European Foundation Statute
state of play

EESC – Social Economy Category meeting  26 February 2015
European Commission adopts a legislative proposal for a European Foundation Statute
European Commission confirmed that it has withdrawn the legislative proposal for a European Foundation Statute from its 2015 work programme.
1. The context & the process
EU company law context

• SE Regulation (European Company) 2001
• SCE Regulation (European Cooperative Society) 2003
• European Association/Mutual Society Regulations: proposed 1992, withdrawn 2006
• SPE Regulation (European Private Company): proposed 2008 blocked in Council, withdraw 2014
• Directive for single-member company presented in 2014 ...
EFS “Preparatory Work”

- Demand from the sector 2002
- European Commission Feasibility Study 2009
- Public consultation with stakeholders 2009
- Call from European Economic and Social Committee opinions adopted in 2010 and 2012
- Call from European Parliament Written Declaration 2011
Legislative process

- European Commission adopts proposal (regulation) 8 February 2012

- EU advisory Bodies positive opinions Sep./Nov. 2012

- European Parliament (consent - majority) - Positive vote 2 July 2013

- Council of EU Ministers
  28 Member States (unanimity approval)
  2012: first reading - 4 meetings
  2013: compromise proposal - 3 meetings (tax removed)
  2014: screening of proposal without tax – 4 meetings, bilateral discussions, COREPER 19/11
  2015: removed from EC work programme
EU Member States’ “positions”

Yes
Yes
Yes
Yes, but
Why?
Hum...
Issues under review

- The need for the EFS / use of other Statutes
- Cost of Implementation and uptake of the EFS
- Minimum assets
- Scope
  - Increasing supervision powers
  - Clarification of cooperation mechanism among supervisory authorities
- Registration
- Clarification of applicable laws and hierarchy of laws
- Economic activities of the FE
2. Why a European Foundation Statute?
A sizeable sector in Europe

- 110,000+ foundations in EU (2008)
  120,000 today
  sector is growing in terms of numbers

- 83-150 billion euros collective annual expenditure

- 1,000,000 FT employees (direct employment)
- 2,500,000 volunteers
Recent trends

- **Growth of the sector**
- **Internationalisation:** Foundations (and other PBOs); funders/donors and beneficiaries are often active and/or have assets in multiple countries
- **Collaboration:** Seeking partnerships, scaling up, pooling resources (financial and expertise)
The Challenges...

60+ laws governing foundations in the EU:

Multiple barriers - legal, administrative and fiscal

- Lack of recognition of legal personality abroad
- Problem to move a foundation’s seat cross-border if needed
- Administrative barriers
- Fiscal barriers to foundations/donors

Result:

- Additional costs > €100 million annually
- Initiatives delayed or abandoned
The Solution...
A European level playing field

A EUROPEAN FOUNDATION STATUTE

An optional, legal instrument for foundations serving the general interest with cross-border activity (at least two countries) existing in parallel with national foundation laws
3. What type of Statute?

Key Features
Ensuring easy access

• Different options to establish Inter vivos, causa mortis, conversion, mergers
  o Option for limited duration ≤ 6 years
• Comparatively low initial minimum assets initially at 25,000 EUR increased to 50,000 EUR
• Full legal personality and capacity
• Generous cross-border component (2 MS)
• Non-discriminatory tax treatment originally included – removed by Member States in Nov 2013
Credibility & Trustworthiness

- (Closed) list of 20+ purposes serving the general interest
- Internal Governance rules
  - At least 3 Directors
  - Conflict of interest rules
- Audit & mandatory disclosure
- National registration and Member State supervision
- Limitation of unrelated economic activities
For whom - who would benefit?

• Provide foundations with a common framework & conditions across EU; greater legal certainty; lower (admin.) costs
• Enable donors to securely and easily support/pool assets for good causes;
• Increase resources for public good that ultimately benefit citizens
• Improve the availability of funding sources and net aggregate funding across Member States for general interest work
• Increased collaborations across Europe to meet common challenges
Advantages

• Efficiency and simplification, reduce barriers

• Accountability

• Economic benefits, encourage new activities of all sizes

• Citizen benefits, enable citizens engagement
What’s next?

“The Commission will (therefore) consider, together with the foundation sector and other stakeholders, other possibilities, including non-legislative ones, which could be used in order to facilitate the activity of foundations across the EU”

Letter from the EC January 2015

The Council / the Member States