Basic information

2012/0022(APP) APP - Consent procedure Regulation	Procedure lapsed or withdrawn
Statute for a European Foundation (FE) **Subject** 2.40.01 Right of establishment 2.50.04.02 Electronic money and payments, cross-border credit transfers 3.45.01 Company law 3.45.04 Company taxation 3.45.07 Social economy, mutual societies, cooperatives, associations 4 Economic, social and territorial cohesion 4.10.16 Social and community life, associations, foundations	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
JURI Legal Affairs	REGNER Evelyn (S&D)	25/04/2012
	Shadow rapporteur THEIN Alexandra (ALDE)	

Former committee responsible	Former rapporteur	Appointed
JURI Legal Affairs		
JURI Legal Affairs	KÖSTER Dietmar (S&D)	03/09/2014

Committee for opinion	Rapporteur for opinion	Appointed
CULT Culture and Education	HIRSCH Nadja (ALDE)	13/03/2012

Former committee for opinion	Former rapporteur for opinion	Appointed
DEVE Development	The committee decided not to give an opinion.	
DEVE Development		

ECON	Economic and Monetary Affairs	The committee decided not to give an opinion.	
ECON	Economic and Monetary Affairs		
EMPL	Employment and Social Affairs		
EMPL	Employment and Social Affairs		
ENVI	Environment, Climate and Food Safety	The committee decided not to give an opinion.	
ENVI	Environment, Climate and Food Safety		
ITRE	Industry, Research and Energy	The committee decided not to give an opinion.	
ITRE	Industry, Research and Energy		
IMCO	Internal Market and Consumer Protection		
IMCO	Internal Market and Consumer Protection		
CULT	Culture and Education		
CULT	Culture and Education		
LIBE	Civil Liberties, Justice and Home Affairs		
LIBE	Civil Liberties, Justice and Home Affairs	The committee decided not to give an opinion.	

Council of the European Union

Council configuration	Meetings	Date
Competitiveness (Internal Market, Industry, Research and Space)	3295	2014-02-20

European Commission

Commission DG	Commissioner
Financial Stability, Financial Services and Capital Markets Union	BARNIER Michel

Key events

Date	Event	Reference	Summary
08/02/2012	Legislative proposal published	COM(2012)0035	Summary
30/05/2013	Vote in committee		
18/06/2013	Committee interim report tabled for plenary	A7-0223/2013	Summary
02/07/2013	Decision by Parliament	T7-0293/2013	Summary
02/07/2013	Results of vote in Parliament		
20/02/2014	Debate in Council		
07/03/2015	Proposal withdrawn by Commission		

Technical information

Procedure reference	2012/0022(APP)
Procedure type	APP - Consent procedure
Procedure subtype	Legislation
Legislative instrument	Regulation
Legal basis	Treaty on the Functioning of the European Union TFEU 352-p1sub1
Other legal basis	Rules of Procedure EP 165
Stage reached in procedure	Procedure lapsed or withdrawn

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE506.115	04/03/2013	
Amendments tabled in committee		PE508.073	16/04/2013	
Committee opinion	CULT	PE506.187	26/04/2013	
Committee interim report tabled for plenary		A7-0223/2013	18/06/2013	Summary
Interim resolution adopted by Parliament		T7-0293/2013	02/07/2013	Summary

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2012)0035	08/02/2012	Summary
	SWD(2012)0001		

Document attached to the procedure		08/02/2012	
Document attached to the procedure	SWD(2012)0002	08/02/2012	
Commission response to text adopted in plenary	SP(2013)627	28/11/2013	

National parliaments

Document type	Parliament /Chamber	Reference	Date	Summary
Contribution	DE_BUNDESRAT	COM(2012)0035	12/04/2012	
Contribution	PT_PARLIAMENT	COM(2012)0035	12/04/2012	
Contribution	IT_SENATE	COM(2012)0035	28/06/2012	

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
CofR	Committee of the Regions: opinion	CDR1364/2012	29/11/2012	

Additional information

Source	Document	Date
National parliaments	IPEX	
European Commission	EUR-Lex	

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.

Statute for a European Foundation (FE)

2012/0022(APP) - 18/06/2013 - Committee interim report tabled for plenary

The Committee on Legal Affairs adopted an **interim report** by Evelyn REGNER (S&D, AT) the proposal for a Council Regulation on the Statute for a European Foundation (FE).

Members welcome the Commission’s proposal as **a major step towards making it easier for foundations to support public benefit purposes across the EU**. They consider the introduction of a common Statute for a European Foundation could make it much easier for foundations to package and transfer resources, expertise and donations and to pursue their activities throughout the EU. They stress that it is important that negotiations on this important piece of legislation move forward quickly in order to provide the foundation sector with this new instrument that it is urgently awaited.

The report underlines that the FE should contribute to the development of a **truly European culture and identity**. They point out that, while the legal form of the FE would be new, the proposal is that it should be applied through structures that already exist in the Member States. It also calls for the Regulation to stipulate that the Member State with financial authority over the foundation shall be responsible for ensuring that it is, in practice, managed strictly in accordance with its statute.

In Members' opinion, to underpin confidence in the FE, the sustainability, seriousness and viability of foundations, as well as the effectiveness of their supervision, must be core criteria. They therefore call on the Council to take into account the following recommendations:

- the **minimal level of assets** of EUR 25 000 should be maintained throughout the lifetime of the foundation;
- the existence of an FE in any Member State should be **open-ended** or, where expressly laid down in its statutes, set for a specified period of time of not less than four years;
- **amendments to a foundation's statutes**, where the existing statutes have become inappropriate for the functioning of the FE, should be allowed if they are made by its governing board;
- provisions should be made to **avoid conflicts of interest** within foundations *vis-à-vis* bodies independent of the founder, while recognising that foundations may be set up in a family context, in which a high degree of trust between founder and committee members is a prerequisite, so that the founder knows that the purpose of the foundation will be secure after his or her death;
- the **threshold for foundations that are required to have their accounts audited** should take into account the total assets, the annual income and the number of employees of that foundation;
- the Statute should provide for information of volunteers; the Statute should also **encourage volunteering** as a guiding principle;
- a provision should be added whereby **any remuneration paid to members of the governing board** or other bodies of the FE is to be reasonable and proportionate;
- as regards the representation of employees, the negotiation procedure which, under the proposal, refers only to the information and consultation of employees within the EU, should be extended to **cover participation by employees in the bodies of the FE;**
- in the interests of effective supervision, the **registered office and the administrative headquarters** of an FE should be in the Member State in which it is established;
- the proposal should be **limited to a civil law instrument**, while reinforcing a number of the core elements of the public benefit concept as found in the Member States, so as to facilitate the recognition of equivalence within Member States.

The report highlights the potential offered by foundations in providing jobs for young people. In addition, assistance to the victims of terrorism and acts of violence and the promotion of interreligious dialogue are felt to be highly relevant **public benefit purposes**.

Statute for a European Foundation (FE)

2012/0022(APP) - 02/07/2013 - Interim resolution adopted by Parliament

The European Parliament adopted a resolution on the proposal for a Council Regulation on the Statute for a European Foundation (FE).

Necessity to put in place a common statute: Parliament recalls that there are more than 110 000 foundations with a public benefit purpose in the Union, with estimated combined assets of approximately EUR 350 billion, spending a total of approximately EUR 83 billion and employing between 750 000 and 1 000 000 European citizens. In civil law and tax law throughout the Union, there are **more than 50 different pieces of legislation applicable to foundations**, as well as a host of complicated administrative procedures, which give rise annually to advisory costs estimated to amount to as much as EUR 100 million – money that thus becomes unavailable for public benefit purposes.

In this context, Members welcome the Commission's proposal as **a major step towards making it easier for foundations to support public benefit purposes across the EU**. They consider the introduction of a common Statute for a European Foundation could contribute to the development of a **truly European culture and identity** and make it much easier for foundations to package and transfer resources, expertise and donations and to pursue their activities throughout the EU. They stress that it is important that negotiations on this important piece of legislation move forward quickly in order to provide the foundation sector with this new instrument that it is urgently awaited.

The resolution points out that, while the legal form of the FE would be new, **the proposal is that it should be applied through structures that already exist in the Member States**. It also calls for the Regulation to stipulate that the Member State with financial authority over the foundation shall be responsible for ensuring that it is, in practice, managed strictly in accordance with its statute.

Parliament's recommendations: in Members' opinion, to underpin confidence in the FE, the **sustainability, seriousness and viability of foundations**, as well as the effectiveness of their supervision, must be core criteria. They therefore call on the Council to take into account the following recommendations:

- the **minimal level of assets** of EUR 25 000 should be maintained throughout the lifetime of the foundation;
- the existence of an FE in any Member State should be **open-ended** or, where expressly laid down in its statutes, set for a specified period of time of not less than four years;
-

amendments to a foundation's statutes, where the existing statutes have become inappropriate for the functioning of the FE, should be allowed if they are made by its governing board;

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- in the interests of effective supervision, the **registered office and the administrative headquarters** of an FE should be in the Member State in which it is established;
- the proposal should be **limited to a civil law instrument**, while reinforcing a number of the core elements of the public benefit concept as found in the Member States, so as to facilitate the recognition of equivalence within Member States.

The resolution highlights the potential offered by foundations in providing jobs for young people. In addition, assistance to the victims of terrorism and acts of violence and the promotion of interreligious dialogue are felt to be highly relevant **public benefit purposes**.