



Comité européen des associations d'intérêt général
European Council for non-profit organisations

SQUARE AMBIORIX n°32 bte 47 , B-1000 Bruxelles
TEL + 32 2 230 00 31 - FAX + 32 2 230 00 41

cedag@cedag-eu.org - www.cedag-eu.org

DRAFT ANSWER ON THE EU CONSULTATION FOR A EUROPEAN STATUTE FOR FOUNDATIONS¹

CEDAG - The European Council for Non-profit Organizations (Comité européen des associations d'intérêt général), was created in Brussels in 1989 (incorporated in 1996) as a network aiming at voicing the concerns of the non-profit sector at the European level on specific issues which are common to all non-profit organizations and associations. In particular, it aims at enhancing the capacity of the non-profit sector as a key actor of civil dialogue and advocacy, with a view to promoting European citizenship, and as provider of services of general interest.

CEDAG welcomes the consultation process launched by the European Commission on 16 February 2009 to seek views from interested parties on a possible European Foundation Statute (EFS), which builds upon the Feasibility Study on a EFS published on the same day.

CEDAG has repeatedly called for ensuring a secure legal framework for social economy through the adoption of new European statutes: for foundations, for mutual societies and for associations. This demand was endorsed by a recent European Parliament own initiative report on social economy on 19 February 2009².

CEDAG fully supports the key conclusion of the Feasibility Study stating that a European Foundation Statute is the most cost-effective policy option for addressing the administrative and legal barriers that foundations face in their cross-border activities. Foundations must benefit from a legislative and regulatory environment that takes fully into account their characteristics, allowing them to operate on a level playing field with other types of societies and organisations in the single market. In this sense, SOCIAL ECONOMY EUROPE calls on the European Commission to complete its impact assessment in 2009 and present a proposal for a regulation once the new Commission takes office, for approval by the Council and the Parliament.

Against this background, SOCIAL ECONOMY EUROPE would like to share its views on the different questions raised in the public consultation:

1. Barriers to the cross-border activities/establishment of foundations

Foundations and their founders are increasingly working across borders. However, they face a number of internal market barriers which prevent them from operating in a European-level playing on an equal footing with other European legal forms.

Those barriers as listed in the Feasibility Study include: the difficulty in recognising foreign foundations' legal personality; the lack of possibility of transfer of seat to another Member State; legal insecurity over national recognition of 'general interest' nature; administrative burden and cost of foundations setting up several branches in other countries. As indicated by the Study, the measurable cost of these barriers ranges from € 90,000,000 to € 101,700,000 per year. This amount is likely even higher as there are (incalculable) costs that are not considered, e.g. costs of foundation seat transfer, costs of duplication etc.

2. The European Foundation Statute as the most appropriate solution

cedag agrees with the conclusion of the Feasibility Study that the European Foundation Statute is the best option among the various policy options analysed as to how cross border barriers could be addressed.

¹ http://ec.europa.eu/internal_market/company/eufoundation/index_en.htm

² P6_TA(2009)0062 - <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P6-TA-2009-0062&language=EN&ring=A6-2009-0015>

CEDAG is of the opinion that the European Foundation Statute (EFS) is an opportunity to have a European instrument designed to help address European and global policy issues of public interest. It would contribute:

- To provide an adequate legal instrument to facilitate the cross-border and trans-national activities of public benefit foundations;
- To establish a level playing field for foundations to add a European dimension to their entities and activities;
- To provide them with a European legal instrument to group and/or to develop their organisation and activities.

It would further:

- Serve to clarify the concept of foundation and providing a common definition of 'public benefit purpose foundations' across the EU as currently the term is much too loosely used to refer to very diverse undertakings, ranging from personal benefit to commercial endeavours;
- Offer a new management tool to support citizen action at EU level and beyond;
- Provide a benchmark of accountability, transparency and good governance in managing funds for public benefit purpose across the EU and beyond.

CEDAG would also like to support the position of the European Foundation Centre stressing that the other proposed options identified in the Study are neither viable nor effective, namely maintaining the status quo, harmonisation of foundation laws, treaty model option (bi-lateral or multi-lateral).

Maintaining the status quo would leave existing barriers. Furthermore, other proposed approaches such as information campaigns or soft law approaches such as code of conduct or accreditation model could not reduce the costs incurred by foundations and could not provide for the necessary legal certainty for cross-border operations.

Concerning harmonisation, foundation laws differ considerably even though common key elements can be identified. The differences are rooted in different culture and history and are seen as an asset.

Harmonisation of laws in the field would be difficult due to the diverse realities such as the existence of private interest funds in a few national jurisdictions. Politically unlikely in a Union of 27 countries and over 50 foundation laws, it could only result if at all in a minimum common denominator that would not solve current problems.

The Treaty model option seems not viable as experience shows that few countries have signed such treaties. This option was not retained in the discussions on other European Statutes (Company, Cooperative, Private company statutes).

As regards taxation, CEDAG supports the idea that only a non-discriminatory solution is both realistic and reasonable. A European Foundation should be treated like a public benefit purpose foundation in the same Member State. This is also the approach suggested by the Feasibility Study.

3. Content of a possible European Foundation Statute

CEDAG strongly supports the creation of a European Statute for foundations as a new additional and optional³ legal instrument, governed by European law and complementing national laws. It would be intended specifically for foundations and other interested parties wishing to pursue public benefit activities in more than one country. Existing foundations would have the freedom to decide for themselves if they wish to use the new European legal form (by creation of, transformation or conversion into EFS).

CEDAG wishes to call the attention of the European Commission to the proposals released by the European Foundation Centre (EFC) about the content of a regulation on the European Foundation in 2005. CEDAG supports the key elements of the EFC's proposed European Foundation Statute namely: a public-benefit purpose (based on an open list); a European dimension of the activity (in at least two Member States); a minimum endowment/starting capital; transparency of accounts, financial and activity reporting; and clear supervision mechanisms at EU level or delegated at national level.

4. Other comments

Finally, CEDAG would like to share a number of concerns regarding the form of the public consultation:

- Regarding the language of the consultation, CEDAG considers that language diversity in a consultation process is essential to ensure that all EU citizens and organisations are in a position to understand the issues at stake and to answer with specific details on technical issues in their native language. In this sense, we regret that the consultation document, its key findings and the online questionnaire have only been published in English. We believe this can have a detrimental impact on the level of response to the public consultation, which we understand would be one of the elements considered by the European Commission to assess the level of demand for new a new initiative in the field.

³ As other existing or proposed statutes: European Company Statute (2001), European Cooperative Statute (2003), and the recently proposed European Private Company Statute (2008).

- Possibility to include additional comments. The form of the consultation based on a long list of technical questions (Part I) and an online only questionnaires to individuals and funders (Part II°) leaves little room for additional comments on the proposal for an EFS and may lead to some confusion as to which parts respondents should contribute and how these replies will be assessed.
- In terms of the consideration of all contributions received, CEDAG understands that the European Commission will publish separately the contributions submitted by organisations registered and those which are not registered in the EC Interest Representative Register. CEDAG acknowledges the importance of transparency regarding the relations between the European Commission and interest representatives and did register indeed. However, it wishes to underline that this register is still at an experimentation stage until proper assessment with a broad range of stakeholders, among which civil society organisations. Therefore, the registry should not yet be used in a way that is likely to be discriminatory towards some of them.
- Applicability to European associations
Finally, we want to stress that most arguments in favour of a European Statute for Foundations equally apply to associations and similar Non-Governmental Organisations. We call therefore for a similar initiative regarding those organisations, in line with appeals already launched by the European Parliament and the European Economic and Social Committee.

We remain at your disposal for further information on the matter.