



European public consultation strengthens the case for European Foundation Statute

Brussels, 16 November 2009

A European Statute is the most cost-effective policy option for addressing cross-border barriers and thereby stimulating foundations' activities across Europe. The European Foundation Centre (EFC) welcomes this key outcome of the public consultation released by the European Commission Directorate-General for Internal Market and Services (DG MARKT) on 10 November 2009.

The vast majority of the responses to the public consultation on a European Foundation Statute support the establishment of a European legal form for foundations. The results are also in line with the recommendations of the Feasibility Study for a European Foundation Statute published by DG MARKT on 16 February this year.

Commending the high mobilisation and participation of foundations and partner organisations in the consultation, Gerry Salole, EFC Chief Executive, stated: "The EFC hails the results of both the survey and the Study. The EFC had expressed its concerns that the format of the consultation and the availability of all the consultation documents including the Feasibility Study in one language only would have an impact on the level of participation. Clearly, the sector has expressed firm interest and sent a plain message. In step with this strong demand from the sector, the EFC now calls on the Commission to conclude the impact assessment work in 2010 by presenting a proposal for a regulation that will enable foundations to easily operate in the internal market."

Why a European Foundation Statute?

The European Foundation Statute would be an optional, public-benefit legal tool, governed by European law, and complementing national laws. The Statute would ease cross-border work, removing barriers and offering new opportunities both for organisations and individuals to support public benefit activities across Europe. It would help resolve the administrative and legal obstacles that foundations encounter in their cross-border work within the internal market, including the difficulty of recognising foreign foundations' legal personality and public-benefit status. The Statute would also bring some additional benefits to both European foundations and EU policy, in particular, helping to develop a common definition of 'public-benefit purpose' foundations, supporting citizens' participation and initiatives at European level and supporting the EU's competitiveness by directing resources into research and innovation.

Key outcomes of the public consultation

The consultation generated a large number of responses especially from the non-profit sector which expressed its support for a European Foundation. The European Commission received 226 responses from 27 countries. By far the highest number of responses came from foundations, charities and trusts (87%).

The key outcomes of the consultation strengthen the case for a European Foundation Statute:

Overcoming barriers and difficulties to the cross-border activities of foundations in Europe

Respondents acknowledge the magnitude of the civil and tax law barriers that foundations and funders face as identified in the Feasibility Study. The transfer of registered or real seat and the recognition of foreign foundations were ranked as the most important civil law barriers.

The European Foundation Statute as the preferable policy option

Most of the respondents considered the European Foundation Statute as the preferable policy option. Respondents who are representatives of the non-profit sector strongly support the idea of a Statute. While very few public authorities responded to the survey - from only six EU countries – most of those who did respond acknowledge the barriers that foundations face. The few business representative respondents tend

to support further development on company law in general. Some jurisdictions which acknowledge both public interest foundations and private interest funds wish to examine further the focus of a would-be European Foundation Statute and to ensure non-discrimination.

Content of the possible European Foundation Statute

Respondents outlined the content of a European Foundation Statute, which reflects in many instances the EFC's initial proposals released in 2005¹ as follows:

- ✓ **A comprehensive European tool:** A majority of the respondents were of the view that a Statute should be as comprehensive as possible and refer back to the national laws in as few cases as possible.
- ✓ **An initial endowment:** Most of the respondents thought that some initial endowment should be required.
- ✓ **Economic activity** should be allowed provided that such activities remain ancillary and/or that the resulting income benefits the public benefit purpose of the organisation.
- ✓ **Public benefit focus:** The EFC and the vast majority of respondents from the non-profit sector believe that there is a need for an EU-wide legal instrument to support public-benefit purpose projects and operations. Any legal person or individual would be able to use this new instrument to set up a European Foundation. Other European legal forms are already in existence or under discussion to cater for private interests, including the European Company Statute, the European Economic Interest Grouping, and the Private Company Statute.
- ✓ **Transformation of existing foundations into a European Foundation:** Generally respondent foundations were interested in transforming into a European Foundation provided that it would bring added value. They believed that the possibility of transformation would be decisive for the expansion of activities cross-border.
- ✓ **No formal membership:** Varying views exist on the issue. For its part the EFC considers that the European Foundation could have no "formal" membership but that some participatory structure would be allowed. By its nature a European foundation cannot be a membership company or a shareholders company.

Supervision: The dominant view from the respondents from the non-profit sector is that supervision would best be arranged at a European level or alternatively be delegated to the national level. This is also the view of the EFC. The few responding public authorities preferred national supervision.

Taxation: All respondents agree that equal tax treatment between national and European Foundations should be provided for, a position that the EFC has been advocating to prevent any discriminatory treatment between national and European public benefit foundations. Respectively, taxation of foreign foundations and taxation of domestic foundations operating abroad were regarded as important barriers followed by inheritance taxation.

The summary report and the individual responses to the public consultation on a potential European Foundation Statute are available on the Commission website at:

http://ec.europa.eu/internal_market/company/eufoundation/index_en.htm

Background

Since 2001, the EFC has informed the European Commission that foundations need a separate European legal instrument. Two public consultations were held in the framework of the revision of Company Law in 2003 and 2005, with a strong participation from foundations.

¹ European Foundation Centre – Proposal for a regulation on a European Foundation Statute:
<http://www.efc.be/SiteCollectionDocuments/EuropeanStatuteUpdated.pdf>

At the end of 2007, DG MARKT finally launched a Feasibility Study on a European Foundation Statute, the results of which were published in February 2009², and ran a public consultation on the matter. The Study set out the potential benefits of an EFS in terms of reducing or eliminating unnecessary financial costs and administrative burdens for foundations' cross-border work within the EU³. Besides the Study, two field recommendations exist on the matter:

- The European Foundation Centre's proposal for a regulation on a European statute for foundations published in 2005.
- The European Foundation - a New Legal Approach, a research project by legal experts, Hopt/Walz/von Hippel/Then, Verlag Bertelsmann Stiftung 2006

On 4 July 2006 the European Parliament adopted a resolution on recent developments and prospects in relation to company law⁴ which "calls on the Commission to continue its preparation of Community legislation providing for other legal forms of entrepreneurial organisation, such as the European foundation".

On 1 October 2009 the European Economic and Social Committee adopted an opinion on the diverse forms of enterprises (INT/447) in which it welcomes the start of work on a European Foundation Statute and hoped that this would conclude shortly with its adoption.

Further details on the European Foundation Statute are available on the dedicated webpage <http://website/EuropeanFoundationStatute/Pages/EuropeanFoundationStatute.aspx>

About the European Foundation Centre

The European Foundation Centre (EFC) is an independent association dedicated to creating an enabling environment for foundations, strengthening the infrastructure of the sector, and promoting collaboration, both among foundations and between foundations and other actors, to advance the public good in Europe and beyond.

Who we are:

Established in 1989, the EFC today serves a core membership of more than 230 members in some 40 countries. The EFC also hosts the secretariat of The Donors and Foundations' Networks in Europe (DAFNE) set up in 2006.

What we do:

The Centre fulfils its mission through:

- Representing its members' interests at the level of third parties such as European and international institutions
- Improving the visibility and understanding of the role of foundations, and advocating good practice, openness and transparency
- Playing a consultancy role with respect to legal and fiscal issues and expansion of professional development opportunities for foundations' staff
- Convening foundations to facilitate exchanges of information and expertise and fostering cooperation with national-level associations of foundations, donors' fora and other organisations serving the sector

The Centre is an independent international not-for-profit association under Belgian law. Ultimate authority vests in the EFC Annual General Assembly of Members, with governance entrusted to an elected Governing Council, supported by a Management Committee. Membership of the Centre implies commitment to the EFC brand. Members agree to adhere to the [EFC Principles of Good Practice](#).

Details of EFC membership and activities are available at www.efc.be

² Feasibility Study on a European Foundation Statute http://ec.europa.eu/internal_market/company/eufoundation/index_en.htm

³ http://ec.europa.eu/internal_market/company/eufoundation/index_en.htm

⁴ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2006-0295+0+DOC+XML+V0//EN>