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Highlights of the EFC comparative overview of foundations’ operating environment

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1. What is a foundation?

No common definition - generally accepted concept:

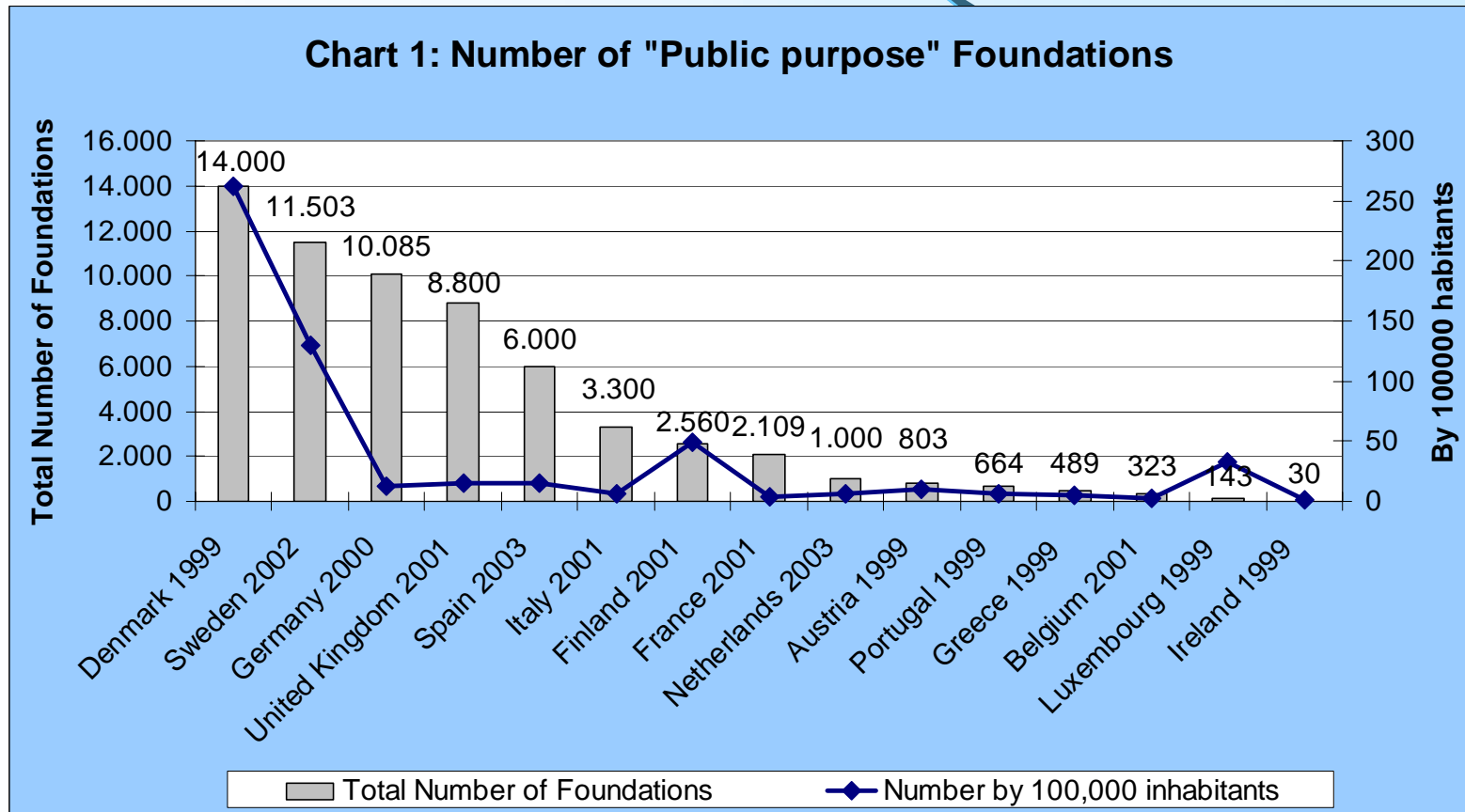
- A separately constituted **non-profit** body
- with their **own governing board**
- with their **own source of income** whether or not exclusively from an endowment to **support public benefit purposes.**
- they have **no members** although some type of participatory structures may exist
- may be established for a limited period, but assets given over for public benefit purposes may **not revert to private ownership**

Purpose and assets-driven organisations

Excludes private purpose foundations

2. Number of public purpose foundations

15 « old » members states- 62,000



3. EFC Typology of Foundations

Resources, decision-making & distribution patterns

- Independent
- Corporate
- Governmentally-supported
- Community based & other fundraising foundations

grantmaking – operating and “hybrid” foundations

4. EFC Legal and Tax Task Force Comparative overview

The EFC Legal and Tax Task Forces have reviewed foundations' legal and fiscal environment in the 15 old Member States:

- Striking feature is diversity, which is rooted in different legal traditions and cultures
- Some common features and trends can be identified

4.1. Is state approval needed to set up a foundation?

Yes

- Austria
- Belgium
- Finland
- France
- Germany
- Greece
- Luxembourg
- Portugal
- Spain
- Slovakia

- Ireland : Charity Number by Revenue Commissioners
- UK: Charity number and register

No

- Czech Republic
- Denmark
- Hungary
- Italy
- Netherlands
- Sweden

4.2. Is a minimum capital required?

Yes

- 16,000 eur Czech Rep
500,000 csk
- 25,000 eur Finland
- in practice Belgium
25,000 eur
- 30,000 eur Spain
- 34,000 eur Denmark
- in practice Germany
50,000 eur
- 152,000 over 5 years for corporate foundations – in practice 762,000 for Public utility foundations in France

- Ireland, can depend on the legal form
- UK, can depend on the legal form

No

- Austria
- Greece Italy
- Luxembourg
- Netherlands
- Portugal
- Sweden

4.3 What purposes can foundations pursue?

Any legal purpose

Denmark

Finland

Germany

Greece

Netherlands

Sweden

Public or private purpose - different legal acts

Austria public benefit (private: special act)

Belgium public benefit (private: special rules)

Public“benefit” only

France

Ireland - Charities only public benefit/charitable purposes

Italy

Luxembourg

Portugal - Purpose of social interest.

Spain

UK - Charities only public benefit/charitable purposes

4.4. Is economic activity allowed?

Yes:

Belgium, Denmark,
Germany, Hungary, Latvia,
Luxembourg, Portugal,
Spain, Sweden, UK

Yes, but only if purpose related:

Austria, Estonia, Finland,
France, Greece, Ireland,
Italy, Netherlands, Malta, Poland,
Slovenia

No:

Cyprus, Czech Republic (only very
limited), Lithuania and Slovakia
(only very limited)

4.5. Reporting, Accountability, Auditing

Majority of EU laws require:

- Yearly accounts to be sent to supervisory authority
- Annual reports to be sent to supervisory authority
- Auditing only for larger foundations

4.6. Are foundations exempt from corporate income tax also with business income?:

All EU Members States provide for a tax exempt status for public benefit foundations (donations, investment income).

With regard to economic activities three basic categories can be found:

1. All business income is taxed in full whether the activity is **related or unrelated** to the public benefit purpose of the foundation
2. Most countries clearly tax income from **unrelated economic activity** but exempt income from **related activity**
3. Some Member States (e.g. Germany, Hungary, Spain and the UK) even go further as they **also exempt unrelated economic activity (related activity is in those countries also tax exempt)**. All those countries only exempt ancillary unrelated economic activity.

4.7. VAT

- Foundations pay VAT
- Problems:
 - Final Consumers - unrecoverable VAT
Those without economic activities cannot recover any on the goods and services they purchase. This VAT cost can amount to 10 % of the overall expenditure of the organisation

UK: European Charities Committee on VAT estimated that charities lose over £400 million (€666 million) every year on VAT.

- Refund schemes