



Donors and Foundations Networks in Europe

## JOINT STATEMENT

### European Economic and Social Committee gives strong backing to European Foundation Statute

Brussels, 28 June 2010

The European Foundation Centre (EFC) and the Donors and Foundations' Networks in Europe (DAFNE) welcome the opinion in support of the European Foundation Statute<sup>1</sup>, which was adopted by the European Economic and Social Committee (EESC) on 28 April 2010. The EESC, the EU's official advisory body on social and economic matters, gave a clear and strong backing to the Statute by approving with a large majority of the votes the opinion drafted by EESC member Mall Hellam. The opinion urges the European Commission to present a proposal for a Regulation on a European Foundation Statute (EFS) to support public-benefit activities for its adoption by the Council and the European Parliament in due course.

Gerry Salole, EFC Chief Executive, praised the initiative noting that: "The EESC's opinion strengthens the call repeatedly made by the EFC and DAFNE for the European Foundation Statute as the most cost-effective solution for addressing cross-border barriers and thereby stimulating foundation activities across Europe. The opinion should feed into the work of the European Commission, which we hope can conclude its internal impact assessment and subsequently table a proposal for a Regulation on the EFS. We also appeal to the Member States and the European Parliament to support this initiative. A recent survey of Members of the European Parliament conducted by GALLUP showed that no less than 73% of responding MEPs would support the EFS<sup>2</sup>."

Rosa Gallego, Chair of DAFNE, stated that: "We trust that the EU and Member State representatives will give due attention to EESC's recommendations. We believe that an EFS will contribute to providing a favourable and secure European framework for foundations' cross-border work for the next decades, in the current context of globalisation and the increased mobility of people and private assets across borders".

#### **EESC's views for a European Foundation Statute**

The EESC opinion on an EFS, which will now be shared with other EU institutions for follow-up action, aims to contribute to the current Commission's reflection on a new European legal tool for foundations to facilitate their cross-border activities.

The EESC considers that a review of needs and opportunities confirms the necessity for a European company law project for foundations, which would offer them an adapted instrument to facilitate their activities in the internal market. EESC's opinion recalls that the feasibility study on a European Foundation Statute published by the Commission in 2009 as well as feedback from practitioners have indicated that the number of foundations and founders who want to develop transnational operations and cooperation has grown significantly over the last decade. Both illustrate that foundations conducting cross-border activities have to face several barriers, including legal barriers, which lead to increased transaction cost, therefore reducing the amount of their available funds on public good.

The EESC believes that it has become necessary to consider the development of an EFS that is accessible and tailored to foundations' needs, with a view to facilitating their operations and collaborative ventures within the single market, enabling them to pool resources from different countries and giving a European scale from the outset to the creation of European foundations to support public-benefit activities. A European Statute would make cross-border operations, donations

<sup>1</sup> <http://www.efc.be/EuropeanFoundationStatute/Documents/INT-498-CESE%20634-2010EN-o.pdf> (118kb)

<sup>2</sup> Gallup's survey summary results are available at [http://www.efc.be/News/Documents/EFC\\_One\\_Pager\\_FINAL.pdf](http://www.efc.be/News/Documents/EFC_One_Pager_FINAL.pdf)

and cooperation smoother by providing an efficient management tool for public-benefit purposes, while offering a recognised European label. It can also serve as a new mechanism to support European public good and citizen actions, and address major European socio-economic concerns and needs.

Regarding the content and form, the Committee considers that in order to make it effective and attractive, the new Statute will have to provide clear and comprehensive rules regarding setting-up, operations and supervision and have a genuine European dimension.

### Why do we need a European Foundation Statute?

The EFC and DAFNE consider that a European Foundation Statute would contribute to:

- **Overcoming obstacles which hamper increasing cross-border work.** In the current context of globalisation, foundations and their funders are increasingly working across borders<sup>3</sup>. However, a number of civil and tax law barriers are hampering their cross-border work. The lack of a proper legislative instrument at European level prevents them from working on an equal footing with other organisations and as a result many initiatives are delayed or abandoned. As listed in the feasibility study on an EFS, the most important barriers are as follows:
  - Lack of possibility of transfer of seat to another Member State
  - Difficulty in recognising foreign foundations' legal personality
  - Legal insecurity over national recognition of 'general interest' nature
  - Administrative burden and cost of foundations setting up several branches in other countries
  - Barriers in foundations' fiscal environments
- **Offering a key opportunity to support public-interest action.** The EFS is an opportunity to have a European instrument designed to help address European and global pressing needs and policy issues in areas such as research, education and innovation, mobility and migration, the environment, cultural and linguistic diversity and dialogue, security and development. It would also contribute to have a benchmark of accountability, transparency and good governance in channelling domestic and foreign financial funds for public purpose across the EU and beyond as well as to clarify the concept of a foundation and provide a common definition of 'public-benefit purpose foundations' across the EU.

### What type of Statute does the foundation sector want?

The EFS will be a new, *additional and optional statute*, governed by European law and complementing national laws. Existing foundations will have the freedom to decide for themselves if they wish to use the new European legal form. It will allow foundations and funders to easily set up a European Foundation (EF) with the same conditions throughout the EU. Respondents to the EC public consultation in 2009 outlined the key elements that an EFS and an EF should have, which reflect and complement the EFC's initial proposals, as follows:

- A comprehensive European legal tool which refers to the national laws in as few cases as possible. Any legal person or individual would be able to use this new tool to set up an EF.
- A public-benefit purpose (based on an open list of public-benefit purposes).
- An initial endowment/starting capital.
- Activities with a European dimension (i.e. in at least two Member States).
- No formal membership, although some participatory structures would be allowed whose rights are regulated by their statutes<sup>4</sup>.
- Creation ex-nihilo of an EF by will or notarial deed, by transformation of an existing foundation into an EF, or by merger between two foundations. Respondents to the consultation believe that the possibility of transforming existing foundations into EFs would be decisive for the expansion of cross-border activities.
- Clear supervision mechanisms at EU level or alternatively delegated to the national level.
- Income-generating activities should be allowed provided that they remain ancillary and/or that the resulting income benefits the public-benefit purpose of the organisation. Transparency of accounts, and financial and activity reporting.
- Regarding taxation, a non-discriminatory approach should be pursued, i.e. an EF should be treated like a tax-exempt national foundation in the same Member State.

<sup>3</sup> In 2007 two-thirds of EFC members were working across borders and active outside their country of origin.

<sup>4</sup> The definition of an EF is based on the fact that foundations, in contrast to associations, in most continental European jurisdictions, have no members. The main governing organ of an EF is the board. However, the EF may have additional organs and may also develop some type of "participatory" structure. Generally, a European Foundation shall have no members. However, some foundations do have members, whose rights are regulated by their statutes. Said members are gathered in an assembly and may be elected to sit on the Board of Directors and on controlling bodies. Such foundations are known in Italy.

## Background

Since 2001, the EFC has informed the European Commission that foundations need a separate European legal instrument. Three public consultations were held in the framework of the revision of Company Law in 2003, 2005 and 2009, with a strong participation from foundations. The European Commission commissioned a feasibility study on an EFS to examine regulatory differences and internal market barriers and their costs for foundations, as well as to assess the foundation sector's scale and economic weight and impact an EFS would have on the sector and Europe's economy. The feasibility study strengthens the case for a European Statute for foundations by providing clear evidence of the need for such a European legal tool. It sets out the potential benefits of an EFS in terms of reducing or eliminating unnecessary financial costs and administrative burdens for foundations' cross-border work within the EU. The large number of responses to the 2009 public consultation, notably from the non-profit sector, showed a strong support for the EFS. The foundation sector expressed firm interest and sent a plain message with an 87% of the 226 responses coming from foundations, charities and trusts.

In addition to the feasibility study, two field recommendations exist on the matter:

- The EFC's proposal for a regulation on a European statute for foundations published in 2005.
- The European Foundation - a New Legal Approach, a research project by legal experts, Hopt/Walz/von Hippel/Then, Verlag Bertelsmann Stiftung published in 2006

Other EU institutions have also stressed the need for the EFS over the past years:

- On 4 July 2006 the European Parliament (EP) adopted a resolution on recent developments and prospects in relation to company law <sup>5</sup>, which "calls on the Commission to continue its preparation of Community legislation providing for other legal forms of entrepreneurial organisation, such as the European foundation". In a report on social economy<sup>6</sup> adopted on 19 February 2009, the EP also notes that there is a need for the recognition of a European statute for foundations to ensure that they benefit from equal treatment in internal market law.

- MEP Alain Lamassoure highlighted the adoption of an EFS in 2008 in his report to the French EU Presidency "European citizens and community law implementation". The report included over 60 initiatives to improve the effective implementation of European law for the benefit of citizens, one of being the EFS.

- The EESC had previously expressed its support for the EFS in its opinion on the diverse forms of enterprises (INT/447) adopted in October 2009. The Committee's opinion welcomes the start of work on an EFS and hoped that this would conclude shortly with its adoption.

Further details on the European Foundation Statute are available on the dedicated webpage: <http://www.efc.be/EuropeanFoundationStatute>

### For further information please contact

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<sup>5</sup> <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2006-0295+0+DOC+XML+V0/EN>

<sup>6</sup> <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P6-TA-2009-0062&language=EN>



## About the European Foundation Centre

The European Foundation Centre (EFC) is an independent association dedicated to creating an enabling environment for foundations, strengthening the infrastructure of the sector, and promoting collaboration, both among foundations and between foundations and other actors, to advance the public good in Europe and beyond.

**Who we are:** Established in 1989, the EFC today serves a core membership of more than 230 members in some 40 countries. The EFC also hosts the secretariat of The Donors and Foundations' Networks in Europe (DAFNE) set up in 2006.

### What we do:

The Centre fulfils its mission through:

- Representing its members' interests at the level of third parties such as European and international institutions
- Improving the visibility and understanding of the role of foundations, and advocating good practice, openness and transparency
- Playing a consultancy role with respect to legal and fiscal issues and expansion of professional development opportunities for foundations' staff
- Convening foundations to facilitate exchanges of information and expertise and fostering cooperation with national-level associations of foundations, donors' fora and other organisations serving the sector

The Centre is an independent international not-for-profit association under Belgian law. Ultimate authority vests in the EFC Annual General Assembly of Members, with governance entrusted to an elected Governing Council, supported by a Management Committee. Membership of the Centre implies commitment to the EFC brand. Members agree to adhere to the [EFC Principles of Good Practice](#).

Details of EFC membership and activities are available at [www.efc.be](http://www.efc.be)



Donors and Foundations Networks in Europe

## About DAFNE

The Donors and Foundations' Networks in Europe (DAFNE) is an informal network of Donors and Foundations' Networks (DFNs) in Europe serving charitable foundations and other grantmakers at the national level.

**Who we are:** Established in 2006 and representing 22 member organisations from all across Europe with collective membership of over 5,000 foundations, DAFNE sets out to underpin the individual activities of its members and to strengthen their collaboration to contribute to a fruitful environment for philanthropy and especially for public benefit foundations in Europe.

DAFNE also provides a platform for enhancing bilateral and multilateral collaboration among individual DFNs and also, collectively, with the European Foundation Centre (EFC) and third parties.

### What we do:

In pursuing its objectives the DAFNE is a platform for:

- exchanging national experience and knowledge including best practices
- organising the support of DFNs
- offering networking opportunities
- developing joint programs or projects
- peer learning of DFNs
- promoting philanthropy and donors best practices at European level
- organising the support of advocacy efforts at European level
- defining common positions on regulatory and fiscal issues

Details of DAFNE are available at [www.dafne-online.eu](http://www.dafne-online.eu)