



### **Vice-President Jacques Barrot States Need to Improve the Environment for Cross-border Philanthropy in Europe**

Speaking at the conference on Cross-border philanthropy in Europe in Brussels on 9 December, European Commission Vice-president Barrot stated that philanthropy is an activity of vital economic and social importance; however there is a persisting 'lack of Europe' in the field. The Single Market is not a reality for foundations and philanthropic bodies yet, which still face legal and administrative barriers in their cross-border work and cooperation and cannot unleash their full potential. There is a case for considering appropriate EU action to address these hurdles. The European Commission will therefore review potential options with an open mind, including the development of a European Foundation Statute. Encouraging Member States to ensure a fair-treatment of other EU country -based foundations and their donors by adapting their tax laws in line with the EC-Treaty is another line of action of the Commission as well as the review of the VAT treatment of public bodies and public benefit organisations, which the EC is starting.

Gerry Salole, Chief Executive of the European Foundation Centre (EFC) stated that the ability to learn from each other's practices and know-how and to develop innovative legal tools to optimize philanthropic work is crucial if foundations are to address current European and global challenges successfully. Interestingly, and despite the daunting nature of the current climate, the atmosphere in the philanthropic sector is up-beat and optimistic with new ideas to make good use of all available resources to tackle needs, and creative and often collaborative solutions across-border to both old and new challenges. However EU legislative action is clearly needed to support such initiatives.

Closing the debate, Prof Manuel Ortega Medina, former MEP and chair of the friends of ERA recalled that the foundation sector is a competent and solid sector, but it has not been heard yet. This means that European is lagging behind on an effective European Framework for philanthropy. He encouraged the sector to raise its voice and joint forces with allies. Existing barriers to philanthropy cannot be overcome by European rulings, he added, they do not provide legal safety and European case law is often implemented in different ways in the 27 Member. Therefore it only offers an unsatisfactory solution. "It's like trying to empty the Atlantic with a teaspoon" Mr Medina said. A European legal form is needed to establish a level-playing field for philanthropy in Europe. The European Foundation Statute would be a new, attractive, optional, public-interest tool, governed by European law, which complements the national foundation laws.

For Dr Wolfgang Heusel, ERA Director, a Statute would also help create a European Identity, and help pool resources in essential fields including education and culture which underpin Europe's innovation potential and creativity. Bernard Majoie president of the Fondation Fournier Majoie pour l'Innovation further indicated the need for a trusted European label which can both give greater visibility to European initiative and provides a benchmark of transparency and accountability.

90 representatives of foundations, EU institutions, public authorities, as well as law, tax and financial experts gather in Brussels to debate existing barriers and potential solutions for cross border philanthropy in Europe. Developments on the European Foundation Statute, EC infringement procedures and critical European Court rulings -Porsche & Stauffer- on non-discrimination regarding the tax treatment of donors and foundations were the core of the discussions. The event was a joint initiative of ERA (the Academy of European Law), the European Foundation Centre (EFC), the King Baudouin Foundation, the Transnational Giving Europe, the Fondation Fournier Majoie pour l'Innovation and DDB law firm.

Marjut Leskinen of the European Commission reported on the results of the public consultation on the European Foundation Statute released on 10 November 2009. The European Statute has strong support from the non-profit sector, while few governments have expressed initial views on the matter. She informed participants that once in office, the new Commissioner is due to take a decision on the statute, and the launch of the impact assessment study of a new legislation in the field.

Tina Tukić of the European Commission reported on the infringement procedures launched by the EC to request Member States to bring their national tax laws in line with the EC-Treaty. 19 procedures were started and 11 cases successfully closed. The procedures question discriminatory national tax provisions for individual donors and corporate donors and the taxation of public benefit organisations. Countries have already started work to review their tax legislation and administrative procedures to allow tax-effective cross-border donations including France, the Netherlands and Luxembourg. But case law has great limitations in that it only addresses case by case breaches. Hence, Member states have engaged in discussion about the need for a coordinated approach in the field to avoid creating other obstacles as well as acknowledge the recent ECJ rulings.

For further information and copies of the presentations please contact the EFC secretariat at [eu@efc.be](mailto:eu@efc.be).

