

Foundations in the EU: a growing phenomenon

What is a foundation?

Public-benefit foundations are asset-based, purpose-driven, separately-constituted, non-profit bodies with no members or shareholders. Foundations focus on areas ranging from social services, health and education, to science and the environment, and arts and culture. Foundations have established and reliable sources of income, which enable them to plan and carry out work over a longer term than many other institutions. Increasingly, foundations are cooperating across European borders on issues and projects which directly benefit people, and are key to developing a citizens' Europe.

What do foundations do?

Public-benefit foundations provide support to thousands of citizens' projects, associations, and universities across Europe and elsewhere in the world. They also run their own programmes, research institutes, hospitals and museums. Foundations play a key role in promoting scientific excellence and knowledge, education and training for all, innovation, culture and creativity. Working with partners from both the public and private sectors, they address people's needs and interest. They seek to advance civic engagement and improve the living conditions of the general public and specific population groups.

A growing sector with significant economic footprint

The foundation sector is growing dynamically and is gradually achieving a significant economic footprint. There are 110,000 public-benefit foundations (almost 4 foundations per 10,000 people) located in the European Union. Some 43% of these foundations were set up as recent as the early 1990s.

Foundations spend between €83 billion and €150 billion annually, over twice as much as the US foundation sector. Foundations are also big employers, providing direct full-time employment to between 750,000 to 1 million people in the EU. Furthermore, foundations give grants or capital support to create and sustain employment.

The European Foundation Statute (EFS) Feasibility Study

The European Commission published a Feasibility Study¹ to examine regulatory differences, internal market barriers, and their costs in 2009. The Study assessed the foundation sector's scale and economic weight as well as the impact an EFS would have on the sector and Europe's economy.

Key findings:

1. The European foundation sector is a major economic force and makes significant contributions to the public good of Europe.
2. The public benefit foundation is the only type of foundations which is accepted in every Member State and in practice public benefit foundations are the most important foundation type.
3. In the 27 Member States considerable regulatory differences can be found (regarding foundations). However, as regards the public benefit foundations there are also important similarities which overall are more substantial than the remaining differences.
4. There are legal barriers both in civil law and in tax law obstructing foundations' cross-border activities. As in company law, most of the barriers can be overcome, but this leads to compliance costs which will often be higher than they would be in company law, given that the legal and personal environments vary (foundation and tax laws of the Member States tend to have more legal uncertainties *inter alia* because of fewer case law and specialised lawyers).
5. Current barriers against cross-border activities are costing European foundations c. €100 million per year, according to the Study. Additionally, there are incalculable costs (costs of foundation seat transfer, costs of reduplication, etc.) which are certainly higher.
6. The European Foundation Statute emerges from the Study as the best policy option for addressing cross-border barriers and stimulating foundation activities.
7. In addition to reducing the costs for cross-border activities, a possible European Foundation Statute would have further positive effects on the general governance of foundations and trusts; on the behaviour of donors and giving; on the corporate sector; and on the European economy, especially in the field of research and development (R&D).

¹ See the Feasibility Study at: http://ec.europa.eu/internal_market/company/eufoundation/index_en.htm

What type of Statute do foundations want?

Content and form of a Statute for a European Foundation

The EFS will be a new additional and optional statute, governed by European law and complementing national laws. Existing foundations will have the freedom to decide for themselves if they wish to use the new European legal form. It will allow foundations and funders to easily set up a European Foundation (EF) with the same conditions throughout the EU.

Key elements of the EFC's proposed EFS include:

- A public-benefit purpose (based on an open list of public benefit purposes)
- Activities with a European dimension (i.e. in at least two Member States)
- A minimum endowment/starting capital
- Creation ex-nihilo of an EF by will or notarial deed, by transformation of an existing foundation into an EF, or by merger between two foundations.
- Transparency of accounts, financial and activity reporting
- Clear supervision mechanisms at EU level or delegated at national level

Regarding taxation, only a non-discriminatory solution is both realistic and reasonable. A European Foundation should be treated like a tax-exempt national foundation in the same Member State.

The EFC released its initial proposals for the content of a regulation on the EFS in 2005, see <http://www.efc.be/efs/aboutEFS>

Why do we need the European Foundation Statute?

Overcoming obstacles to cross-border work

Foundations and their funders are increasingly working across borders. Two-thirds of EFC members alone work across borders and are active outside their country of origin. However, a number civil and tax law barriers are hampering foundations' current cross-border work. The lack of appropriate legal tools means that new European initiatives by foundations are delayed or abandoned. Barriers preventing a European-level playing field include:

- Struggling with over 50 different national and, at times, regional laws across the EU.
- Legal insecurity over national recognition of the 'general interest' nature of resident foundations' cross-border work and public-benefit status
- Difficulty recognising foreign foundations' legal personality
- Lack of possibility to transfer a foundation seat to another Member State
- Administrative burden and cost of foundations setting up several branches in other countries
- Non-resident foundations suffer tax discrimination

A key opportunity to support public interest action

The European Foundation Statute is an opportunity to have a European instrument designed to help address European and global policy issues of public interest. The EFS will contribute to:

- Overcoming existing legal, administrative and tax barriers and easing public benefit foundations work across borders and cooperation.
- Clarifying the concept of foundation and providing a common definition of 'public benefit purpose foundations' across the EU as currently the term 'foundation' is much too loosely used to refer to very diverse undertakings, ranging from personal benefit to commercial endeavours.
- Pooling private resources into activities for public good to address pressing needs and global policy issues in areas such as research, education and innovation, mobility and migration, the environment, cultural and linguistic diversity and dialogue, and security and development, among others.
- Providing a robust and flexible management tool to support citizen action at EU level and beyond.
- Having a benchmark of accountability, transparency and good governance in channelling domestic and foreign financial funds for public purpose across the EU and beyond.

Timetable

The EFC has called the European Commission to conclude its internal impact assessment on the European Foundation Statute in 2009, and present a draft regulation once the new Commission takes office, for approval by the Council and the European Parliament.

Brief History and Milestones

2001

EFC informs the European Commission of the need for a separate European legal instrument for foundations.

2001-2

Commission sets up High Level Group (HLG) of Company Law Experts to review European company law trends and the need for new European legal forms. HLG consultation stresses the value of a European legal form for foundations.

May 2003

Commission presents Action Plan for Company Law & Corporate Governance, which plans to review the feasibility of separate European Foundation Statute (EFS).

September 2005

Expert Group Report on measures and actions to promote the role of foundations and the non-profit sector in boosting research and development (R&D) investment urges the Commission to consider preparing a regulation for a European Foundation Statute, for adoption by European Council and Parliament

December 2005-March 2006

Second Commission consultation on priorities for European Company Law & Corporate Governance, which specifies the need to launch EFS feasibility study. Foundations (c.33% of those consulted) unanimously urge Commission to conduct a feasibility study.

4 July 2006

European Parliament's report on the prospects of company law asks Commission to continue work on EFS.

November 2006

Internal Market and Services Commissioner states that Commission would "pursue reflection on the matter".

Autumn 2007

11-month EFS feasibility study begins

February 2009

EC Directorate-General for Internal Market and Services publishes the EFS Feasibility Study and launches third public consultation

...2009... Impact assessment begins

This document was drawn up by EFC Advocacy Task Force.

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