

European Foundations – a proposed new form of public benefit entity

On 8 February 2012, the European Commission published proposals for a draft statute which will create an entirely new public benefit entity – a ‘European Foundation’ – for organisations working in fields such as education, research, social and health services, culture and protection of the environment. The statute aims to ensure that European citizens and the EU economy can reap the benefit of this work by making it easier and cheaper for public benefit entities to operate across Member States.

Evidence collated by the Commission shows that currently even the most determined public benefit organisation can be swamped by obstacles when attempting to branch out across different Member States. Differences between national laws can cause barriers for public benefit organisations including:

- the additional legal and administrative costs of registration incurred in different Member States;
- uncertainty as to whether a Member State will recognise their status as a public benefit entity;
- ambiguity as to the tax treatment they will receive; and
- the risk of fewer donations from a public unfamiliar with a foreign public benefit organisation.

While some laws will continue to differ from state to state, European Foundations have been designed to avoid some of these pitfalls. The draft Statute provides that all European Foundations would receive full legal personality and capacity in all Member States, resulting in consistent treatment across the EU. The intention is that this will allow organisations to operate across States with greater legal certainty and at a lower cost.

By way of example, European Foundations would be subject to exactly the same tax regime as the domestic public benefit organisations within a Member State. This would mean that if a member of the public donated to a European Foundation, their donation would be treated in exactly the same way as if they had donated to a domestic organisation. (See also our recent article on the new definition of charity for tax purposes.)

The draft Statute provides that a European Foundation can be set up from scratch by one or more persons, by the conversion of an existing national public benefit entity or through a cross-border merger. Existing public benefit organisations could choose to create a European Foundation which would exist in parallel with their domestic organisation. In order to register as a European Foundation, an organisation must show that they:

- promote public benefit purposes, as defined by the draft Statute. The Statute includes an exhaustive list of public benefit purposes including arts, culture or historical preservation, environmental protection, and civil and human rights;
- carry out activities in at least two Member States (or have the intention of doing so); and
- have minimum assets of at least EUR 25,000, to demonstrate that the entity has sufficient resources to pursue its purpose.

The proposal has now been passed to the EU's Council of Ministers and the European Parliament for consideration. The adoption of the draft Statute will require both unanimous agreement of the Member States and consent of the European Parliament.

The draft European Foundation Statute can be accessed via the European Commission website, along with related press releases and additional information:

- http://ec.europa.eu/internal_market/company/docs/eufoundation/proposal_en.pdf
(draft Statute)
- <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/12/112&format=HTML&aged=0&language=en&guiLanguage=en> (press release)
- <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/12/79&format=HTML&aged=0&language=EN&guiLanguage=en> (frequently asked questions)

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