

## 2009 SESSION REPORT

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tel.: +32.2.512.8938 | fax: +32.2.512.3265 | e-mail: aga@efc.be | web: www.efc.be



### ***“The time is right for a European Foundation Statute”***

*Moderator:* Eleanor Boddington, Wellcome Trust

*Speakers:* Helmut Anheier, Centre for Social Investment  
Marcello Clarich, Luiss University of Rome  
Ludwig Forrest, King Baudouin Foundation  
Marjut Leskinen, European Commission DG Internal Market

*Session proposed by: EFC Legal Committee*

Eleanor Boddington of the Wellcome Trust guided the panel and participants of the session through a lively debate about the potential development of a European Foundation Statute.

**Helmut Anheier** of the Centre for Social Investment at the University of Heidelberg started by highlighting main outcomes of the feasibility study on a European Foundation Statute, which was published earlier in the year, as follows: The economic weight of the foundation sector is significant and the sector has become more international. There are legal barriers both in civil and in tax law obstructing foundations cross-border activities. As in company law, most of these barriers can be overcome but this leads to compliance costs. The study estimated that current barriers cost European foundations around 100 million euros per year. The European Foundation Statute emerges from the study as the best policy option for addressing cross-border barriers and stimulating foundations activities.

**Marjut Leskinen** of DG Internal Market at the European Commission stated that the feasibility study was well written and very comprehensive. However, more information would be appreciated for some of the aspects, in particular with regard to concrete cases of existing barriers and if already established foundations would actually use such a European legal tool. If trust in foreign based foundations would be the main problem, this could potentially be overcome by an accreditation system. Among other things it depends on the results of the public consultation, whether the European Commission will undertake a cost/benefit analysis. The political decision on the matter is expected to be taken by the new Commission that will be appointed by the end of this year.

**Ludwig Forrest** of King Baudouin Foundation, in his capacity as philanthropy advisor, highlighted case studies of an individual donor, a consortium of donors, a US corporate donor, and an institutional donor who wanted to establish philanthropic activities in several Member States but who did not have the appropriate legal tool available to them. Mr Forrest stressed that an increasing number of donors have an international background. Global problems, such as poverty, do not stop at national borders, and neither should the legal vehicles available to address these problems. Increasingly donors also wish to come together and start multinational initiatives to address these issues.

**Marcello Clarich** supported the idea of a European Foundation Statute from an Italian perspective but stressed that tax barriers also need to be dealt with. He stated that a European Foundation Statute should be a flexible legal tool.

With regard to how comprehensive such a European statute could be, Ms Leskinen mentioned the move to the more detailed and self-standing proposal on the private company statute from the more basic rules in the European Company Statute (SE). However, supervision would need to be more decentralised.

Despite the peculiarities of national foundation laws, such as for example the Italian specific case of foundations with a participatory structure, which was mentioned by Italian participants in the debate, there are clear common structures and components of foundations across Europe. It was stressed again that the statute is intended to be an optional and complementary legal tool, which would not replace or interfere with national foundation laws.

With regard to the public consultation, Ms Leskinen mentioned the high number of foundations who have already participated in it. She regretted it was not possible to translate the feasibility study and the questionnaire and acknowledged that this could have made it more difficult for non-English speakers to participate in the Consultation. She confirmed that further contributions sent a few weeks after the deadline of May 15<sup>th</sup> – would still be taken into account, in particular those with concrete case studies. The Commission has been made aware of the support from the foundation sector for a statute but national governments, who ultimately will have to decide on such a statute, will also need to be convinced of the value of such a statute.

Several contributions from the audience also stressed the symbolic value of such a statute for the foundation sector in Europe and for the European soul and concept. It was seen as important to make Europe more relevant and the statute could be one important tool to achieve this.