



Contribution to the European Commission public consultation on a European Foundation Statute¹

London, 12 May 2009

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Number of registration of the organisation in the European Commission *interest representatives register*² (where applicable): 4361690830-63

Euclid Network welcomes the consultation process launched by the European Commission on 16 February 2009 to seek views from interested parties on a possible European Foundation Statute (EFS), which builds upon the Feasibility Study on a EFS published on the same day.

Our organisation supports the key conclusion of the Feasibility Study stating that a European Foundation Statute is the most cost-effective policy option for addressing the administrative and legal barriers that foundations face in their cross-border activities.

Foundations must benefit from a legislative and regulatory environment that takes fully into account their characteristics, allowing them to operate on a level playing field with other types of societies and organisations in the single market. In this sense, we call on the European Commission to complete its impact assessment in 2009 and present a proposal for a regulation once the new Commission takes office, for approval by the Council and the Parliament.

We are pleased to share our views on the key questions raised in Part I of the consultation questionnaire

Question I. Barriers to the cross-border activities/establishment of foundations

Foundations and their founders are increasingly working across borders. However, they face a number of internal market barriers which prevent them from operating in a European-level playing on an equal footing with other European legal forms.

Those barriers as listed in the Feasibility Study include: the difficulty in recognising foreign foundations' legal personality; the lack of possibility of transfer of seat to another Member State; legal insecurity over national recognition of 'general interest' nature; administrative burden and cost of foundations setting up several branches in other countries. The Feasibility Study indicates that the measurable cost of these barriers ranges from € 90,000,000 to € 101,700,000 per year. This amount is likely even higher as there are (incalculable) costs that are not considered, e.g. costs of foundation seat transfer, costs of duplication etc.

¹ http://ec.europa.eu/internal_market/company/eufoundation/index_en.htm

² The Commission asks organizations who wish to submit comments in the context of public consultations to provide the Commission and the public at large with information about whom and what they represent. If an organization decides not to provide this information, it is the Commission's stated policy to list the contribution as part of the individual contributions. (Consultation Standards, see [COM \(2002\) 704](#), and Communication on ETI Follow-up, see [COM \(2007\) 127 of 21/03/2007](#))
To register go to EC register of interest representatives
<https://webgate.ec.europa.eu/transparency/reg/in/welcome.do?locale=en#en>

Question II The European Foundation Statute as the most appropriate solution

We agree with the conclusion of the Feasibility Study that the European Foundation Statute is the best option among the various policy options analysed in the Study as to how cross-border barriers could be addressed.

We believe that the European Foundation Statute (EFS) would

- Provide an adequate legal instrument to facilitate the cross-border and trans-national activities of public benefit foundations
- Establish a European level playing field for foundations to develop their organisation and activities
- Provide a robust and flexible management tool to support citizen action at EU level and beyond. Funding for European-level initiatives could also be easier to secure from foundations with a European focus.
- Pool private resources into activities for public good to address pressing needs and global policy issues.
- Have a benchmark of accountability, transparency and good governance in channelling domestic and foreign financial funds for public purpose across the EU and beyond.
- Clarify the concept of foundation and providing a common definition of 'public benefit purpose foundations' across the EU as currently the term is much too loosely used to refer to very diverse undertakings, ranging from personal benefit to commercial endeavours

We support the position of the European Foundation Centre (EFC) stressing that the other proposed options identified in the Study are neither viable nor effective, namely maintaining the status quo, harmonisation of foundation laws, treaty model option.

Maintaining the status quo would leave existing barriers. Soft law approaches such as code of conducts or accreditation model could not reduce the costs incurred by foundations nor provide the necessary legal certainty for cross-border operations.

Harmonisation: Technically difficult and politically unrealistic in a Union of over 50 foundation laws and 27 countries, it could only result if at all in a minimum common denominator that would hardly address current problems. Foundation laws differ considerably even if there are common elements, which would also be found in company laws. The differences are rooted in the countries' culture and socio-economic development and are regarded as an asset. Harmonisation of laws in the field would also be difficult due to the diverse realities such as the existence of private interest and commercial funds in some jurisdictions.

The (bi-lateral/multi-lateral) Treaty model option was not retained for other European Statutes (European, Company and the European Cooperative) and experience shows that few countries would sign such treaties in the fields concerned.

With regard to the tax treatment of a European Foundation, we support the approach suggested by the Feasibility Study that only a non-discriminatory solution is both realistic and reasonable. A European Foundation should be treated like a public benefit purpose foundation in the same Member State.

Question III Content of a possible European Foundation Statute

We believe that the European Statute for foundations should be a new additional and optional³ legal instrument, governed by European law and complementing national/regional laws. It would be intended specifically to pursue public benefit activities in more than one country. Existing foundations would have the freedom to decide for themselves if they wish to use the new European legal form (by creation of, transformation or conversion into an EFS).

We wish to call the attention of the European Commission to the proposals released by the European Foundation Centre (EFC) about the content of a regulation on the European Foundation in 2005⁴. Key elements of the EFC's proposal include: a public-benefit purpose (based on an open list of public-

³ As other existing or proposed statutes: European Company Statute (2001), European Cooperative Statute (2003), and the recently proposed European Private Company Statute (2008).

⁴ <http://www.efc.be/ftp/public/Legal/EuropeanStatuteUpdated.pdf> (242kb).

benefit purposes); a European dimension of the activity (in at least two Member States); a minimum endowment/starting capital; transparency of accounts, financial and activity reporting; and clear supervision mechanisms at EU level or delegated at national level.

Additional comments

Finally, we would like to share a number of concerns regarding the form of the public consultation:

- a. Format of the consultation. We wish to stress that the format of the consultation may have a negative impact on the level of participation due to:
 - the format of the questionnaire part I, only available as a pdf file which therefore cannot be used as such to reply
 - the addition in the same document of a second questionnaire -- the online-questionnaire -- which leads to some confusion as to which parts respondents should contribute and how these replies will be reviewed
 - the availability of all the consultation documents including the feasibility study in one language only
- b. Review of contributions to the consultation. The European Commission indicated that it would publish separately the contributions submitted by organisations registered in the EC Register of interest representatives and those which are not registered. We appreciate the importance of transparency regarding the relations between the European Commission and interest representatives. However, we believe that the contributions and opinions of all organisations - regardless of whether they are registered or not - should be acknowledged and reviewed by EU institutions, in particular as the register is still in its pilot phase.

We hope that these comments and proposals are given due attention.

Yours sincerely,

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