

**EFC urges the European Commission to take action
on the European Foundation Statute**

Outline

In a March 14th 2006 statement, the European Foundation Centre (EFC) urged the European Commission to carry out a feasibility study on a European Foundation Statute, as a first step towards the review and adoption of a proposal by EU Institutions in due course. The EFC's statement is a contribution to the European Commission public consultation on EU future priorities in the field of company law and corporate governance¹, and specifically to question 13 of the consultation document, which calls for input to review the usefulness "to carry out an examination of the feasibility of a European Foundation Statute".

The EFC invites its members, national associations of foundations and other stakeholders to participate in this consultation. To facilitate the process, the EFC has drafted a template response, which can be downloaded at

http://www.efc.be/ftp/public/EU/Template_letter_2006_EFStatement.doc

A strong voice of the foundation sector and other interested parties is required to ensure that the European Commission does carry out the feasibility study on the development of a European Foundation Statute. **Stakeholders should submit their contributions by March 31st 2006** to the European Commission Directorate General (DG) MARKT F2, B-1049 Brussels.

Summary of EFC statement

The EFC stresses that a primary objective of a European Statute for foundations is to develop an **efficient regime for private investment for the European public good across the EU**. Foundations are active in every conceivable field of citizens' interest or endeavour. Their contribution to the welfare and development of our societies and to our diverse cultures is essential in particular in view of the process of European integration. **European integration** must be based on a **citizens' Europe**, who should be given the means to actively build and support the European public good. The European Foundation Statute would be one important legal tool to consider in this regard. Key arguments in favour of a European Foundation Statute can be summarised as follows:

- **Advancing the European public good** by addressing European citizens needs. A European Statute for Foundations can contribute to the development of the EU objectives and policies in various areas of concern and interest for EU citizens, and third country- residents in the EU.
- **Addressing globalisation:** Foundations and their funders are increasingly affected by the globalisation of the economy both in terms of their action, and their income. A new legal instrument would help them to operate and work in an effective way at a cross-border and at a European level.
- **Taking advantage of European integration - cross-border work and cooperation:** A European legal tool for foundations will provide a more enabling environment for the cross-border work of foundations and funders. It will also lead to increased cross-border co-operation in areas where the pooling of expertise and resources is needed.
- **Overcoming existing legal and administrative barriers:** Heavy administrative procedures to set up a branch in another country, problems with the recognition of legal personality,

¹ European Commission DG Internal Market and Services: "Consultation on Future Priorities for the Action Plan on Modernising Company Law and Enhancing Corporate Governance in the European Union"

difficulties running operations abroad are some of the current obstacles to foundations' transnational work.

- **A European benchmark of good practice:** The European Statute for foundations can be seen as a benchmark in terms of governance, transparency and accountability in cross-border work and financing, at a time when the prevention of money-laundering, terrorism financing is of key concern to national government, European and multi-lateral institutions.
- **A specific European legal tool for foundations:** While various regional and national laws govern foundations across the EU, public purpose foundations do share common key features: they are asset and purpose driven institutions. Existing European statutes would not fit the objectives and the special features of foundations, which require a specific and distinct European instrument.

The EFC informed the European Commission that it has worked on a comparative analysis of foundation laws in different Member States, and on this basis has developed **recommendations for an optional European Statute for foundations**. The EFC proposal is available at:

http://www.efc.be/projects/eu/legal/european_statute.asp

Background

In 2001, the European Commission set up a High Level Group of Company Law Experts to review current trends in the field of European company law. The Group organised a brief consultation in 2002 in which the EFC participated and stressed the added value of a European legal form for foundations. Based on the Group's recommendations the Commission presented its Action Plan on "modernising company law and enhancing corporate governance in the European Union" in May 2003. The Plan outlined the Commission approach to Corporate Governance and Company Law issues and a list of prioritised measures for adoption in the short, medium and long term. It also stated that: "With respect to possible development of a proposal for a Regulation on a European Foundation, before deciding to submit a proposal, the Commission intends to launch a study aiming at assessing in depth the feasibility of such a statute"², by no later than 2006. Following the enlargement the EU, the Commission decided to open a new public consultation on the matter with a view to reviewing some of the 2003 Action Plan priorities and actions.

Objectives and content of the EU consultation³

The consultation seeks stakeholders' opinions on the strategy for future priorities in the field of company law and corporate governance in the EU, and in particular, aims to assess the continued relevance of the medium and long-term measures listed in the European Commission 2003 Action Plan⁴ in the light of the Lisbon Agenda, and EU enlargement. The consultation is also aimed at evaluating the opportunity of modernising and simplifying European Company Law. Issues under review include corporate governance, corporate restructuring and mobility as well as potential new European legal forms. Question 13 of the consultation calls for input to review the usefulness "to carry out an examination on the feasibility of a European Foundation Statute" The consultation recalls that a study on a European legal form for foundations was envisaged for the medium term in the 2003 Action Plan.

Action Point

The EFC encourages its members, national associations of donors and other stakeholders to submit individual statements to support the feasibility study for a European Foundation Statute. Replies to the consultation should be sent by 31st March 2006 to DG MARKT F2, European Commission, B-1049 Brussels, e-mail Markt-COMPLAW@cec.eu.int. The Commission's consultation paper is available at

http://www.eu.int/comm/internal_market/company/consultation/index_en.htm

For further information EFC members are invited to contact the EFC secretariat at eu@efc.be

² Quote taken from COM (2003) 284 final

³ See EFC briefing EU consults on a European Foundation Statute 18/01/02006 <http://www.efc.be/content/alert.asp?ContentID=980> (members login required)

⁴ COM (2003) 284 final - "Modernising Company Law and Enhancing Corporate Governance in the European Union – A Plan to Move Forward"