



European Foundation Centre (EFC) Legal Seminar 5th February 2007 *How does EU law affect national foundation law?*

Summary Note

A series of European Court cases, European legislative and policy initiatives as well as tax infringement procedures by the European Commission have created a momentum of challenges and opportunities for the foundation sector. The seminar initiated some fruitful discussions on how European law influences national foundation law, and how this fits into the broader context of promoting organised philanthropy and its operating environment in Europe and internationally. The EFC Legal Seminar, attended by some 60 participants, and organised in cooperation with the King Baudouin Foundation at the Bellevue Museum on 5th February 2007 addressed the aforementioned issues. The Fondazione Monte dei Paschi di Siena from Italy provided some financial support to the seminar. The Seminar was chaired by Ludwig Forrest of the King Baudouin Foundation.

Recent developments at EU level show that national laws governing foundations are under closer review by EU institutions, which are beginning to rule against national tax laws that discriminate against foreign-based public benefit organisations. The European Court of Justice decided in September 2006 against sections of the German tax code in the so-called “Stauffer” Case and in the beginning of 2006 the Court ruled that substantial shareholding in companies by foundations could be seen as economic activity, and therefore tax breaks received by these foundations could be regarded as unlawful “state aid” according to the EC Treaty. The seminar included a series of case studies of how European law influences the daily work of foundations in Europe. Implications of EU competition law and state aid rules on foundations’ work were discussed and the necessity for a European Foundation Statute for trans-European philanthropic organisations was highlighted.

Peter Schonewille of Directorate-General Taxation and Customs Union of the European Commission encouraged the participants to start infringement procedures at the European Commission to help bring national foundation tax laws in line with the EC Treaty. Launching a complaint at the European Commission is a very easy and effective tool to fight national laws that are in conflict with the EC Treaty. It is free of charge and anyone can launch such a complaint, including non-EU residents. Complainants do not have to have a formal interest in bringing the proceedings and can also ask for confidentiality. The European Commission has started infringement procedures against Belgium and, more recently in 2006, against Ireland, Poland and the UK. According to Mr Schonewille, it is just a question of time until the first infringement procedure is started against the tax treatment of foreign-sourced income of charities. Foundations have an increasingly diversified asset allocation and they invest across borders. However, foundations often have to pay foreign withholding tax on their foreign investment income without being able to recover this foreign dividend tax. Tax exemption or recovery schemes are often only applicable if both the recipient and the dividend distributing entity are domestic. Some participants stated at the seminar that they would seriously consider launching a complaint against tax rules. The current infringement case(s) could be an important breakthrough for cross-border giving and foundation tax law in Europe with regard to gift- and inheritance tax as well as income tax and corporate income tax incentives for foundations and their donors.

The EFC will keep monitoring legal issues at national and EU levels and will inform its members of any changes in the legislation. The EFC will also ensure that there is a continued dialogue with the EU institutions concerning the feasibility study on the European Foundation Statute.