

F.A.Q.

European Commission, MEMO/12/79

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Proposal for a Regulation on the Statute for a European Foundation (FE) – frequently asked questions

1. Why action at EU is level needed?

Foundations carry out activities in a number of areas which are important for European citizens and the EU's economy, such as education, research, social and health services, culture or the protection of the environment.

However, the evidence gathered by the Commission¹ shows that many foundations encounter numerous obstacles when they want to operate outside national borders. In particular, foundations often:

- have to bear costs to meet Member States' different legal and administrative requirements; do not have enough legal certainty as to whether they will be recognised as a public benefit purpose foundation in other Member States and be allowed to act as such;
- are uncertain about tax treatment they will be subject to abroad and sometimes have to complete time-consuming or costly procedures to prove that they are entitled to the same benefits as domestic foundations;
- find that donors from other Member States know less about foreign foundations and trust them less, which can result in fewer donations.

Such difficulties can limit the scope of foundations' work as well as the amounts of funds available for their public benefit purpose activities.

The cross-border character of such problems demonstrates that it would not be sufficient to address them solely at national level and that action at EU level is required. The Statute would provide a supplementary option to facilitate the work of foundations but it would leave Member States the choice and scope to uphold and develop their own national legal forms in parallel.

2. What is a European Foundation?

A European Foundation (*Fundatio Europaea*, FE) is a new European legal form, which foundations from across the EU with a public benefit purpose will be able to opt for. It will exist in parallel with domestic foundations. Recourse to the European Foundation will be entirely voluntary.

3. Who will benefit from the European Foundation Statute and how?

The following stakeholders will draw most benefits:

- *Foundations* will benefit from more uniform conditions across the EU and should thus be able to pursue their activities in other Member States with greater legal certainty and less costs.
- *EU citizens* will be the main beneficiaries as - thanks to lower costs - foundations should be able to channel more resources into their public benefit purpose activities and further expand those;
- *Member States' economy* is likely to benefit from more funding being available for important fields such as education, research, social and health services, culture or the protection of the environment.

- *Donors* should find donating to foreign foundations less costly and simpler. Moreover, the uniform rules and European label connected to the Statute should make European Foundations more trustworthy and recognisable for donors.

4. Who can set up a European Foundation and how?

The European Foundation can be set up by one or more persons (natural or legal) or public bodies. The available methods are the following:

- by will of any natural person;
- by notarial deed or written declaration of any natural and/or legal person or public body;
- by merger of public benefit purpose entities from one or more Member States;
- by conversion of a national public benefit purpose entity into the FE.

The Statute refers to "public benefit purpose entities", which includes public benefit purpose foundations and/or entities which also follow public benefit purposes and have similar characteristics to foundations. This formulation was chosen to encompass entities in Member States where the specific legal form of a foundation does not exist.

The Statute lays down rules on procedures for the creation of the FE by conversion and by cross-border merger to facilitate practical use of these formation methods. Formation by merger between public benefit purpose entities from the same Member State should be governed by the law of that Member State.

5. What are the main requirements for becoming a European Foundation? Where are they registered?

In order to benefit from the Statute, each European Foundation would need to meet the following criteria:

- It should promote public benefit purposes only, as defined in the Statute;
- It should carry out activities in at least two Member States or have the intention, stated in its statutes, of doing so; and
- Its founding assets should be equivalent to at least 25 000 euro.

The applications for registration will need to be submitted to national registries responsible for registration of FEs in a particular Member State.

6. Why does the Statute focus on public benefit purpose entities only?

The scope focuses solely on public benefit purpose entities for the following reasons:

- Focusing EU action on the activities of public benefit purpose entities should bring most benefits to the EU citizens;
- The scope should correspond to the needs of the foundation sector. A great majority of the sector consists of foundations which follow some public benefit purposes in their work, and most of those follow public benefit purposes only;
- A clear-cut definition should make it easier to use the Statute.

7. Which public benefit purposes can the European Foundation pursue according to the Statute?

To ensure legal certainty, as well as recognition and trust across the EU, the Statute includes an exhaustive list of public benefit purposes, which the European Foundations can follow in their work that are commonly accepted under civil and tax laws in most Member States. They include, for instance, arts, culture or historical preservation, environmental protection, civil or human rights, etc.

8. Why is a cross-border element one of the requirements to become a European Foundation?

The main purpose of the Statute is to tackle obstacles that foundations face when operating across the EU. That is why it is required that foundations benefiting from the Statute either already carry out Europe-wide activities or have an intention of doing so written in their statutes.

9. Why is a minimum amount of founding assets required?

It is important that foundations demonstrate that they have sufficient resources to pursue their public benefit purpose in order to be trustworthy to beneficiaries, donors and public authorities. This is of particular importance for the European Foundation which aims to provide a model of a foundation with high standards of accountability. The Statute proposes that the minimum amount of founding assets be equivalent to at least €25 000. This amount should respond to the above-mentioned concerns. At the same time, it should not make the European Foundation too costly to establish and should allow this legal form to be accessible to smaller foundations.

10. Will the European Foundation be governed by the same rules in all Member States?

The Statute provides a set of rules, applicable in all Member States, relating to the setting up of the FE (e.g. minimum assets, cross-border dimension, public benefit purpose), the formation, registration, internal organisation, supervision of the FE, etc. The Statute also sets out what should be the minimum content of the FE's statutes.

However, certain matters will be still governed by national law. This will be the case where the Statute makes reference to the existing national law (e.g. on taxation; on disclosure of information) or as regards issues which are not, or are only partially set out in the Regulation or the statutes of the FE.

As the main principles will be set out in the Statute, the legal form should be fundamentally the same throughout the EU.

11. What rights does the Statute grant European Foundations?

It will provide European Foundations with a legal personality and full legal capacity in all Member States and it will allow them to carry out activities within the EU and in third countries. The FE will also be able, under certain conditions, to perform economic activities.

In addition, the FE will be able to transfer its registered office from one Member State to another, without having to wind up or to create a new legal entity and without affecting any right or obligation which existed before the transfer.

12. Are European Foundations allowed to carry out economic activities? Why?

Yes, because economic activities can be important for pursuing foundations' public benefit purposes, e.g. a foundation in the health sector running a hospital. Therefore the FE will be able, in accordance with its statutes, to engage in economic activities provided that any profit is exclusively used in pursuance of its public benefit purposes.

The FE will also be able to carry out some economic activities which are not related to its purpose as those could be an important means of increasing the funds available for public benefit purposes.

However, in the interest of ensuring appropriate use of assets and creditor protection, a threshold of 10% of the annual net turnover of the FE will be set for permitted unrelated economic activities. Moreover, for the sake of transparency, the results from these unrelated activities will have to be presented separately in the accounts.

13. How will it be ensured that European Foundations are transparent and accountable?

The FE will be required to keep full and accurate records of all financial transactions. It will have to draw up the annual accounts and an annual activity report and to inform the competent authorities within specified deadlines.

The annual accounts will then have to be audited and subsequently publicly disclosed, together with the activity report.

14. Does the Statute foresee any rules regarding employees' involvement in the European Foundation?

The Statute will ensure that the FE's employees and long-term volunteers are duly informed and consulted on the employment situation and other matters relevant for them in situations where the FE has a significant number of employees in at least two Member States.

The provisions are tailor-made for foundations, based on the existing acquis – i.e. on principles set out in the European Works Councils Directive ([Directive 2009/38/EC](#)). The importance of volunteering in foundations has been taken into account by proposing that long-term volunteers would be also involved in the process of information and consultation in the FE.

15. How will European Foundations be supervised?

The FE will be supervised by the supervisory authority of the Member State where it is registered in order to benefit from the procedures already developed at national level. This is currently the case in all Member States for national foundations.

The Regulation sets minimum, but robust, supervisory powers to guarantee adequate powers for supervisory authorities across the EU. For instance the supervisory authority will have the right to:

- inquire into the affairs of the FE and, for that purpose, require the directors and employees of the FE to make available all necessary information and evidence;
- appoint an independent expert to inquire into the affairs of the FE at the expense of the FE where there is evidence of financial impropriety, serious mismanagement or abuse;
- issue warnings to the governing board and order the governing board to comply with the statutes of the FE, the Regulation and the applicable national law where there is evidence to the contrary;
- dismiss or propose the dismissal of a member of the governing board to a competent court;
- decide to wind up the FE or propose the winding up of the FE to a competent court.

Moreover, in order to ensure efficient supervision, the Statute requires close cooperation between the supervisory authorities of the Member State where the FE is registered and the supervisory authorities in Member States where the FE carries out its activities.

16. Does the Statute address tax treatment of European Foundations and their donors and beneficiaries?

Yes, but only partially. According to the Statute, European Foundations will be granted the same tax treatment which is applicable to domestic public benefit purpose foundations. Donors to, and beneficiaries of, European Foundations will be subject to the same tax treatment as if they were donating to/receiving benefits from a public benefit purpose foundation established in their own Member State. This is because Member States will need to regard the FE as "equivalent" to public benefit purpose foundations established under their national legislation. Therefore, the Statute does not lay down specific rules on the tax treatment that should be applied to European Foundations and their donors and beneficiaries but simply ensures the same tax treatment as for domestic public benefit purpose foundations.

Such rules will help to address the difficulties often faced by foundations and their donors when applying for tax benefits in other Member States. Currently, even if Member States cannot discriminate against foreign foundations and their donors, foreign foundations and their donors may find it costly and difficult, in practice, to effectively benefit from these tax advantage due to the need for them to prove that the foreign foundations are "equivalent" to domestic ones.

17. Facts and figures

- The foundation sector in Europe consists of approximately 110,000 public benefit purpose foundations.
- Although it is difficult to provide exact figures, the calculations carried out in the feasibility study estimate the assets foundations in the EU to amount to about €350 billion and their annual expenditures to €83 billion (lower end estimates)
- On the basis of EFC research² and additional data and extrapolations, the feasibility study suggests there are between 750,000 and 1 million full time employed staff work for the foundation sector across the EU and a further 1 million persons as volunteers.
- The situation between the Member-States is very varied:
 - there are fairly high numbers of foundations (over 10,000) in Hungary, Germany, Romania, Spain or Sweden,
 - but fewer (below 200) in Estonia, Ireland, Latvia or Slovenia.

The number of public benefit purpose foundations has seen *substantial growth in recent years*: between 28% and 40% of all foundations in Member States such as Germany, Finland, France and Belgium were founded in the last decade. Similarly, according to EFC research, in nine countries (Belgium, Estonia, France, Germany, Italy, Luxembourg, Slovakia, Spain and Sweden) around 43% of foundations (over 18,000 in absolute numbers) were set up during the last two decades.

- Areas in which foundations are active:
 - There are most foundations in the area of *education and research*, approximately 30% of all foundations³.
 - *Social and health services* is the next biggest areas, with an average of 25% of foundations in the area of social services, and 17% in the area of health. In addition, according to the EFC research in seven EU countries, surveyed foundations appear to spend most on social and health services, e.g. 49% of overall support provided by surveyed French foundations goes to health services, and 36% to social services; and 31% of all support of surveyed Dutch foundations focuses on social services.
 - *Arts and culture* is the next significant area of activity after health; it is the most important area in Spain with 44% of Spanish foundations involved in this field; and is relatively prominent in a number of other countries (such as Finland, Germany, Italy, Portugal, the Czech Republic and Poland).

Costs for channelling funds on a cross-border basis

According to the feasibility study, the overall costs of the barriers foundations faced in their international activity could amount to *between €90 and €102 million a year*⁴.

18. What are the next steps?

The Commission's proposal will now be passed to the EU's Council of Ministers and the European Parliament for their consideration.

According to the legal basis applicable to the proposed Regulation (Article 352 of the Treaty on the Functioning of the European Union), the adoption of the Statute requires unanimous agreement of the Member States and consent of the European Parliament.

More information:

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

[IP/12/112](#)

¹ .

Through a feasibility study carried out by an external consultant, a public consultation ([IP/09/270](#)) on the results of the study and a consultation on the Single Market Act Communication ([IP/10/1390](#)) and contacts with the foundation sector.

² .

Report of the European Foundation Centre Research Task Force "Foundations in the European Union: Facts and Figures" of May 2008;

http://www.efc.be/NewsKnowledge/Documents/EFC-RTF_EU%20Foundations-Facts%20and%20Figures_2008.pdf

3 :

The interest in this area appears smaller according to the EFC research, where over 10% of surveyed foundations were interested in science

4 :

This figure is based on calculations of costs of legal and fiscal advice for setting up a new entity abroad and for keeping abreast of changes in national legislations when already running operations abroad. The calculations are based on assumptions of one-off legal advice costs of €10,000 - 16,000 for setting up a new entity and ongoing legal yearly costs of €3,000 for monitoring changes in national legislations per foundation.
