

ORGANISATION EUROPEENNE POUR LA RECHERCHE NUCLEAIRE
CERN EUROPEAN ORGANIZATION FOR NUCLEAR RESEARCH

Action to be taken

Voting Procedure

For information	FINANCE COMMITTEE 325 th Meeting 17 June 2009	-
For approval	COUNCIL RESTRICTED SESSION 151 st Session 18 June 2009	Two-thirds Majority of all the Member States

**REVISED AGREEMENT BETWEEN CERN AND ESO CONCERNING THE
ADMISSION OF ESO STAFF TO THE CERN PENSION FUND**

The Council is invited to approve the revised Agreement between CERN and ESO concerning the admission of ESO staff to the CERN Pension Fund, as set out in the attached Annex, which will enter into force once signed by the Directors-General of CERN and ESO.

REVISED AGREEMENT BETWEEN CERN AND ESO CONCERNING THE ADMISSION OF ESO STAFF TO THE CERN PENSION FUND

At its 142nd Session on 21 June 2007, the Council approved the document CERN/2733/Rev. entitled “*CERN Pension Fund – Governance Principles and Structure – Report of the Study Group on Pension Fund Governance*”.

The above-mentioned document *inter alia* provides for the amendment of the 13 March 1991 Agreement between CERN and ESO concerning the admission of ESO staff to the CERN Pension Fund in order to take account of the new composition of the Governing Board of the Pension Fund (cf. Article I 2.05 of the Rules of the Pension Fund).

Therefore, in accordance with Article VIII of the current Agreement (*Duration and termination of the Agreement*), CERN and ESO have drafted the necessary amendments.

The principal changes concern Article I (*Admission of ESO staff to the Fund*). Paragraph 3 has been modified to specify that ESO is henceforth represented within the Governing Board by two members appointed by the ESO Council and the ESO Staff Association respectively. The new paragraph 4 provides that the Governing Board also includes a member appointed by the CERN and ESO Pensioners Association. Paragraph 1 has also been redrafted to clarify the existing understanding that only international staff members of ESO are admitted to the Pension Fund.

The current Article VII (*Competence of the seat of the Organization*) has been deleted as it was deemed unnecessary.

The other modifications are of a purely editorial nature and concern the Preamble, Article IV (*Obligations of ESO*) and Article VIII (*Arbitration*) (Article IX in the current Agreement).

The revised Agreement needs to be approved by the CERN and ESO Councils before being signed by the Directors-General of both Organizations. The ESO Finance Committee has already been informed of the afore-mentioned modifications, which are also on the agenda of the ESO Council for approval at its June 2009 Session.

Once in force, the revised Agreement will replace the 13 March 1991 Agreement.

Proposal:

The Council is invited to approve the revised Agreement between CERN and ESO concerning the admission of ESO staff to the CERN Pension Fund, as set out in the attached Annex, which will enter into force once signed by the Directors-General of CERN and ESO.

ANNEX

REVISED AGREEMENT BETWEEN CERN AND ESO CONCERNING THE ADMISSION OF ESO STAFF TO THE CERN PENSION FUND

The European Organization for Nuclear Research, hereinafter referred to as “CERN”,
whose seat is at Geneva, Switzerland,

on the one hand,

and

The European Organization for the Astronomical Research in the Southern
Hemisphere, hereinafter referred to as “ESO”, whose seat is at Garching, Germany,

on the other hand,

WHEREAS the CERN Council has approved, by its decision dated 19 and 20
December 1955, the setting-up of the CERN Pension Fund, hereinafter referred to as
the “FUND”, with the purpose of insuring CERN staff against the financial
consequences of disability and old age;

WHEREAS the CERN Council has, by its Resolution dated 23 June 1989, placed the
FUND under its direct control and established the FUND’s operational autonomy
within the Organization, of which it remains an integral part;

WHEREAS ESO has requested, in a decision of its Council dated 15 September 1966
and then confirmed on 2 December 1982, to insure its International Staff Members in
the FUND, in order to safeguard them against the financial consequences of disability
and old age;

WHEREAS this request was justified by the number of ESO staff eligible for
disability and old-age insurance, which did not warrant the setting-up of a disability
and old-age insurance scheme particular to this Organization;

WHEREAS this request was also justified by the nature of ESO, as a scientific
European Intergovernmental Organization similar to CERN, and by the longstanding
co-operation between both Organizations;

WHEREAS the CERN Council has accepted, by its decision dated 14 and 15 June
1967, the principle of the admission of ESO staff into the FUND;

WHEREAS a corresponding Agreement between both Organizations was concluded to this effect on 1 July 1968 and then amended on two occasions on 1 July 1983 and on 13 March 1991;

WHEREAS, confirming the FUND's operational autonomy, the CERN Council has, by its Resolution dated 21 June 2007, redefined the governance principles and the structure of the FUND, thereby recognizing the need to enhance the representation of ESO;

HAVE AGREED AS FOLLOWS:

ARTICLE I

Admission of ESO staff to the FUND

1. This Agreement shall provide for the admission of ESO International Staff Members, as defined by the ESO Staff Rules, who have a contract for a minimum of six months by virtue of the ESO Staff Rules and Regulations (hereinafter referred to as "ESO staff") to the FUND, in accordance with the Rules of the FUND and any future amendments, which ESO hereby undertakes to accept in their entirety.
2. ESO staff shall be admitted and treated on the same basis as CERN staff. All provisions of the Rules and Regulations of the FUND shall apply in the same way to ESO staff as they apply to CERN staff.
3. ESO shall appoint two members of the Governing Board of the FUND. One shall be appointed by the ESO Council and the other by the ESO Staff Association from among the ESO staff.
4. The Governing Board of the FUND shall also include a member appointed by the CERN and ESO Pensioners Association from among the CERN and ESO beneficiaries of the FUND.
5. Additional administrative arrangements may be made by the Directors-General of both Organizations jointly for the implementation of this Agreement.

ARTICLE II

Reference salary

The reference salary of an ESO staff member within the meaning of Article II 1.03 et seqq. of the Rules of the FUND shall be the reference salary of the grade and step in the CERN salary scale which corresponds to his/her grade and step in the ESO salary scale.

ARTICLE III

Mutual consultation

1. Both Organizations shall consult each other on any changes they intend to make to their respective Staff Rules and Regulations which may affect the parameters determining the actuarial bases of the FUND or the provisions of this Agreement.
2. ESO shall be consulted beforehand by CERN and/or the FUND on any intention to amend the Rules of the FUND.

ARTICLE IV

Obligations of ESO

ESO hereby accepts the responsibilities consequent upon this Agreement and the admission of ESO staff to the FUND.

In particular, ESO hereby undertakes:

1. to give the FUND all information concerning ESO staff who are to become members of the Fund;
2. to bear all costs of providing the FUND with any information, documentation or special reports;
3. in accordance with the Rules and Regulations of the FUND, to bear its share of the administrative costs of the FUND in proportion to the number of its staff in the FUND;
4. to contribute a share, determined by the actuary, to any financial measure decided by CERN in order to maintain the actuarial balance of the FUND;
5. to supply any evidence which may be required in order to substantiate the rights of the ESO staff admitted to the FUND;
6. within thirty days of their becoming due, to pay the amounts due as contributions under the Rules of the FUND into an account specified for this purpose;
7. to comply with the obligations resulting from the insurance policy subscribed by CERN against occupational accidents and illnesses, which covers also ESO staff;
8. to ensure the compatibility of its Staff Rules and Regulations with the Rules and Regulations of the FUND;

9. to represent and to defend the interests of the FUND and/or of CERN in any dispute which arises between ESO staff and any other party in which the FUND is involved and/or to provide to the extent required legal powers and authorizations to CERN or the FUND.

ARTICLE V

Guarantees

Under Article I 3.03 of the Rules of the FUND, ESO shall guarantee the benefits acquired under the provisions of these Rules by ESO staff until the cessation of the rights of the last beneficiary.

ARTICLE VI

Accounts

Admission of ESO staff to the FUND shall not give rise to the keeping of a special account in the name of ESO nor to the communication of separate balance sheets relating only to ESO staff.

ARTICLE VII

Duration and termination of the Agreement

Should essential circumstances or conditions underlying this Agreement change or cease, both parties shall enter into negotiation with respect to a revision of this Agreement. In this event, either party may request a termination of this Agreement on conditions to be mutually agreed upon. Acquired rights of the members of the FUND and the beneficiaries shall be respected.

ARTICLE VIII

Arbitration

1. Any dispute arising between CERN and ESO as to the interpretation or application of this Agreement and which cannot be settled by direct negotiation shall, unless the parties agree to another method of settlement, be submitted on application by either party to an arbitration tribunal composed of three members, namely an arbitrator appointed by CERN, an arbitrator appointed by ESO and a third arbitrator chosen by joint agreement between the two above-mentioned arbitrators, this arbitrator being neither an official of CERN nor an official of ESO, and presiding over the tribunal. The tribunal itself shall determine its rules of procedure.

2. The application for arbitration shall include the name of the arbitrator chosen by the applicant; the respondent shall appoint its arbitrator and inform the other party of his/her name within three months of receiving the application.
3. If the respondent fails to notify the name of its arbitrator within the above period or if the two arbitrators fail to agree on the choice of a third arbitrator within three months of the appointment of the second arbitrator, the arbitrator or the third arbitrator, as the case may be, shall be appointed by the President of the Administrative Tribunal of the International Labour Organization at the request of whichever party is first to apply to the Tribunal.
4. The arbitration tribunal shall decide on the basis of this Agreement and, where a matter is not specifically covered by this Agreement or a provision is ambiguous or unclear, on the basis of Swiss substantive law. It shall sit in Geneva.
5. The decisions of the arbitration tribunal shall be final and the parties shall have no right of appeal.

ARTICLE IX

Entry into force of the Agreement

This Agreement shall replace the Agreement concluded on 13 March 1991. It shall enter into force on ... 2009.

Done in quadruplicate, two copies being in French and two in English, both texts being equally authentic, in Geneva and Garching, on ...

For the European Organization for
Nuclear Research

Rolf Heuer

Director-General

For the European Organization for the
Astronomical Research in the Southern
Hemisphere

Tim de Zeeuw

Director-General