

How could a European Statute for Foundations look like?

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European legal form for foundations

The EFC is supporting the idea of developing a European legal form for foundations through a Foundation Statute (EFS), which would be an additional and optional legal instrument for funders and foundations active in more than one EU-Member State.

Why do we need a European Statute?

- Advancing the European public good
- Addressing globalisation issues
- New instrument for co-operation among funders and foundations
- Overcoming existing legal and administrative barriers
- A European benchmark of good practice

How could a European Foundation Statute promote research?

- Foundations already figure strongly in the support of research
- European legal tool could strengthen foundations role in research through:
 - More co-operation between funders and foundations
 - Overcoming existing legal and administrative barriers
 - Pooling more resources and expertise

Legal basis for a European Statute

Proposal based on Internal Market measures:

- Article 95
qualified majority in Council and co-decision with EP
- Article 308 (the “catch all”)
Unanimous approval by Member States in the Council

Are public benefit foundations covered by the EC Treaty?

- Article 43

Freedom of Establishment

Are foundations “companies or firms” according to Article 48 EC Treaty?

- Article 56

Free Movement of Capital

Is the setting up of public benefit foundations protected by this Freedom?

European Foundation basic elements

- The EF is an independently constituted and managed body, having the disposal of irrevocably dedicated assets (minimum of 50,000 EUR) to pursue public benefit purpose(s)
- Activities in at least 2 Member States
- Established in perpetuity or for a specified period of time
- Legal personality through registration

Public benefit purpose of an EF

- All assets and income shall be used in the pursuit of the public benefit purpose(s)
- Public benefit: The EF serves the public interest at large at European/international level and
- Its purposes include one or more of an open list of purposes, which is included in the EFC European Foundation Statute draft

Legal capacity includes the right to:

- Hold and receive movable and immovable property from any lawful source
- Carry out activities within any Member State of the EU and in any third country
- Engage in economic activities provided that any income is used in the pursuance of its purposes and they do not constitute the main aim of an EF

Setting up:

- By will by any natural person (s) resident in one or more EU States
- By notarial deed by any natural and or legal person(s) resident in one or more EU States
- By merger between foundations
- By conversion of existing foundations

Transparency and Accountability

- Registration and supervision of the EF with a European Registration authority
- Governing board of three members
- Full and accurate records of all financial transactions, annual statements of accounts and annual activity reports for the Registration authority have to be drawn up
- Professional audit for larger EFs

Governance

- Governing Board of at least three members
- Responsible for all decisions with regard to proper administration and conduct of EF affairs
- Represents EF towards third parties
- Liability of board members is limited to wilful or grossly negligent performance

Tax treatment of an EF

- The EF shall be subject to the same tax regime applicable to public benefit organisations in the Member State in which it has its registered office (Branches of the EF respectively)
- The donor of an EF (no matter where in the EU the EF is registered) shall get the same tax treatment as if the donation was made to a public benefit organisation in the donor's own Member State of residence

Way forward: Feasibility study in 2006

- Already announced in the 2003 Action Plan on Company Law
- EU- Consultation on “Future Priorities for the Action Plan on Modernising Company Law” (open until March 31st 2006)
- In its statement during the current consultation, the EFC urged the European Commission to launch the feasibility study