

MAX-PLANCK-INSTITUT
FÜR KOHLENFORSCHUNG



Statutes of the Foundation

MAX-PLANCK-INSTITUT
FÜR KOHLENFORSCHUNG

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The Executive Committee and the Management Board of the Max-Planck-Institut für Kohlenforschung in Mülheim an der Ruhr passed the following amendment to its Statutes on 12/11/2020.

The foundation authority gave its approval on 03/12/2020.

Preliminary remark

(1) In 1912, the

Kaiser Wilhelm Institute for Coal Research in Mülheim an der Ruhr

was established by the Kaiser Wilhelm Society (Kaiser-Wilhelm-Gesellschaft zur Förderung der Wissenschaften) as part of its scientific expansion with the funds made available to it for this purpose by the factories, individuals, associations, foundations and scientific societies joined together in the committee of the Kaiser Wilhelm Institute for Coal Research in Mülheim an der Ruhr with the assistance of the City of Mülheim an der Ruhr. It developed further in importance and size predominantly based on the continuous funding from the above committee until 1949.

(2) The Kaiser-Wilhelm-Gesellschaft zur Förderung der Wissenschaften in Berlin, the stock corporation Rhenish-Westphalian Coal Syndicate in Essen as the trustee of the committee of the Kaiser Wilhelm Institute for Coal Research in Mülheim an der Ruhr and the City of Mülheim an der Ruhr established the Kaiser Wilhelm Institute for Coal Research in Mülheim an der Ruhr in 1912 which has been a legally independent foundation since 1939. The foundation has had its present name since 18 July 1949.

The Institute was a research facility of the Kaiser-Wilhelm-Gesellschaft zur Förderung der Wissenschaften and, as a legally independent Max-Planck Institute of Max-Planck-Gesellschaft zur Förderung e.V. (MPG), is run in accordance with the desires of its founders based on the tradition and purpose of the Kaiser-Wilhelm-Gesellschaft zur Förderung der Wissenschaften.

§ 1 Legal form, name and registered office

(1) The Institute is an independent foundation under private law.

(2) The foundation has the name

"Max-Planck-Institut für Kohlenforschung (independent foundation) in Mülheim an der Ruhr"

(3) The foundation's registered offices is in Mülheim an der Ruhr.

§ 2 Purpose of the foundation

(1) The purpose of the foundation is to promote basic scientific research for the benefit of the general public.

- (2) The purpose of the foundation within the meaning of para. 1 is realized predominantly through the maintenance of a research institute and by implementing independent research at this Institute.

§ 3 Not-for-profit status

- (1) The foundation exclusively and directly pursues non-profit purposes within the meaning of Section "Tax-privileged purposes" in the Fiscal Code of Germany.
- (2) The foundation does not operate out of self-interest and does not primarily pursue its own economic purposes.
- (3) The foundation's funds may only be used for purposes in accordance with the Statutes.
- (4) No individual may be favoured by expenditure which is not in line with the purpose of the foundation or by disproportionately high remunerations.

§ 4 Endowment funds

- (1) The foundation was endowed with the following when it was established:
1. by the Kaiser-Wilhelm-Gesellschaft zur Förderung der Wissenschaften in Berlin, the Institute established in Mülheim an der Ruhr primarily based on committee funds, with all its facilities and equipment and the related rights and obligations,
 2. by the stock corporation Rhenish-Westphalian Coal Syndicate in Essen, the amount of RM 200,000.00,
 3. by the City of Mülheim an der Ruhr, the premises in the area of Holthausen Plot A, parcels of land no. 2518/141, 2519/149 and 2520/149 which together have a size of 0.8579 ha, including the buildings on them and the fittings acquired by the City.
- (2) In addition, the following form part of the endowment assets
1. as held by the foundation:
 - the Ziegler Foundation, according to the principles stipulated by the sponsor on 10/12/1970,
 - the Karl Ziegler guest professorship and the
 - Ziegler fund set up based on the settlement of 01/10/1968 and the decree of the Ministry of Finance of the Federal State of North-Rhine-Westphalia of 05/03/1991,
 2. the reserve funds paid to assets in accordance with § 5 para. 1 Sentence 3,
 3. the amounts from the Ziegler licence revenues paid into the Ziegler fund since 01/01/1989 to the extent permissible under tax law and
 4. all grants not subject to the short-term fund use obligation.
- (3) The foundation can dispose of the assets under para. 2 no. 1 in accordance with the applicable regulations and Statutes.
- (4) The value of the endowment assets must be preserved undiminished.

§ 5 Use of the endowment assets

- (1) The returns from the endowment assets and the grants not attributed to it must be used to perform the foundation's purpose. Reserve funds should be formed where this is permitted under the provisions of tax not-for-profit law. The reserve funds must be added to the assets.
- (2) Para. 1 applies to endowments with the proviso that conditions must be observed under which the endowment is granted.

§ 6 Financial year, annual financial statement, budget

- (1) The financial year is the calendar year.
- (2) The annual financial statement must be drawn up within four months of the end of a financial year and must be audited. The audit must also cover the undiminished preservation of the endowment assets and the use of the funds in accordance with the Statutes.
- (3) The budget must be drawn up at the latest by 31/01 of the year preceding a financial year and the draft must be presented to the Administrative Headquarters of the MPG and afterwards to the Executive Committee for a resolution.

§ 7 Coordination of the budget

- (1) The budget must be submitted to the Senate of the MPG at the latest two months before the new financial year starts.
- (2) After hearing the Executive Committee of the foundation, the Senate of the MPG is authorized to take measures which are required to ensure that the budget corresponds with the actually available funds. This does not affect the returns from dependent assets according to § 4 para. 2 and that part of the budget funds which comes from the foundation's own returns.
- (3) The MPG's Internal Audit Department will review the use of public funds by the foundation.

§ 8 Bodies

- (1) An Executive Committee and a Management Board are established to manage the foundation.
- (2) The members of these bodies shall only be held liable towards the foundation in the event of wilful misconduct or gross negligence.

§ 9 Executive Committee

- (1) The Executive Committee consists of eight members who must not also be members of the Management Board. Of these,
 1. one member who is responsible for science is appointed by the Ministry of the federal state of North-Rhine-Westphalia,

2. one member by the City of Mülheim an der Ruhr,
3. three members by the MPG and
4. three members by the Shareholders' Meeting of Studiengesellschaft Kohle mbH (SGK).

If the MPG or the SGK become permanently unavailable (e.g. by resolution to liquidate/dissolve, application for insolvency or official/judicial termination), their right to appoint three members of the Executive Committee shall cease to apply. In this case, the Executive Committee shall consist of five members from the time of the unavailability.

- (2) The period in office of members of the Executive Committee is five financial years. The previous members shall remain in office until they are either re-appointed or a new member is appointed. Appointments may be revoked for good cause. If members leave prematurely, substitute members must be appointed for the remaining period in office. Re-appointments are permissible.
- (3) The Executive Committee shall advise the Management Board, pass resolutions for matters of general importance relating to the foundation and monitor the activities of the Management Board. In particular, it has the following tasks:
 1. Appointing the Scientific Directors and Administrative Director and dismissing them for good cause as well as passing resolutions in all matters relating to legal relationships between the foundation and the members of the Management Board,
 2. Monitoring the activities of the Management Board and accepting the annual accountability report of the Management Board,
 3. Discussions and passing of resolutions in matters of general importance for the foundation, especially important building projects and long-term investments, in consultation with the Management Board,
 4. Approving the budget,
 5. Setting the principles and guidelines for investing the endowment assets,
 6. Making decisions regarding the annual allocations from the administration of the endowment assets, including the assets according to § 4 (2),
 7. Appointing the auditors,
 8. Approving the annual financial statement and relieving the foundation's Management Board,
 9. Passing resolutions regarding the endorsement of the guidelines, directives and other resolutions of the MPG's Senate and/or Executive Committee that contain requirements and regulations for the MPG's dependent Institutes, for the foundation.
 10. Performing, and passing resolutions regarding, all other tasks assigned to it in these Statutes.
- (4) The Executive Committee shall appoint a Chairperson and a Deputy Chairperson from its ranks. The Chairperson or, in case of a deputization, its Deputy Chairperson, shall represent the foundation to the Management Board members in the context of Executive Committee resolutions.
- (5) The Executive Committee is authorized to elect an Honorary Chairperson and honorary members in recognition of special services for promoting the Institute.

- (6) Executive Committee resolutions can only be passed, if more than a third of its members are present. In the event of a tie, the Chairperson has the casting vote. If a resolution cannot be passed due to a lack of sufficient participation, the Chairperson shall convene a new meeting at which a decision will be taken regardless of the number of those in attendance.
- (7) Executive Committee meetings are generally in-person meetings. However, with the Chairperson's approval, the members may attend a meeting by phone or video calls in exceptional cases; this counts as attendance. In exceptional cases, the Chairperson may decide to hold the whole meeting as a phone or video conference.
At the Chairperson's request or the Deputy Chairperson's request, Executive Committee resolutions may be issued using a written or remote procedure. If written or remote voting is used, a failure to respond within four weeks of the request to vote is treated as a rejection. The Chairperson or the Deputy Chairperson shall draw up voting minutes which must be sent to all members of the Executive Committee immediately.
- (8) The Executive Committee shall adopt its own Standards of Operation Procedure. In particular, these should contain more detailed rules for holding meetings as video or phone conferences.

§ 10 Management Board

- (1) The Management Board of the foundation generally consists of four to eight members and is formed by the Directors of the Institute who are scientific members of the MPG as well as the Administrative Director. Any two of them have joint power of representation.
- (2) The Management Board shall manage, administer and represent the foundation, conduct the current business of the foundation and prepare and execute Executive Committee resolutions. It shall pass resolutions in matters relating to the foundation, unless specified otherwise in the provisions of these Statutes. It shall use the foundation's funds economically and cost-effectively. It may transfer implementation of specific transactions to individual Management Board members.
- (3) The Administrative Director may only vote in
 1. decisions regarding the management of the endowment assets,
 2. creation of the budget,
 3. creation of the annual financial statement and
 4. in all other matters where this is explicitly stated in the Management Board's Standards of Operation Procedure.
- (4) The Chairperson of the Management Board is appointed by the Executive Committee at the suggestion of the Management Board from the ranks of the Scientific Directors for a period in office of three financial years. They shall bear the title "Managing Director". They may be directly re-elected once, but this should only be used in justified exceptional cases. They shall manage the current matters of the foundation and thus contribute to relieving the Management Board, especially in the area of administrative management of the foundation.
- (5) The Management Board shall set its own rules of procedure which shall also set out the Managing Director's deputization and which requires the Executive Committee's approval.

It must be forwarded to the MPG's Executive Committee for acknowledgement. The delegation rules must be announced in the Standards of Operation Procedure.

- (6) The Management Board shall create the budget and the annual financial statement and submit these to the Executive Committee.
- (7) Management Board meetings are generally in-person meetings. However, with the Managing Director's approval, members may attend a meeting by phone or video calls; this counts as attendance. In exceptional cases, the Managing Director may decide to hold the whole meeting as a phone or video conference.
At the Managing Director's request, Management Board resolutions may also be conducted in writing, remotely or using electronic procedures. If resolutions are passed in writing, remotely or using electronic procedures, a failure to respond within two working days of being requested to do so shall be treated as a rejection. The details are regulated in the Standards of Operation Procedure of the Management Board.
- (9) The Management Board shall attend the meetings of the Executive Committee in an advisory capacity.
- (10) Scientists and other employees of research operations who are remunerated according to pay group W2 and below, are employed by the Management Board in accordance with the rules of procedure applicable at the MPG.

§ 11 Scientific Directors

- (1) The Scientific Directors are appointed by the Executive Committee after letters of reference have been obtained in accordance with the regulations of the MPG for a period of no more than seven years. An appointment for a period in office of less than seven years should only be used in justified exceptional cases, however especially in awareness that retirement age will be reached. Initial appointments require the approval of the Senate of the MPG.

The President of the MPG shall specify the employment conditions in consultation with the Chairperson of the Executive Committee. The Chairperson of the Executive Committee is commissioned with concluding the contract of employment.

- (2) Re-appointment for additional periods in office of no more than seven years by the Executive Committee is possible without limit and does not require letters of reference or any other approvals to be obtained in advance; para. 1 Sentence 2 applies accordingly. Re-appointments should be implemented until retirement age is reached, unless this is contrary to the recommendation of the MPG issued based on its regulations on transferring management functions or if there are reasons which would constitute good cause for a dismissal under these Statutes.
- (3) If the Scientific Directors are appointed to official Civil Servant's positions, which requires the consent of the Executive Committee, recruitment and dismissal shall be governed by the provisions for Civil Servants.
- (4) The Scientific Directors are free to choose their scientific activities within the framework of the Institute's purposes. They are not subject to restrictions in their choice and implementation of their scientific work.

- (5) If a Scientific Director is not re-appointed in accordance with para. 2, the former Scientific Director is entitled to be granted opportunities for independent scientific work in accordance with para. 4 to the extent that, and so long as, they remain a Scientific Member of the MPG.

§ 12 Administrative Director

- (1) The Administrative Director is appointed by the Executive Committee at the suggestion of the Management Board for a period in office of no more than seven years. An appointment for a period in office of less than seven years should only be used in justified exceptional cases, however especially in awareness that retirement age will be reached. The Chairperson of the Executive Committee is commissioned with concluding the contract of employment.
- (2) The Executive Committee may re-appoint the Administrative Director for additional periods in office of no more than seven years without limits; para. 1 Sentence 2 applies accordingly. Re-appointments are to be implemented until retirement age is reached and should only be omitted in case of reasons which could constitute good cause for a dismissal under these Statutes.
- (3) The Administrative Director manages the administration of the foundation in accordance with the specifications of the Management Board and supports the Managing Director in the administrative management of the Institute and the Scientific Directors in their administrative tasks.
- (4) They shall notify the Management Board of the relevant developments of the endowment assets and prepare the passing of resolutions by the Management Board in accordance with § 10 para. 3 No. 1.
- (5) If the Executive Committee rejects the Management Board's suggestion for appointment as Administrative Director and if no agreement can be reached between the Management Board and the Executive Committee, the Administrative Director shall be appointed by an Arbitration Board whose decision after hearing the Management Board and the Executive Committee shall be binding for both the Management Board and the Executive Committee. The Arbitration Board shall consist of the President of the MPG, the Vice President of the MPG responsible for the Chemistry, Physics and Technology Section and the Secretary General of the MPG. The President shall be the Chairperson. Members of the Arbitration Board who also hold a membership - including a dormant membership - of a governing body or who declare that they are biased for other reasons, are excluded from playing a part on the Arbitration Board. As a substitute, the Executive Committee of the MPG shall appoint a representative; if the President cannot take part, the Executive Committee of the MPG shall also specify who is to be the Chairperson.

§ 13 Assistance and discussions

- (1) Employees who have completed their education and training at a scientific university and are working in the scientific and technology area shall be able to provide appropriate assistance at regular Institute meetings where the general objectives, methods and the implementation of research projects is to be discussed together. The procedure shall be set out in the Standards of Operation Procedure in its current version as approved by the Executive Committee. Otherwise, § 28 para. 7 Sentences 2 and 3 of the Statutes of the MPG in their current version shall apply.

- (2) The research objectives of the Institute should aim to promote the scientific and professional development of each employee through their work, including acceptance of their own responsibility. The Scientific Directors should hold meetings with their scientific and scientific/technical employees about their professional situation at appropriate intervals or if the occasion arises. The currently approved Standards of Operation Procedure will outline more details.

§ 14 Scientific Advisory Board

The Institute has a Scientific Advisory Board. The Scientific Advisory Board is governed by the Rules for Scientific Advisory Boards of the MPG, including the rules regarding the appointment of members by the President of the MPG. Where adjustments to these rules are considered necessary given the particularities of the foundation, the Executive Committee shall pass a resolution for these changes in consultation with the Management Board.

§ 15 Amendments to the Statutes

- (1) The Statutes of the foundation can be amended by Management Board and Executive Committee resolution. In order to be valid, the resolutions of the Management Board and the Executive Committee require a two-thirds majority of the votes of voting-entitled members. The resolutions of the Executive Committee (according to § 9 para. 7) and the Management Board (according to § 10 para. 7) can also be passed in a written procedure. In this case, failure to respond within four weeks of being requested to vote shall be considered a rejection. The Chairperson of the Executive Committee shall draw up voting minutes which must include the written declarations and be sent to all members immediately.
- (2) The purpose of the foundation (§ 2), the provision of § 11 para. 1, 3 and 4 regarding the appointment and scientific activity of the Directors and the provisions contained in § 16 regarding the dissolution of the foundation may only be changed, if this is factually justified based on changed political, legal, economic or institutional framework conditions and the reference to the foundation's intention is preserved.
- (3) The provision in § 9 para. 1, where this grants the MPG the right to appoint three Executive Committee members, may only be amended with the approval of the MPG.
- (4) The provision of § 1 para. 3 (Registered office of the foundation) and the provision of § 9 para. 1, where the latter grants the City of Mülheim an der Ruhr the right to appoint a member, may only be amended with the approval of the City of Mülheim an der Ruhr.

§ 16 Dissolution of the foundation

- (1) The Management Board with the consent of the Executive Committee may pass a resolution to dissolve the foundation. In order to be valid, the resolutions of the Management Board and the Executive Committee require a two-thirds majority of its members.

- (2) If the foundation is dissolved or if the tax-privileged defined purpose ceases to apply, the assets shall pass to the City of Mülheim an der Ruhr which is obligated to continue to use them at the foundation's registered office for non-profit purposes for the benefit of the general public and largely in line with the former purpose of the foundation, if possible. It shall take into account the suggestions of the last Executive Committee where possible and requires the approval of the Ministry of the federal state of North-Rhine-Westphalia responsible for science to define or change the purpose.

§ 17 Official approval

The foundation authority of the federal state of North-Rhine-Westphalia must be notified of these resolutions according to §§ 15 and 16 of these Statutes of the foundation, as specified by law.

§ 18 Foundation authority

- (1) The foundation authority is the regional government of Düsseldorf, with the highest foundation authority being the Ministry of the Interior of the federal state of North-Rhine-Westphalia.
- (2) Upon request, the foundation authority must be informed of all matters relating to the foundation at any time. It must be provided with the annual financial statement unrequested.

§ 19 Role of the tax authorities

- (1) Irrespective of the approval obligations resulting from foundation law, resolutions to amend the Statutes and to dissolve the foundation must be reported to the competent tax authorities.
- (2) Changes to the Statutes which relate to the purpose of the foundation require the consent of the tax authorities to maintain tax privilege.

§ 20 Coming into force, transitional rule

- (1) This new version of the Statutes shall come into force on the 1st day of the month following the date of approval by the foundation authorities.
- (2) When these Statutes come into force, the Scientific Directors in office at this time and the Administrative Director in office at this time shall transitionally establish the Management Board in accordance with the provisions of § 10. The period in office of the members of the Executive Committee shall continue. At the latest during its first ordinary meeting after these Statutes come into force, the Executive Committee shall appoint the Management Board in accordance with the provisions of these Statutes; members of the transitional Management Board shall be subject to the provisions on re-appointment. The Scientific Directors are to be appointed for a period in office which corresponds to the remaining term according to the MPG's recommendation regarding transfer of the management function.