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Committee on Culture and Education

2012/0022(APP)

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

PA_NonLeg_Interim

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 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

¹ ECR 2006, p. I-8203.

² ECR 2009, p. I-359.

³ ECR 2011, p. I-497.

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 Paliadelí, 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