Statute for a European Foundation (FE)

2012/0022(APP) - 08/02/2012 - Legislative proposal

PURPOSE: to facilitate the cross-border activities of public benefit foundations through laying down the conditions for the establishment and operation of a European Foundation.

PROPOSED ACT: Council Regulation.

BACKGROUND: through their various activities in numerous areas, **foundations play an important role in the EU.** They contribute to the fundamental values and objectives of the Union, such as respect for human rights, the protection of minorities, employment and social progress, protection and improvement of the environment or the promotion of scientific and technological advances. **Nonetheless, the exercise of their activities encounters various obstacles across the EU.**

In the context of the contribution of foundations to the social economy and to financing innovative initiatives of public benefit, the Single Market Act called for action to remove obstacles that foundations face in operating on a cross-border basis. The same call was made in the EU Citizenship report 2010 "Dismantling the obstacles to EU citizens' rights", which stressed the importance of enhancing the European dimension of the activities of public benefit purpose foundations with a view to promoting citizen action at EU level.

The Commission underlined the importance of developing European legal forms for entities in the social economy sector (e.g. foundations, cooperatives or mutuals) in its "Social Business Initiative" (SBI) Communication of 25 October 20114.

The European Parliament also called for an appropriate legal framework for foundations (as well as for mutual societies and associations) in its resolution responding to the Commission's Single Market Act as well as in its previous resolutions of 2009 and 2006.

IMPACT ASSESSMENT: the following options were examined: 1) no new policy action at EU level; (2) an information campaign and a voluntary quality charter; (3) a Statute for a European Foundation (with or without addressing tax issues); and (4) limited harmonisation of laws on foundations.

The analysis of the impacts of the options proposed showed that **the Statute for a European Foundation with automatically applied non-discriminatory tax treatment** would be the most appropriate option, removing cross-border obstacles for foundations and donors and facilitating the efficient channelling of funds for public benefit purposes.

LEGAL BASIS: Article 352 of the Treaty on the Functioning of the European Union. The European Court of Justice confirmed in its judgment on the European Cooperative Society (C-436/03 European Parliament v Council of the European Union) that Article 352 was the correct legal basis.

CONTENT: this initiative creates **a new European legal form** intended to facilitate foundations' establishment and operation in the single market. It will allow foundations to more efficiently channel private funds to public benefit purposes on a cross-border basis in the EU. This, in turn, should result in more funding being available for public benefit purpose activities due to lower costs for foundations – and therefore, should have a positive impact on European citizens' public good and the EU economy as a whole.

This proposal does not aim to deal with the particular situation of political foundations affiliated to political parties at European level.

The main points are as follows:

Main features of the FE: the FE is an entity with a public benefit purpose with legal personality and full legal capacity in all the Member States of the EU:

- it has a **cross-border dimension** in terms of activities or a statutory objective of carrying out activities in at least two Member States;

- its founding assets are equivalent to **at least EUR 25 000.**

The FE is allowed to engage in economic activities as long as the profit is used in pursuance of its public benefit purpose(s), in accordance with the Regulation. An exhaustive list of the public benefit purposes accepted under civil and tax laws in most Member States is provided for reasons of legal certainty.

Formation: the FE can be formed: (i) **ex nihilo** (by a testamentary disposition, by notarial deed or by means of a written declaration by any natural and/or legal person(s) or public body in accordance with the applicable national law); (ii) **by the merger** of public benefit purpose entities legally established in one or more Member States or (iii) by the **conversion** of a national public benefit purpose entity legally established in a Member State into the FE.

The proposal establishes a list of documents and particulars that should accompany applications for registration and should be disclosed. Moreover, in order to facilitate the process of registration, the registries are required to cooperate with each other with regard to the documents and particulars of the FE.

Organisation of the FE: the proposal lays down rules regarding the governing board, managing directors and supervisory board, including on conflicts of interest. In order to ensure its credibility and trustworthiness, the FE has to apply high standards of transparency and accountability.

Registered office and its transfer: the FE can transfer its registered office to another Member State, while maintaining its legal personality and not having to wind up.

Involvement of employees and volunteers: the proposal contains rules concerning the information and consultation of employees and volunteers, in accordance with the relevant EU law. The proposal does not contain rules on employee participation in the board as board- level participation in public benefit purpose entities exists in very few Member States.

Dissolution of the FE: the proposal allows the conversion of the FE back into a public benefit purpose entity governed by the law of the Member State in which it has its registered office upon the condition that the conversion is permissible under the statutes of the FE. Member **State supervision:** the text gives robust powers to the competent national supervisory authorities, in order to enable them to effectively oversee the activities of the public benefit purpose entities for which they are responsible. Supervisory authorities are also required to cooperate and exchange information with one another and rules are included as regards cooperation of registries and supervisory authorities with tax authorities.

Tax treatment: the Regulation provides for the **automatic application to the FE and its donors of the same tax benefits granted to domestic public benefit purpose entities**. This is because Member States

would be required to regard the FE as equivalent to public benefit purpose entities established under the legislation of the Member States concerned. Donors to and beneficiaries of the FE should be treated in accordance with the same principle.

BUDGETARY IMPLICATIONS: the proposal has no implication for the budget of the European Union.