



# European Foundation Statute Feasibility Study Consultation Contribution of the European Foundation Centre (EFC)

May 2009

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## **Introduction**

This is the contribution of the European Foundation Centre (EFC) to the European Commission public consultation on the European Foundation Statute.

The EFC strongly supports the creation of the European Foundation Statute as an optional legal instrument. We trust that the European Commission, based on the clear recommendation of the feasibility study, will complete its impact assessment in 2009 and issue a proposal for a regulation when the new Commission takes office.

## **Overall comments on technical aspects of the consultation**

While we welcome the online public consultation on the European Foundation Statute, we would like to submit some observations on its format which we believe was not conducive to a high level of participation:

- The fact that the questions (part I) were published in a PDF document did not allow to use the document directly to answer the various very specific questions. A simple user-friendly format should have been made available.
- The inclusion in the same document of a second questionnaire (Part II) -- the online-questionnaire – brought some confusion as to which parts of the questionnaire respondents had to contribute and how these replies will be reviewed.
- It would have been helpful for respondents to have the consultation documents and a snapshot of the feasibility study available in different languages

### **A. Name of the foundation/company/organisation/person and your function**

European Foundation Centre AISBL  
Gerard Salole, Chief Executive Officer

### **B. Address and register ID number of registered organisations**

Rue de la Concorde 51, 1050 Brussels, registration number: 0456.810.414

European Foundation Centre ID number with the European Commission register of interest representatives is: 78855711571-12

### **C. The legal form, field of activity and country of origin of your organisation**

Belgian international non-profit association; Association Internationale Sans But Lucratif (AISBL)

### **D. If you are answering for a foundation – N/A**

1. Does your foundation conduct cross-border activities in the EU/EEA area?

If yes, in which form does your foundation conduct these activities (*e.g. foreign foundations, branches, subsidiaries, provision of services, export/direct sales of goods, fund raising, grant making*)?

2. Does your foundation plan to expand its activities to other Member State(s) in the foreseeable future?

If yes, in which form (*e.g. foreign foundations, branches, subsidiaries, provision of services, export/direct sales of goods, fund raising, grant making*)?

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European Foundation Centre, AISBL

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Please indicate to which Member State(s).

3. Please indicate the approximate yearly expenditure of your foundation.

4. Please indicate whether the purpose of your foundation is (1) public benefit only, (2) mixed public benefit and private or (3) private only.

### **Question 1) Barriers to the cross-border activities/establishment of foundations**

**Q 1.1) The study identifies four *categories of civil law barriers/difficulties* for the cross-border activities of foundations in Europe (pp. 105-111):**

**1) Recognition of foreign foundations (pp. 105-107),**

**2) Recognition of trusts (p. 107),**

**3) Cross-border transfer of the Real Seat (pp. 107-110),**

**4) Cross-border transfer of the Registered Seat (pp. 110-111).**

**Do you agree with these findings?**

The EFC has analysed existing civil and tax law barriers and we agree with the legal barriers, which are listed in the study concerning existing barriers to the cross-border activities/ establishment of foundations:

- Lack of possibility of transfer of seat to another Member State – either the real seat or the registered seat.
- Difficulty in recognising foreign foundations' legal personality – recognition procedures exist in several Member States.
- Legal insecurity over national recognition of "general interest" nature or "public benefit" status of resident foundations' cross-border work.

We can support the analysis of existing barriers with our own legal research and practical experience, see below under Q 1.4.

**Q 1.2) Do you see any *further civil law barriers/difficulties*? Please specify.**

Apart from these legal and administrative burdens, we would like to stress the following administrative barriers:

- Administrative burden and cost to foundations of dealing with a diversity of national rules.
- Administrative burden and cost to foundations of the setting up several branches in other countries, which requires continuous legal advice.
- Lack of trust in foreign-based foundations. Foundations have reported that they have set up branches in other Member States also because of the lack of trust in foreign legal forms. In this respect, the ability to operate under a foundation form known and recognised in all Member States would be seen as easing EU-wide operations.

**Q 1.3) Please *rank the civil law barriers* in order, starting with the one you find the most important.**

- Lack of possibility of transfer of seat to another Member State – either the real seat or the registered seat.
- Difficulty in recognising foreign foundations' legal personality – recognition procedures exist in several Member States.

- Legal insecurity over national recognition of "general interest" nature or "public benefit" status of resident foundations' cross-border work.

**Q 1.4) If you are answering for a foundation, please give *concrete examples of the civil law barriers and/or difficulties you have encountered. How do you deal with these barriers/difficulties? Have they influenced your plans to conduct cross-border activities?***

The EFC is aware of a series of foundations that face practical obstacles and added costs in their everyday cross-border activities. Some prominent cases had been shared with the drafters of the feasibility study

The Carpathian Foundation International is based in Hungary, with additional national organisations established in Hungary, Poland, Romania, Slovakia and Ukraine<sup>1</sup>. Naturally there are considerable costs arising from the establishment of several national organisations. Running offices in five different countries is expensive, and there are also costs resulting from having to consult legal advisors in all the countries in question, during the setting-up phase of the organisation and on a regular basis thereafter, to keep up with the changing legal environment in each country. Each national entity is also required to have a different governance structure in line with national rules, which complicates things further.

In 2007, discussions started to set up a European Climate Foundation. Its objective would be to promote climate and energy policies that reduce Europe's greenhouse gas emissions and help Europe play an even stronger international leadership role in mitigating climate change. Because of the lack of a European legal tool, the legal and tax situation of public benefit foundations in selected European countries was reviewed and checked against a set of criteria which were considered essential for the establishment and functioning of such a foundation. In terms of strategic assessment, a European legal instrument would have been the best option. The European Climate Foundation was eventually established in 2008 in The Hague (head office), the Netherlands. It also has a presence in Germany (Berlin) and Belgium (Brussels).

The German Körber Foundation has considered setting up several national foundations for the EUSTORY network because of the lack of a European Statute<sup>2</sup>. The network, which supports teaching history to young people across several EU Member States, is suffering from the lack of a European framework for its activities. Some foundations also struggle to find the appropriate legal structure when they have a pan-European public interest objective and are therefore forced to establish themselves as national entities despite their pan-European mission.

An example of another foundation encountering this type of problem is the RISE Foundation for rural development<sup>3</sup>. The mission of the RISE Foundation covers all aspects of conservation and development in the rural world, promoting private investments, the advancement of private property, and cooperation between land managers and rural communities. It currently operates across all 27 EU Member States and has reported to the EFC that it faced a number of challenges during its setting-up phase. Problems were faced in dealing with different legal systems, in drafting the articles of incorporation, in fundraising, and in supporting transnational projects.

**Q 1.5) If you are answering for a foundation and have tried to transfer your real or *registered seat cross-border, have you experienced any problems? Please specify your reasons for wanting to transfer the seat and the problems experienced, if any. N/A***

<sup>1</sup> Based on an interview with Janos Lukacs, the Executive Director of the Carpathian Foundation, 8 May 2008. Additional information is available on the organisation's website at [www.carpathianfoundation.org](http://www.carpathianfoundation.org).

<sup>2</sup> More information on the network: EFFECT magazine, vol. 2, issue 1, Spring 2008, p. 25,

<http://www.efc.be/ftp/public/Communications/EFFECT/Spring2008/effectspring08creativity.pdf> (2855kb)

<sup>3</sup> <http://www.risefoundation.eu/>

**Q 1.6) The study identifies eight *categories of tax law barriers/difficulties* for the crossborder activities of foundations in Europe (pp. 111-122):**

- 1) Income taxation of foreign foundations (pp. 112-114),**
- 2) Income taxation of domestic foundations operating abroad (pp. 114-115),**
- 3) Income taxation of domestic donors of foreign foundations (p. 116),**
- 4) Income taxation of foreign donors of domestic foundations (p. 117),**
- 5) Income taxation of foreign donors of foreign foundations (pp. 117-118),**
- 6) Income taxation of affiliated beneficiaries (p. 118),**
- 7) Inheritance taxation (pp. 118-120),**
- 8) Further taxes (pp. 120-121).**

**Do you agree with these findings? If not, please explain why.**

The EFC together with a network of 27 national legal experts has mapped the fiscal environment for public benefit foundations and their donors for the 27 EU Member States. A striking feature of the sector - that we noticed during the mapping of the legal and fiscal environment- is its diversity, which results from the different legal systems and cultures in the 27 EU Member States. However, we can say that in civil law the differences are much greater than in tax laws. In the field of tax law some clear common trends can be identified, which were also highlighted by the study:

### **1) Income taxation of foreign foundations (pp. 112-114)**

The EFC agrees with the findings of the study regarding the taxation of income of foreign foundations. Tax incentives are in most cases only granted to resident public benefit foundations. See EFC comparative chart 9 for overview (charts are listed in annex in the end of the document).

### **2) Income taxation of domestic foundations operating abroad (pp. 114-115),**

The EFC agrees with the findings of the study on the taxation of income of domestic foundation operating abroad. All EU Member States provide for special tax treatment for public benefit purpose foundations. Generally income from economic activity related to the public benefit purpose, and income deriving from asset management is also tax exempt in most countries. See EFC comparative charts 2-4 for overview.

However, cross-border activities can put the tax exempt status at risk. Public benefit foundations are according to most tax laws allowed pursuing activities across-borders. See EFC comparative chart 1 for overview. However, if the foundation operates mainly abroad, the tax exempt status is put at risk in Austria, France, Portugal, and Sweden. German tax law requires that the activities outside Germany somehow also benefit the German public. However we were informed that this rule is interpreted very loosely.

### **3) Income taxation of domestic donors of foreign foundations (p. 116)**

The EFC agrees with the findings of the study on the tax treatment of donors. Individual and corporate donors are eligible to claim income tax relief for charitable donations in most jurisdictions, but not in all 27 Member States. Slovakia is the only country that has no tax incentives at all in place for individual or corporate giving, while Finland, Lithuania, Malta and Sweden only provide some tax incentives for corporate donors. Overall there is a trend to introduce more incentives for giving. See EFC comparative charts 6-8 for overview of the income tax treatment of donors as well as chart 5 for the gift- and inheritance tax treatment. Furthermore, in most EU countries, donations to foundations in other countries do not qualify for tax relief to the donor. There seems to be some changes in a few countries which have or are introducing tax incentives for cross border donations – the Netherlands, Poland, Slovenia, and to some extent Finland have recently amended their tax laws, and they now allow donors to claim tax relief for cross-border donations.

See EFC comparative chart 10 for an overview over the income tax treatment of the donor giving across-border as well as the gift- and inheritance tax treatment.

#### **4) Income taxation of foreign donors of domestic foundations (p. 117)**

The EFC agrees with the findings of the study regarding the tax treatment of foreign donations to domestic foundations. The situation where a local foundation receives donations from abroad (by a foreign donor with taxable income in the state of the foundation) has not often been reported to us. If the donor has a taxable income in the state where the foundation has its seat or place of actual management, she/he will try to receive tax privileges. In that case indeed most Member States leave it up to the country of taxpayer's residence to take these into account (which, in turn, might deny any deduction). The interaction of two tax systems may lead to less tax incentives for the donor. When the donation is deductible in the state where the foundation is established (State F) but not in the donor's residence state (State D) the deduction will reduce the amount of income tax paid by the donor in State F that can be credited against his or her income tax liability in State D. The net result is that the increase in the donor's total income tax liability in State D cancels part or all of the tax relief in State F for the donation.

#### **5) Income taxation of foreign donors of foreign foundations (pp. 117-118)**

The EFC agrees with the findings regarding the tax treatment of foreign donors to foreign foundations. A Member State can also have an impact on non-resident donors of non-resident foundations if, and to the extent that, these donors are subject to domestic income tax because they generate income in this State. If the world-wide income of the taxpayer (which is usually the basis for his income tax due, or at least the tax rate, in his state of residence) is zero or negative) the donor may not receive any tax incentive because of the fact that his income stems from more than one jurisdiction – while no tax would have been due had he earned his entire income within one state.

#### **6) Income taxation of affiliated beneficiaries (p. 118)**

We agree with the findings on the tax treatment of affiliated beneficiaries. Such a case has however not been reported to us. Member States might collect taxes from a person whom they regard as beneficiary of a foundation based on the fictitious payment to the beneficiary, irrespective of whether or not this person has actually received it. While such taxation may be legitimate and reasonable if the foundation is a private purpose foundation (a “foundation for the founder”), it constitutes a significant risk wherever the states disagree on the categorization of the foundation as public purpose-related or private purpose-related.

#### **7) Inheritance taxation (pp. 118-120)**

The EFC fully agrees with the conclusion of the study on inheritance taxation. Cross-border donations are hampered by gift and inheritance taxation. Only a minority of the Member States (where a gift and inheritance tax exist) accepts a inheritance tax exemption for donations to non-resident public-benefit foundations of another Member State (*Belgium, Ireland, Italy, Slovenia*) while the majority refuses a general tax-exemption. See EFC comparative chart 11 for an overview over the income tax treatment of the donor giving across-border as well as the gift- and inheritance tax treatment. More information on cross-border giving can be obtained at the King Baudouin Foundation “Giving in Europe Website. <http://www.givingineurope.org/site/index.cfm?TID=1&BID=1&SID=1&LG=2&ART=247&back=2>

This clearly illustrates that the current tax situation puts significant barriers to cross-border public benefit work. Over the recent years, European institutions and legal scholars have raised their concern of whether these national tax laws would be in conflict with the EC-Treaty.

The following three cases have been considered as being potentially in conflict with the EC-Treaty:

- no tax incentives for donations to charities established in other Member States
- higher inheritance or gift tax for legacies and gifts to charities in other Member States and
- higher taxation of foreign-sourced income of charities – same issue as Stauffer case

**Q 1.7) Do you see any further tax law barriers/difficulties? Please specify.**

No

**Q 1.8) Please rank the tax law barriers in order, starting with the one you find the most important?**

Major tax barriers are as follows:

- higher taxation of foreign-sourced income of public benefit foundations
- higher inheritance or gift tax for legacies and gifts to charities in other Member States
- no tax incentives for donations to public benefit foundations established in other Member States

**Q 1.9) If you are answering for a foundation, please give concrete examples of the tax law barriers and/or difficulties you have encountered. How do you deal with these barriers/difficulties? Have they influenced your plans to conduct cross-border activities?**

As soon as a foundation has cross-border investments (foreign sourced income) it is taxed at a higher lever than local organisations in most Member States. As soon as a foundation has or wishes to attract founders/funders from different Member States the lack of tax deductibility of cross-border donations and the less favourable gift-and inheritance tax treatment becomes an issue.

**Q 1.10) Do you consider the civil law barriers or the tax law barriers more important?**

Both civil law and tax barriers are important. Existing legal and tax law barriers are in conflict with the EC Treaty and national legislators could be forced to remove these barriers.

As regards the civil law barriers, the European Court of Justice (ECJ) has so far not addressed this question. However, as the feasibility study rightly suggests, it is likely that even if the ECJ would review and question, for example, the existing registration requirements for foreign foundations, those requirements may not even be seen as being in conflict with the EC Treaty (if those requirements are not contrary to the four-factor test set forth in the *Gebhard* case<sup>4</sup>). The ECJ may therefore not be able to help removing important existing civil law barriers.

In the field of tax law, the ECJ has developed the following non-discrimination principle:

- A foundation resident in Member State X but with activities/income in Member State Z should be treated equal with resident public benefit foundations and should therefore receive tax exemption if it fulfils the respective national tax law requirements in Member State Z (see “Stauffer” case C-386/04). As regards the tax treatment of donors, the recent “Persche” ruling (C-318/07) just confirmed that national tax laws should

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<sup>4</sup> In the *Gebhard* case, the ECJ proposed a four-criteria test that decides under which conditions a Member State may derogate from the freedom of establishment by imposing its own mandatory laws, if these are 1) applied in a non-discriminatory manner 2) justified by imperative requirements of the public interest 3) suitable to attain their objective and 4) compatible with the principle of proportionality. See ECJ case C-55/94, which can be downloaded at [http://eur-lex.europa.eu/smartapi/cgi/sga\\_doc?smartapi!celexplus!prod!CELEXnumdoc&numdoc=61994J0055&lg=en](http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&numdoc=61994J0055&lg=en)

provide for equal tax treatment of donations going to resident and foreign EU-based public benefit foundations as long as the foreign beneficiary organisation fulfils the respective national tax law requirements of the taxpayer's country.

However, as the feasibility study rightly outlines, such a non-discrimination solution as developed by the ECJ is not easy to implement because of the different requirements for tax exemption for foundations and their donors in the different Member States. In addition, it is not at all clear when and how such ECJ decisions have an impact in all Member States as the ECJ only has the competence to interpret a potential conflict of a national rule with the EC Treaty in a very specific national case.

Member States will find different interpretations of the ECJ jurisprudence and will find individual and diverse ways to react to ongoing infringement procedures. Therefore, the EFC is of the opinion that legislators must act on several fronts to respond to EU reality and to ensure that national laws do not conflict with the EC Treaty. National legislators must ensure that national foundation laws are in line with the EC Treaty and in addition, European legislators should develop a European legal form for foundations.

The EFC believes that a European Foundation Statute, drafted by European legislators in consultation with the foundation sector, will enable cross-border work free of red tape. This legislative approach must obviously work in parallel with the courts and the European Commission infringement procedures. However, a EU-level regulation would be a more effective approach to solving also the legal and administrative problems faced by foundations. Current judicial rulings and infringement procedures focus on tax problems while the European Foundation Statute would offer an appropriate tool for cross-border cooperation and would remove existing civil law barriers.

**Q 1.11) Why do foundations set up additional organisations/structures in other Member States in your view?**

Foundations set up branches in other Member States for policy, managerial as well as legal and fiscal reasons. Because foreign foundations are either not legally recognized or they lack the trust of citizens/companies/authorities in the other Member States, foundations have decided to set up additional legal structures.

**Q 1.12) The study seems to identify tax barriers as the main reason for foundations setting up additional organisations/structures in other Member States (p. 122).**

**Do you agree with this finding? If not, what do you think is the main reason for foundations setting up additional structures/organisations in other Member States?**

Tax barriers are one motivation to set up branches in different Member States among others, see reply to question 1.11.

**Question 2) What solutions would be most appropriate**

**Q 2.1) The study assesses *five different options to deal with the barriers/difficulties* identified. The options assessed are (p. 178-194):**

- 1) Status quo combined with soft law instruments**
- 2) Harmonization**
- 3) Bilateral or multilateral treaties**
- 4) A European Foundation Statute without tax elements, and**
- 5) A European Foundation Statute with tax elements**

**What other options for solving the problems do you see if any?**

No, The EFC does not see any other options to solve the problems.

**Q 2.2) The study suggests that of the above options, *the European Foundation Statute* seems to be the preferable policy option (p. 1). Do you agree? Why/why not?**

The EFC fully agrees with the conclusion of the study stating that the European Foundation Statute is the preferable policy option.

The EFC does not even consider the other three described scenarios as a viable option for the following reasons:

- Maintaining the status quo would leave foundations and their funders with existing barriers. The existing legal framework is not suited to respond to the specific needs of foundations and their founders in today's European reality. We do not believe that information campaigns or soft law approaches such as codes of conduct or accreditation models could reduce costs. Such approaches would in the case of cross-border operations not provide the necessary legal certainty and could hardly convince national governments to provide for equal tax treatment of foreign-based and local public benefit foundations and their donors.
- Harmonisation of foundation laws is neither wanted nor feasible. Foundation law differs considerably even though common key elements can be identified. The differences are rooted in different cultures and histories and are seen as an asset. Harmonisation of laws in the field would be difficult due to the diverse realities, such as the existence of private interests or commercial foundations in some national jurisdictions. Politically unrealistic in a Union of 27 countries and over 50 foundation laws, it could only result, if at all, in a minimum common denominator that would not solve current problems. In addition, there is no need to push for removal of different legal traditions at the national level if there are other tools to ease cross-border operations of foundations and their funders.
- The Treaty option (bi-lateral or multilateral) is unrealistic as experience shows that not all countries choose to sign such treaties. Obviously this option was not retained in the discussion on the other statutes.

**Therefore the EFC sees the European Foundation Statute as the only real option to overcome existing barriers in the most effective way.** A European Foundation Statute could help remove existing legal and administrative barriers. It would be an additional and optional, public benefit tool, governed mainly by European law and complementing national and regional laws. The European Foundation Statute would allow foundations and funders established or operating in more than one country to adopt the form of a European Foundation registered in one EU Member State but recognised in the other 26. It would then be able to operate EU-wide according to a single set of rules and a coherent management and reporting system.

We support the feasibility study conclusion that a more comprehensive European Statute would lead to the highest cost reduction.

**Q 2.3) If you do not agree, *what do you consider as the preferable policy option?* Why?**

N/A

**Q 2.4) Would you consider a European Foundation Statute which does not include tax elements (for instance a tax-exempt status in all EU Member States, p.191) as a useful/attractive instrument? Why/why not?**

The EFC believes that a European Foundation Statute, drafted by European legislators will enable cross-border work free from red tape and will help foundations to unleash its full potential. This will be independently of whether the Statute includes tax elements or not. However, should any tax elements be included in the Statute, they should not lead to an unfavourable tax treatment for the European Foundation compared to national foundations. Therefore we consider that the non-discriminatory approach would be the most appropriate solution.

**Q 2.5) Do you believe that an accreditation system (pp. 179-180) could be a proportionate solution to the problems for cross-border activities that foundations face today? Why/why not?**

The EFC does not believe that information campaigns or soft law approaches such as codes of conduct or accreditation models could reduce costs. Such approaches would in the case of cross-border operations not provide the necessary legal certainty and could hardly convince national governments to provide for equal tax treatment of foreign-based and local public benefit foundations and their donors.

**Q 2.6) What added value do you think a "European label" (obtained for instance through a European legal form like the European Foundation) would bring for the foundations?**

The European Foundation Statute would offer a solution to key problems faced by organisations and initiatives that want to act cross-border, not least to have a cost-effective and efficient legal form that allows operations in different countries. When just looking at the "European label" that such a European legal form would imply, we see the following advantages:

- It would help foundations and their donors to extend their cross-border work and cooperation.
- It would increase the trust into the so-labelled foundations.
- It could set a benchmark in terms of accountability, transparency and good governance.
- It could help clarify the concept of foundation and provide a common definition of "public benefit purpose foundations" across the EU.

**Q 2.7) In your view, the benefits attached to a "European label" for foundations:**

- **Can only be achieved through a specific European legal form (European Foundation Statute)**
- **Can be achieved through an accreditation system**
- **Can already be achieved through national foundations (e.g. through their names, statutes, marketing)**
- **Can be achieved through other means, which ones?**

The EFC does not believe that a "European label" could be achieved by other means than a European Foundation Statute. An accreditation system or any other soft law system would in the case of cross-border operations not provide the necessary legal certainty.

The EFC has witnessed a series of "European" initiatives, which could not be realised because of the very fact that the founders would have had to choose one national foundation law.

**Question 3) Content and form of a possible statute for a European Foundation**

**Q 3.1) According to the study the European Foundation should have the following five main characteristics (p.194):**

- 1) Legal personality
- 2) Promotion of a public benefit purpose
- 3) No membership
- 4) State supervision, and
- 5) Establishment by registration

**Do you agree that a European Foundation should have these five characteristics? If not, please explain why.**

The EFC fully supports the **five basic elements** outlined by the feasibility study. A European Foundation should:

1. Have legal personality (with full capacity and limited liability) which is acquired upon registration.
2. Promote public benefit purposes only.
3. Open list of public benefit purposes: The description of public benefit should provide for an open list of public benefit purposes in order to allow for flexibility. Defining what is meant by a public benefit purpose by means of an open list, would make the review of such decisions the task of the European Court of Justice.
4. Have no “formal” membership
5. Be supervised by an authority
6. Be established by registration

With regard to point 4 (no “formal” membership), we would like to stress that generally an EF shall have no members. However, some foundations do have members, whose rights are regulated by their statutes. Said members are gathered in an assembly and may be elected to sit on the Board of Directors and on controlling bodies.

Apart from these five fundamental criteria, we agree that there are a number of questions for which certain alternative solutions are possible. We have highlighted below under questions 3.3 to 3.7 which options we prefer with regard to initial endowment, economic activities, supervision, European dimension, governance and transfer of seat, see the answers to questions.

**Q 3.2) How detailed should the European Foundation Statute be? Should it be as comprehensive as possible (as is the case for the Commission proposal for a European Private Company Statute) or should it only contain basic rules and refer to national laws on other issues (as is the case for the European Company Statute) (pp. 195-196)?**

When it comes to the question of how **autonomous** and detailed a Statute on the European Foundation should be, the EFC is of the opinion that the statute should be comprehensive as regards most aspects of foundation law and should only refer to national law in as few legal fields as possible (e.g., labour law, insolvency law). This will allow founders to save compliance costs by using one legal tool and arrange for a governing structure which would be comparable in all Member States rather than having to deal with 27 different European Foundation structures throughout the EU.

**Q 3.3) Should an initial endowment be required (p. 199)? If yes, how large an endowment should be required?**

**Minimum capital:** We are of the opinion that a certain minimum amount of capital could indeed be a sign of the seriousness of the purpose of the European Foundation, and could strengthen trust in a European Foundation. Such a minimum capital should however not prevent smaller initiatives to start operations.

**Q 3.4) What should be the rule on economic activities by the European Foundation itself (p. 204)?**

**Economic activities:** We believe that a European Foundation should be able to undertake economic activities either directly or through another legal entity provided that any income or surpluses are clearly and directly used in pursuance of its public benefit purposes. A significant amount of existing foundations undertake economic activities also across borders. It is therefore vital that a European Foundation Statute would allow such activities.

**Q 3.5) How should the supervision of a European Foundation be arranged (pp. 200-203)?**

**State supervision:** We believe that a central European state supervisory authority would be able to acquire a good reputation and could develop a uniform standard in its supervisory practice. Alternatively, the oversight over European Foundations could be delegated to the national level.

**Q 3.6) On what conditions should an existing foundation be able to transform itself into a European Foundation (p 184)?**

**Conversion and merger:** The Feasibility Study does not address in much detail how a conversion of an existing foundation to a European Foundation could work or how existing foundations/other legal entities could merge with a European Foundation. As the feasibility study mentions, it is likely that the process would be similar to the merger of existing national foundations or the conversion/transformation of foundations to other types of public benefit entities or the amendment of statutes. However, some more details would have been worthwhile considering. See also Article 5 in the EFC recommendations in this regard [www.efc.be/efc/aboutEFS.htm](http://www.efc.be/efc/aboutEFS.htm)  
Member States would have to take steps to allow conversion of existing public benefit foundations into European foundations and for mergers (between both national foundations and between national foundations and foundations established in other EU countries) at least where such mergers were to result in a European Foundation.

**Q 3.7) If you think that the European Foundation should have other characteristics, please specify which ones.**

**“European” Dimension:** There are good arguments in favour of a European dimension: a mere “national” foundation will not carry out cross-border activities and therefore does not need a European legal form which aims to overcome barriers to cross-border activities. In addition, it may be easier to find political agreement on a proposal that does not allow a foundation which has only local activities to be set up as a European Foundation. The need for a European dimension would also be fully in line with the subsidiarity principle. The European Foundation would not compete with national foundation forms.

We believe that **self governance** is very important. With regard to **governance requirements**, the EFC is of the opinion that clear basic rules should be drafted for the European Foundation, which could serve as a benchmark for the whole foundation sector in Europe and beyond. It should then be up to the founder/the board to structure details of internal governance rules in the bylaws of the EF. Having very detailed binding rules for internal governance would seem to be over-regulating the European Foundation with a one-size-fits-all approach and not offering enough flexibility. While foreseeing a high degree of uniformity of the statute externally in terms of creditor protection through a minimum capital or representation of the European Foundation towards third parties, it seems important to leave some flexibility internally for founders and the board to design internal affairs in the bylaws.

**Seat and transfer of seat:** The Feasibility Study does not address in much detail the issue of “seat” and transfer of seat: Would a transfer of seat be allowed and if yes, under what circumstances? Would the registered office and the principal place of activity have to be in the same Member State? Would a

transfer have to result in the transfer of both, the registered seat and the principal place of activity? This option of mandatory joint transfer of registered seat and principal place of activity (which was applied in the European Company/SE following the so-called “real seat” principle) may not be in line with recent case law of the ECJ. Another option could be to separate the registered office and the principal place of activity in a way that they could be in two different Member States (following the so-called incorporation principle) and could be transferred separately. We are of the opinion that the transfer of seat to another Member State should not result in the winding up of the EF or the creation of a new legal entity.

#### **Question 4) Potential transformation of existing foundations into a European Foundation**

If a European Foundation Statute were introduced, the possibility of transforming existing foundations into a European Foundation would seem to depend on several factors e.g. the statutes of the foundation ("will of the founder"), the agreement of the board of the foundation, the approval of the supervisory authority, the scope of cross-border activities and existing barriers, as well as on the content of a possible European Foundation Statute (p.184).

**Q 4.1) If you are answering for a foundation, would you consider transforming your foundation into a European Foundation if possible?**

**Q 4.2) On what criteria would the decision of the board depend?**

**Q 4.3) What do you think the benefits and drawbacks of a transformation in the case of your foundation would be?**

**Q 4.4) Would the possibility to transform itself into a European Foundation be decisive in order for your foundation to expand its activities to other Member States? Why/why not?**

**Q 4.5) In case your foundation already operates cross-border, would this possibility lead to a substantial increase of cross-border activities?**

The Feasibility Study does not address in much detail how a conversion of an existing foundation to a European Foundation could work or how existing foundations/other legal entities could merge to a European Foundation. As the feasibility study mentions, it is likely that the process would be similar to the merger of existing national foundations or the conversion/transformation of foundations to other types of public benefit entities or the amendment of statutes. However, some more details would have been worthwhile considering. See also Article 5 in the EFC recommendations in this regard <http://www.efc.be/ftp/public/Legal/EuropeanStatuteUpdated.pdf>.

Member States would have to take steps to allow conversion of existing public benefit foundations into European foundations and for mergers (between both national foundations and between national foundations and foundations established in other EU countries) at least where such mergers were to result in a European Foundation.

#### **Question 5) Any other comments**

The European Foundation Statute would offer a solution to key problems faced by organisations and initiatives that want to act cross-border, not least to have a cost-effective and efficient legal form that allows operations in different countries. Several initiatives have been delayed by the lack of an adequate European legal tool. The European Foundation Statute would be beneficial for advancing foundations' and funders work as well as the future of Europe as follows:

- **For foundations to facilitate and increase cross-border work and cooperation.** Such a European tool would ease foundations' **cross-border activities**. Foundations from different

regions address global issues that do not stop at national borders, such as environment, migration and research. These issues could be dealt with more effectively in **cooperation** with foundations in neighbouring countries, or communities facing similar situations. A European statute would encourage them to add a **European dimension** to their entities and activities.

- It would offer **legal certainty** and significant **cost savings** due to its **uniformity** throughout the EU.
- It would be a **trusted** legal tool that would ease cross-border operations.
- It would provide foundations and funders with a **flexible** European legal instrument to design internal governance structures and to **group their organisation and/or to further develop** their organisation and activities.
- A European Statute is needed to ensure that foundations receive equal treatment in the internal market regulation.
- **For donors to help mobilise and channel private assets for public benefit across Europe**  
The European Foundation Statute would be a tool to meet the international interest of founders, their rising geographical mobility during their working life and upon retirement, and the related increased geographical spread of their assets across Europe and beyond.
- **For citizens to serve as a robust and flexible management tool to support citizen action at EU level and beyond.**
- **For companies to serve as a dedicated tool to develop a coherent European community.**  
The internationalisation of companies, which in many cases have to create foundations in the different countries with the related complexity of maintaining a coherent policy and management among the different branches and effectiveness.

#### **Overall:**

- **To support European public good**
- **To underpin EU competitiveness: knowledge society, research and innovation**
- To have a **benchmark of accountability, transparency and good governance** in channelling domestic and foreign financial funds for public purpose across the EU and beyond.
- **To help the pooling of private resources** to address pressing needs and global policy issues in areas such as research, education and innovation, mobility and migration, the environment, cultural and linguistic diversity and dialogue, security and development.
- To **clarify the concept of foundation** and provide a common definition of "public benefit purpose foundations" across the EU as currently the term "foundation" is much too loosely used to refer to very diverse undertakings, ranging from personal benefit to commercial endeavours.

## **Annex: Selected EFC legal and fiscal comparative charts**

### **1. Activities abroad and implications for tax-exempt status**

<b>Country</b>	<b>Do activities abroad put the tax-exempt status of public benefit foundations at risk?</b>
Austria	yes, but only if foundations are operating mainly abroad
Belgium	No but for some of the categories of organisations (scientific research, protection of monuments...) the eligibility to receive tax deductible gifts could be put at risk if they carry out their activities outside Belgium.
Bulgaria	No
Cyprus	No
Czech Republic	No
Denmark	No
Estonia	No
Finland	No, if the purpose of these activities is in the public interest and such activities are of a non-profit nature
France	No, but tax benefits for donors are not granted, if the foundations do not conduct the main part of their activities in France. French foundations collecting funds and organizing humanitarian missions, foundations collecting funds to promote French language, culture and science outside France are deemed to be perform their activities in France in that sense.
Germany	no, but there must be the possibility (!) of a positive impact for the German public, for example by improving Germany's image,
Greece	No
Hungary	No
Ireland	No
Italy	No
Latvia	no, but tax exemption is not applicable to activities abroad
Lithuania	No
Luxembourg	No
Malta	No
Netherlands	no, if the activities are charitable
Poland	No
Portugal	yes, if the activities only benefit foreigners
Romania	No
Slovakia	No
Slovenia	No
Spain	No
Sweden	yes, a foundation pursuing activities wholly outside Sweden might lose/not obtain special tax status

United Kingdom

No, if they are within objectives of the foundation

## 2. Tax treatment of foundations: Income from economic activities

Country	Is income from economic activities taxed?
Austria	Yes
Belgium	No
Bulgaria	No
Cyprus	No
Czech Republic	No
Denmark	No
Estonia	No
Finland	No, if the purpose of these activities is in the public interest and such activities are of a non-profit nature
France	No, if the purpose of these activities is in the public interest and such activities are of a non-profit nature
Germany	Related economic activity is not taxed. Unrelated economic activity is also allowed, but taxed if it exceeds 35.000 € per year.
Greece	No
Hungary	No
Ireland	No
Italy	No. Normally income from “small-scale business activity” of NPO is not taxed (see decree no. 460/97). Other economic activities are taxed or not allowed within a NPO. For banking foundations, the permitted economic activities are taxed.
Latvia	No, but tax exemption is not applicable to activities abroad
Lithuania	No
Luxembourg	No
Malta	No
Netherlands	No, if the activities are charitable
Poland	No
Portugal	Yes, if the activities only benefit foreigners
Romania	No
Slovakia	No
Slovenia	No
Spain	No
Sweden	Yes, a foundation pursuing activities wholly outside Sweden might lose/not obtain special tax status
United Kingdom	No, if they are within objectives of the foundation

### 3. Tax treatment of foundations: Income from asset administration

Country	Is income from asset administration taxed?
Austria	No
Belgium	Yes
Bulgaria	No, interest earned on bank deposits and sale of shares is exempted, but dividends are taxed at 5% and capital gains at 10%
Cyprus	No, depending on certain conditions
Czech Republic	No
Denmark	Yes, but dividends from companies in which foundations hold at least 15% of shares are exempted
Estonia	No, unless it is being distributed outside the purpose of the foundation
Finland	No, but there are some exceptions (i.e. private equity funds)
France	No
Germany	No
Greece	No, but income from securities is taxed
Hungary	No
Ireland	No
Italy	Yes
Latvia	No
Lithuania	Yes, but only if overall annual profit exceeds approximately 300,000 euros
Luxembourg	No, if it does not derive from commercial activities and is used for the foundation's purpose
Malta	Yes
Netherlands	No
Poland	No, if it is used for the foundation's purposes
Portugal	No, but income from bearer securities is taxed
Romania	No, only if they exceed 15,000 euros
Slovakia	No, except sale of investments
Slovenia	No
Spain	No
Sweden	Yes, but pension foundations and others which meet specific criteria are exempt
United Kingdom	No

#### 4. Majority shareholding and taxation of majority shareholding of public benefit foundations

Country	Is majority shareholding in companies permitted?	Is majority shareholding in companies taxed?
Austria	Public foundations: no Private foundations: yes, if not involved in company management	No. If the foundation invests its assets in resident company shares or participation, the dividends are not taxed.
Belgium	Yes	Dividends are taxed with the tax on legal entities (25% or 15%)
Bulgaria	Yes	Yes
Cyprus	Yes	No
Czech Republic	No	N/A.
Denmark	Yes, but then they are governed under a separate act as a commercial foundation	No, dividends from Danish companies in which the foundation holds at least 15% of the shares are exempt. Income of the company is treated as income of the majority shareholding foundation.
Estonia	Yes	No
Finland	Yes	No, major shareholding is not considered to be economic activity and is tax-exempt
France	Yes, if it is in line with foundation's purpose	No, but "influential" shareholding is
Germany	Yes	No, but "influential" shareholding is
Greece	Yes	No
Hungary	Yes	No
Ireland	Yes	No, as long as it is in support of charitable purposes
Italy	Yes, but foundations of banking origin: instrumental enterprises. Onlus: only in certain companies.	Yes. The dividends from shareholding in companies by public-benefit foundations are taxed.
Latvia	Yes	No
Lithuania	No. Foundations' assets must be maintained in credit institutions.	N/A
Luxembourg	Yes, if related to the main objectives of the foundation	yes, if qualifying as commercial/industrial activity (which is unlikely)
Malta	Yes	Yes
Netherlands	Yes	No, but "influential" shareholding is
Poland	Yes	No
Portugal	Yes	No
Romania	Yes	Yes
Slovakia	Yes	Yes
Slovenia	No	N/A.
Spain	Yes	No
Sweden	Yes	Yes
United Kingdom	Yes	No

## 5. Donations: Income tax, gift and inheritance tax

Country	Do public benefit foundations pay income tax on grants and donations?	Are grants/donations subject to gift and inheritance tax?
Austria	No	Yes, some pay 2.5% and some private foundations pay 5%
Belgium	No	Yes, but inheritance tax: reduced to 6.6%, 7% or 8.8% depends on region. Gift tax: Reduced to 6% or 7% depends on region.
Bulgaria	No	No
Cyprus	No	No, gift and inheritance tax abolished
Czech Republic	No	No
Denmark	Yes, but deductions are possible	No, if included on a Ministry of Taxation list of public-benefit foundations
Estonia	No	No, gift and inheritance tax abolished
Finland	No	No
France	No	No
Germany	No	No
Greece	No	No
Hungary	No	No
Ireland	No	No
Italy	No	No, public benefit purpose foundations are tax exempt. Other foundations pay 8%
Latvia	No	No
Lithuania	No	Yes, but for the donor only
Luxembourg	No	Yes, but at the reduced rate of 6%
Malta	No	No, gift and inheritance tax has been abolished. 5% duty on transfer of documents related to immovables/shares.
Netherlands	No	No
Poland	No	No
Portugal	No	No
Romania	No	No
Slovakia	No	Gift and inheritance tax has been abolished
Slovenia	No	No
Spain	No	No
Sweden	No	Gift and inheritance tax has been abolished
United Kingdom	No	No

## 6. Tax deduction vs. tax credit

Country	System of tax deduction or tax credit?
Austria	Tax deduction
Belgium	Tax deduction
Bulgaria	Tax deduction
Cyprus	Tax credit
Czech Republic	Tax deduction
Denmark	Tax deduction
Estonia	Tax deduction
Finland	Tax deduction for corporate donors only
France	Tax credit
Germany	Tax deduction
Greece	Tax deduction
Hungary	Tax credit for individuals and tax deduction for corporate donors
Ireland	If a donor is 'taxed at source', the charity claims the tax back. If a donor is self-assessed for tax, the donor claims the tax back.
Italy	Tax credit or tax deduction
Latvia	Tax deduction for individuals and tax credit for corporate donors
Lithuania	Tax deduction only for legal persons
Luxembourg	Tax deduction
Malta	Tax deduction for corporate donors only
Netherlands	Tax deduction
Poland	Tax deduction
Portugal	Tax credit for individuals and tax deduction for corporate donors
Romania	Tax deduction
Slovakia	None
Slovenia	Tax deduction
Spain	Tax credit
Sweden	None
United Kingdom	Tax deduction

## 7. Tax treatment of individual donors

Country	Limit of incentive?	Amount deductible on 10,000*	Amount deductible on 100,000*
Austria	Donations to certain organisations can be deducted up to 10% of taxable income	10,000	30,000
Belgium	Only cash donations, except works of art to museums. Up to 10% of taxable income, with a maximum of 319,580 euros (2005)	10,000	30,000
Bulgaria	Cash, real estate and in-kind donations. Deduction varies between 5% and 50% of the income depending on the type of beneficiary up to 65% of the total income.	500 – 5,000	5,000 - 50,000
Cyprus	There is no limit and the whole amount of the donation can be deducted	10,000	100,000
Czech Republic	Movable assets or real estate. Deductible up to 10% of taxable income, if at least 2% of income is donated, but not less than 1,000 CZK (approximately 35 euros).	10,000	30,000
Denmark	Cash and in-kind donations exceeding 500 DKK (approx. 70 euros) up to 7,900 DKK (approx. 1,000 euros) are deductible	1,000	1,000
Estonia	Total of donations deducted cannot exceed 5% of the donor's total income	10,000	15,000
Finland	No tax incentives for individual donors	0	0
France	Income tax reduction equal to 66% of the value of their gift (75% in some cases), up to 20% of the donor's taxable income. Alternatively, individual donors may chose a wealth tax reduction equal to 75% of the value of the gift, up to Euros 50,000.	6,600 - 7,500	60,000
Germany	Tax deduction up to 20% of the yearly taxable income with the possibility to carry forward. In addition, individual donors can deduct the maximum amount of 1 million euros over a period of 10 years.	10,000	100,000
Greece	Cash donations only, exception is medical equipment to hospitals. Only donations above 100 euros are deducted. Limit in the field of culture: 10% of income.	10,000	100,000
Hungary	Cash donations only. Tax amount can be reduced by 30% of the donation, maximum 100,000 HUF (approx. 400 euros) or 50,000 HUF (approx. 200 euros). If both types are supported, maximum amount is 150,000 HUF (approximately 600 euros).	600	600

Ireland	Cash and publicly-quoted shares can be donated. Minimum of 250 euros up to 50% of gross income.	10,000	100,000
Italy	Cash donations only. Tax credit for 19% of the donation to Onlus with a limit of up to 2% of the income. No limits for donations to universities.	1,900	18,000
Latvia	Individual donors can receive an income tax deduction of 25% of donated amounts, but not exceeding 20% of taxable income	2,500	25,000
Lithuania	No tax incentives for individual donors	0	0
Luxembourg	Donations are deductible up to 10% of the taxable net annual income of the donor or 500,000 euros, provided the donations exceeds 120 euros	10,000	30,000
Malta	No tax incentives for individual donors	0	0
Netherlands	Donations from 1% (or over 60 euros) of taxable income up to 10% of taxable income are deductible.	10,000	30,000
Poland	Cash, shares, securities, real-estate and in-kind-donations. Limit of incentive: 6% of the tax base	10,000	18,000
Portugal	25% of the amount donated can be subtracted from income tax when there is no limit on deduction for corporate donors. 25% of the amount donated can also be subtracted, as long as the amount does not exceed 15% of their total income tax in the respective year, when there is a limit on deduction for corporate donors.	2,500	25,000
Romania	Donation can be deducted up to 2% of total income	6,000	6,000
Slovakia	No tax incentives for individual donors	0	0
Slovenia	The total amount of cash and in-kind donations to foundations can be deducted, which accounts for 0.3% of liable person's taxed income in a tax year	900	900
Spain	Tax credit of 25% of the value of the donation up to a limit of 10% of the total taxable income of the donor. Movable and immovable property.	2,500	25,000
Sweden	No tax incentives for individual donors	0	0
United Kingdom	Cash donations. Total donations are deductible via Gift aid and payroll giving schemes.	10,000	100,000

## 8. Tax treatment of corporate donors

Country	Limit of incentive?	Amount deductible on 10,000 euros*	Amount deductible on 100,000 euros*
Austria	Deductions up to 10% of business profits.	10,000	20,000
Belgium	Only cash donations, exception: works of art donated to museums up to 5% of the taxable income, with a maximum of 500,000 euros.	10,000	10,000
Bulgaria	Donations are not levied with a tax withheld at the source and lead directly to decrease of the financial result if they amount up to 10%, 15% or 50% (dependent on the recipient) from the positive financial result. The total amount of the deduction cannot exceed 65 % of the total income.	1,000-5,000	10,000-50,000
Cyprus	Whole amount of the donation can be deducted - subject to certain conditions.	10,000	100,000
Czech Republic	The donation can be a movable asset or real estate. The donation is deductible up to 5% of taxable income, in some cases up to 10%, provided at least 2,000 CZK (approximately 70 euros) is donated.	10,000	10,000-20,000
Denmark	Gifts exceeding 500 DKK (approximately 70 euros) up to 7,900 DKK (approximately 1,000 euros) are deductible each year.	1,000	1,000
Estonia	Total of donations deducted from taxable income may not exceed either 3% of the sum of the payments made during the year and subject to social insurance tax, nor 10% of the calculated profit of the latest fiscal year.	300	3,000
Finland	Monetary donations made by corporations with a minimum amount of 850 euros are eligible for a tax deduction. Maximum amount depends on the recipient, divided in two categories. Maximum amount of a donation given to a publicly financed university or to a fund within the university is 250.000 euros. Maximum amount of a donation given to a public benefit foundation is 50.000 euros.	10,000	50,000-100,000
France	Tax reduction equal to 60% of donations to public utility foundations up to 0.5% of their annual turnover.	6,000	25,000
Germany	A tax deduction on the income up to 20% of yearly taxable income (or 0.4% of the sum of the turnover and salaries).	10,000	100,000
Greece	Cash donations are deductible up to a maximum of 10% of the taxable income. Where the cash donation exceeds 2,950 euros, the whole amount can be deducted if the donor pays withholding tax at a rate of 10% of the donation.	10,000	20,000
Hungary	The tax base of the company can be reduced by 100% of the donation up to 20% of the tax base.	10,000	40,000
Ireland	Donations over 250 euros are deductible in full.	10,000	100,000
Italy	Up to 10% of income with maximum 70.000 Euro or 2% of income (see also law no. 917/86, Art. 100).	15,000	40,000

Latvia	A tax deduction of 85% of donated sums, up to 20% of total payable tax.	8,500	85,000
Lithuania	Deductions up to 40% of business profits, cash donations limit of incentive is approx. 9,500 euros	9,500	9,500
Luxembourg	Cash donations mostly, but in-kind donations are deductible in some cases. Donations are deductible up to 10% of the taxable net annual income of the donor or 500,000 euros, provided the donations have an aggregate value in excess of 120 euros.	10,000	20,000
Malta	Cash donations only. Limit of incentive: 2,400 euros.	2,400	2,400
Netherlands	Donations of 227 euros or over can be deducted, with a maximum of 10% of the annual income	10,000	20,000
Poland	Cash, shares, real estate and in-kind donations are deductible. Limit of incentive: 10% of the tax base.	10,000	20,000
Portugal	No limits on tax deduction when donations benefit state-supported foundations or represent endowment of private origin foundations pursuing social or cultural aims. Rates range from 120%-150%.	12,000	120,000
Romania	Donation can be deducted up to 3% of the turnover, but no more than 20% of the profit tax.	10,000	100,000
Slovakia	No tax incentives in place for individual or corporate giving. Instead, beneficiaries do not pay tax on any donations they receive.	0	0
Slovenia	A tax deduction in the amount of cash donations paid to a foundation, which accounts for 0.3% of taxable entity's taxed income in a tax year, but may not exceed the tax base in a given tax period. There is additional tax relief for research funding.	600	600
Spain	Corporations can deduct 35% of all donations up to limit of 10% of the taxable base or 0.1% of the company's turnover in form of a tax credit.	3,500	20,000
Sweden	No deductions in general. Some donations can be deducted as business expenditure.	0	0
United Kingdom	Money, qualifying shares and securities and interests in UK real estate. A deduction from taxable profits for donations of money to UK charities can be claimed.	10,000	100,000

**9. Can a foreign based foundation get the same tax benefits as a national foundation according to the wording of your tax law? If yes, under what conditions?**

<b>Country</b>	<b>Can a foreign based foundation get the same tax benefits as a national foundation according to the wording of your tax law?</b>
Austria	No
Belgium	As far as corporate tax exemption is concerned yes: If the Belgian branch of a foreign foundation performs only incidentally economic activities (art 182 of the Belgian ITC, but it cannot be exempted if the reason for exemption is solely based on art 181 of the Belgian ITC (non-profit activities of the “privileged sector”, listed by the income tax code).
Bulgaria	Generally no, only if the foundation sets up a local branch according to national law
Cyprus	No
Czech Republic	No
Denmark	No
Estonia	No
Finland	No
France	Generally no, only if the foreign foundation performs its activities on the French territory and is regarded as having a public benefit purpose in France.
Germany	Yes, according to ECJ's Stauffer-decision, providing they fulfil the same requirements as foundations located in Germany – especially the possibility to benefit the German public at large.
Greece	No
Hungary	No
Ireland	Generally no, only if the foundation sets up a local branch according to national law and to the extent it operates locally.
Italy	No
Latvia	No
Lithuania	Generally no, only if the foundation sets up a local branch according to national law
Luxembourg	No
Malta	No
Netherlands	No
Poland	Generally no, but the operations of a representative office of the foreign foundation is treated similarly as the national foundation in regard to taxes. However, if it runs economic activity, it is subject to separate regulations governing the conduct of economic activity on the territory of Polish Republic by the representatives of foreign entities
Portugal	No
Romania	No
Slovakia	No

Slovenia	No
Spain	Generally no, but a foundation will receive the same tax benefits if it establishes a formal delegation in Spain, which is registered by the competent public body, promotes purposes of general interest and accomplishes the legal requirements for foundation according to the Spanish law. If the foreign foundation sole activity in Spain is fundraising, civil law does not allow formal registration therefore not special tax regime will be applicable.
Sweden	No
United Kingdom	No

## 10. Are donations to foreign-based public-benefit organisations income tax deductible for the donor?

Country	Are donations to foreign-based public-benefit organisations income tax deductible for the donor?
Austria	No
Belgium	No, but it should be noted that the European Commission is challenging the Belgian legislation on this point.
Bulgaria	No
Cyprus	No, but some exceptions
Czech Republic	No
Denmark	Yes (act recently amended)
Estonia	No
Finland	Generally no, but exemptions for donations made by corporations, if the recipient organisation is approved by Ministry of Finance to be a public benefit organisation by similar criteria to national foundations
France	No
Germany	No
Greece	No, but some specific exceptions
Hungary	No
Ireland	No
Italy	Yes, if they have a legal recognition in Italy as requested by law no. 917/86 art. 15 or 100).
Latvia	No
Lithuania	No
Luxembourg	No
Malta	No
Netherlands	Yes, as long as the recipient is recognised as charitable
Poland	Yes
Portugal	No, but exceptions possible
Romania	No
Slovakia	N/A no tax incentives at all
Slovenia	Yes
Spain	Generally no, but a foundation will receive the same tax benefits if it establishes a formal delegation in Spain, which is registered by the competent public body, promotes purposes of general interest.
Sweden	No
United Kingdom	No

## 11. Is there a gift and inheritance tax exemption for donations to non-resident organisations?

Country	Can a foreign based foundation get the same tax benefits as a national foundation according to the wording of your tax law? If yes, under what conditions?
Austria	N/A no such tax
Belgium	Yes, if donation is given to a comparable non-profit entity in another EU country
Bulgaria	No
Cyprus	N/A. no such tax.
Czech Republic	No, in this case donor is tax liable, but exemptions exist for lifetime donations to humanitarian and charitable NGOs (local tax authorities decide)
Denmark	No
Estonia	N/A. no such tax.
Finland	No, the beneficiary is tax liable according to Finnish law
France	No
Germany	No
Greece	Only as far as reciprocity exists
Hungary	No, the beneficiary is liable
Ireland	No
Italy	Yes
Latvia	No
Lithuania	No
Luxembourg	No, only informal gifts are exempt but if donor dies within one year, inheritance tax is due
Malta	N/A. no such tax.
Netherlands	Yes, for foreign qualifying organisations (not yet in force)
Poland	N/A. Gift and inheritance tax only applies to individuals
Portugal	No, beneficiary is liable for tax (stamp duty) no some few exemptions are foreseen
Romania	No
Slovakia	N/A. no such tax.
Slovenia	Yes, if given to a charity organisation that is registered in a EU member state to conduct charitable activity
Spain	N/A. Gift and inheritance tax only applies to individuals.
Sweden	N/A. no such tax.
United Kingdom	Lifetime gifts to foreign charities and foundations are considered as PET's (Potentially Exempt Transfers). This means that only if the donor dies within the seven years following the gift, inheritance tax will have to be paid.