Since 1976, the Organization examines how to "guarantee payment of the benefits becoming due to the members and beneficiaries of the (CERN Pension) Fund until the expiry of the rights of the last beneficiary" (CERN/CC/1342).

On 26 June 1986, Council adopted a Resolution to that end (CERN/1628). It also entrusted a Task Force on Reintegration with the purpose to propose a way for implementing this goal.

On 14 December 1995, the Task Force presented to the Committee of Council its Report, prepared in close co-operation with the Swiss Authorities (CERN/CC/2117). It recommended, as a first legal step, the establishment of an international Foundation under Swiss law which would welcome, before the dissolution of the Organization and once put into balance, the Pension Fund. This Foundation would provide the guarantees mentioned above.
This Report has been examined by the CERN bodies concerned, in particular the Governing Board of the Pension Fund, the Standing Advisory Committee, the Tripartite Employment Conditions Forum (Forum), as well as by the Swiss Authorities.

The proposal to establish an international Foundation under Swiss law is now ready for decision by Council and its subordinate bodies. Therefore, it is recommended to Council to approve:

1) the Third Progress Report by the Chairman (CERN/CC/2117; Annex 1 to the present document), including its Appendix 3 concerning an exchange of letters between the Swiss Confederation and CERN concerning the tax arrangements for the Foundation in Switzerland, as well as Appendices 4, 5, 6, but excluding Appendices 1 and 2);

2) the revised Draft Council Resolution, supplementing the Council Resolution dated 27 June 1986 (CERN/1628), concerning guarantees for the continued payment of the pension rights of CERN's personnel in the event of dissolution of the Organization, (Annex 2 to the present document);

3) the revised Draft Deed of Constitution of the "Foundation of the pension Fund of the European Organization for nuclear research (CERN), (Annex 3 to the present document);

4) the continuation of the work on the issues listed in paragraph 21 above, according to the recently established procedures involving the Tripartite Employment Conditions Forum.

I. Introduction

1. On 26 June 1986 the Council adopted a Resolution under which the Organization undertakes to "guarantee payment of the benefits becoming due to the members and beneficiaries of the [CERN Pension] Scheme until the expiry of the rights of the last beneficiary ..." and approved the principle of the steps proposed for that purpose, especially the establishment of a Foundation which would take over the Pension Fund in the event of the dissolution of the Organization, without prejudice to other systems providing equivalent guarantees (CERN/FC/2946/Rev., Appendix IV and CERN/1628).

2. The procedures for applying these steps required further examination. These studies have been conducted by the Task Force on Reintegration (TFR) chaired in succession by Dr. M. GIGLIARELLI-FIUMI and Dr. M. O. OTTOSSON since June 1991, on the appointment by Council.

3. At its session of June 1991 the Council extended the terms of reference of the TFR beyond the initial 1986 concept (CERN/1861 and CERN/1878), so as to include possible guarantees during the lifetime of the Organization.

II. Report of the Task Force on Reintegration (TFR)

4. In 1995, the TFR produced its "Third Progress Report by the Chairman" dealing with the establishment of an International Foundation under Swiss Law to take over the CERN Pension Fund in the event of the dissolution of the Organization.
5. The report consisted of four documents: the Report itself and its three Appendices, namely:

- a Draft 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 (Appendix 1);

- a Draft Deed of Constitution of the "Foundation of the Pension Fund of the European Organization for Nuclear Research (CERN)" (Appendix 2);

- an exchange of letters between the Swiss Confederation and CERN concerning the tax arrangements for the Foundation in Switzerland (Appendix 3),

the last two Appendices have been drawn in co-operation with and with the assistance and consent of the Swiss Authorities who would have to approve the setting up of the Foundation and to monitor its operation once set up.

III. Agreement of the Governing Board of the Pension Fund

6. The report was presented to the Governing Board of the Pension Fund on 3 October 1995. The Board discussed the document and agreed with all the proposals it contained.

IV. Presentation of the Report to the Committee of Council

7. The Task Force submitted its "Third Progress Report by the Chairman" (CERN/CC/2117) to the Committee of Council on 14 December 1995. The Committee took note of it and recommended that it be examined by the Tripartite Employment Conditions Forum (TREF).
V. Discussion of the Report by the Tripartite Employment Conditions Forum (TREF)

8. TREF's first reading of the Third Progress Report on 29 February 1996 highlighted several issues meriting further examination. At that stage it was agreed to hold enlarged meetings of the Task Force on Reintegration to include members of TREF who wished to examine those matters in more details. The Committee of Council was apprised of this development at its meeting of 21 March 1996 (CERN/CC/2127).

VI. Discussions in the Enlarged Meetings of the Task Force on Reintegration (EMTFR)

9. The EMTFR were held on 18 April, 8 May and 18 June 1996, with the attendance of several members of TREF, including members of four Member States Delegations, of the Management and of the Staff Association. The Third Progress Report and its Appendices were examined, several question were asked by the members of TREF and were answered by the members of the TFR.

It was concluded that it would be appropriate to amend:

- the Draft 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" (CERN/CC/2117- Appendix 1);

- the Draft Deed of Constitution of the "Foundation of the Pension Fund of the European Organization for Nuclear Research (CERN)" (CERN/CC/2117 - Appendix 2 ),

...to underline that the CERN Member States are currently not in a position to take a legal commitment concerning the operation of the Foundation, after the Organization's dissolution.
The Staff Association representatives, however, expressed strong reservations on several of these amendments.

A. Draft Council Resolution

10. The EMTFR recommended (amendments in bold):

   - Article 2, paragraph 1 - to replace "actuarial and financial balance" by "actuarial balance",

   - Article 2, paragraph 2 - be amended as follows:

     "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 using actuarial parameters on which the Council will decide".

   - Article 2, paragraph 3 - to write:

     "In the event of a technical deficit, the Organization shall remedy it, pursuant to the Council Resolution dated 26 and 27 June 1986, by paying to the Foundation a sum on which the Organization will agree in consultation with Switzerland."

11. The version of the draft Council Resolution proposed by the TFR contained an Article 3 entitled "Benefits of the Foundation", which reads:

   "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 Reintegration. Its recommendations shall be submitted to the Council."

   The EMTFR proposed that the article be deleted, as its inclusion in a Council Resolution was not appropriate and as the examination referred to was already part of the Task Force terms of reference.
B. Deed of Constitution of the Foundation

12. The EMTFR recommended (amendments in bold):

- Article III "Purposes and Resources": to become "Purposes";

- Article III, paragraph 2, of which provisions were as follows:

"The Foundation shall also have the purpose of protecting the insured persons against the effects of inflation on their purchasing power."

to be deleted;

- Article IV "Organs": to add the Administrator;

- Article V, fifth indent of paragraph 2 - to delete "[benefits] designed to preserve the purchasing power [of the insured persons]" and to write:

"The Council shall decide annually on the adjustment of benefits 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."

- Article VI "Composition of the Council", first indent - to amend as follows:

"Four members appointed ad personam by the Council. Former Member States of CERN may, through the good offices of the Swiss Confederation, put forward proposals for appointments to the Council."

- Article VI, third indent to amend as follows:

"Five members elected amongst themselves by the persons insured by the Foundation according to electoral regulations issued in accordance with Article V.4 above;"
• Article IX “The Administrator”, paragraph 2 - to amend as follows:

“The Administrator shall implement the Council’s decisions and represent the Foundation. He shall administer the Foundation, with special regard to the management of its assets. [...]”;

• Article XII “Capital assets of the Foundation”, paragraph 1 - to write “[...] This operational capital may be increased by the Council at any time”;

• Article XII, paragraph 2, which begins with “The Foundation’s resources shall also include” - to amend as follows:

- second indent: to replace

“the debts recognised by CERN, especially those needed to balance its pension scheme”

by

“the amounts to be paid to the Pension Fund by CERN, especially those needed to balance its pension fund;”

- third indent, to write:

“payments, if any, from former CERN Member States to the pension fund”

13. In agreement with the EMTFR, these proposals were submitted on 7 August 1996 to the Swiss Authorities. On 2 September 1996, the Staff Association informed the Swiss Authorities of their strong reservations and worries.
VI. Opinion of the Governing Board of the Pension Fund

14. The EMTFR's proposals were also forwarded to the Governing Board of the Pension Fund which examined them and formulated an opinion and recommendations relating thereto in a letter dated 12 September 1996 from its Chairman, M. P. LEVAUX, to the Director-General of CERN (Annex 4). In particular the letter made the following recommendations:

"Regarding the Draft Resolution, the Governing Board recommends that Article 2, paragraph 1 should make some reference to Article II.1.15 of the Pension Fund Rules and Regulations, which deals with the questions of pension adjustment and the preservation of purchasing power in the following terms: "The CERN Council shall decide annually the adjustment to be made to pensions (except that for unsuitability), to fixed benefits and to allowances. For this purpose, it shall take particular account of the criteria adopted for the adjustment of salaries."

"In Article 2, paragraph 2 of the Draft Resolution, on the question of the actuarial parameters, the Governing Board believes that in view of their ultimate importance to ensuring the implementation of the schedule of benefits provided for in the Pension Fund Rules and Regulations, the "actuarial parameters" should be qualified in order to avoid misunderstanding at a later date. It thus proposes to qualify the term using, for instance, the expression "realistic economic parameters" as in the Resolution adopted by Council in 1986. Clearly, the present economic parameters are not entirely "realistic" for the time being."

"With regard to the Deed of Constitution of the Foundation, and in particular Article VI "Composition of the Council", while the Governing Board understands the reasons for the Enlarged Task Force's amendments, it has some concern about the former Member states' responsibility with respect to their nationals affiliated to the Fund and about the operation of the Foundation's Council should it be unable to renew itself. It would appear rather problematic if all ties between the former Member States and the former employees, in particular regarding basic social security, were
totally severed once the Foundation was established. It would be more appropriate to find a wording that involves the former CERN Member States through the good offices of the Swiss Confederation, especially as the former are explicitly mentioned in Articles XII and XVII of the Deed of Constitution."

"Finally, the Governing Board believes that the Third Report by the Chairman in no way brings the work of the Task Force on Reintegration to a conclusion. Other important issues remain, in particular relating to the maintenance of the levels of the benefits to be paid by the Foundation after the dissolution of the Organization and the consequences of the withdrawal of a Member State, and it is therefore necessary for discussions to continue."

VII. Further discussion by the Tripartite Employment Conditions Forum (TREF)

15. TREF was informed on all these developments at its meeting held on 18 and 19 September 1996 and resumed its discussion on the issue which the Chairman of TREF, Dr. J. BEZEMER summarized as follows during the meeting of the Finance Committee, on 25 September 1996:

"Regarding the creation of a Foundation under Swiss law, there remained a divergence of views on whether ties should be maintained with former Member States after dissolution. There was a further divergence on whether to submit the amended Report [of the TFR] or to allow more time for examination of outstanding issues, in particular the future adjustment of pensions by the Foundation, the consequence of withdrawal of a Member State and provision for health insurance coverage in the event of dissolution of the Organization. After many years of discussion in the Task Force, the time was now right to reach a conclusion on the main proposal to set up a Foundation under Swiss law as soon as possible, while formally indicating that some important issues required further studies." (Minutes - CERN/FC/3916)
16. However, during the discussion in TREF, a consensus had emerged on the first two requests made by the Governing Board of the Pension Fund concerning the Draft Council Resolution, namely:

- to refer to Article II 1.15 of the Pension Fund Rules and Regulations in paragraph 1 of Article 2;

- to qualify the parameters by using the expression "realistic economic parameters" in paragraph 2 of Article 2 which will then read:

"To this end the Governing Board of the Pension Fund shall, at the request of the Council of the Organization, draw a liquidation actuarial balance sheet for the Pension Fund, using realistic economic parameters on which the Council will decide".

IX. Observations of the Swiss Authorities

17. Following the agreement referred to in paragraph 13 above, the Federal Department of Foreign Affairs of the Swiss Confederation forwarded its response in a letter dated 25 September 1996 (Annex 5). Commenting only on the Deed of Constitution, an act which would have to conform to the Swiss law, it accepted the modifications proposed except those concerning the first indent of paragraph 1 of Article VI and paragraph 1 of Article XII.

The Federal Department of Foreign Affairs proposed to amend Article VI, paragraph 1 to read:

"(...) four members appointed ad personam by the Swiss Confederation after consultations with the former Member States which may put forward proposals to that end (...)"

and requested that the word "operational" after "capital" be deleted in Article XII.
X. Proposal

18. The TFR's Report and its recommendation of a mechanism to create a Foundation under Swiss law in the event of the dissolution of the Organization has been carefully examined by the CERN's instances involved up to now:

- The existence of the Foundation would permit transferring the assets of the Pension Fund to this new institution before the dissolution of the Organization, as a means of removing them from the general CERN's liquidation.

- The Foundation would be benefiting from tax exemptions granted by the Swiss Authorities.

Note has been taken of the opinion and recommendations of the Governing Board of the CERN Pension Fund, of the EMTFR's proposed amendments, of the observations of the Swiss Authorities and of the Staff Association's reservations.

19. The Third Progress Report represents the fulfilment of the first stage of Task Force's terms of reference — "the preparation of documents concerning the establishment of a foundation under Swiss law in the event of the dissolution of the Organization" — which would offer an improved guarantee that the pension rights of the CERN personnel would be safeguarded in such an event.

20. The amendments proposed after the enlarged meetings of the TFR to the draft Resolution and to the Draft Deed of Constitution, together with those approved and proposed by the Swiss Authorities, may be retained.

The proposal of the Governing Board of the Pension Fund as expressed in the letter of 12 September 1996 from the Chairman of the Board to the Director-General may also be retained. Therefore, the Draft Council Resolution may be amended as follows:
"Article 2, paragraph 1:

The Organization shall bring the Fund into actuarial balance in accordance with Article 4 of the Council Resolution dated 26 and 27 July 1986, taking into consideration in particular the commitments of Article II 1.15 of the Rules of the Pension Fund (edition 1.1.1986), before the Fund is transferred to the Foundation."

"Article 2, paragraph 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, using realistic economic parameters on which Council will decide."

21. Finally, one should also underline that the issue of the Foundation is inseparable from several other aspects of the guarantees issue that remain to be examined, namely:

- the withdrawal of one (or several) Member State(s) during the life-time of the Organization and the consequences for the Pension Fund;

- 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;

- the guarantee that, in the event of its dissolution, the Organization will settle its debts to the Pension Fund;

- the health insurance of the beneficiaries of the Foundation.
22. **Therefore, it is recommended to Council to approve:**

1) **the Third Progress Report** by the Chairman (CERN/CC/2117; Annex 1 to the present document), including its Appendix 3 concerning an exchange of letters between the Swiss Confederation and CERN concerning the tax arrangements for the Foundation in Switzerland, as well as Appendices 4, 5, 6, but excluding Appendices 1 and 2; 

2) **the revised Draft Council Resolution**, supplementing the Council Resolution dated 27 June 1986 (CERN/1628), concerning guarantees for the continued payment of the pension rights of CERN's personnel in the event of dissolution of the Organization, (Annex 2 to the present document); 

3) **the revised Draft Deed of Constitution** of the "Foundation of the pension Fund of the European Organization for nuclear research (CERN), (Annex 3 to the present document); 

4) **the continuation of the work** on the issues listed in paragraph 21 above, according to the recently established procedures involving the Tripartite Employment Conditions Forum.
List of the Annexes to the present document:

Annex 1: Task Force on Reintegration - “Guarantees for the pensions of the CERN personnel in the event of the dissolution of the Organization” - Third Progress Report by the Chairman (CERN/CC/2117);

Annex 2: Revised Draft 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 (CERN/2165, Annex 2);

Annex 3: Revised Draft Deed of Constitution of the “Foundation of the Pension Fund of the European Organization for Nuclear Research (CERN)” (CERN/2165, Annex 3);

Annex 4: Letter from the Chairman of the Governing Board of the Pension Fund to the Director-General of CERN, dated 12 September 1996 (CERN/2165, Annex 4);

Annex 5: Letter from the Swiss Federal Department of Foreign Affairs, dated 25 September 1996 (CERN/2165, Annex 5);
ORGANISATION EUROPÉENNE POUR LA RECHERCHE NUCLÉAIRE
CERN EUROPEAN ORGANIZATION FOR NUCLEAR RESEARCH

COMMITTEE OF COUNCIL
Two-hundred-and-twenty-first Meeting
Geneva - 14 December 1995

TASK FORCE ON REINTEGRATION

"Guarantees for the pensions of the CERN personnel in the event of the dissolution of the Organization"

THIRD PROGRESS REPORT BY THE CHAIRMAN

Following the work carried out since 1976 (CERN/CC/1342) and its Resolution of 26 June 1986 (CERN/FC/2946/Rev., Appendix IV and CERN/1628), the Council, at the same Session, set up a Task Force on Reintegration with the task of examining the matter of guarantees for the pensions of the CERN personnel in the event of the dissolution of the Organization (CERN/1628); it defined the Task Force's terms of reference at its Session in June 1991 (CERN/1878).

In that framework, the Task Force, in close co-operation with representatives of the Swiss Confederation, examined and made preparations for the establishment of an International Foundation under Swiss law which would provide those guarantees. The Task Force puts before the Committee of Council the legal instruments required for the establishment of this Foundation, to be approved subsequently by the Council.
The Committee of Council is invited:

1. to take note:

- of the Third Report of the Chairman of the Task Force on Reintegration entitled "Guarantees for the pensions of the CERN personnel in the event of the dissolution of the Organization" (CERN/CC/2117) and of the proposals set out in the appendices thereto, namely:

- a "Draft Resolution, supplementing the Council Resolution of 26 and 27 June 1986, concerning guarantees for the continued payment of the pension rights of CERN's personnel in the event of the dissolution of the Organization" (CERN/CC/2117, Appendix 1);

- a "Draft deed of constitution of a Foundation of the Pension Fund of the European Organization for Nuclear Research (CERN)" (CERN/CC/2117, Appendix 2);

- a Draft exchange of letters between the Swiss Federal Council and the Organization relating to the tax arrangements in Switzerland for the Foundation's movable assets (CERN/CC/2117, Appendix 3);

2. to transmit this Report and the attached proposals to the Director-General with a view to preparations for the forthcoming decisions to be taken by the Council;

3. to request the Task Force on Reintegration to pursue its work in accordance with its terms of reference.
TASK FORCE ON REINTEGRATION

"Guarantees for the pensions of the CERN personnel in the event of the dissolution of the Organization"

THIRD PROGRESS REPORT BY THE CHAIRMAN

INTRODUCTION

1. The Organization has been examining "guarantees for the pensions of members of the CERN personnel in the event of the dissolution of the Organization" (CERN/CC/1342) since 1976. This is a subject to which the CERN staff attaches essential importance in view of the legally precarious nature of the existence of the Pension Fund.

These examinations, the main working documents for which are described in the appendix (CERN/CC/2117, Appendix 4), were begun by the Group of Experts (1976-1979) and subsequently continued by the Tripartite Working Group on Pensions (1983-1986). They have been continued by the Task Force on Reintegration (1986-1991) set up by the Council in June 1986, the terms of reference of which were revised in June 1991. At the same time, Dr. M.O. OTTOSSON, Delegate for Sweden, was appointed as its chairman to succeed Dr. M. GIGLIARELLI-FIUMI who wished to resign, and subsequently agreed to continue to occupy this position although he is no longer a member of his country's delegation to CERN.

I. THE REVISED TERMS OF REFERENCE OF THE TASK FORCE ON REINTEGRATION

2. At its session in June 1991 the Council extended the terms of reference of the Task Force on Reintegration beyond the initial 1986 concept (CERN/1861 and CERN/1878).
They include the examination of pensions guarantees during the working lifetime of the Organization, to encompass in particular:

a) efforts to obtain a collective guarantee by the Member States;

b) the reintegration of the personnel into the national social security schemes;

c) the implications for the Pension Fund of the withdrawal of a Member State.

They also include pensions guarantees in the event of the dissolution of the Organization and, in particular:

a) the preparation of documents concerning the establishment of a foundation under Swiss law in the event of the dissolution of the Organization;

b) the guarantee that, in the event of its dissolution, the Organization will settle its debt to the Pension Fund.

The terms of reference also proposed that an ad hoc group should examine the legal questions and draw up a relevant protocol to be appended to the Convention establishing CERN to make it possible to solve these problems.

II. MEMBERSHIP AND WORK

3. The Task Force on Reintegration resumed work in October 1991. Its membership comprises a representative of the Organization's Member States as its Chairman; a representative of the Management, two representatives of the Pension Fund, two representatives of the Staff Association, one of them acting on behalf of the pensioners, and an observer from ESO, as one of the participating Organizations of the Pension Fund. The list of members is appended hereto (CERN/CC/2117, Appendix 5).
4. The Task Force examined the rather extensive set of problems resulting from its amended terms of reference. It reached the conclusion that it would be best to draw up an order for them and give priority to the most important and urgent one: **preparing for the establishment of a Foundation under Swiss law to take the Pension Fund over in the event of the dissolution of the Organization.**

In this respect, two matters affected the work:

- the position of the Swiss authorities as described on page 11 of this document and whose importance lies in the fact that the planned Foundation will be set up in Switzerland;

- the existing documents, especially the **Council Resolution dated 25 June 1986** (CERN/FC/2946/Rev., Annex IV) and the draft **Constitution of the Foundation and Agreement concerning Integration into the French Social Security Systems** appended thereto (ibid, Appendices A and B).

5. The work was done in two stages. Firstly and **internally**, the Task Force on Reintegration examined and revised the existing documents to meet the new requirements. It found that the solution consisting in reintegration into the French social security systems and, more generally, the national systems of the Member States was currently rather theoretical.

6. The Task force then established fruitful **collaboration** between itself and the **Swiss Federal authorities**, represented by Services of the Confederation (the Directorate of International Public Law of the Federal Department of Foreign Affairs, the Federal Insurance Office and the Permanent Mission of Switzerland to the International Organisations in Geneva), with which a joint Working Group was set up. The minutes of this meeting are appended (CERN/CC/2117, Appendix 6).
This work resulted in two drafts:

a) a **deed establishing** the "Foundation of the Pension Fund of the European Organization for Nuclear Research (CERN)"**, comprising the Constitution of the Foundation, to be validated before the dissolution of the Organization had been decreed;

b) an **exchange of letters** between the Swiss Federal Council and CERN concerning the "Foundation of the Pension Fund of the European Organization for Nuclear Research (CERN)" relating to the tax situation of that Foundation in Switzerland.

This work was concluded at a further plenary meeting on 25 June 1995.

III. CONCLUSION

7. The Task Force on Reintegration, which has kept the President of Council informed of its operations (letter dated 21 April 1993 from the Chairman of the Task Force to the President of Council and the report to the Committee of Council dated 24 June 1993), has now fulfilled a considerable part of its terms of reference by drawing up the legal instruments which would make it possible, if it became necessary, to set up an **International Foundation under Swiss law** as the appropriate means of guaranteeing continued payment of pensions to CERN personnel and beneficiaries of the Pension Fund in the event of the dissolution of the Organization.

These legal instruments are:

a) a **statement of reasons** setting out the subjects concerned and proposing the legal instruments, the procedures and the timetable needed for the decisions to be taken by both the Council and the Swiss authorities;
b) a draft Council Resolution, supplementing the one adopted in June 1986, relating to guarantees for the continued payment of the pension rights of the CERN personnel in the event of the dissolution of the Organization (CERN/CC/2117, Appendix 1);

c) a draft Constitution of the Foundation, i.e. the Deed of Constitution of the "Foundation of the Pension Fund of the European Organization for Nuclear Research (CERN)" (CERN/CC/2117, Appendix 2);

d) a draft exchange of letters between the Federal authorities and CERN guaranteeing that the Foundation, once established, would enjoy the same tax advantages as those currently granted to the Organization (CERN/CC/2117, Appendix 3).

8. The Task Force will continue to examine the other important matters in its terms of reference (cf. § 2 above). It also wishes to stress that it feels it necessary to examine immediately the means which will allow the Foundation to maintain the level of pensions and the purchasing power of the beneficiaries, and especially the matter of pensions indexation, after the dissolution of the Organization.
Proposals relating to
"Guarantees for the pensions of the CERN personnel in the event of the dissolution of the Organization"

A. INTRODUCTION

Several years ago, in response to a legitimate request on the part of its staff to see payment of its pensions guaranteed in the event of dissolution of the Organization, CERN undertook an examination of the means of achieving that goal. This action was taken as a precautionary measure given the current improbability of that circumstance arising.

The work has been long-drawn-out owing to the lack of any precedent and to the special political and legal characteristics of an intergovernmental organisation.

A suitable, essentially legal system has gradually been drawn up. It comprises the establishment, before any decision is taken to dissolve the Organization, of an International Foundation under Swiss law which would take over the Pension Fund and continue its operations and the service it provides. This process would be accompanied by steps designed to ensure the proper operation of the pensions scheme, its financial balance and the necessary tax guarantees.

On 26 June 1986 the Council adopted a Resolution under which the Organization undertakes 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 ..." and approved the principle of the steps proposed for that purpose, especially the establishment of a Foundation which would take over the Pension Fund in the event of the dissolution of the Organization (CERN/1628).

However, the procedures for applying these steps, of which the principle has been laid down, required further examination. These studies have been conducted by a series of working groups chaired in succession by
Dr M. GIGLIARELLI-FIUMI (Italy) and Dr M.O. OTTOSSON (Sweden) on the Council's appointment.

To conclude this preparatory process, the Task Force is now putting proposals before the Council and its Committees for examination in order to reach decisions providing the legal framework for the guarantee sought. These proposals are based on the opinions of several experts and arise in particular from close collaboration with the representatives of the Swiss Confederation, the State in which the Organization has its seat which, under the provisions of Article XIV of the Convention establishing CERN, would be required to act as liquidator in the event of its dissolution.

Section B gives an explanation of the reasons and processes which have led to the drafting of the documents that will have to be approved by the Council at the appropriate moment.

B. EXPLANATION OF REASONS

I. PENSION GUARANTEES AND CERN'S OWN SOCIAL PROTECTION SYSTEM

CERN's social protection system

1. Like the other intergovernmental organisations, CERN has its own social protection scheme which is independent of any other, either national or international. It provides the Organization's staff with similar protection to that of a national social security system.

2. Under the terms of the Organization's Staff Rules and Regulations (Articles V 1.01 and R V 1.01), this protection comprises:
a) a health insurance scheme agreement,

b) an occupational accidents and illnesses scheme,

c) a Pension Fund insuring its members and beneficiaries and those entitled to benefits as dependents against the economic consequences of disability, old age and death. This Fund has no legal existence apart from the Organization, of which it forms an integral part.

In addition, in 1968 ESO (the European Southern Observatory) and CERN concluded an agreement admitting ESO to the CERN Pension Fund. Under the terms of this Agreement, CERN's Pension Fund provides the same social security scheme for both organisations.

3. This scheme was set up pursuant to the Organization's basic texts: the Convention establishing the Organization dated 1st July 1953, amended on 17 January 1971, the Organization's Staff Rules and Regulations and the agreements made between the Organization and its Host States: the Status Agreement dated 11 June 1955 between Switzerland and CERN, the Status Agreement between France and CERN dated 13 September 1965, revised on 16 June 1972, and the Agreement on social protection between France and CERN dated 31 December 1970.

**Social protection and permanence**

4. National social security schemes are established by law in each Member State of the Organization: they have an assured permanent existence and are in general guaranteed by the state.

CERN's social protection scheme (against old age, disability and death) enjoys no such guarantees. In particular, it is managed by a Pension Fund which is an integral part of the Organization, has no distinct legal personality and therefore no legal existence independent of that of the Organization. Moreover, this scheme has no connection or communication with the national social security schemes of the Member States.
5. As an intergovernmental Organization, CERN has no legal assurance of a permanent existence, and the same applies to its social protection scheme. If CERN were to be dissolved, the Pension Fund itself would necessarily be involved in the general process of the liquidation of CERN provided for by Article XIV of the Convention establishing the Organization. With the applicable documents in their present form, the members and beneficiaries of the Fund would thus, instead of a pension, receive "a liquidation sum" which would not provide the social security sought.

6. For these reasons, the Member States of the Organization have recognised the need to guarantee the pension rights of the members and beneficiaries of the CERN Pension Fund in the event of the Organization's dissolution and examine the steps which therefore need to be taken, as indicated above.

7. An initial attempt was made at the end of 1970 aimed at establishing, with the aid of the Member States' delegations, a system for the social reintegration of the members of the CERN personnel into the national social security systems. This attempt failed with the majority of the Member States.

8. It was therefore decided to explore other avenues. The investigation started in 1976 and gave rise to a great deal of work both inside the Organization and in its relations with the Host States. Here stress must be laid on the joint work undertaken together with the Swiss Confederation and France, the Organization's Host States.
II. RECOGNITION OF THE NEED FOR A GUARANTEE

The search for solutions: the Group of Experts (1976-1979)

9. For this purpose the Committee of Council appointed a Group of Experts in 
December 1976 chaired by J.-M. Dufour, legal adviser to the Organization, to 
look into this matter; the Group consisted of representatives of the CERN 
Management, the Staff Association, experts from each of the Organization's 
Host States and an expert from the International Labour Organisation (ILO). 
Its opinion (CERN/CC/1342) given in 1979, stressed on page ii), § 5b that:

"in the event of dissolution of the Organization ... the best 
solution for the Organization's Staff Insurance Scheme would be 
it its establishment as a Foundation under public international law, 
with its seat in Switzerland ...";

"There would be joint participation in the Foundation by the 
Member States, who would guarantee it financially in the sense 
given in the report (page 16, paragraph 71)".

10. In December 1979, in order to establish firmly the principle of pension 
guarantees in the event of the dissolution of the Organization, Council, in 
the context of the review of the employment and social conditions of the 
CERN personnel (RESCO), approved\(^1\) the inclusion of an Article II.11.4\(^2\) in 
the Rules of the Staff Insurance Scheme\(^3\).

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1 CERN/1356
2 "The Organization guarantees the benefits acquired under the terms of these Rules. In the 
event of a merger, reconstitution or other transformation or in the event of the dissolution of 
the Organization, the Council or any \textit{ad hoc} body set up, where required in one of the 
aforementioned cases, shall take the necessary steps to ensure uninterrupted payment of the 
benefits of the Staff Insurance Scheme until the cessation of entitlement of the last 
beneficiary."
3 The name of the Pension Fund prior to 1986.

11. Following this opinion, work continued on further examination of possible solutions. Following an internal study begun in 1980, in December 1983 (CERN/1527) the Council set up a Tripartite Working Group on Pensions chaired by Dr. M. GIGLIARELLI-FIUMI, a member of the Italian delegation, and consisting of representatives of the Member States, the Management and the Staff Association; one of its terms of reference, was to report to the Council on "pension guarantees in the event of the dissolution of the Organization" (CERN/1401).

The fourth report by the Chairman of this Working Group (CERN/FC/2946/Rev.) dated 6 June 1986, the draft of which was approved by the Consultative Committee on Employment Conditions (CCEC) at its meeting on 22 April 1986 (CERN/FC/2973, contains the determinant conclusions and recommendations on the matter.

12. This report finds that:

"... a practicable and feasible solution for the guarantees for the continued payment of the benefits in the event of dissolution of the Organization exists, if two conditions are fulfilled.

"The first is that by the time of dissolution the Pension Fund is put into balance. The second is that the two approaches examined, viz. continuation of the Fund by a Foundation and reintegration in national schemes, are allowed to co-exist and in some cases to complement one another."

It recommends the Council:

- to approve the "Resolution concerning guarantees for the continued payment of the CERN personnel's pension rights in the event of the dissolution of the Organization",

95/131/5/e
i.e. to accept the principle of the establishment of a Foundation to take over the Pension Fund in the event of the dissolution of the Organization and that of the conclusion by the Organization of agreements with the Member States for the reintegration of the members of the Pension Fund into the national social security schemes.

The Working Group had pointed out its preference for the Foundation approach which would ensure that the assets were destined for a precise purpose and provide the most suitable legal form for the aim in view. It would, in fact, be the most simple way of legally separating the Fund from the Organization and from the latter's dissolution. It would make it possible to convert the Fund into an independent legal entity while, at the same time, entrusting to it all the funds allocated to the CERN pension scheme and their management.

13. On the basis of this report, at its session on 26 and 27 June 1986 (CERN/1628), the Council approved the principle of the establishment of an International Foundation under Swiss law and, on the recommendation of the Finance Committee, adopted the draft "Resolution concerning guarantees for the continued payment of the CERN personnel's pension rights in the event of the dissolution of the Organization", the text of which is appended to the fourth report by the Chairman of the Working Group on CERN Pensions.


14. At the same time, since the establishment of the agreed solutions required further studies to be made, the Council, at the same session in June 1986, set up a "Task Force on Reintegration", the terms of reference of which were to examine with the CERN Member States "the possible reintegration of CERN staff and beneficiaries (of the Pension Fund) in one or more of their National Schemes" (CERN/1628). With the consent of the Director-General, it was agreed that the Task Force would also undertake the task of continuing "the work on the model texts for the establishment of a Foundation and an Integration Agreement with the Swiss and French authorities respectively" (CERN/FC/3165, page 2).
15. The Task Force on Reintegration, initially chaired by Dr. M. GIGLIARELLI-FIUMI, decided that its most urgent task was to look into the facilities for reintegrating the CERN personnel into the social security systems of the Organization's Member States.

The results did not live up to their hopes. The first Progress Report (CERN/FC/3165) submitted to the Finance Committee and to the Council at its June 1986 session (CERN/1702) set out the difficulties encountered and the modest success achieved during this attempt.

16. At the same time, and by way of an interim measure, in December 1989 (CERN/1788) the Council, with ESO's agreement, approved the proposal to recognise the Participating Organizations' obligations concerning pension guarantees in the event of the dissolution of CERN by amending Article I. 3.03 of the Rules of the Pension Fund, which now provide that:

"CERN and ESO guarantee the benefits acquired under the provisions of these Rules by the members of their own personnel until the cessation of the rights of the last beneficiary" ...

In the event of the dissolution of CERN, its Council will, without prejudice to other systems of 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 and will implement any steps for integration into the national social security systems of the Member States guaranteeing such equivalence".
17. A second progress report (CERN/FC/3387) was submitted to the Finance Committee and to the Council at its December 1990 Session (CERN/1847) recommending the continuation of the Task Force on Reintegration and the renewal of its membership made necessary by the departure of its Chairman and certain members.

The position of the Swiss authorities

18. As previous work had shown, progress in this field was also subject to the adoption of a stance by the Swiss Confederation in view of its capacity as the state in which the Organization has its seat. A meeting was therefore held in Bern on 14 May 1991 at which the Federal authorities expressed the view that one essential condition for setting up this Foundation, which they supported, was that the Member States should ensure that the Fund was financially balanced at the time of the dissolution of the Organization at the latest.

19. They also confirmed the principle accepted since 1979 that the Foundation would, when the time came, enjoy the same tax privileges and immunities as those granted to the Organization before its dissolution.


20. At its Session on 21 June 1991 (CERN/1861 and CERN/1878) the Council extended the terms of reference of the Task Force on Reintegration to include, besides the examination of pension guarantees in the event of the dissolution of the Organization, that of guarantees during CERN's working life and, in particular, the steps to be taken if a Member State should leave the Organization.

21. It also appointed Dr. M.O. OTTOSSON, Swedish delegate to the Council, Chairman of the Task Force, the membership of which comprised a Management representative, two representatives of the Pension Fund, two Staff Association representatives, one of whom acted on behalf of the
pensioners, and an observer from ESO (cf. Appendix b to the Third Report by the Chairman).

22. After examining all the matters covered by its terms of reference, the Task Force on Reintegration, decided on 15 October 1991 to concentrate its efforts first of all on the one which it considered most urgent: preparing for the establishment of a Foundation under Swiss law to take over the Pension Fund in the event of the dissolution of the Organization. This task was undertaken in close co-operation with the representatives of the Swiss Confederation.

C. THE MEANS FOR PROVIDING THE GUARANTEE: ESTABLISHMENT OF THE FOUNDATION

23. The discussions with the Swiss representatives confirmed that it would be preferable for the proposed Foundation to be an international Foundation under Swiss law rather than an international public law Foundation since this latter solution would in fact result in the creation of another intergovernmental organisation and would be too cumbersome from the political point of view.

24. These discussions also made it possible to identify the legal instruments, the operations and the timetable needed to establish the Fund as a Foundation.

I. Problems and legal instruments required

25. The conversion of the Fund into a Foundation under Swiss law independent of the Organization requires the settlement of three issues and, as a corollary, the drawing up of a number of instruments. On the one hand, the Organization must express its will to set up the Foundation; this power is in the hands of the Council as the supreme body, which must express this will in a Resolution. On the other hand, on the formal side, the establishment of the Foundation requires a special deed of constitution.
Finally, it was agreed that it was necessary as far as possible to alleviate the charges which the Foundation would have to face under ordinary law, especially in the tax field.

Following the Council Resolution of June 1986 and in its spirit, three documents were therefore prepared:

a) The decision to set up the Foundation: a draft Council Resolution

26. At present the Pension Fund is a Service of the Organization with no legal existence of its own. Its conversion into an independent Foundation under Swiss law requires Council's approval of this step. The proposed Resolution (CERN/CC/2117, Appendix 1) will constitute the legal basis on which such a conversion can be effected if necessary.

b) The formal requirement: a draft Deed of Constitution of the Foundation

27. Under Swiss law the establishment of a Foundation is subject to the existence of a legal deed (the "Deed of Constitution"), the form and substance of which are defined by that law (Civil Code, Articles 80 et seq.). A draft Deed of Constitution of the Foundation has therefore been drawn up with the assistance of the competent Swiss authorities, and has been approved by them. This Foundation under Swiss law would, according to the rules, be subject to supervision by the Swiss Confederation (CERN/CC/2117, Appendix 2).

The Organization's Council is required to approve this draft Deed of Constitution as the expression of its will to establish the Foundation. At the same time it will have to empower the intended signatories (the President of Council, the Director-General, the Chairman of the Governing Board of the Pension Fund and the Administrator) to sign the necessary documents at the appropriate time.
c) Tax status of the Foundation in Switzerland: a draft exchange of letters between the Swiss Federal Council and CERN

28. Since 1979 there had been an agreement that the Foundation would, in its operations for the beneficiaries, enjoy the same tax exemptions as those granted to the Organization. The principle of this advantage has been confirmed. It would relieve the Foundation from the taxes normally levied on its movable assets.

Together with the Task Force on Reintegration, the Swiss Federal Department of Foreign Affairs has drawn up a draft exchange of letters between the Swiss Federal Council and CERN concerning tax privileges on the Foundation's movable assets. This draft is based on Article 20, §§ 1 and 2, of the Agreement concluded on 11 June 1955 between the Swiss Federal Council and CERN to determine that Organization's legal status in Switzerland.

In the covering letter, the Federal Department of Foreign Affairs undertakes to submit that draft exchange of letters to the Swiss Federal Council for approval as soon as the Foundation has been established (CERN/CC/2117, Appendix 3).

II. The operations to be performed

29. Action has to be taken on three fronts, namely:

The prior balancing of the Fund

30. Before its transfer to the Foundation, the Fund will have to be economically and financially balanced in order to have the means of fulfilling its purpose. This operation will be absolutely essential, for it will determine the actual ability of the Foundation to do what it is intended to do. It requires a decision to be taken by Council on the matter. The Federal authorities accord it prime importance and it is indeed a prerequisite from the technical point of view.
This balancing process will have to be completed in accordance with the relevant rules in force under the auspices of the Fund's consulting actuary and the authority of the Governing Board of the Pension Fund and the Organization's Council.

The transfer of the Fund to the Foundation

31. The other important operation relates to the transfer to the Foundation of the property and assets assigned to the Organization's pension scheme. As the Foundation will be replacing the Organization and its Pension Fund in the managing and payment of pensions, CERN will have to transfer to it all the associated rights and obligations. "Inheritance" by one institution from the other will have to be arranged on the basis of lists certified by the Organization's Internal Audit service and its external auditors and by the body responsible for supervising the Foundation.

This operation will be completed after financial balance has been achieved and will require a Council Resolution at the appropriate time.

Role of the Swiss Confederation

32. Article XIV of the Convention establishing CERN allocates to Switzerland as the state in which its seat is established a special role to play in the event of the dissolution of the Organization. To this end, the competent Swiss authorities have actively assisted in drawing up the basis for the Foundation, which would be established solely as the successor to the Organization's present Pension Fund. They have taken an active part in drawing up the Deed of Constitution of the Foundation. The Foundation will be supervised, within the meaning of Swiss law, by the Federal Social Insurance Office.
As soon as the Foundation has been established and thus become a legal entity, the Federal Department of Foreign Affairs will take the necessary steps to implement the agreed tax exemption system by submitting the aforementioned draft exchange of letters to the Federal Council for approval (cf. § 28 in this connection).

The Swiss authorities will have to be informed of the Council's decisions as soon as they have been taken so that they can, when the time comes, take the necessary steps falling within their competence (registration of the Foundation and exchange of letters concerning the tax exemption system).

III. The timetable

33. From the point of view of time-scale, the implementation of these arrangements is somewhat unusual.

At the moment there is no prospect of the dissolution of the Organization and there is thus no "immediate" need for them to be implemented.

34. However, it is right that provision be made in good time for the consequences of such a dissolution and that the legal procedure for establishing the Foundation be in place now so that it can be implemented as soon as it becomes necessary and in the shortest possible time.

35. For the moment we may thus confine ourselves to preparing the legal instruments without which nothing could be done in case of necessity. As long as the Organization exists there is no need to convert the Pension Fund into a Foundation.
36. It must be added that the proper operation of the guarantee linked to the establishment of the Foundation assumes that it will be set up before the Organization is legally dissolved in order to facilitate "inheritance" by the former from the latter. If the Organization were to be dissolved before the Foundation came into existence it would be difficult to make the transfer properly since, formally speaking, the Pension Fund would be included in the liquidation of CERN.

37. From the timetable point of view, therefore, the Foundation must be in existence before any dissolution of the Organization is decreed so that the various necessary operations can be accomplished, especially the transfer of powers and assets from the one to the other. One year beforehand would be appropriate.

IV. The decisions to be taken

38. Implementing these guarantees thus requires the taking of several decisions by the Council.

39. First of all, the Council must give its approval to the proposed aims and procedure. To that end, a draft Resolution has been drawn up, supplementing that adopted in June 1986, concerning the guarantees for continued payment of the pension rights of the CERN staff in the event of the dissolution of the Organization, with a view to its adoption by the Council (CERN/CC/2117, Appendix 1);

40. Secondly, the Council must also approve the draft Deed of Constitution of the Foundation, i.e. the Deed of Constitution of the "Foundation of the Pension Fund of the European Organization for Nuclear Research (CERN)", which expresses the will to set up this Foundation (CERN/CC/2117, Appendix 2). However, the Deed would be implemented only when there was a real prospect of dissolution of the Organization. Until that time, it would be kept "in reserve". It would be validated at the time of establishment of the Foundation by a declaration before a notary.
41. Finally, the Council must approve the principle of **tax arrangements** that the Swiss Confederation would grant to the Foundation in Switzerland if it were set up, under which the Foundation would be granted the same tax privileges and immunities for its movable assets as those currently enjoyed by the Organization.

To that end, the Council must agree to the **draft exchange of letters between the Swiss Federal Council and CERN** proposed by the Federal Department of Foreign Affairs of the Swiss Confederation (CERN/CC/2117, Appendix 3).
DRAFT 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
Dear Sir,

We refer to the discussions held between the representatives of the European Organization for Nuclear Research and the Swiss Federal authorities, viz. the Federal Department of Foreign Affairs and the Federal Office for Social Insurance, concerning the establishment of the "Foundation of the Pension Fund of the European Organization for Nuclear Research CERN".

Please find enclosed the draft Exchange of Letters between the Swiss Federal Council and CERN drawn up by the Federal Department of Foreign Affairs together with CERN's Task Force. This draft provides that the aforementioned Foundation will, in its operations in favour of the beneficiaries, enjoy the same tax privileges as the Organization with respect to its movable assets.

The Federal Department of Foreign Affairs undertakes to submit this draft exchange of letters to the Swiss Federal Council for approval as soon as it has been informed that the Foundation has been established.

Yours faithfully,

DIRECTORATE OF INTERNATIONAL PUBLIC LAW

M. Krafft

Encl. ment.
THE HEAD
OF THE FEDERAL DEPARTMENT
OF FOREIGN AFFAIRS

Bern, ..........

Dear Director-General,

I refer to the discussions held between the representatives of your Organization and my Department concerning the establishment of the "Foundation of the Pension Fund of the European Organization for Nuclear Research (CERN)". This Foundation will be established in accordance with Articles 80 et seq. of the Swiss Civil Code and, in particular, Article 89bis, § 6, to succeed the CERN Pension Fund in the event of the dissolution of the Organization. Its purpose will be to ensure the implementation of the rights to social providence of the persons insured by the CERN Pension Fund until the cessation of the rights of the last beneficiary.

On the basis of Article 20, paragraphs 1 and 2, of the Agreement concluded on 11 June 1955 between the Swiss Federal Council and CERN to determine that Organization's legal status in Switzerland, the Foundation concerned will enjoy the same tax exemption as the Organization with respect to its movable assets within the context of its operations in favour of its beneficiaries.

I should be grateful if you would let me know whether the above meets with your approval. If so, and under the provisions of Article 30 of the Agreement dated 11 June 1955 on the legal status of CERN in Switzerland, this letter and your reply will constitute an agreement by exchange of letters between the Federal Council and CERN, which will come into effect on the date of your reply.

With assurances of my highest esteem,

FEDERAL DEPARTMENT OF FOREIGN AFFAIRS

[The Head of the Federal Department of Foreign Affairs]
List of main working documents


- Fourth Report by the Chairman of the Working Group on CERN Pensions - CERN/FC/2946/Rev.

- First Progress Report by the Chairman of the Task Force on Reintegration - CERN/FC/3165

- Second Progress Report by the Chairman of the Task Force on Reintegration - CERN/FC/3387

- Task Force on Reintegration - CERN/1861
List of members of the Task Force on Reintegration

- Dr. M.O. OTTOSSON  
  Chairman of the Task Force on Reintegration, representative of the Member States

- Dr. G. BACHMANN  
  Observer from ESO

- Mr. C. CUENOD  
  Administrator of the Pension Fund

- Mr. M. DORAN  
  Staff Association representative

- Mr. J.-M. DUFOUR  
  Legal Adviser, Management representative

- Mrs. E. GRÖNGER-VOSS  
  Deputy Legal Adviser

- Dr. G. MAURIN  
  Vice-Chairman of the Governing Board of the Pension Fund

- Mr. L. RESEGOTTI  
  Staff Association representative for pensioners
SUMMARY RECORD

of the meeting held at CERN on 2 June 1993

between the Representatives of the Swiss Federal Authorities
and the
Task Force on Reintegration

THOSE TAKING PART:

Swiss authorities

Mrs. GERBER                         Federal Department of Foreign Affairs,
                                          International Law Directorate

Mr. A. PEREZ                        Permanent Mission of Switzerland to the International
                                          Organisations

Mrs. SCHNYDER                     Federal Social Insurance Office, Occupational Provident
                                          Directorate

Mr. SCHELLENBER                   Federal Department of Foreign Affairs,
                                          International Law Directorate

CERN:

Dr. M.O. OTTOSSON                  Chairman of the Task Force on Reintegration

Mr. C. CUENOUD                    Administrator of the Pension Fund

Mr. M. DORAN                      Member of the Task Force on Reintegration

Mr. J.-M. DUFOUR                  Legal Adviser

Mrs. E. GRÖNINGER-VOSS            Deputy Legal Adviser

Dr. G. MAURIN                     Vice-Chairman of the Governing Board of the Pension Fund

Mr. L. RESEGOTTI                  Member of the Task Force on Reintegration
1. The meeting continued the discussions begun between the representatives of the Swiss authorities and CERN at a meeting held in Bern in May 1991 with a view to the establishment of a Foundation to take over the CERN Pension Fund in the event of the dissolution of the Organization.

2. Mrs. GERBER said that the Swiss authorities were willing, in co-operation with CERN, to draft the necessary documents for the establishment of the Foundation in the near future. She reminded the meeting that the Foundation was to be set up under the provisions of Article 20, paragraph 2 of the Status Agreement dated 11 June 1955 concluded between Switzerland and CERN and would enjoy the same privileges and immunities as the Organization with respect to its movable assets.

The Federal Department of Foreign Affairs (DFAE) would therefore prepare a draft exchange of letters between the Confederation and CERN which it would submit to the Federal Council for approval. The exchange of letters would supplement the aforementioned Status Agreement.

3. Mrs. SCHNYDER explained the law applicable to the proposed Foundation, which would be regarded as a Foundation with an international nature under Swiss law, governed essentially by the provisions of the LPP (= Occupational Provident Scheme Act) on the basis of Article 98 bis paragraph 6 of the Swiss Civil Code. These provisions could, however, be flexibly applied, taking account of the special needs of a pension fund of an international organisation.

4. The steps to be accomplished to establish the Foundation were:
   
a) drawing up the Constitution of the Foundation and its Regulations;

b) engrossment of the Deed of Establishment before a Genevan notary (declaration by the Organization's legal representative (the Director-General) of the desire to establish a Foundation, the Constitution of which was the one defined under a) above);
c) the decision by the Federal Social Insurance Office (OFAS) to accept the Foundation and its Constitution;

d) the entry of the Foundation in the Business Register.

In order to make the Foundation a legal entity ready to continue the operations of the Pension Fund as quickly as possible in the event of the dissolution of the Organization, steps a), b) and c) could be completed immediately and the entry in the Business Register could be postponed until the time when a decision had been taken on the dissolution of the Organization.

5. It was decided to follow the work schedule below:

The draft Constitution of the Foundation would be examined by a working group consisting of the representatives of the Swiss authorities (DFAE and OFAS) and of CERN. An initial working meeting was scheduled for 6 July 1993 in Bern.

A draft exchange of letters between the Confederation and CERN would be prepared by the DFAE and then submitted to CERN.

The Regulations of the Foundation, essentially defining the rights of the members and beneficiaries of the Foundation would be drawn up at a later stage.

* * *

96/129/5/e
DRAFT 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 balance in accordance with Article 4 of the Council Resolution dated 26 and 27 July 1986, taking into consideration in particular the commitments of Article II 1.15 of the Rules of the Pension Fund (edition of 1.1.1986), 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, using realistic economic parameters on which Council will decide.

3. In the event of a technical deficit, the Organization shall remedy it, pursuant to the Council Resolution dated 26 and 27 June 1986, by paying to the Foundation a sum on which the Organization will agree in consultation with Switzerland.

ARTICLE 3
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.
DRAFT 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

1. The purpose of the Foundation shall be to ensure implementation of the social security rights of those insured under the CERN pension fund 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. 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 outside CERN.

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

The organs of the Foundation shall be:

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

ARTICLE V
Operation of the Council

1. The Council shall be the supreme organ 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 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 organs and the persons empowered to represent 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 fulfil 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 ad personam by the Swiss Confederation after consultations with the former Member States which may put forward proposals to that end;

- one member appointed by the Council of ESO or the States which were members of ESO at the time of the dissolution of ESO;

- five members elected amongst themselves 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 persons who composed the last 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 represent the Foundation. He shall 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 annual operating budget to the Council;

e) after consultation with the Investment Committee, proposing to the Council any major change in the distribution of investments;

f) submitting the annual 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
Annual General Meeting of insured persons

1. A General Meeting of insured persons shall be convened 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 Fund;

   - the amounts to be paid to the Pension Fund by CERN, especially those needed to balance its pension fund:

   - payments, if any, from former CERN Member States to the pension fund;

   - 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 by the Audit Body, 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 in force 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
Dear Professor,

At its meeting on 3 September 1996, the Governing Board of the Pension Fund examined the modifications made by the Task Force on Reintegration, enlarged to include certain members of TREF, to the documents "Deed of Constitution of a Foundation of the Pension Fund of the European Organization for Nuclear Research" and "Draft Council Resolution, supplementing the Council Resolution of 26-27 June 1986, concerning guarantees for the continued payment of the CERN personnel's pension rights in the event of the dissolution of the Organization".

The Task Force on Reintegration was set up by Council in June 1986 and its terms of reference were revised in June 1991. Its aim is to seek ways of obtaining a collective guarantee from the Member States with a view to the reintegration of personnel into national systems and to study the implications of the withdrawal of a Member State from the Pension Fund. The Task Force's purposes also include the study of guarantees for the payment of pensions in the event of the dissolution of the Organization and, as a result, the preparation of the documents concerning the establishment of a Foundation under Swiss Law as well as the procedures associated with such a Foundation, which is one of the solutions provided for in the Rules and Regulations of the Pension Fund.
At its 55th meeting, on 13 February 1996, having heard the Third Report of the Task Force (CERN/CC/2117) by its Chairman, Mr M.O. Othrosen, the Governing Board expressed its satisfaction with the progress achieved. However, the amendments made since then to the documents mentioned in the first paragraph of this letter raise, in the Governing Board's opinion, some serious questions.

Considering its general responsibilities towards the Pension Fund and even though it has no jurisdiction over the Task Force on Reintegration, the Governing Board wishes to draw your attention to the following points, and kindly requests that they be considered when the Third Report by the Chairman is discussed at TREF on 18 September 1996.

Regarding the Draft Resolution, the Governing Board recommends that Article 2, paragraph 1 should make some reference to Article III.1.15 of the Pension Fund Rules and Regulations, which deals with the questions of pension adjustment and the preservation of purchasing power in the following terms: "The CERN Council shall decide annually the adjustment to be made to pensions (except that for unsuitability), to fixed benefits and to allowances. For this purpose, it shall take particular account of the criteria adopted for the adjustment of salaries."

In Article 2, paragraph 2 of the Draft Resolution, on the question of the actuarial parameters, the Governing Board believes that in view of their ultimate importance to ensuring the implementation of the schedule of benefits provided for in the Pension Fund Rules and Regulations, the "actuarial parameters" should be qualified in order to avoid misunderstanding at a later date. It thus proposes to qualify the term using, for instance, the expression "realistic economic parameters" as in the Resolution adopted by Council in 1986. Clearly, the present economic parameters are not entirely "realistic" for the time being.

With regard to the Deed of Constitution of the Foundation, and in particular Article VI "Composition of the Council", while the Governing Board understands the reasons for the Enlarged Task Force's amendments, it has some concern about the former CERN Member States' responsibility with respect to their nationals affiliated to the Fund and about the operation of the Foundation's Council should it be unable to renew itself. It would appear rather problematic if all ties between the former Member States and the former employees, in particular regarding basic social security, were totally severed once the Foundation was established. It would be more appropriate to find a wording that involves the former CERN Member States through the good offices of the Swiss Confederation, especially as the former are explicitly mentioned in Articles XII and XVII of the Deed of Constitution.

Finally, the Governing Board believes that the Third Report by the Chairman in no way brings the work of the Task Force on Reintegration to a conclusion. Other important issues remain, in particular relating to the maintenance of the levels of the
benefits to be paid by the Foundation after the dissolution of the Organization and the consequences of the withdrawal of a Member State, and it is therefore necessary for discussions to continue.

Yours sincerely,

[Signature]

R. Levaux
Chairman of the Governing Board

The same letter has been sent to the Chairman of TREF

- COPY: M. Robin
Constitution of a Foundation of the Pension Fund of the European Organization for Nuclear Research (CERN)

Dear Mr Dufour,

We refer to your letter of 7 August 1996 in which you request the Federal authorities' approval of the texts establishing the Foundation for the Pension Fund of the European Organization for Nuclear Research (CERN) as amended by the Tripartite Employment Conditions Forum (TREF). The documents concerned are the "Draft Council Resolution, supplementing the Council Resolution of 26 and 27 June 1986, concerning the guarantees for the continued payment of pension rights of the CERN's personnel in the event of dissolution of the Organization" and the "Draft Deed of Constitution of the Foundation of the Pension Fund of the European Organization for Nuclear Research".

In agreement with the Federal Office of Social Insurance, we shall limit ourselves to commenting exclusively on the Draft Deed of Constitution given that the latter must comply with the provisions of Swiss law. We accept the amendments drafted by TREF with the exception of those relating to the first paragraph of Article VI and the first paragraph of Article XII.

Concerning the first paragraph of Article VI bearing on the composition of the Foundation's Council, we are of the opinion that as the text now stands the Council cannot appoint its own members. We therefore propose the following:
"(...) - four members appointed *ad personam* by the Swiss Confederation after consultations with the former Member States, which may put forward proposals to that end (...)".

Concerning the first paragraph of Article XII we point out that Swiss law does not recognise the notion of "operating capital" and therefore request that the word "operating" be deleted.

We are most grateful for the fact that you have consulted us in this matter.

Yours sincerely,

(M. Krafft)

DIRECTORATE OF PUBLIC AND INTERNATIONAL LAW