

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 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 interests. They seek to advance civic engagement and improve the living conditions of the general public and specific population groups.

A growing sector with a 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 recently 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 and 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 foundation 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 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 and 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 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.

Public consultation on a European Foundation Statute

The outcomes of the European Commission's 2009 public consultation² on the European Foundation Statute (EFS) strengthen the case for the adoption of an EFS. The consultation sought stakeholders' views on the need and content of a possible European Statute for foundations and on how it might affect donors' and founders' attitudes. The consultation generated a large number of responses, notably from the non-profit sector, which showed a strong support for the EFS as the most cost-effective policy option for addressing cross-border barriers and thereby stimulating foundations' activities across Europe.

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

² http://ec.europa.eu/internal_market/consultations/docs/2009/foundation/summary_report_en.pdf

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 of their country of origin. However, a number of civil and tax law barriers are hampering foundations' and funders' current cross-border work. As a result of the lack of appropriate legal tools new European initiatives by foundations are delayed or abandoned. Barriers preventing a European-level playing field include:

- Lack of possibility to transfer a foundation's real or registered seat to another Member State
- Difficulty recognising foreign foundations' legal personality
- Legal insecurity over national recognition of the 'general interest' nature of resident foundations' cross-border work and public-benefit status
- Administrative burden and cost of foundations setting up several branches in other countries or dealing with a diversity of national rules - over 50 national and regional laws across the EU
- Lack of trust of foreign-based foundations
- Non-resident foundations or domestic foundations operating abroad suffer tax discrimination. This is also true for domestic/foreign donors of foreign/domestic foundations

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. Currently, the term 'foundation' is much too loosely used and can 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.

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.

Respondents to the consultation outlined the key elements that a European Foundation Statute and a European Foundation should have, which reflect and complement the EFC's initial proposals released in 2005, as follows:

- A comprehensive European legal tool which refers back to the national laws in as few cases as possible. Any legal person or individual would be able to use this new legal instrument to set up a European Foundation.
- A public-benefit purpose (based on an open list of public-benefit purposes).
- An initial endowment/starting capital.
- Activities with a European dimension (i.e. in at least two Member States)
- No formal membership, although some participatory structure would be allowed.
- 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. Respondents to the consultation believe that the possibility of transforming existing foundations into European Foundations would be decisive for the expansion of cross-border activities.
- Clear supervision mechanisms at EU level or alternatively delegated to the national level.
- Income generating activities should be allowed provided that they remain ancillary and/or that the resulting income benefits the public benefit purpose of the organisation.
- Transparency of accounts, financial and activity reporting

Regarding taxation, a non-discriminatory approach should be pursued, i.e. a European Foundation should be treated like a tax-exempt national foundation in the same Member State.

Timetable

The EFC calls on the European Commission to conclude its internal impact assessment on the European Foundation Statute in 2010, and present a draft regulation for approval by the Council and the European Parliament in due course.

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 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

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

July 2006

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

Autumn 2007

11-month EFS feasibility study begins.

February 2009

EC Directorate-General for Internal Market and Services (DG MARKT) releases the EFS Feasibility Study and launches third public consultation.

European Parliament report on social economy notes that there is a need for the recognition of a European statute for foundations to ensure that they benefit from equal treatment in internal market law.

July 2009

European Economic and Social Committee decides to draw up an 'own-initiative opinion' on the EFS.

November 2009

DG MARKT releases the outcome of the public consultation on an EFS: Foundation sector unanimously supports the European Statute as the most cost-effective policy option for addressing cross-border barriers and thereby stimulating foundations' activities across Europe.

January 2010

Commissioner-designate for Internal Market announces that he will consider giving foundations a European Statute

...2010... Impact assessment begins

This document was drawn up by the EFC Advocacy Task Force.

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