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INTERIM REPORT

on the proposal for a Council regulation on the Statute for a European
Foundation (FE)
(COM(2012)0035 – C7-0000/2013 – 2012/0022(APP))

Committee on Legal Affairs

Rapporteur: Evelyn Regner

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

**on the proposal for a Council regulation on the Statute for a European Foundation (FE)
(COM(2012)0035 – C7-0000/2013 – 2012/0022(APP))**

The European Parliament,

- having regard to the proposal for a Council regulation (COM(2012)0035),
 - having regard to the Commission's impact assessment accompanying its proposal for a Council regulation on the Statute for a European Foundation (FE),
 - having regard to the Declaration of the European Parliament of 10 March 2011 on establishing European statutes for mutual societies, associations and foundations,
 - having regard to the feasibility study on the introduction of a Statute for a European Foundation carried out in 2008 by the Max Planck Institute for Comparative and International Private Law and the University of Heidelberg,
 - having regard to the judgments of the European Court of Justice in Cases C-386/04, *Centro di Musicologia Walter Stauffer v Finanzamt München für Körperschaften*¹, C-318/07, *Hein Persche v Finanzamt Lüdenscheid*² and C-25/10, *Missionswerk Werner Heukelbach eV v Belgian State*³,
 - having regard to Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States (European Citizenship)⁴,
 - having regard to the opinion of the Economic and Social Committee of 18 September 2012⁵,
 - having regard to the opinion of the Committee of the Regions of 29 November 2012⁶,
 - having regard to Rule 81(3) of its Rules of Procedure,
 - having regard to the interim report of the Committee on Legal Affairs and the opinion of the Committee on Culture and Education (A7-0223/2013),
- A. whereas 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;

¹ ECR 2006, p. I-8203.

² ECR 2009, p. I-359.

³ ECR 2011, p. I-497.

⁴ OJ L 150, 30.4.2004, p.77.

⁵ OJ C 351, 15.11.2012, p. 57.

⁶ OJ C 17, 19.1.2013, p. 81.

- B. whereas, however, a proportion of the staff of foundations are volunteers who are not paid for their time;
- C. whereas the existence and activities of foundations operating in the Union for the public good are crucial in the fields of education, training, research, social and health provision, historical memory and reconciliation between peoples, protection of the environment, youth and sport, as well as arts and culture, and whereas many of their projects have an impact far beyond national borders;
- D. whereas, 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;
- E. whereas legal, tax-related and administrative barriers, which give rise to expensive and lengthy procedures, as well as a lack of appropriate legal instruments, mean that foundations refuse, or find it difficult, to embark on or develop activities in another Member State;
- F. whereas, in a time of tight national budgets, particularly for cultural and artistic activities, education and sport, the financial and social commitment of foundations is essential, although they can only complement, and cannot replace, the state in the pursuit of public benefit purposes;
- G. whereas, with regard to taxation, it is not tax-law harmonisation that is being proposed, but rather application of the rule of non-discrimination, under which, automatically and as a matter of principle, European foundations and their donors are subject to tax provisions and advantages that are identical to those that apply to national entities with a public benefit purpose;
- H. whereas 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;
- I. whereas the European Parliament welcomes the Commission's proposal as a major step towards making it easier for foundations to support public benefit purposes across the EU;
- J. whereas the proposed statute is an optional European legal form which will be available for foundations and funders with activities in more than one Member State, but will neither replace nor harmonise existing foundation laws;
- K. whereas in times of economic difficulty it is increasingly important that foundations have the right tools to enable them to pursue public benefit purposes at European level and to pool resources, while also reducing costs and legal uncertainties;
- L. whereas it is crucial that European Foundations (FEs) operate on a sustainable and long-term basis and are truly active in at least two Member States, as otherwise their specific status would not be justified;

- M. whereas some of the terminology and definitions in the Commission proposal require clarification;
- N. whereas some additions and adaptations to the Commission proposal appear necessary in order to enhance the trustworthiness and credibility of an FE, for instance as regards compliance with legal and ethical rules, the exclusiveness of the public benefit purpose, the cross-border component, the minimum assets and the need to maintain these in principle throughout the lifetime of the FE, a rule on timely disbursement, the minimum duration, and the payment of remuneration to Members of the governing board or bodies of the FE;
- O. whereas creditor protection and employee protection are crucial and need to be maintained throughout the lifetime of an FE;
- P. whereas, as regards representation of employees, the reference to Directive 2009/38/EC of the European Parliament and of the Council of 6 May 2009 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees (Recast)¹ should be strengthened in order to make clear that the procedural rules under that Directive apply; whereas, furthermore, there should be greater sanctions on infringements, for instance by making the registration of an FE conditional on fulfilment of the requirements under Directive 2009/38/EC, in line with Article 11(2) of Council Regulation (EC) No 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society (SCE)²; whereas, beyond this, provisions are necessary regarding the involvement of employees in the bodies of an FE, in line with Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees³, so that the form of an FE cannot be misused for the purpose of depriving employees of rights to employee involvement or withholding such rights;
- Q. whereas a provision regarding the representation of volunteers in the FE is to be welcomed, given that 2.5 million volunteers are active in the sector;
- R. whereas the increasing representation and valuable contribution of volunteers in the work of foundations contribute to the objectives of general interest pursued by them; since, especially, more and more young people have to volunteer in order to collect their first work experience, it may be worthwhile for foundations to consider forms and instruments that will allow them to access the information needed to work in a more effective way, for example through the European Workers Council;
- S. whereas it is necessary to clarify that the registered seat and the central administration of an FE shall be in the same Member State, in order to prevent the dissociation of the registered seat and central administration or principal place of activities, and also in order to facilitate supervision, given that an FE will be supervised by the supervisory authority of the Member State in which it has its registered office;

¹ OJ L 122, 16.5.2009, p. 28.

² OJ L 207, 18.8.2003, p. 1.

³ OJ L 294, 10.11.2001, p. 22.

- T. whereas it should not be the purpose of the FE to finance European political parties;
- U. whereas, concerning taxation, the application of the non-discrimination principle as developed by the European Court of Justice needs to be the starting point; whereas it has been acknowledged by the sector that the proposed approach of granting automatic application of equal tax treatment would increase the attractiveness of the FE statute by considerably reducing the fiscal and administrative burden, making it more than a mere civil law instrument; whereas, however, the approach appears to be very contentious in Council, with Member States being reluctant to allow interference with their domestic tax laws; whereas it therefore appears appropriate not to discard possible alternative scenarios;
- V. whereas 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 obviously urgently awaited;
1. Encourages the Member States to use the existing momentum to work for the swift introduction of the Statute on a comprehensive basis, with all guarantees of transparency, so that barriers to foundations' cross-border work can be dismantled, and new foundations can be set up to meet the needs of the people living in the EU or to work in the public good or further the interests of society; stresses that establishing the Statute would contribute to the implementation of genuine EU citizenship and pave the way for a statute for a European organisation;
 2. Emphasises that the FE should contribute to the development of a truly European culture and identity;
 3. 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;
 4. Welcomes the fact that the Statute lays down minimum standards in terms of transparency, accountability, supervision and use of funds, which can, in turn, serve both citizens and donors as a form of quality label and thereby secure confidence in FEs and prompt the development of their EU activities for the benefit of all citizens;
 5. Highlights the potential offered by foundations in providing jobs for young people, among whom unemployment is reaching alarming levels;
 6. 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;
 7. Notes that the possibility of merging existing FEs has not yet been established;
 8. Notes that, in order to underpin confidence in FEs, the sustainability, seriousness and viability of foundations, as well as the effectiveness of their supervision, must be core criteria and, with this in mind, requests the Council to take into account the following recommendations and modifications:

- (i) the minimal level of assets of EUR 25 000 should be maintained throughout the lifetime of the foundation;
- (ii) 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; placing a shorter time limit of not less than two years on it should be permissible only where there is sufficient justification for doing so, and where the foundation's purpose would thereby be fully safeguarded;
- (iii) 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; where the FE has other bodies in accordance with Article 31, these bodies should be involved in the decision on the amendments to the statutes.
- (iv) to avoid conflicts of interest within foundations vis-à-vis bodies independent of the founder, i.e. that do not have a business, family or other relationship with the founder, provision should be made along the lines proposed by the Commission, but it should be recognised 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;
- (v) 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; for foundations under this threshold, an independent examination of the accounts is sufficient;
- (vi) the Statute should provide for information of volunteers; the Statute should also encourage volunteering as a guiding principle;
- (vii) 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; specific criteria should be established to determine the reasonableness and proportionality of the remuneration;
- (viii) as regards the representation of employees, the negotiation procedure which, under Articles 38 and 39 of 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 parallel with the reference currently made in Articles 38 and 39 of the proposal to the procedures for the establishment of a European Works Council, reference should be made, for the purpose of involvement of employees in the bodies of the FE, to the procedures under Council Directive 2001/86/EC;
- (ix) the provision on representation of employees in Article 38 of the proposal should be maintained; the notion of volunteers and volunteering activities should be further clarified;
- (x) 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;

(xi) the proposal should be limited – as proposed by the sector – to a civil law instrument, while reinforcing – in line with Parliament’s proposal – 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;

(xii) The proposal for a Council regulation should be modified as follows:

Modification 1

Proposal for a regulation Recital 15 a (new)

Text proposed by the Commission

Modification

(15a) The members of the governing board should ensure compliance with the obligations set out in this regulation and the statutes, and with all legal and ethical rules of conduct relevant to the FE. To that end they should devise organisational structures and internal measures to prevent and detect breaches of the rules.

Modification 2

Proposal for a regulation Recital 18

Text proposed by the Commission

Modification

(18) In order to enable the FE to reap the full benefits of the single market, it should be able to transfer its registered ***office*** from one Member State to another.

(18) In order to enable the FE to reap the full benefits of the single market, it should be able to transfer its registered ***seat*** from one Member State to another.

(This amendment applies throughout the text; its adoption will necessitate linguistic adjustments throughout the text.)

Modification 3

Proposal for a regulation

Article 2 – point 1

Text proposed by the Commission

(1) ‘assets’ means any tangible or intangible resource capable of being owned or controlled to produce value;

Modification

(1) ‘assets’ means any tangible or intangible resource capable of being owned or controlled to produce ***economic and/or social*** value;

Justification

This ensures that the definition of ‘assets’ is given a broad interpretation and not made subject to the production of economic value.

Modification 4

Proposal for a regulation

Article 2 – point 2

Text proposed by the Commission

(2) ‘unrelated economic activity’ means an economic activity of the FE, not serving directly the public benefit purpose of the public benefit purpose entity;

Modification

(2) ‘unrelated economic activity’ means an economic activity, ***excluding normal asset administration such as investment in bonds, shares or real estate***, of the FE, not serving directly the public benefit purpose of the public benefit purpose entity;

Modification 5

Proposal for a regulation

Article 2 – point 5

Text proposed by the Commission

(5) ‘public benefit purpose entity’ means a foundation with ***a*** public benefit purpose and/or similar public benefit purpose corporate body without membership formed in accordance with the law of one of the Member States;

Modification

(5) ‘public benefit purpose entity’ means a foundation with ***an exclusively*** public-benefit purpose and/or similar public-benefit purpose corporate body without membership formed in accordance with the law of one of the Member States;

Modification 6

Proposal for a regulation

Article 4 – paragraph 2 – point b a (new)

Text proposed by the Commission

Modification

(ba) the names of the managing directors appointed in accordance with Article 30;

Modification 7

Proposal for a regulation

Article 5 – paragraph 2 – point sa (new)

Text proposed by the Commission

Modification

(s a) support for victims of terrorism and violence,

Justification

Assistance to the victims of terrorism and acts of violence is felt to be a highly relevant public benefit purpose which should be included, since it cannot be incorporated into any of the existing categories in the list. The same applies to the promotion of interreligious dialogue for understanding, solidarity and social cohesion, which should be included, as it is not covered by any of the categories proposed.

Modification 8

Proposal for a regulation

Article 5 – paragraph 2 – point sb (new)

Text proposed by the Commission

Modification

(s b) promotion of interreligious dialogue

Justification

Assistance to the victims of terrorism and acts of violence is felt to be a highly relevant public benefit purpose which should be included, since it cannot be incorporated into any of the existing categories in the list. The same applies to the promotion of interreligious dialogue for understanding, solidarity and social cohesion, which should be included, as it is not covered by any of the categories proposed.

Modification 9

Proposal for a regulation

Article 5 – paragraph 2 – subparagraph 2 – introductory wording

Text proposed by the Commission

It may be created only for the following purposes, to which its assets shall be irrevocably dedicated:

Modification

It may be created only ***for one or more of*** the following purposes, to which its assets shall be irrevocably dedicated:

Modification 10

Proposal for a regulation

Article 5 – paragraph 2 a (new)

Text proposed by the Commission

Modification

2a. The FE shall not benefit any person through disproportionate compensation or through expenses that are not in pursuance of the public benefit purpose. The FE does not fulfil its public benefit purpose if it only serves the benefit of a limited number of individuals.

Modification 11

Proposal for a regulation

Article 6

Text proposed by the Commission

At the time of registration, the FE shall have activities or a statutory objective of carrying out activities in at least two Member States.

Modification

The FE shall have activities or ***at least*** a statutory objective of carrying out activities in at least two Member States. ***If, at the time of registration, the FE merely has a statutory objective of carrying out activities in at least two Member States, it must convincingly demonstrate at that time that within two years it will carry out activities in at least two Member States. This time limit shall not apply where it appears justified and proportionate, with a view to pursuing its purpose, for the FE to take up its activity later. At any rate the FE shall be required to begin and maintain activities in at least two Member States during its lifetime.***

Justification

The phrase ‘at the time of registration’ is deleted, given that the European foundation carries out activities in at least two Member States and this condition should be met at all times.

Modification 12

Proposal for a regulation Article 7 – paragraph 2

Text proposed by the Commission

2. The FE shall have assets equivalent to at least EUR 25 000.

Modification

2. The FE shall have assets equivalent to at least EUR 25 000. ***It shall maintain these minimum assets throughout its lifetime unless it has been established for a specified period of time under Article 12(2).***

Modification 13

Proposal for a regulation Article 7 – paragraph 2 – subparagraph 1 a (new)

Text proposed by the Commission

Modification

The FE shall spend 70 % of the income received in a financial year within the following four years, unless a specific project is identified in the statutes which will be executed in the following six years.

Modification 14

Proposal for a regulation Article 12 – paragraph 2

Text proposed by the Commission

2. The FE shall be set up for an indefinite period of time or, where expressly laid down in its statutes, for a specified period of time of not less than ***two*** years.

Modification

2. The FE shall be set up for an indefinite period of time or, where expressly laid down in its statutes, for a specified period of time of not less than ***four*** years. ***In cases where a limited period of time is***

appropriate to achieving the objectives of the FE and this is reasonably justified, the FE may be set up for a period of time of not less than two years.

Modification 15

Proposal for a regulation

Article 15 – paragraph 2 – point d a (new)

Text proposed by the Commission

Modification

(da) information on the procedures whereby arrangements for employee involvement are determined pursuant to Directive 2009/38/EC.

Modification 16

Proposal for a regulation

Article 15 – paragraph 3

Text proposed by the Commission

Modification

3. Each competent authority shall treat the request for a merger in accordance with the same procedures and principles as if it had been a request for a merger resulting in a national public benefit purpose entity.

3. Each competent authority shall treat the request for a merger in accordance with the same procedures and principles as if it had been a request for a merger resulting in a national public benefit purpose entity. ***The responsible authority shall refuse the request for a cross-border merger mandatorily and exclusively on the grounds that the documents referred to in paragraph 2 are not in conformity with this Regulation or that the rights of creditors and employees are not sufficiently protected.***

Modification 17

Proposal for a regulation

Article 17 – paragraph 1

Text proposed by the Commission

Modification

1. The FE may be formed by conversion of

1. The FE may be formed by conversion of

a public benefit purpose entity legally established in a Member State, provided that it is permitted under the statutes of the converting entity.

a public benefit purpose entity legally established in a Member State, provided that ***this is not specifically prohibited*** under the ***statutes and does not contradict the wishes of the founder.***

Justification

The statutes will not necessarily provide for the situation of conversion, given that it is not possible to provide for a non-existing legal situation, such as the conversion of a still undecided legal entity: the European Foundation.

Modification 18

Proposal for a regulation Article 18 – paragraph 3

Text proposed by the Commission

3. The competent authority shall treat the request for conversion in accordance with the same procedures and principles as if it had been a request to amend the statutes of the public benefit purpose entity.

Modification

3. The competent authority shall treat the request for conversion in accordance with the same procedures and principles as if it had been a request to amend the statutes of the public benefit purpose entity. ***The responsible authority shall refuse the request for conversion mandatorily and exclusively on the grounds that the documents referred to in paragraph 2 are not in conformity with this regulation or that the rights of creditors and employees are not sufficiently protected.***

Modification 19

Proposal for a regulation Article 20 – paragraph 1

Text proposed by the Commission

1. Where the existing statutes have become inappropriate for the functioning of the FE the governing board may decide on amendment to the statutes.

Modification

1. Where the existing statutes have become inappropriate for the functioning of the FE the governing board may decide on amendment to the statutes. ***Where the FE has other bodies in accordance with Article 31, these bodies must be involved in the decision on the amendments to the***

statutes.

Modification 20

Proposal for a regulation

Article 23 – paragraph 1 – point g

Text proposed by the Commission

(g) the names, purposes and **addresses** of founding organisations where these are legal entities, or similar relevant information as regards public bodies;

Modification

(g) ***the full names and addresses of the founders where these are natural persons;*** the names, purposes and ***company seat*** of founding organisations where these are legal entities, or similar relevant information as regards public bodies;

Justification

Point (g) makes no mention of the identification of founders in cases where they are natural persons, so this needs to be included. The word ‘addresses’ is not a legal term and should be replaced by ‘company seat’, with the same requirement to provide notification of its existence and location and, as relevant, that of other seats or centres of activity.

Modification 21

Proposal for a regulation

Article 23 – paragraph 2 a (new)

Text proposed by the Commission

Modification

2a. An FE cannot be registered until it has been shown that it complies with the obligations under Chapter V of this regulation on employee involvement in the FE.

Modification 22

Proposal for a regulation

Article 32 – paragraph 1

Text proposed by the Commission

1. The founder and any other board members who may have a business, ***family*** or other relationship with the founder or

Modification

1. The founder and any other board members who may have a business or other relationship with the founder or with each

with each other, that could create ***an actual or potential*** conflict of interest such as to impair his/her judgment, shall not constitute the majority of the governing board.

other that could create ***any*** conflict of interest such as to impair his/her judgment, shall not constitute the majority of the governing board.

Modification 23
Proposal for a regulation

Article 32 – paragraph 3

Text proposed by the Commission

3. No benefit, ***direct or indirect***, may be distributed to any founder, governing or supervisory board member, managing director or auditor, nor extended to any person having a business or close family relationship with them, unless it is for the performance of their duties within the FE.

Modification

3. No benefit may be distributed to any founder, governing or supervisory board member, managing director or auditor, nor extended to any person having a business or close family relationship with them, unless it is for the performance of their duties within the FE.

Justification

Not allowing the benefits of a foundation to be distributed to certain persons involved in its management and their relatives could result in situations of injustice and/or social discrimination. It would prevent the existence of a very large number of foundations created on the basis of serving a particular need that occurs within the family of one of the founders.

Modification 24
Proposal for a regulation
Article 34 – paragraph 2

Text proposed by the Commission

2. The FE shall draw up and forward to the competent national registry and to the supervisory authority annual accounts and an annual activity report within six months from the end of the financial year.

Modification

2. *Does not affect the English text.
Linguistic correction to the German version.*

Modification 25

Proposal for a regulation Article 34 – paragraph 4

Text proposed by the Commission

4. The annual accounts of the FE shall be audited by one or more persons approved to carry out statutory audits in accordance with the national rules adopted pursuant to Directive 2006/43/EC of the European Parliament and of the Council.

Modification

4. The annual accounts of the FE shall be audited by one or more persons approved to carry out statutory audits in accordance with the national rules adopted pursuant to Directive 2006/43/EC of the European Parliament and of the Council ***if the FE exceeds one of the following criteria:***

***(a) an annual income of EUR 2 million;
or***

(b) assets of EUR 200 000; or

(c) an average of 50 employees during the financial year.

For FEs that do not exceed any of these criteria, an independent examiner may be used instead of an auditor.

Modification 26

Proposal for a regulation Article 34 – paragraph 5

Text proposed by the Commission

5. The annual accounts, duly approved by the governing board, together with ***the opinion submitted by the person responsible for auditing the accounts, and*** the activity report shall be disclosed.

Modification

5. The annual accounts, duly approved by the governing board, together with the activity report, shall be disclosed. ***The opinion submitted by the person responsible for auditing the accounts shall be disclosed in accordance with the rules of the Member State in which the FE has its registered offices.***

Justification

Article 34 lays down that auditing shall take place. The manner in which it is to take place is still governed by the national rules of the Member State in which the FE has its registered office. These rules vary widely and provide for differing duties of disclosure, e.g. whether the whole opinion or only part of it should be published.

Modification 27

Proposal for a regulation Article 35

Text proposed by the Commission

The FE shall have its registered office and its central administration or principal place of activities in the European Union.

Modification

The registered office of an FE shall be located within the European Union, in the same Member State as its central administration or principal place of activities. While the FE shall have activities in at least two Member States, including relevant activities in the Member State with the registered office and central administration, the FE may also pursue activities outside the EU.

Modification 28

Proposal for a regulation Article 37 – paragraph 2 – point e a (new)

Text proposed by the Commission

Modification

(ea) any consequences of the transfer for employee participation.

Modification 29

Proposal for a regulation Article 37 – paragraph 5 – subparagraph 2

Text proposed by the Commission

The competent authority of the host Member State can refuse the transfer only on the grounds that the conditions referred to in the previous subparagraph are not met.

Modification

The competent authority of the host Member State can refuse the transfer only on the grounds that the conditions referred to in the previous subparagraph are not met; *it shall further refuse the transfer if the rights of creditors and employees are not sufficiently protected.*

Modification 30

Proposal for a regulation

Article 38 – paragraph 2 – subparagraphs 1 and 2

Text proposed by the Commission

The FE ***with up to 200 employees*** shall establish a European Works Council on the request of ***at least 20 of its employees in at least two Member States or representatives of those employees.***

The FE with more than 200 employees shall establish a European Works Council on the request of at least 10% of its employees in at least two Member States or representatives of those employees.

Modification

The FE shall establish a European Works Council on the request of at least 10% of its employees in at least two Member States or representatives of those employees.

Modification 31

Proposal for a regulation

Article 38 – paragraph 2 – subparagraph 3

Text proposed by the Commission

The national measures on the subsidiary requirements set out in subpoints (a) to (e) of point 1 of Annex I to Directive 2009/38/EC of the European Parliament and of the Council shall apply to the establishment of the European Works Council.

Modification

Articles 5 and 6 of Directive 2009/38/EC and the national measures on the subsidiary requirements set out in subpoints (a) to (e) of point 1 of Annex I to Directive 2009/38/EC of the European Parliament and of the Council shall apply to the establishment of the European Works Council.

Modification 32

Proposal for a regulation

Article 38 – paragraph 3

Text proposed by the Commission

3. Representatives of volunteers engaged in formal volunteering activities in the FE for a sustained period shall be given an observer status in the European Works

Modification

deleted

Council. The number of such representatives shall be of at least one per Member State in which at least 10 such volunteers are present.

Modification 33
Proposal for a regulation
Article 44 – paragraph 2

Text proposed by the Commission

2. Once the creditors of the FE have been paid in full, any remaining assets of the FE shall be transferred to another public benefit purpose entity with a similar public benefit purpose or otherwise used for public benefit purposes as close as possible to those for which the FE was created.

Modification

2. Once the creditors of the FE have been paid in full, any remaining assets of the FE shall be transferred to another public benefit purpose entity ***based in the same Member State in which it is registered,*** with a similar public benefit purpose, or otherwise used for public benefit purposes as close as possible to those for which the FE was created.

Justification

When a European Foundation is liquidated, any remaining assets should be transferred to another public body based in the same state in which the European Foundation is registered. This ensures that assets generated within the EU in the general interest remain within the EU after liquidation.

Modification 34
Proposal for a regulation
Article 45

Text proposed by the Commission

Each Member State shall designate ***a supervisory authority for the purpose of supervising*** FEs registered in that Member State and notify the Commission thereof.

Modification

Each Member State shall designate ***one or more authorities of its choice that are responsible for the effective supervision of*** FEs registered in that Member State and notify the Commission thereof.

2. Instructs its President to forward this resolution to the Council and the Commission.

26.4.2013

OPINION OF THE COMMITTEE ON CULTURE AND EDUCATION

for the Committee on Legal Affairs

on the proposal for a Council regulation on the Statute for a European Foundation (FE)
(COM(2012)0035 – 2012/0022(APP))

Rapporteur: Nadja Hirsch

SUGGESTIONS

The Committee on Culture and Education calls on the Committee on Legal Affairs, as the committee responsible, to incorporate the following suggestions in its report:

- having regard to the Declaration of the European Parliament of 10 March 2011 on establishing European statutes for mutual societies, associations and foundations,
- having regard to the feasibility study on the introduction of a Statute for a European Foundation carried out in 2008 by the Max Planck Institute for Comparative and International Private Law and the University of Heidelberg,
- having regard to the Commission proposal for a Council regulation on the Statute for a European Foundation (FE),
- having regard to the Commission's impact assessment accompanying its proposal for a Council regulation on the Statute for a European Foundation (FE),
- having regard to the judgments of the European Court of Justice in cases C-386/04, *Centro di Musicologia Walter Stauffer v. Finanzamt München für Körperschaften*¹, C-318/07, *Hein Persche v. Finanzamt Lüdenscheid*², and C-25/10, *Missionswerk Werner Heukelbach eV v. Belgian State*³,
- having regard to Directive 2004/38/EC of the European Parliament and of the Council of

¹ ECR 2006, p. I-8203.

² ECR 2009, p. I-359.

³ ECR 2011, p. I-497.

29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States (European Citizenship),

- A. whereas 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;
- B. whereas, however, a proportion of the staff of foundations are volunteers who are not paid for their time;
- C. whereas the existence and activities of foundations operating in the Union for the public good are crucial in the fields of education, training, research, social and health provision, historical memory and reconciliation between peoples, protection of the environment, youth and sport, as well as arts and culture, and many of their projects have an impact far beyond national borders;
- D. whereas, 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;
- E. whereas legal, tax-related and administrative barriers, which give rise to expensive and lengthy procedures, as well as a lack of appropriate legal instruments, mean that foundations refuse or find it difficult to embark on or develop activities in another Member State;
- F. whereas, in a time of tight national budgets, particularly for cultural and artistic activities, education and sport, the financial and social commitment of foundations is essential, although they can only complement, and cannot replace, the state in the pursuit of public-benefit purposes;
- G. whereas, with regard to taxation, it is not tax-law harmonisation that is being proposed, but rather application of the rule of non-discrimination, under which, automatically and as a matter of principle, European foundations and their donors are subject to tax provisions and advantages that are identical to those that apply to national entities with a public-benefit purpose;
- H. whereas 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;

Recommendations

1. Welcomes the fact that negotiations in the Council on the creation of a Statute for a European Foundation have been stepped up again under the Irish Council Presidency;
2. Encourages the Member States to use the momentum to work for the swift introduction of

the Statute on a comprehensive basis, with all guarantees of transparency, so that barriers to foundations' cross-border work can be dismantled and new foundations can be set up to meet the needs of the people living in the EU or to work in the public good or further the interests of society; stresses that establishing the Statute would contribute to the implementation of a genuine EU citizenship and pave the way for a statute for a European organisation;

3. Emphasises that the FE should contribute to the development of a truly European culture and identity;
4. Points out that while the legal form of the FE would be new, the proposal is for it to be applied through structures that already exist in the Member States;
5. Recalls the proposals in the 2011 report on the European Year of Volunteering, and urges the Commission to consider these proposals in concrete terms;
6. Welcomes the fact that the Statute lays down minimum standards in terms of transparency, accountability, supervision and use of funds, which can, in turn, serve both citizens and donors as a form of quality label and thereby secure confidence in the FE and prompt the development of their EU activities for the benefit of all citizens;
7. Highlights the potential offered by foundations in providing jobs for young people, among whom unemployment is reaching alarming levels;
8. Notes that 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, and suggests, in this regard, that:
 - the minimal level of assets of EUR 25 000 be maintained throughout the lifetime of the foundation;
 - 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; for foundations under this threshold, an independent examination of the accounts is sufficient;
 - rules on employee participation should not be extended to volunteers; the Statute should, however, encourage volunteering as a guiding principle;
 - amendments to a foundation's statutes, in which the essence of the foundation is enshrined, should be allowed only if they are made by its governing board;
 - the existence of an FE in any Member State should, as a matter of principle, be open ended, and placing a time limit on it should be permissible only where there is sufficient justification for doing so, and where the foundation's purpose would thereby be fully safeguarded;
 - to avoid conflicts of interest within foundations vis-à-vis bodies independent of the founder, i.e. that do not have a business, family or other relationship with the founder,

there should be provision along the lines proposed by the Commission, but it should be recognised 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;

- in the interests of effective supervision, the registered office and the administrative headquarters of an FE should be in the same Member State in which it is established;
9. 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;
 10. Notes that the possibility of merging existing FEs has not yet been established;
 11. Emphasises that the taxation proposed, which does not involve tax-law harmonisation, will allow for balanced treatment of European foundations across the Union;
 12. Takes the view that partnerships between European foundations may mean that they have greater access to resources, including European funds, with a view to attaining the purpose for which they were created;
 13. Supports automatically applicable, non-discriminatory taxation without an equivalency test, and calls on the Member States to pursue that approach because it is the only way to realise the full potential of a common Statute for Foundations.

EXPLANATORY STATEMENT

Foundations play an important role in the European Union. They operate in key fields including education, research, social provision and health, protection of the environment, the promotion of talent, youth and sport, the arts and culture. They invest large sums of money, from their revenue or the donations they receive, for public-benefit purposes, supporting specific aims, initiating projects or engaging in activities themselves, for example as think tanks. They represent a major source of employment in the EU and they are made viable by the unpaid input of large numbers of volunteers.

Increasingly, the activity of foundations also extends across borders because very few of the issues that they address are confined to single countries: health research, climate change, civil rights, and culture, film and media promotion are just some of the fields in which foundations work for the benefit of the public. However, foundations seeking to operate in more than one Member State, or donors who want to give money to good causes outside their own country, run up against barriers. Not everywhere is the concept of a public-benefit purpose automatically recognised. On the contrary, there are complex, expensive and lengthy recognition procedures to go through and barriers in civil and tax law that can be overcome only with intensive input from lawyers or tax consultants. The resources used up on all this become unavailable for public-benefit purposes.

On 8 February 2012, the Commission put forward a proposal for the establishment of a Statute for a European Foundation, designed to remove the existing constraints, facilitate foundations' cross-border activities and simplify the transfer of donations. It is intended that the new Statute will exist alongside national arrangements and that existing structures will be adapted to ensure its application and supervision. A European Foundation would be required to operate in at least two Member States and to have assets equivalent to at least EUR 25 000. The introduction of minimum standards in terms of transparency, accountability, registration, supervision and auditing is intended to make the FE a form of quality label for citizens and donors. With regard to taxation, the principles of the three relevant European Court of Justice rulings in relation to non-discriminatory taxation of foreign foundations would in future apply automatically and without an equivalency test.

The rapporteur supports the Commission's proposal and wishes to send out a strong signal to the Member States to implement the Statute for a European Foundation without delay. In this regard, attention is drawn to the importance of FEs' being viable and sustainable and of their being efficiently supervised in order to enhance respect for and confidence in the new Statute.

The rapporteur has insisted that the opinion and recommendations of the Committee on Culture and Education, as a channel for the views of citizens, are submitted alongside the report from the Committee on Legal Affairs. She stresses the advantages that the creation of the Statute offers for the various parties involved.

- For the public, the abolition of costly barriers to foundations' cross-border activities would release more money to realise public-benefit aims.

- For donors, it would become less expensive and administratively more straightforward to make cross-border donations. Donors could also look to the FE as a form of quality label.
- Foundations would benefit from the increased legal security afforded by a definitive list of public-benefit purposes mutually recognised by legal and tax authorities, and from the reduction in their administrative and consultancy costs, and would thus be able to package and transfer resources and expertise more effectively; and, with the help of the FE as a form of quality label, more cross-border activities and donations could be encouraged.
- For the Member States, despite the pressure to economise, more money would in future become available for important areas such as education, research, social and health provision, culture and the protection of the environment.

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	23.4.2013
Result of final vote	+: 25 -: 0 0: 0
Members present for the final vote	Zoltán Bagó, Lothar Bisky, Piotr Borys, Jean-Marie Cavada, Mary Honeyball, Petra Kammerevert, Morten Løkkegaard, Emma McClarkin, Emilio Menéndez del Valle, Marek Henryk Migalski, Katarína Neveďalová, Doris Pack, Chrysoula Paliadeli, Monika Panayotova, Gianni Pittella, Marie-Thérèse Sanchez-Schmid, Marietje Schaake, Marco Scurria, Hannu Takkula, László Tőkés, Helga Trüpel, Sabine Verheyen, Milan Zver
Substitute(s) present for the final vote	Ivo Belet, Nadja Hirsch, Stephen Hughes, Seán Kelly

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	30.5.2013
Result of final vote	+ : 21 - : 1 0 : 0
Members present for the final vote	Raffaele Baldassarre, Luigi Berlinguer, Françoise Castex, Christian Engström, Marielle Gallo, Giuseppe Gargani, Sajjad Karim, Klaus-Heiner Lehne, Antonio López-Istúriz White, Antonio Masip Hidalgo, Jiří Maštálka, Alajos Mészáros, Bernhard Rapkay, Evelyn Regner, Rebecca Taylor, Alexandra Thein, Rainer Wieland, Cecilia Wikström, Tadeusz Zwiefka
Substitute(s) present for the final vote	Mary Honeyball, Eva Lichtenberger, József Szájer, Axel Voss