

COMMISSION OF THE EUROPEAN COMMUNITIES

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EUROPEAN FOUNDATION

(Commission Services' working document)

COMMISSION SERVICES' WORKING DOCUMENT CONCERNING
THE EUROPEAN FOUNDATION

INTRODUCTION

At its meeting on 7 and 8 April the European Council laid down in outline the objectives, tasks and structure of the Foundation and decided that the Foundation should be set up by an agreement between the Member States meeting within the Council of the European Communities. The European Council implied rather than expressed a view on the question whether the Community itself should be a Contracting Party to this agreement. The attached draft texts envisage such Community participation. The reasons which have led to this suggestion are the following.

The objectives of the Foundation include matters of Community concern and competence; the Community institutions are to take part in the nomination of members of the Council of the Foundation, and the Community budget is to finance the Foundation, perhaps as sole contributor during the initial stages. Community participation in the Convention and Protocol is therefore desirable in principle, besides being necessary for legal and practical reasons.

The Presidency's conclusions following the European Council do not specify the respective share of membership of the Council of the Foundation. In preparing the attached texts the Commission services have taken as a working hypothesis one of the formulae which has been under consideration, namely 50% from the Member States, 25% from the Council on the basis of a Commission proposal and following the opinion of the European Parliament and 25% by cooptation.

The purpose of the "Draft Agreement" to be found on the last page of the attached document is to help to ensure that the Foundation can begin its activities quickly, as desired by the European Council. But it is not possible to set up the Foundation itself by such means; a full international Convention is required to create the Foundation with legal personality in national and international law.

DRAFTCONVENTION
SETTING UP
EUROPEAN FOUNDATION

HIS MAJESTY THE KING OF THE BELGIANS
HER MAJESTY THE QUEEN OF DENMARK
THE PRESIDENT OF THE FEDERAL REPUBLIC OF GERMANY

THE PRESIDENT OF THE FRENCH REPUBLIC
THE PRESIDENT OF IRELAND
THE PRESIDENT OF THE ITALIAN REPUBLIC

HIS ROYAL HIGHNESS THE GRAND DUKE OF LUXEMBOURG

HER MAJESTY THE QUEEN OF THE NETHERLANDS
HER MAJESTY THE QUEEN OF THE UNITED KINGDOM OF GREAT BRITAIN AND
NORTHERN IRELAND

THE EUROPEAN ECONOMIC COMMUNITY

DESIRING to ...

RESOLVED to ...

CONSIDERING that ...

HAVE DECIDED to set up a European Foundation and to lay down the conditions under which it will function, and to this end have designated as their Plenipotentiaries:

HIS MAJESTY THE KING OF THE BELGIANS:

HER MAJESTY THE QUEEN OF DENMARK:

THE PRESIDENT OF THE FEDERAL REPUBLIC OF GERMANY:

THE PRESIDENT OF THE FRENCH REPUBLIC:

THE PRESIDENT OF IRELAND:

THE PRESIDENT OF THE ITALIAN REPUBLIC:

HIS ROYAL HIGHNESS THE GRAND DUKE OF LUXEMBOURG:

HER MAJESTY THE QUEEN OF THE NETHERLANDS:

HER MAJESTY THE QUEEN OF THE UNITED KINGDOM OF GREAT BRITAIN AND
NORTHERN IRELAND

THE COUNCIL OF THE EUROPEAN ECONOMIC COMMUNITY:

WHO, having exchanged their Full Powers, found in good and due form, have
agreed as follows:

Chapter I

PRINCIPLES AND OBJECTIVES OF THE FOUNDATION

Article 1

A European Foundation (hereinafter called "the Foundation") is jointly set up. It shall have legal personality.

The Foundation shall be non-profit making. Its seat shall be in Paris.

Article 2

The aim of the Foundation shall be to increase mutual understanding among the peoples of Europe and to promote deeper awareness of Europe's cultural heritage as a whole and in its constituent parts and greater understanding of European integration.

To achieve this aim the Foundation may act directly or indirectly, organizing activities of its own or providing guidance or encouragement for activities organized by other bodies, with a view to:

- promoting contact and the exchange of ideas between persons and groups in the different Community countries;
- encouraging language teaching;
- fostering awareness among Community nationals of the historical, cultural and social development of the Contracting States, their common heritage and European integration;
- promoting research and the dissemination of research results in the above fields.

The Foundation's area of activity shall include all Member States of the European Economic Community (hereinafter called "the Community") and countries which have applied for Community membership.

Article 3

The Foundation shall ensure that its activities are complementary to those of other institutions or bodies active at national, bilateral or international level in the fields referred to in Article 2.

Similarly, the Foundation's activities must not duplicate those included in existing or future Community programmes.

The Foundation shall give priority to indirect action involving the provision of guidance and encouragement, where necessary in the form of financial assistance, for projects and activities organized by other institutions or bodies in the fields referred to in Article 2.

As a rule, the Foundation shall organize direct action only in areas where the existing or foreseeable activities of other institutions or bodies are clearly inadequate.

The scope of the activities encouraged or organized by the Foundation must, as a general rule, either by virtue of their objective or by virtue of the circle of persons likely to benefit, extend beyond the territory of one Contracting State.

The Foundation shall be responsible for the balanced management of the resources placed at its disposal.

Article 4

Within its terms of reference the Foundation shall cooperate with any institutions and bodies active in the same or similar fields wishing to cooperate.

The Contracting Parties shall take all the measures necessary to facilitate the pursuit of the aim of the Foundation.

Article 5

The Foundation shall draw up a programme establishing its priorities. The programme may extend over a period of up to three years from the date of adoption.

Special attention shall be paid to the interests and requirements of young people when the programme is being formulated.

Article 6

The Foundation and its staff shall enjoy such privileges and immunities as are necessary for the performance of their tasks, under the conditions laid down in the Protocol annexed to this Convention, which forms an integral part thereof.

The Foundation shall conclude a headquarters agreement with the French Government.

Article 7

In each of the Contracting States, the Foundation shall enjoy the most extensive legal capacity accorded to legal persons under their laws; it may, in particular, acquire or dispose of movable and immovable property, conclude contracts and be a party to legal proceedings. To this end it shall be represented by the person empowered by the Board.

Chapter II

STRUCTURE

Article 8

The authorities of the Foundation shall be:

- the Board;
- the Executive Committee.

Article 9

1. The Board shall be composed of thirty-six nationals of the Contracting States, who shall be chosen on the grounds of their qualifications and experience and whose independence is beyond doubt.
2. The members of the Board shall be completely independent in the performance of their duties. They shall neither seek nor take instructions from anybody.

Article 10

1. The members of the Board shall be appointed as follows:
 - The Contracting States shall jointly appoint eighteen members on basis of two per State;
 - Nine members shall be appointed by the Council of the Community acting by a qualified majority in accordance with the weighting laid down in Article 148(2) of the Treaty establishing the European Economic Community on a proposal from the Commission after consultation with the European Parliament;
 - The members thus appointed by the Contracting States and by the Community shall then appoint nine other members, each of whom must receive at least twenty votes to be elected. At least five of these members shall be coopted from among the directors of institutions or organizations active in the same fields as the Foundation.
2. The term of office of members of the Board shall be six years. In the event of a member of the Board terminating his service prior to the expiry of his term of office, he shall be replaced for the remainder of his term by a member appointed in accordance with the conditions governing the original appointment. The term of office of members of the Board 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.
3. The Board shall elect a Chairman and three Deputy Chairmen from among its members to serve for a period of three years. The term of office of the Chairmen and the Deputy Chairmen shall be renewable once only.
4. The Chairmen shall convene the Board at least twice a year and at the request of at least one third of its members.
5. Decisions by the Board shall be taken by an absolute majority of its members.

Article 11

The Board shall administer the Foundation and lay down its general guidelines. It shall direct its activities and supervise its development.

To this end the Board shall:

- adopt the work programme establishing the Foundation's priorities;
- draw up the Foundation's rules of procedure;
- decide whether to accept any legacy, donation or subsidy.

Article 12

1. The Executive Committee shall be composed of:
 - the Chairman of the Board
 - the Deputy Chairmen
 - seven members elected by the Board from among its members.

2. The term of office of members of the Executive Committee shall be three years. It shall be renewable.

3. The Chairman shall convene the Executive Committee at least four times a year.

Article 13

1. The Executive Committee shall direct the Foundation under the authority of the Board. It shall supervise implementation of the Foundation's programme.
2. It shall be responsible for the administration of the Foundation and shall act as authorized by the Board. It shall prepare the draft annual budget and, where necessary, the draft multiannual financial forecasts and submit them to the Board.
3. It shall have authority over the staff and shall be responsible for their recruitment and dismissal.
4. It shall prepare the activities of the Board.

Article 14

A Secretary, appointed by the Board, shall assist the Executive Committee in the performance of its organizational and administrative duties and shall manage the day-to-day activities of the Foundation in accordance with instructions from the Board and the Executive Committee. His mandate and term of office shall be fixed by the Board.

Chapter III

FINANCIAL PROVISIONS

Article 15

The Foundation shall be financed by means of the following.

1. A subsidy from the Community; this shall constitute the Foundation's initial endowment.
2. Possible additional subsidies from the Community.
3. Voluntary contributions from public and private funds.

The Foundation shall not accept any donation or contribution conditional upon tasks not compatible with its aims.

Article 16

The Board shall draw up a budget each year. It shall include estimates of all items of revenue and expenditure for that financial year.

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

Revenue and expenditure shall be expressed in European units of account.

Article 17

The Executive Committee shall implement the budget in accordance with the financial rules and within the limits of the appropriations granted. He shall report on his management to the Board.

Article 18

1. Without prejudice to the powers vested in the Court of Auditors by Article 209 of the Treaty establishing the European Economic Community in respect of outside bodies in receipt of Community subsidies, financial control shall be exercised by two auditors appointed by the Board for a period of three years. Their term of office shall be renewable.

2. The purpose of the audit, which shall be based on records and, if necessary, performed on the spot, shall be to establish that all revenue has been received and all expenditure incurred in a lawful and regular manner and that the financial management has been sound.

The auditors shall submit their report to the Board annually.

The Executive Committee shall supply any such information and assistance as the auditors may require in the performance of their duties.

3. The financial rules shall lay down the terms on which the Executive Committee shall be given a discharge in respect of the implementation of the budget.

Article 19

The Board shall adopt the financial rules, specifying in particular

- (a) the procedure for establishing and implementing the annual budget and for presenting and auditing accounts;
- (b) the methods for the payment and deployment of the Foundation's resources;
- (c) the rules and procedure concerning the responsibility of authorizing officers and accounting officers.

Chapter II

MISCELLANEOUS PROVISIONS

Article 20

The French Republic shall provide the Foundation, free of charge, with land in Paris and the buildings which the Foundation requires for its activities, and shall undertake the upkeep thereof.

The procedure for implementing paragraph 1 shall be laid down in the headquarters agreement.

Article 21

The Executive Committee shall, by 31 March at the latest, draw up an annual general report on the activities of the Foundation and shall submit it to the Board for approval. Once approved the report shall, by 30 June at the latest, be forwarded to the Commission of the Community and the Governments of the Contracting States.

Article 22

1. The Board shall adopt:

- provisions governing the service allowances of its members and members of the Executive Committee;
- rules relating to the conditions of appointment and employment of its staff.

2. The court having jurisdiction in respect of officials of the Community shall be competent in respect of disputes between the foundation and its servants.

Article 23

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 the laws of the Contracting 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.

Article 24

Any dispute between Contracting Parties, or between one or more Contracting Parties and the Foundation concerning the application or interpretation of the Convention shall be settled by the Court of Justice of the European Communities.

Article 25

The treatment accorded by each Contracting State to contributions to the Foundation's financing in relation to national taxes and dues shall be at least as advantageous as the most favourable treatment accorded to contributions to the financing of comparable organizations or foundations.

Chapter V

TRANSITIONAL AND FINAL PROVISIONS

Article 26

1. This Convention shall apply to the territories covered by the Treaty establishing the European Economic Community.

Article 27

1. This Convention is concluded for an indefinite period.
2. It shall enter into force one month from the date on which four Contracting Parties, including the French Republic and the Community, have deposited their instruments of acceptance, approval or ratification with the Government of the French Republic.
3. From that date this Convention shall, in relation to such of its provisions as under the constitutional requirements of any other Contracting State can enter into force solely by virtue of the signature of the Convention, also apply to that Contracting State.
4. The members of the Board shall be appointed for the first time not later than the first day of the month following entry into force of this Convention.
5. The Board shall meet as soon as its members have been appointed.

It shall conclude the headquarters agreement.

It shall appoint its Chairman and the members of the Executive Committee.

It shall take the necessary steps to set up the foundation and make arrangements, notably in relation to the preparation of its first programme, for the Foundation to become operational without delay.

Article 28

The French Government shall notify the Contracting Parties of

- (a) the deposit of each instrument of acceptance, approval, ratification or accession;

- (b) the entry into force of this Convention.

Article 29

This Convention, drawn up in the Danish, Dutch, English, French, German, Irish and Italian languages, all six texts being authentic, shall be deposited in the archives of the French Government, which shall transmit a certified copy to the Government of each of the other Contracting States and to the Council of the Community.

PROTOCOL ON THE PRIVILEGES AND IMMUNITIES OF THE EUROPEAN FOUNDATION

THE STATES PARTIES TO THE CONVENTION setting up a European Foundation,
signed at on,

DESIRING to define the privileges and immunities necessary to ensure the
smooth running of that Foundation,

HAVE AGREED on the following provisions:

CHAPTER I

Arrangements for the Foundation

Article 1

The European Foundation (hereinafter called "the Foundation") shall enjoy
immunity from enforcement in the exercise of its activities, except:

- (a) in respect of a civil action brought by a third party for damage
arising from an accident caused by a motor vehicle belonging to, or
operated on behalf of the Foundation, or in respect of a motor traffic
offence involving such a vehicle;
- (b) in respect of the enforcement of a judicial decision under a provision
of the Convention or of this Protocol;
- (c) where the Board, acting unanimously, has waived such
immunity in any particular case.

Article 2

1. The premises and buildings of the Foundation shall be inviolable. This provision shall not prevent the implementation of measures taken pursuant to Article 16 of this Protocol or authorized by the Board.

2. The Foundation shall not allow its premises and buildings to be used as a refuge by a person having just committed an offence in flagrante delicto, or in respect of whom a warrant for arrest has been issued, or who has been convicted or is subject to a deportation order.

3. The archives of the Foundation shall be inviolable.

Article 3

Save as provided in Article 1(a), (b) and (c), the property and assets of the Foundation shall be immune from any form of administrative or provisional judicial constraint such as requisition, confiscation, expropriation or attachment.

Article 4

1. Without prejudice to national provisions safeguarding the artistic and cultural heritage of Contracting States, goods imported or exported by the Foundation and strictly necessary for the exercise of its official activities shall be exempt from any turnover tax, customs duties and other taxes or charges, and from all prohibitions and restrictions on import or export.

2. The circulation of publications and other information material sent by or to the Foundation in the course of its official activities shall not be restricted in any way.

3. For its official communications and the transmission of all its documents, the Foundation shall enjoy in the territory of each Contracting State the treatment accorded by that State to international organizations. Official correspondence and other official communications of the Foundation shall not be subject to censorship.

Article 5

1. Within the scope of its official activities, the Foundation, its assets, income and other property shall be exempt from all direct taxes.

2. When the Foundation makes substantial purchases which are strictly necessary for the exercise of its official activities, the price of which includes indirect taxes or sales taxes, the Contracting States shall, whenever possible, take the appropriate measures to remit or refund the amount of such taxes.

3. No exemption shall be accorded in respect of taxes and dues which amount merely to charges for public utility services.

Article 6

The Foundation may receive and hold any kind of funds, currency, cash or securities; subject to national provisions on exchange control, it may dispose of them freely in the exercise of its official activities and hold accounts in any currency to the extent required to meet its obligations.

CHAPTER II

Arrangements concerning members of the Board, the Secretary and other persons connected with the Foundation

Article 7

Members of the Board shall, in the course of performing their duties and while they are travelling to and from places of meeting, enjoy the following privileges, immunities and facilities:

- (a) immunity from personal arrest or detention and from seizure of their personal luggage, except when found in the act of committing an offence;
- (b) immunity from legal proceedings, even after the termination of their mission, in respect of acts performed by them in their official capacity and within the limits of their functions, including their words spoken and written;
- (c) inviolability for official papers and documents;
- (d) all the customary administrative facilities, particularly with regard to travel or stay.

Article 8

The Contracting States, in close cooperation with the Foundation, shall take all measures within their power to ensure that all necessary administrative facilities, particularly with regard to travel, stay and currency exchange, are granted to persons taking part in the work of the Foundation.

Article 9

1. The Secretary and staff of the Foundation shall:

- (a) be immune from legal proceedings, even after they have left the service of the Foundation, in respect of acts done by them in the exercise and within the limits of their functions including words written and spoken; this immunity shall not apply in the case of a motor traffic offence committed by such persons, nor in the case of damage caused by a motor vehicle belonging to or driven by such persons;
- (b) together with those members of their families forming part of their households, benefit from such exemption from immigration restrictions or formalities for the registration of aliens as is customarily accorded to the staff of international organizations;
- (c) in respect of currency or exchange regulations, be accorded the same privileges as are customarily accorded to the staff of international organizations;
- (d) have the right to import free of duty their furniture, effects and a motor car for their personal use at the time of first taking up their post in the State concerned for a period of one year or more and the right to re-export free of duty their furniture, personal effects and motor car for their personal use on termination of their duties in that State, subject in either case to the conditions and restrictions imposed by the national law of the State in which this right is exercised.

2. The Contracting States shall, in close cooperation with the Foundation, take all appropriate measures to facilitate the entry, stay and departure of persons entitled to benefit from the provisions of this Article.

Article 10

The scheme of social security benefits for the Secretary and members of staff shall be set out in the provisions governing relations between the Foundation and its staff.

If provision is not made for such benefits, the persons referred to in the preceding paragraph may opt for the scheme either under the law of the State in which the Foundation has its seat, or under the law of the Contracting State to which they were last subject, or under that of the Contracting State of which they are nationals.

This option may be exercised once only and shall take effect from the date of taking up employment with the Foundation.

Article 11

1. The Secretary and staff of the Foundation shall be liable to a tax for the benefit of the Foundation on salaries, wages and emoluments paid by the Foundation, in accordance with the conditions and procedure to be laid down by the Board of the Foundation within one year from the entry into force of the Convention. From the date on which this tax is applied, such salaries and emoluments shall be exempt from national income tax.

2. The provisions of paragraph 1 shall not apply to pensions and annuities paid by the Foundation to former Secretaries or to former members of staff.

3. In the application of income tax, wealth tax and death duties and in the application of conventions on the avoidance of double taxation concluded between Contracting States, the Secretary and staff of the Foundation who, solely by reason of the performance of their duties in the service of the Foundation, establish their residence in the territory of a Contracting State other than their country of domicile for tax purposes at the time of entering the service of the Foundation, shall be considered, both in the country of their actual residence and in the country of domicile for tax purposes, as having maintained their domicile in the latter country provided that it is a Contracting State. This provision shall also apply to a spouse to the extent that the latter is not separately engaged in a gainful occupation, and to children dependent on and in the care of the persons referred to in this Article.

CHAPTER III

General provisions

Article 12

1. Privileges, immunities and facilities under this Protocol shall be accorded solely in the interests of the Foundation and not for the personal advantage of the beneficiaries.

2. The authorities of the Foundation have not only the right but also the duty to waive an immunity when such immunity impedes the course of justice and when it is possible to dispense with the immunity without jeopardizing the purposes for which it is accorded.

Article 13

This Protocol shall in no way affect the right of each Contracting State to take all precautionary measures necessary in the interests of its security.

Article 14

No Contracting State is obliged to accord the privileges and immunities referred to in Article 9(c) and (d) to its own nationals and permanent residents.

Article 15

Without prejudice to the provisions of Article 9(1)(d), no exemption shall be accorded in respect of goods for the personal benefit of the staff of the Foundation.

Goods imported or acquired under this Protocol shall not be sold, given away or hired out except under the conditions laid down by provisions in force in the States which have granted exemptions.

Article 16

1. The provisions of this Protocol shall be applied in a spirit of close cooperation by the authorities of the Foundation and the competent authorities of the Contracting States in order to facilitate, while respecting the independence of the Foundation, the proper administration of justice, the application of social legislation, police, safety or public health regulations and to prevent any abuse of the privileges, immunities and facilities provided for in this Protocol. The procedure for cooperation mentioned in this paragraph may be laid down in the supplementary agreements provided for in Article 17.

2. The name, position and address of the persons benefiting from the provisions of Articles 9 to 12 and the arrangements for them shall be communicated from time to time to the Governments of the Contracting States.

Article 17

Supplementary agreements may be concluded between the Foundation and one or more Contracting States for the purpose of implementing and applying this Protocol.

Article 18

The provisions of Article 22(2) of the Convention shall apply to disputes concerning this Protocol.

FINAL ACT

THE PLENIPOTENTIARIES OF THE HIGH CONTRACTING PARTIES,

assembled at on for the signature of the Convention
setting up a European Foundation,

HAVE ADOPTED THE FOLLOWING TEXTS:

- the Convention setting up a European Foundation,
- the Protocol on the Privileges and Immunities of the European Foundation.

At the time of signature of these texts, the Plenipotentiaries have:

- taken note of the declarations by the Government of the Federal
Republic of Germany set out in Annex ...

Declaration by the Government of the Federal Republic of Germany

The Government of the Federal Republic of Germany reserves the right to
declare, when depositing its instrument of ratification of the Convention
establishing a European University Institute, that this Convention shall
equally apply to Land Berlin.

DRAFT AGREEMENT BETWEEN THE CONTRACTING PARTIES TO THE CONVENTION
SETTING UP A EUROPEAN FOUNDATION

THE REPRESENTATIVES OF THE HIGH CONTRACTING PARTIES

Considering that the European Foundation should be in a position to complete its mission as soon as possible after it comes into being and that, to this end, preparatory work should begin before the Convention setting up a European Foundation comes into force, to facilitate the creation of an administrative infrastructure for the Foundation and to allow the Foundation to define its priorities,

HAVE AGREED to the establishment of a Committee whose members would be appointed by each of them and the Commission of the European Communities to carry out preliminary studies to prepare the ground for the establishment of the Foundation and its subsequent activities.

The Committee would

- compile a list of national and international institutions and bodies, public and private, active in the same or related fields with which the Foundation could usefully cooperate or maintain contacts;
- establish what these institutions or bodies have already done and what they are planning to do;
- facilitate adoption of the Foundation's first programme by delivering an opinion on the matters to which the Foundation should give priority.