

**Contergan Foundation Act**  
**(Contergan Foundation Act – ContStifG)**  
**as amended by the Sixth Amendment of 09.07.2021**

**Section 1**  
**General provisions**

**§ 1**  
**Name of the foundation**

The “Disabled Children’s Relief Foundation”, established by the law dated 17<sup>th</sup> December 1971 (Federal Law Gazette - BGBl. I p. 2018; 1972 I p. 2045) (hereinafter: Establishment Act), last revised by article 19 of the act dated 27<sup>th</sup> December 2003 (Federal Law Gazette - BGBl. I p. 3022) obtains the name “Contergan Foundation”.

**§ 2**  
**Purpose of the foundation**

The purpose of the foundation is to aid disabled people whose deformities can be linked to their mothers taking medication containing Thalidomide by Grünenthal GmbH, Aachen (formerly Chemie Grünenthal GmbH in Stolberg) during pregnancy,

1. providing benefits and
2. providing assistance by promoting or conducting research and trial projects in order to support their participation in community life and to alleviate the long term impacts of incurred impairments.

**§ 3**  
**Tax concessions**

The foundation exclusively and directly pursues tax deductible objectives in accordance with §§ 51 to 68 of the German Fiscal Code.

## **§ 4**

### **Endowment fund**

(1) The endowment fund consist of

1. the funds made available to the foundation by the Federal Government to cover financial compensation and Contergan pensions pursuant to § 13 sec. 1, as well as essential administrative expenses;
2. the funds amounting up to 30 million Euro annually provided by the Federal Government to cover specific needs and to support multidisciplinary medical centres of excellence; this also includes other expenses related to these services and supporting the centres of excellence, including administrative expenses;
3. a financial donation amounting to 50 million Euro granted by the Grüenthal GmbH which must be paid by 15<sup>th</sup> July 2009;
4. funds in the amount of 51,129,000 Euro provided by the Federal Government pursuant to § 4 sec. 1 no. 1 of the Establishment Act, as well as funds provided by the Federal Government for applications not yet approved by the end of 30<sup>th</sup> June 2022 pursuant to § 13 sec. 4 sentence 4;
5. the capital stock of 1.5 million Euro provided by the Federal Government pursuant to § 4 sec. 1 no. 1 of the Establishment Act;
6. funds in the amount of 5 million Euro provided by the Federal Government pursuant to § 4 sec. 1 no. 1 of the Establishment Act;
7. the contributions specified in sec. 2

and the capital generated from these.

(2) the foundation is entitled to accept donations from third parties. The foundation raises additional funds from third parties.

## **§ 5**

### **Bodies within the foundation, liability**

(1) Bodies within the foundation include

1. the foundation board,
2. the foundation's management board.

(2) Volunteer board members are only liable to the foundation for damages due to intent or gross negligence in performing their duties. The foundation indemnifies volunteer board members from any claims asserted by third parties for damages caused performing their duties unless the damage results from intent or gross negligence. Sentences 1 and 2 apply to former volunteer board members accordingly.

## **§ 6**

### **Foundation board**

(1) The foundation board consists of a minimum of five and a maximum of seven members. Representation is admissible. Three members are appointed by the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth in consultation with the Federal Ministry of Finance and the Federal Ministry of Labour and Social Affairs. An additional two members are appointed by the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth nominated by the individuals specified under § 2. The Federal Ministry of Family Affairs, Senior Citizens, Women and Youth may appoint two more members from the scientific community. Sentences 3 to 5 also apply to the representatives.

(2) The foundation board elects the chairman and the deputy chairman from the members designated by the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth, acting by simple majority. Repeated election is admissible.

(3) The term of office of the foundation board members and their representatives is five years. If a member or his/her deputy resigns before the end of his/her tenure, a replacement is appointed for the remaining term of office. Repeated appointment is allowed.

(4) The members of the foundation board are honorary members; they are entitled to be compensated for their necessary expenses. The members of the foundation board entitled to benefits under this law, are entitled to be compensated for their necessary costs for assistance.

(5) The foundation board operates on the basis of its by-laws. Amendments are determined by way of a simple majority vote. Meetings and proceedings within the foundation board are public. Negotiations are only closed when necessary for the greater public good or legitimate interests of individuals; negotiations on topics which meet these requirements must also be held in closed sessions. Decisions made in closed sessions as defined by sentence 2 must

be subsequently announced to the public or, if unsuitable, in the next public meeting, provided this does not conflict with the greater public good or the legitimate interests of individuals.

(6) The foundation board makes decisions regarding all fundamental issues which belong to the foundation's field of responsibility. It oversees the activities of the foundation's board of management. Details are defined in the charter.

(7) The foundation board constitutes a quorum if half of the members are present. If an issue is postponed due to absence of a quorum and the foundation board is convened to deliberate on said issue, the board constitutes a quorum regardless of the number of members present. The chairperson must explicitly point out this provision when the board convenes for the second time.

(8) The foundation board constitutes a quorum for elections according to section 2 and resolutions according to section 5 if half of the members are present. Further provisions regarding required majorities and quorums are determined by the by-laws.

## **§ 7**

### **The foundation's management board**

(1) The foundation's management board consists of the chairman and a maximum of two additional members. A member of the foundation's management board must be entitled to benefits in accordance with this law.

(2) The members of the foundation's management board are appointed by the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth in agreement with the Federal Ministry of Finance and the Federal Ministry of Labour and Social Affairs upon approval by the foundation board.

(3) The term of office for the foundation's management board is five years. If a member resigns before the end of his/her tenure, a replacement is appointed for the remaining term of office. Repeated appointment is admissible

(4) The members of the foundation's management board are honorary members; they are entitled to be compensated for their necessary expenses. The members of the foundation's

management board qualifying as a beneficiary under this law are entitled to be compensated for their necessary costs for assistance.

(5) The foundation's management board carries out any decisions made by the foundation board and conducts the foundation's business. In particular, these business transactions include allocating the foundation's funds and overseeing the appropriate and economic processes within the foundation. It represents the foundation both judicially and extra-judicially.

(6) For support in fulfilling its tasks, the board of management can employ two full-time managing directors in agreement with the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth and the Federal Ministry of Finance.

(7) The by-laws shall specify further details.

## **§ 8**

### **Charter**

The foundation board may amend the charter with the approval of the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth in agreement with the Federal Ministry of Finance.

## **§ 9**

### **Appropriation of funds**

The foundation's funds may only be used for the purposes of the foundation.

## **§ 10**

### **Supervision, budgeting, audit**

(1) The foundation is under the supervision of the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth.

(2) The foundation must prepare in good time a budget before the beginning of each fiscal year. The budget and the annual financial statement require the approval of the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth. Details are defined in the charter.

(3) The auditing authority is The German Federal Court of Auditors.

## **Section 2**

### **Thalidomide damage benefits**

#### **§ 11**

##### **Allocation of endowment fund**

Actions outlined in this section must be paid from the endowment fund. To be used:

1. for annual special payments awarded to beneficiaries pursuant to §§ 12 and 13,
  - a) the funds specified in § 4 sec. 1 no. 3 and the earnings generated from these assets as well as
  - b) the funds specified in § 4 sec. 1 no. 4 in the amount of 50 million Euro and the earnings generated from these assets since 1<sup>st</sup> January 2009;
2. the funds for benefits to cover specific needs and to support multidisciplinary medical centres of excellence including other expenses as well as administrative expenses related to benefits to cover specific needs and support the centres of excellence pursuant to § 4 sec. 1 no. 2;
3. the funds in accordance with § 4 sec. 1 no. 1 excluding funds for necessary administrative expenses for the remaining services.

#### **§ 12**

##### **Beneficiaries**

(1) Benefits for those with deformities can be linked to mothers taking medicinal products during pregnancy which contain Thalidomide by Grünenthal GmbH, Aachen and are granted the status of an beneficiaries if they were alive at the time when the Establishment Act of the Federation came into force and according to § 13 sec. 5 sentence 2 to their legal heirs.

(2) Benefits pursuant to § 13 of the Establishment Act were not claimed during the time specified under said, Contergan pensions and financial compensation may be applied for from 1<sup>st</sup> July 2009 on.

### **§ 13**

#### **Type and range of benefits**

(1) The beneficiaries stated in § 12 are entitled to the following benefits:

1. one-time financial compensation,
2. life Contergan pension subject to sec. 2 sentence 3,
3. annual benefits to cover specific needs and
4. an annual special payment which is first granted for 2009 and a last payment for 2022

The annual benefits to cover specific needs, to support multidisciplinary medical centres of excellence and the annual special payments are only granted as long as funds according to § 11 sentence 2 no. 1 and 2 are available in the endowment fund. In 2022, the total funds provided for the annual special payment pursuant to § 11 sentence 2 no. 1 through 30<sup>th</sup> June 2022 will be paid to beneficiaries as special payments.

(2) The amount of financial compensation stated in section 1 is determined by the severity of the bodily injuries and the resulting dysfunctions and is

1. between 1,278 Euro to 12,782 Euro for the one-time financial compensation,
2. between 662 Euro and 7,480 Euro for the monthly Contergan pension and
3. between 876 Euro and 9,900 Euro for the annual benefits to cover specific needs.

Furthermore, every beneficiary receives an annual basic allowance in the amount of 4,800 Euro.

In mild cases, the benefits must be limited to financial compensation. The Federal Ministry of Family Affairs, Senior Citizens, Women and Youth adjusts the amount of the Contergan pension at the same percentage the statutory pension insurance is changed. This adjustment specified in sentence 4 always occurs at the same time pensions from statutory pension insurance are adjusted.

(3) The Contergan pension must be capitalised upon application as long as the amount is used for the acquisition or for the economic strengthening of one's own property for residential purposes. §§ 72, 73, 74 sec. 3 sentence 1, §§ 75, 76 and 77 sec. 1 sentence 3 and sec. 3 of the Federal War Victim's Relief Act apply accordingly. § 75 sec. 1 sentence 2 of

the Federal War Victim's Relief Act applies, with the proviso that a sale of or liability against the property, leasehold, condominium or the building lease acquired or economically strengthened with the financial settlement within the period the Contergan pension was capitalised for requires the approval of the foundation. The beneficiary must bear the costs for recording restricted cash in the land register pursuant to § 75 sec. 1 sentence 2 to 4 of the Federal War Victim's Relief Act. Furthermore, the Contergan pension must be capitalised upon application if this is in the legitimate economic interest of the beneficiary. In addition, the Contergan pension may be partially capitalised upon application if this is in the interest of the beneficiary. Capitalisation is limited to a period of up to ten years of the Contergan pension. Eligibility for the Contergan pension, which is replaced by the financial settlement, lapses during the period for which the financial settlement is granted, at the end of the month which follows the month the settlement was paid.

(4) Contergan pension payments begin during the month of application at the earliest. If the application is filed within three months after the Establishment Act comes into effect, the Contergan pension is granted from the time it came into effect. Pursuant to section 1 sentence 1, annual special payments begin the year the application for Contergan pension was filed. Applications for benefits under this act or applications for an increase in benefits under this act submitted through 31<sup>st</sup> December 2021 will be considered for the funds for the annual special payment pursuant to sec. 1 sentence 3. Annual benefits to cover specific needs pursuant to section 1 sentence 1 no. 3 are paid beginning 1<sup>st</sup> January 2017.

(5) A right to the benefits stated in section 1 cannot be delegated, pledged or seized. Rights to financial compensation, to the Contergan pension and to the annual special payments are only feasible on the basis of hereditary circumstances which should be payable to the beneficiary right up to the point of death and only given to a third person on the condition that they are their spouse, life partner, children or parents.

(6) Further details are outlined in the by-laws and policies. In particular, the by-laws make provisions regarding the requirements and the extent of the capitalisation of the Contergan pension according to section 3 sentence 5 and 6 as well as regarding the calculation mode of the capital sum. In particular, the guidelines must lay down the criteria for judging on what basis the benefits are allocated and be in accordance with the section based on the amount of available funds and the ways in which methods for granting special need benefits should be further developed; these guidelines are issued by the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth.

(7) Beneficiaries, whose Contergan pension was capitalised according to section 3, also experience increases in the Contergan pension.

(8) The provisions of the Federal Administrative Procedures Act apply to the repayment of overpayments accordingly. § 118 sec. 3 and 4 of Book VI of the Social Security Code apply accordingly.

## **§ 14**

### **Interest**

Pursuant to § 247 of the German Civil Code, financial compensation pursuant to § 13 section 2 is subject to an annual interest rate in the amount of 2 per cent above the base rate from the date of application.

## **§ 15**

### **Waiver, imputation of third party payments**

(1) If the beneficiary's or his/her legal representative's place of residence or permanent dwelling is situated outside of the territory to which this law applies, they shall only receive benefits according to the provisions of this act, if they declare beforehand in writing that they irrevocably renounce the right to assert possible claims against the Grünenthal GmbH, its shareholders, managing directors and employees which are reduced to taking medicinal products containing Thalidomide.

(2) For benefits according to this law, payments which have already been made by other potentially responsible parties based on the consumption of medicinal products containing Thalidomide are to be taken into account. Payments from third parties, particularly from foreign countries related to taking medication containing Thalidomide are imputed to financial compensation and the Contergan pension.

## **§ 16**

### **Proceedings**

(1) Benefits are granted upon application. Benefits under this act can only be revoked if the claims were based the beneficiary intentionally making incorrect statements or providing incomplete information. The same applies to revoking damage scores granted pursuant to Annex 2 to the rules for granting benefits due to Thalidomide damage cases. The imputation of payments pursuant to § 15 sec. 2 remains unaffected. Recipients of the Contergan pension will also receive annual special payments and the annual benefits to cover specific needs without separate application.

(2) A commission consisting of at least five members that must be established within the foundation's management board, decides whether a claim exists according to this section and assesses the claim according to the guidelines.

(3) The chairman of the commission must be qualified to hold the position of a judge; furthermore, the commission consists of medical specialists from various fields of expertise. If necessary, several commissions can be established.

(4) The members of the commission are appointed by the foundation's board of management.

(5) In cases of doubt in deciding upon whether or not there is a deformity in accordance with § 12, the commission must obtain an expert's opinion.

(6) The foundation's management board determines benefits based on this decision and the assessment of the commission pursuant to section 2 in accordance with the guidelines pursuant to § 13 section 6 by means of written administrative decision.

## **§ 17**

### **Treatment of benefits under this law when applying other laws**

Benefits according to this section are tax-exempt. Claims to such benefits do not qualify as other assets as defined by the Valuation Tax Act.

## **§ 18**

### **Other benefits**

(1) Benefits under this act are not taken into account when calculating or imputing income, miscellaneous receipts and assets under other laws, particularly Book II, III, V, IX and XII of the Social Security Code and the German Civil Code.

(2) Obligations of other parties, in particular those with the obligation to support and the institution for social welfare or other social benefits are not affected by this act. Assigning the beneficiary's claims for maintenance to the beneficiary's spouse, life partner, children or parents in accordance with § 94 of Book XII of the Social Security Code represents an undue hardship under § 94 sec. 3 sentence 1 no. 2 of Book XII of the Social Security Code. With respect to support under Chapter Five to Nine of Book XII of the Social Security Code, the beneficiary and the beneficiary's spouse or life partner, from whom the beneficiary is not separated, cannot be expected to procure financial means from income pursuant to § 19 section 3, § 87 section 1 and § 88 of Book XII of the Social Security Code. Pursuant to § 19 section 3, § 90 section 3 sentence 1 of Book XII of the Social Security Code, assessing the assets of the beneficiary and the beneficiary's spouse or life partner from whom the beneficiary is not separated, represents a hardship. Pursuant to Part 2 of Book IX of the Social Security Code, integration assistance under § 92 Book IX of the Social Security Code is not subject to fees. Pursuant to this law this also applies to beneficiaries receiving benefits under § 103 Book IX of the Social Security Code after the Federal Participation Act comes into effect. Benefits from other positions of power based on legal provisions, for which there is no entitlement, may not be refused because benefits are provided for, according to this act.

### **Section 3**

#### **Project funding**

### **§ 19**

#### **Financial resources**

Applicable to provisions under this section:

1. proceeds from funding pursuant to § 4 sec. 1 no. 5;
2. funds pursuant to § 4 sec. 1 no. 6 and the earnings generated from the assets;
3. benefits under § 4 sec. 2, unless otherwise stipulated by the benefactor(s).

**§ 20**  
**Funding**

(1) The foundation can fund, conduct or implement individual scientific research projects, development and testing of specific treatment methods and other measures in order to achieve the aims outlined in § 2 no. 2.

(2) The funding measures granted before this act comes into effect must be followed through.

(3) There is no entitlement to aid from funds from the foundation.

**§ 21**  
**Spending plan**

The foundation board prepares a spending plan for two fiscal years upon approval by the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth which defines the financial framework for funding. The management board determines the execution of the plan for specific cases.

**Section 4**  
**Final and transitional provisions**

**§ 22**  
**Proceedings**

Unless otherwise stipulated under this act, the Federal Administrative Procedure Act applies.

**§ 23**  
**Legal recourse**

Disputes on benefits under this law are subject to public law remedy.

## **§ 24**

### **Transitional provision**

Any benefits approved by the Contergan Foundation to cover specific needs under the amendment in effect until 31<sup>st</sup> December 2016

1. to be paid out after 1<sup>st</sup> January 2017, and
2. to cover specific needs from 1<sup>st</sup> January 2017 on are offset against benefits pursuant to § 13 sec. 1 sentence 1 no. 3.

## **§ 25**

### **Report**

The Federal Government submits a report to the German Federal Parliament on the effects of this act of these provisions every four years as well as on the possibility for important further development, if necessary. This report must not contain personal information.