

Rationale for a European Statute for Foundations

The European Foundation Centre (EFC) welcomed the decision of the European Commission to launch a study by 2006, which will assess the feasibility of developing a European Foundation Statute as part of its Action Plan Modernising Company Law and Enhancing Corporate Governance in the European Union released in May 2003¹.

In 2002 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.

This proposal was developed on a series of arguments which review the added-value of such a new legal form for different stakeholders, for the foundation sector as well as for citizens and EU authorities, which are outlined below.

How can a European Statute benefit foundations?

A European statute could help 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 statute aims to enable foundations and interested parties to work in several EU countries when there is a value added to do it, corresponding to the very aims of the organisations, for example the co-operation and investment in research, education and training, the management of the natural resources, cultural cooperation, regional co-operation for socio-economic development in particular for those foundations which work in border areas.

• Improved cross-border operations for foundations

The first, and most straightforward, argument in favour of a European Statute for foundations is that such a legal form would improve the cross-border operations and activities of foundations and funders in Europe and would facilitate the giving and receiving of grants across borders.

Existing foundations that have as an integral part of their mission to operate across different countries in the enlarged EU, would have direct use of such a European Statute. A recent survey² estimates that at the turn of this century there are some 16 foundations per 100,000 inhabitants in the EU. Figures suggest a high growth rate in the sector in different EU countries where over 28% up to 40% of the sector was set up in the last decade in countries like Belgium, Finland, France Italy or Germany. They are increasingly active beyond their borders. This trend is seen to continue.

Donors, be they natural or legal persons, who have wealth and assets in various Member States at their disposal and want to pursue their goals across the EU do not have a legal instrument at their disposal and still have to choose between national jurisdictions with regard to the location of their activities.

¹ COM (2003) 284 final, released on 21 May 2003

² The Dimensions of the foundation sector in the EU: key figures, 2003/04, European Foundation Centre Research Task Force www.efc.be/projects/eu/research/

The increasing number of funders with assets in different countries and foundations wishing to engage or develop their cross-border operations should benefit from an appropriate instrument to operate without undue administrative and legal burden.

• **A new instrument for cooperation among funders and foundations**

In fact, in practice the case for a European statute is growing: the EFC is itself eloquent evidence of the coming together of foundations at the European level, and the well-established practice of co-funding and engaging in joint activities and projects is beginning to translate into increased trans-national collaborative projects not only within the EU but also in third countries. These collaborative initiatives can be found in a variety of fields within Europe e.g. research, education, culture, environment; but also between foundations from various Member States to pool- European resources and expertise to operate beyond the EU.

• **Freedom of establishment and equal rights for foundations**

There must be full freedom of establishment for all activities, which contribute, to the objectives of the European Union, irrespective of the form taken by the body that carries them out. Existing instruments at EU level, European Company (SE), European Cooperative Statute) as well as proposals (European Association³) or current studies (feasibility study of a legal instrument for SMEs) are not suited to the “specific features” of foundations. To ensure equal terms of competition and to contribute to its development, the Union should provide foundations, which are a form of organisation generally recognised in all Member States, with an adequate legal instrument capable of facilitating the development of their cross-border activities.

EU Treaty guarantees the free movement of persons, goods, services and capital within the Union (the famous "four freedoms") and prohibits any discrimination on grounds of nationality. Clearly, foundations and their funders do not actually fully benefit from these freedoms. In a global perspective, the European legal situation calls for improvement with regard to foundations, separate and apart from the Association Statute.

³ Amended proposal for a Council Regulation on the Statute for a European Association EA - 14791/02 DRS 75 SOC 563 dated December 6, 2002

How can a European Foundations Statute benefit EU citizens and EU Policies at European, national and local level ? - A few answers

Foundations figure strongly in the support and provision of health and welfare services, education, training and research, culture, environment, sports and recreation, humanitarian rights, development aid. Citizen concerns do not stop at the borders, nor should foundations work. Foundations contribute to the development of a series of policy areas, which cover both shared areas of competence between the Union and the Member States and areas of complementary and supporting action. A few examples are outlined below

• Supporting the democratic life of the Union: European public space

A key dimension of the European Foundation Statute is citizenship. It is aimed at contributing to the reinforcement of a European public space. The Statute could be a new legal instrument of support for citizens' action and participation at the European level in their various fields of interest, including public health & consumers' rights, rule of law, cultural and other fundamental rights outlined in the Charter of fundamental rights of the Constitutional Treaty of the Union.

• Underpinning EU competitiveness: knowledge society, research and innovation

A large number of foundations in Europe operate in the field of education including informal education and vocational training. They have also been at the forefront of funding fellowship and scholarship schemes for teachers and students to underpin their mobility, skills and competence.

While funding equal access to learning, foundations also support excellence in research & technological development (R&D).

A European Foundation Statute would be a new instrument to pool expertise and resources for European –level work including in those areas, which require increased scaling-up of funds, such as Research & Development, ICT and the promotion of scientific and technological advance. Science and research European foundations can contribute to achieving these goals and building a more effective European research area.

• Promoting sustainable socio-economic development and territorial cohesion in an enlarged Europe

- Sustainable development and social progress

By promoting equal access and quality of access, in today's economic context, foundations aim to work towards a better distribution of wealth, where members of society can find a useful role whatever their talents, possibilities or, indeed, disabilities. For people at risk foundations participate in the development of training and inclusion schemes, allowing them to find their place as fully-fledged socio-economic actors.

At first sight, foundations may not have the same direct economic weight as other bodies, and some carry out only secondary economic activities. An initial study of the foundation sector⁴ in 2003/04 identified that in 8 EU countries⁵, over 26,000 foundations surveyed were found to have combined assets totalling some EUR 172 billion - an average of over EUR 6 million per foundation. In 7 EU countries⁶, some 9,700 foundations surveyed, employ some 174,000 people, which equates to an average of 18 people per foundation. We also need to bear in mind that the data does not include the total employment created or sustained by foundations. Many foundations give grants or can provide capital support to employment

⁴ The Dimensions of the foundation sector in the EU: key figures, 2003/04, European Foundation Centre Research Task Force www.efc.be/projects/eu/research/

⁵ Belgium, Finland, France, Germany, Italy, the Netherlands, Sweden and the United Kingdom

⁶ Belgium, Finland, France, Germany, Italy, the Netherlands and Spain

creating and sustaining initiatives in the different fields in which they operate. Their contribution to employment creation should therefore be interpreted in this larger context.

- Sustainable community and territorial development

Sustainable communities and territorial development are a key growth areas of foundations in Western Europe as well as in the new Member States, with the creation of community foundations. This growth, much of which has taken place in the past decade, has been fuelled by a number of trends affecting local and regional communities. These include: decentralisation in some countries, and reduced spending by national governments (e.g. welfare cuts); changing roles for local and regional governments; the failure of conventional approaches in solving socio-economic local problems; desire by local residents to have a direct voice in helping to set community priorities, identifying potential solutions; and strengthening community-based groups to tackle local problems.

- Migrants, migration policies, multiculturalism

Across the EU, countries' experiences and approaches to migration issues are characterised by certain national specificities. Countries are experiencing different stages of migration and minorities' development processes. The current stage is primarily dominated by post-migration and integration challenges. Foundations active in the field see the need to come together to address the challenges of managing migration including refugees and asylum seekers, the development of cohesive and integrated communities, and advance work to combat trafficking in human beings, including children and women, in the enlarged Europe and abroad.

• ***What type of European Foundation Statute?***

A European general interest instrument

The European Foundations Statute would offer a new legal form to foundations, which the EFC sees as complementary to the existing legislations, and an optional statute that does not replace the latter. It does not consist either of a compilation of the existing legislations. It has a genuine European dimension as regards governance, functioning and supervision. It envisages the constitution ex-nihilo of a European foundation, or its constitution by merger and transformation. It poses a minimum capital of 50, 000 euro and an activity in at least two member states. The nature of the activity of the foundation must be of general interest insofar as the objective is also to have a legal instrument of European general interest.

A European benchmark of good practice

Governance systems of foundations in EU Member States are subject to different levels of state supervision and therefore to different levels of liabilities of supervisory authorities. With regard to transparency and publicity requirement and related auditing issues, no general publicity regime applies in any EU country, while many Member States countries account for interested parties being provided upon special request with access to documents of foundations or of supervisory authorities.

The European Statute for foundations can be seen as a benchmark and quality label in terms of governance, transparency and accountability in cross-border work and financing, at a time when the prevention of terrorism financing is of key concerns to national government, European and multi-lateral institutions.

Annex1: About the European Foundation Centre

The European Foundation Centre (EFC) is an independent international association that promotes and underpins the work of foundations active in and with Europe. Established in 1989 by seven of Europe's leading foundations, the EFC today serves a core membership of more than 200 members, associates and subscribers; 250 community philanthropy initiatives; as well as a further 50,000 organisations linked through a network of 42 information and support centres worldwide. The EFC also has cooperation agreements with national and regional associations of foundations in Africa, Northern and Latin America, Asia and Australia, which help extend its global outreach. The EFC hosts WINGS (Worldwide Initiatives for Grantmaker Support), a global network of some 100 grantmaker associations and support organisations.

The Centre fulfils its mission through:

- Representing its members' interests at the level of third parties such as European and international institutions
- Providing a public information record on foundations active in Europe
- Improving the visibility and understanding of the role of foundations
- Playing a strong consultancy role with respect to legal and fiscal issues and expansion of professional development opportunities for foundations' staff
- Convening foundations to facilitate exchanges of information and expertise
- Advocating good practice, openness and transparency, and
- Fostering the capacity of national-level associations of foundations, donors' fora, resource centres and other intermediary organisations.

The Centre is an independent international not-for-profit association under Belgian law. Ultimate authority vests in the EFC Annual General Assembly of Members, with governance entrusted to an elected Governing Council, supported by a Management Committee. A European Union Committee, an International Committee, a Resource Development Committee provide strategic guidance. Operational responsibility is entrusted to a Brussels-based Secretariat under the supervision of the EFC Chief Executive.

Membership of the Centre implies commitment to the EFC brand. Members agree to adhere to the principles and objectives set out in the Prague Declaration, and to a voluntary and self-regulatory Code of Practice endorsed by members and revised and updated on an ongoing basis.

Details of EFC membership and activities are available at
www.efc.be - www.fundersonline.org - www.europeintheworld.info