

EU consults on a European Foundation Statute

Outline

On 21st December 2005, the European Commission launched a public consultation on the future priorities concerning the modernisation of company law and enhancing corporate governance in the European Union. Stakeholders should submit their contributions by the end of March 2006. The consultation addresses pending proposals set out in the Commission 2003 Action plan in the field, including the development of a European legal form for foundations. Specifically the Commission asks concerned parties about the value to carry out a feasibility study about a European Foundation Statute. The European Foundation Centre (EFC) is currently preparing its statement to reply to consultation and request that the study already proposed in the 2003 Action plan be eventually carried out.

Objectives and content of the consultation

The consultation has three objectives.

- In first instance, it seeks stakeholders' opinions on **the strategy for future priorities** for the Action Plan (question 1-2 of the consultation document).

After the corporate scandals in the early 2000's, restoring investor confidence was the main driver for action and reform in the field of company law and corporate governance. According to the Commission, the impetus for future action at EU level must now be more the tandem of improving the competitiveness of EU companies and better regulation.

- Secondly, the consultation document aims at assessing the continued **relevance of the medium and long term measures listed in the Action Plan in 2003¹** in the light of the Lisbon Agenda, i.e. EU efforts to make European industry more competitive, supporting knowledge and innovation for growth, making Europe a more attractive place to invest and work and creating more and better jobs.

Questions 3-6 of the consultation document cover corporate governance issues such as shareholder rights, disclosure by investors of their voting policies as well as directors' responsibilities and enhanced transparency of legal entities.

Questions 7-10 relate to corporate restructuring and mobility by addressing transfer of registered office, board structure and squeeze out and sell out).

Items 11-13 look at legal forms of enterprises, the European Company, the European Private Company which would primarily serve the interests of small and medium sized enterprises active in more than one Member State and the European Foundation.

Specifically question 13 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. The study would assess whether the introduction of such a statute is feasible. Furthermore it would examine whether this new legal form adequately addresses some of the legal and administrative difficulties that foundations face in their cross-border operation (e.g. raising funds from their foreign donors) and whether it would significantly contribute to the improvement of their co-operations across borders.

¹ COM (2003) 284 final - "Modernising Company Law and Enhancing Corporate Governance in the European Union – A Plan to Move Forward"

- Finally, with regard in particular to the EU better regulation initiative², the consultation aims at evaluating the opportunity of modernising and simplifying European Company Law. The Commission announced that new legislative approaches will be subject of a solid impact assessment and key existing legislation should be simplified where appropriate.

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 as well as the need for new European legal forms. 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 European 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. The main objectives of the Action Plan were to foster efficiency and competitiveness of business and to strengthen shareholder rights and third party protection. The Action Plan was based on a set of legislative and non-legislative proposals, grouped under six chapters: corporate governance, capital maintenance and alteration, groups and pyramids, corporate restructuring and mobility, the European Private Company, cooperatives and other forms of enterprises and transparency of national legal forms. In this last chapter the Commission 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"³, by no later than 2006.

On this basis the European Foundation Centre started work to develop recommendations regarding a European Statute for foundations. The latest proposal drawn up by the EFC and its members was released in January 2005. It calls for a European Statute for foundations regarded as an optional European legal instrument additional to national laws, that foundations can choose to facilitate and advance their cross-border work in the EU, see EFC recommendations at http://www.efc.be/projects/eu/legal/european_statute.asp.

Action Point

In consultation with its membership, the EFC will prepare a position paper to request that the feasibility study mentioned in the European Commission 2003 Action Plan be eventually carried out. The EFC will stress the added value of and the need for such a European statute, which could help donors and foundations to develop their cross-border activity in the fields where they are present, to reinforce the coherence of their policy and action in Europe, and advance cross-border co-operations. The EFC paper will be available early February.

The EFC encourages its members, national associations of donors (NADs), research and law institutes that worked on the topic 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. They may also be sent via email to Markt-COMPLAW@cec.eu.int.

The Commission's consultation paper can be downloaded under 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 see http://europa.eu.int/comm/governance/governance_eu/law_making_en.htm, and Communication on "Better Regulation for Growth and Jobs in the European Union" COM(2005) 97 final http://europa.eu.int/eur-lex/lex/LexUriServ/site/en/com/2005/com2005_0097en01.pdf 13th March 2005

³ Quote taken from COM (2003) 284 final