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Proposal for a

**COUNCIL REGULATION**

**on the Statute for a European Foundation (FE)**

(Text with EEA relevance)

{SWD(2012) 1 final}

{SWD(2012) 2 final}

## **EXPLANATORY MEMORANDUM**

### **1. CONTEXT OF THE PROPOSAL**

#### **1.1. General context**

Foundations play an important role in the EU, particularly in civil society. Through their various activities in numerous areas, they contribute to the fundamental values and objectives of the Union, such as respect for human rights, the protection of minorities, employment and social progress, protection and improvement of the environment or the promotion of scientific and technological advances. In this context, they make a substantial contribution to achieving the ambitious goals of smart, sustainable and inclusive growth set by the Europe 2020 strategy<sup>1</sup>. They also enhance and facilitate a more active involvement of citizens and civil society in the European project. Nonetheless, the exercise of their activities encounters various obstacles across the EU.

The Single Market Act Communication<sup>2</sup> adopted in April 2011 highlighted the need to put an end to market fragmentation and to eliminate barriers and obstacles to the movement of services, innovation and creativity in order to deliver growth and employment, and promote competitiveness. It stressed the importance of strengthening citizens' confidence in the single market and of ensuring that its benefits are passed on to citizens. In the context of foundations' contribution to the social economy and to financing innovative initiatives of public benefit, the Single Market Act called for action to remove obstacles that foundations face in operating on a cross-border basis. The same call was made in the EU Citizenship report 2010 "Dismantling the obstacles to EU citizens' rights"<sup>3</sup>, which stressed the importance of enhancing the European dimension of the activities of public benefit purpose foundations with a view to promoting citizen action at EU level.

The Commission also underlined the importance of developing European legal forms for entities in the social economy sector (e.g. foundations, cooperatives or mutuals) in its "Social Business Initiative" (SBI) Communication of 25 October 2011<sup>4</sup>. The SBI aims to support the development of businesses which primarily focus on creating social impact through their activities and its actions also address and benefit those social economy entities (including foundations) that meet the general criteria for a "social business" set out in the Communication.

The European Parliament called for an appropriate legal framework for foundations (as well as for mutual societies and associations) in its resolution responding to the Commission's Single Market Act; it argued in favour of introducing Statutes for these legal entities in its written declaration 84/2010 of March 2011; and it urged the Commission to work towards this objective in its previous resolutions of 2009 and 2006<sup>5</sup>. The European Economic and Social

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<sup>1</sup> COM(2010) 2020.

<sup>2</sup> COM(2011) 206.

<sup>3</sup> COM(2010) 603.

<sup>4</sup> COM(2011) 682.

<sup>5</sup> EP resolution of 6 April 2011 on a Single Market for Europeans (2010/2278(INI)); written declaration 84/2010, P7\_DCL(2010)0084; EP resolution of 19 February 2009 on Social Economy (2008/2250(INI)); and EP resolution of 4 July 2006 on recent developments and prospects in relation to company law (2006/2051(INI)).

Committee advocated a Statute in its 2010 own initiative opinion<sup>6</sup>, which set out its reflections on how such a Statute should be developed, and the Committee of the Regions supported the Commission's announcement of the initiative on foundations in the Single Market Act<sup>7</sup>.

## **1.2. Grounds for and objectives of the proposal**

Foundations cannot channel funds efficiently on a cross-border basis in the EU. When they decide to operate across borders, foundations have to spend part of the resources they collect on legal advice and fulfilling legal and administrative requirements laid down by the different national laws.

The present initiative creates a new European legal form intended to facilitate foundations' establishment and operation in the single market. It will allow foundations to more efficiently channel private funds to public benefit purposes on a cross-border basis in the EU. This, in turn, should result – for instance, due to lower costs for foundations – in more funding being available for public benefit purpose activities and therefore, should have a positive impact on European citizens' public good and the EU economy as a whole.

This proposal does not aim to deal with the particular situation of political foundations affiliated to political parties at European level. These foundations have been subject to specific rules under EU law since 2007, in particular as regards their access to EU funding (together with political parties at European level)<sup>8</sup>. The Commission is currently reviewing these rules and will adopt a legislative proposal amending them in the course of 2012<sup>9</sup>.

## **2. RESULTS OF CONSULTATIONS WITH INTERESTED PARTIES AND IMPACT ASSESSMENT**

In preparing the current proposal the Commission relied widely on external expertise and engaged comprehensively with different stakeholders.

First, a feasibility study — by a Consortium consisting of the Max Planck Institute for Comparative and International Private Law in Hamburg and the University of Heidelberg (Centre for Social Investment)<sup>10</sup> — was carried out and published in 2008; it suggested that a Statute for a European Foundation (with or without addressing tax issues) would be the preferable policy option to address the problems identified.

Secondly, the Commission held, between February and May 2009, a public consultation on the recommendations of the feasibility study. While foundations expressed strong support for the Statute, national authorities and, to some extent, business organisations were more sceptical as to the need for and feasibility of such a legal form. A more general consultation on the Communication 'Towards the Single Market Act' in 2010-2011 also showed strong interest in the Statute from the non-profit sector.

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<sup>6</sup> INT/498 - CESE 634/2010 - April 2010.

<sup>7</sup> CdR 330/2010 fin.

<sup>8</sup> See Regulation (EC) No 1524/2007 on the regulations governing political parties at European level and the rules governing their funding of 18.12.07 amending Regulation (EC) 2004/2003 of 04.11.03.

<sup>9</sup> Commission work programme for 2012, Item n.76.

<sup>10</sup> See [http://ec.europa.eu/internal\\_market/company/docs/eufoundation/feasibilitystudy\\_en.pdf](http://ec.europa.eu/internal_market/company/docs/eufoundation/feasibilitystudy_en.pdf), hereafter the 'feasibility study'.

In addition, the Commission gathered further information about concrete problems encountered through bilateral discussions with foundations, in particular during the 'European Foundation Week' in June 2010 and via contacts with the European Foundation Centre (EFC).

The Commission also collected information on the relevant national legislation from national authorities through a questionnaire and subsequent discussions within the Company Law Expert Group (CLEG)<sup>11</sup> in 2009, 2010 and 2011. Many Member States expressed reservations as to the need for new European legal forms, including for foundations.

The Commission took the above comments and concerns into account when drafting the proposal by basing itself on an analysis of foundations' needs and of national legal systems, and by opting for solutions (e.g. in terms of the scope of the initiative) on which a compromise might be more easily reached given the diversity of national laws.

The impact assessment has been built upon the data gathered as mentioned above. The overall problem identified was the fact that the variety of national civil and tax rules made foundations' cross-border operations costly and cumbersome and that, as a result, the cross-border channelling of funds to public benefit purposes through foundations was largely under-exploited. The more specific problems identified included uncertainty about recognition as a public benefit purpose foundation in other Member States, the costs of pooling and distributing funds on a cross-border basis, and limited cross-border donations.

The following options have been considered: (1) no new policy action at EU level; (2) an information campaign and a voluntary quality charter; (3) a Statute for a European Foundation (with or without addressing tax issues); and (4) limited harmonisation of laws on foundations.

The *no policy action* option would rely on ongoing initiatives, including infringement cases and work in the tax area, ensuring completeness of the implementation of the Services Directive, non-legislative initiatives in the area of research, and foundation sector initiatives to support cross-border giving.

The *information campaign* option would seek to improve foundations' knowledge of their rights and obligations under national laws when operating on a cross-border basis. In addition, a *quality charter*, to be drawn up by foundations on a voluntary basis, and an associated "European quality label" that foundations complying with the charter could be awarded, would aim to ensure the quality and trustworthiness of foundations' activities.

The *option of the Statute for a European Foundation without addressing tax issues* proposes an alternative legal form for foundations; it would not call for changes to the existing forms of national foundations and its use would be voluntary. The Statute would lay down certain requirements (e.g. minimum founding assets, public benefit purposes as agreed in most of the Member States) in order to become a European Foundation.

The *option of the Statute for a European Foundation addressing tax issues* would, in addition, require Member States to regard a European Foundation as equivalent to domestic public benefit purpose foundations, and therefore grant it the same tax benefits that are provided to

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<sup>11</sup> CLEG brings together company law experts from national administrations and meets three times a year, under the chairmanship of DG Internal Market and Services.

those domestic foundations. The same solution would apply with respect to donors to and beneficiaries of the European Foundation.

*Limited harmonisation of laws on foundations* would mean harmonising those requirements that foundations need to meet to be able to register and operate abroad, i.e. the acceptable purposes of a public benefit purpose foundation, minimum assets, registration requirements and some aspects of internal governance. Member States would have to allow foundations fulfilling harmonised criteria to operate in their country without imposing any additional requirements. The options of more extensive harmonisation of national laws on foundations and harmonisation of the tax treatment of foundations and their donors were also considered.

The analysis of the impacts of the options proposed showed that the Statute for a European Foundation with automatically applied non-discriminatory tax treatment would be the most appropriate option, removing cross-border obstacles for foundations and donors and facilitating the efficient channelling of funds for public benefit purposes.

### **3. LEGAL ELEMENTS OF THE PROPOSAL**

#### **3.1. Legal basis**

The legal basis for the proposed Regulation on the Statute for a European Foundation is Article 352 TFEU, which provides the appropriate legal basis when no other provision in the Treaty gives the necessary powers to the EU institutions to adopt a measure.

Article 352 is the legal basis chosen for the existing European legal forms in the field of company law, i.e. the European Company, the European Economic Interest Grouping and the European Cooperative Society. The European Court of Justice confirmed in its judgment<sup>12</sup> on the European Cooperative Society that Article 352 was the correct legal basis.

#### **3.2. Subsidiarity and proportionality**

The proposed action fully complies with the principle of **subsidiarity**. EU action is needed in order to remove the current national barriers and restrictions encountered by foundations when operating across the EU. The current situation demonstrates that the problem is not properly addressed at national level and that its cross-border character requires a common framework to enhance foundations' mobility. Action by Member States alone would not allow the single market to deliver optimum results for EU citizens. This initiative gives foundations the option to choose the proposed European legal form and have their cross-border activities facilitated.

The proposed action would be suitable and would not go beyond what is necessary to satisfactorily achieve the objectives that have been set, therefore complying with the principle of **proportionality**. It aims to create a new legal form in addition to the national forms, leaving unchanged the different national laws already in existence. It would leave the Member States the choice and scope to uphold and develop their national legal forms. Moreover, as far as taxation is concerned, it would not replace Member States' laws on the tax treatment of public benefit purpose foundations (and their donors) with a new set of harmonised rules but would just render those existing rules automatically applicable to the European Foundation (and its donors). The proposed action would tackle the most significant obstacles that

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<sup>12</sup> C-436/03 European Parliament v Council of the European Union.

foundations encounter when operating across borders, without laying down exhaustively all the rules applicable to the European Foundation and without introducing a new set of tax rules.

### **3.3. Choice of legal instrument**

A Regulation is the most appropriate means to ensure the uniformity of the Statute in all the Member States as a European legal form requires the uniform and direct application of rules across the EU.

## **4. DETAILED EXPLANATION OF THE PROPOSAL**

*Chapter I (General provisions)* contains *the subject matter*, the *rules applicable* to the FE, and a set of *definitions* to ensure the clarity of the terms used for the purpose of the Regulation.

It lays down the *main features* of the FE: the FE is an entity with a public benefit purpose with legal personality and full legal capacity in all the Member States of the EU; it has a cross-border dimension in terms of activities or a statutory objective of carrying out activities in at least two Member States; its founding assets are equivalent to at least 25 000 euro. The FE is allowed to engage in economic activities as long as the profit is used in pursuance of its public benefit purpose(s), in accordance with the Regulation. An exhaustive list of the public benefit purposes accepted under civil and tax laws in most Member States is provided for reasons of legal certainty.

*Chapter II (Formation)* lays down the *methods of formation* of the FE, the minimum content of the statutes and the registration requirements.

With regard to its *formation*, the FE can be formed *ex nihilo* (by a testamentary disposition, by notarial deed or by means of a written declaration by any natural and/or legal person(s) or public body(ies) in accordance with the applicable national law), by the *merger* of public benefit purpose entities legally established in one or more Member States or by the *conversion* of a national public benefit purpose entity legally established in a Member State into the FE.

The Chapter establishes a list of documents and particulars that should accompany applications for *registration* and should be disclosed. Moreover, in order to facilitate the process of registration, the registries are required to cooperate with each other with regard to the documents and particulars of the FE.

*Chapter III (Organisation of the European Foundation)* lays down rules regarding the governing board, managing directors and supervisory board, including on conflicts of interest. In order to ensure its credibility and trustworthiness, the FE has to apply high standards of transparency and accountability.

*Chapter IV (Registered office and its transfer)*. The FE can transfer its registered office to another Member State, while maintaining its legal personality and not having to wind up.

*Chapter V (Involvement of employees and volunteers)* contains rules concerning the information and consultation of employees and volunteers, in accordance with the relevant EU law. The proposal does not contain rules on employee participation in the board as board-level participation in public benefit purpose entities exists in very few Member States.

*Chapter VI (Dissolution of the FE).* The Regulation allows the *conversion* of the FE back into a public benefit purpose entity governed by the law of the Member State in which it has its registered office upon the condition that the conversion is permissible under the statutes of the FE. It also contains rules on *winding up* in cases where the purpose of the FE has been achieved or cannot be achieved, the time for which it was set up has expired or it has lost all its assets.

*Chapter VII (Member State supervision)* gives robust powers to the competent national supervisory authorities, in order to enable them to effectively oversee the activities of the public benefit purpose entities they are responsible for. They have, for instance, the power to approve a change to the purpose of the FE, to inquire into the affairs of the FE, to issue warnings to the governing board and to order the governing board to comply with the statutes of the FE, the Regulation and the applicable national law, to dismiss or propose the dismissal of a board member to a court or to wind-up or propose winding-up of the FE to a court. Supervisory authorities are also required to cooperate and exchange information with one another and rules are included as regards cooperation of registries and supervisory authorities with tax authorities.

*Chapter VIII (Tax treatment).* The Regulation provides for the automatic application to the FE and its donors of the same tax benefits granted to domestic public benefit purpose entities. This is because Member States would be required to regard the FE as equivalent to public benefit purpose entities established under the legislation of the Member States concerned. Donors to and beneficiaries of the FE should be treated in accordance with the same principle.

*Chapter IX (Final provisions)* requires Member States to lay down rules on penalties applicable to infringements of the provisions of this Regulation and to take all measures necessary to ensure that they are implemented. The proposal incorporates a review clause.

## **5. BUDGETARY IMPLICATION**

The proposal has no implication for the budget of the European Union.

## **6. ADDITIONAL INFORMATION**

The proposed Regulation is relevant to the European Economic Area.

Proposal for a

**COUNCIL REGULATION**

**on the Statute for a European Foundation (FE)**

(Text with EEA relevance)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 352 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the consent of the European Parliament<sup>13</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>14</sup>,

Having regard to the opinion of the Committee of the Regions<sup>15</sup>,

Acting in accordance with a special legislative procedure,

Whereas:

- (1) Public benefit purpose entities, through their activities in numerous areas, contribute to the fundamental values and objectives of the Union such as respect for human rights, protection of minorities, employment and social progress, the protection, conservation and improvement of the environment or the promotion of scientific and technological advances.
- (2) The legal framework in which public benefit purpose entities carry out their activities in the Union is based on national laws, without harmonisation at Union level. In addition, there are substantial differences between civil and tax laws across the Member States. Such differences make cross-border operations of public benefit purpose entities costly and cumbersome. As a result, the cross-border channelling of funds to public benefit purposes remains largely underexploited.

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<sup>13</sup> OJ C , , p. .

<sup>14</sup> OJ C , , p. .

<sup>15</sup> OJ C , , p. .

- (3) In view of the problems faced by public benefit purpose entities and the fact that there is no other European legal form which they could use for their activities, a European form specifically designed for such entities, which could be created throughout the Union, should be provided for. This legal form should be as uniform as possible across the Union to best promote cross-border public benefit purpose activities.
- (4) The European Parliament adopted resolutions on 6 April 2011 on a Single Market for Europeans<sup>16</sup>, on 19 February 2009 on Social Economy<sup>17</sup>, and on 4 July 2006 on recent developments and prospects in relation to company law<sup>18</sup>, and issued a written declaration on 10 March 2011 on establishing European statutes for mutual societies, associations and foundations<sup>19</sup>, in which it called for a Statute for a European Foundation.
- (5) The European Economic and Social Committee issued an opinion on 28 April 2010 on the European Foundation Statute<sup>20</sup>. The Committee of the Regions issued an opinion on 1 April 2011 on the Single Market Act<sup>21</sup>. Both opinions supported the initiative of the Commission to establish a Statute for a European Foundation.
- (6) The European Foundation (hereinafter 'FE') should be governed by the substantive rules set out in this Regulation and by the statutes of the FE. Provisions of national law applicable to public benefit purpose entities should apply to matters that are not regulated by the Regulation or the statutes of the FE or are only partly regulated by them.
- (7) The FE should promote public benefit purposes only, understood as benefiting a broadly defined group of beneficiaries. Since activities of public benefit purpose entities focus on areas that are important for European citizens and the European economy, such scope would bring the highest social, economic and environmental benefits. In order to ensure legal certainty, the public benefit purpose should be defined by means of a comprehensive list of purposes.
- (8) The main purpose of the Statute is to remove obstacles that foundations face when operating across borders within the Union. Therefore, the Union action should focus on those public benefit purpose entities that already carry out activities in other Member States or have the intention, stated in their statutes, of doing so.
- (9) The FE should have assets of a certain minimum value to make it trustworthy for donors and public authorities, to prove the seriousness of its purpose and to prevent misuse of the legal form. However, the requirement of a minimum value of assets should not make the European Foundation too costly to establish and thus make it more difficult to use such a legal form.

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<sup>16</sup> 2010/2278(INI).

<sup>17</sup> 2008/2250(INI).

<sup>18</sup> 2006/2051(INI).

<sup>19</sup> Written declaration 84/2010, P7\_DCL(2010)0084.

<sup>20</sup> INT/498 - CESE 634/2010 - April 2010.

<sup>21</sup> CdR 330/2010 fin.

- (10) In order to be fully operational, the FE should have legal personality and full legal capacity in all Member States, and should be able to undertake any activities necessary for the pursuit of its public benefit purpose, as long as they are in line with its statutes and this Regulation.
- (11) The ability to carry out economic activities, both related and unrelated to its public benefit purpose, would provide the FE with a substantial source of finance and means of increasing the funds available for public benefit purposes, and should be permitted. However, in the interest of ensuring appropriate use of assets and creditor protection, a threshold for permitted unrelated economic activities should be set.
- (12) To allow the FE to pursue its cross-border activities, it should enjoy, where necessary, a right of establishment within the meaning of Article 49 of the Treaty on the Functioning of the European Union.
- (13) In order to make the FE widely accessible to founders and foundations, it should be possible to create the FE *ex nihilo*, by merger between national public benefit purpose entities or by converting national public benefit purpose entities into the FE. In order to facilitate the creation of the FE by conversion or by cross-border merger, the Regulation should lay down rules on their respective procedures. Mergers between public benefit purpose entities having their registered office in the same Member State should be governed by the law of that Member State.
- (14) In order not to impose unnecessary burdens on public benefit purpose entities, the formalities for the registration of the FE should be limited to those requirements which are necessary to ensure legal certainty. The national registries should notify the Commission of their registered FEs.
- (15) In order to allow the FE to have legal structures that can be adapted to its needs and size and are able to evolve as activity develops, the FE should be free to decide in its statutes the internal organisation that suits it best. However, some mandatory rules on governance, as well as in particular on the role and duties of the governing board and the minimum number of its members should be laid down by the Regulation. The FE should be able to establish a supervisory board or other bodies. In order to facilitate independent opinions and critical challenge, the governing board and the supervisory board of the FE should be sufficiently diverse as regards age, gender, educational and professional background. Gender balance is of particular importance to ensure adequate representation of population. Due to differences in national regimes, the liability of directors should be governed by the applicable national law.
- (16) It is essential that the assets of the FE are used for the furtherance of its public benefit purpose. Clear rules should be provided in order to avoid any conflict of interests that would jeopardise this principle. In this regard, it should be noted that not only an actual conflict of interest, but also the mere appearance of a conflict of interest can impact on the reputation and image of the FE.
- (17) For the sake of credibility and trustworthiness, the FE should apply high standards of transparency and accountability. The FE should keep records of its financial transactions and annual accounts. Those accounts should be audited in accordance with the requirements laid down in Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and

consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC<sup>22</sup> and be disclosed.

- (18) In order to enable the FE to reap the full benefits of the single market, it should be able to transfer its registered office from one Member State to another.
- (19) Given the specific characteristics of the FE, it should be supervised by a state supervisory authority. This is currently the case in all Member States for national public benefit purpose entities. In order to benefit from the procedures already developed by national authorities, the supervision should take place at national level. The Regulation should set minimum but strong supervisory powers to guarantee adequate and sufficiently uniform powers for supervisory authorities across the Union. For the sake of efficient supervision, cooperation between the supervisory authorities of Member States should be ensured.
- (20) Member States enjoy broad freedom to determine the tax treatment applicable to public benefit purpose entities and their donors with respect to income and capital gains taxes, gift and inheritance taxes, property and land taxes, transfer taxes, registration taxes, stamp duties and similar taxes. At the same time, it is necessary to ensure that Member States do not discriminate against foreign public benefit purpose entities and their donors.
- (21) Many Member States provide for beneficial tax treatment for public benefit purpose entities and their donors. The FE should, therefore, in order to bring the highest added value possible to public benefit purpose entities in the Union, be able to benefit from the same tax advantages which the Member State where the FE has its registered office grants to domestic public benefit purpose entities. Such non-discriminatory treatment should also apply to donors giving to the FE and to the FE's beneficiaries within or across borders. In all cases, this treatment should be applied without any need for the FE or its donors or beneficiaries to prove that the FE is equivalent to domestic public benefit purpose entities.
- (22) Member States should grant to FEs the same tax treatment for their economic activities, including permitted unrelated economic activities, as to domestic public benefit purpose entities. Any preferential tax treatment for economic activities, including permitted unrelated economic activities, should respect the Treaty provisions on competition, including State aid rules.
- (23) Provisions must be adopted to guarantee the right of the FE's employees to be informed and consulted at the appropriate transnational level in situations where the FE has a significant number of employees in different Member States. In order to ensure that they are suited to the specific situation of each FE, the practical arrangements for the transnational information and consultation of employees should be determined primarily by means of an agreement between the parties in the FE or, in the absence thereof, through the application of a set of subsidiary requirements contained in Directive 2009/38/EC of the European Parliament and of the Council of 6 May 2009 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the

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<sup>22</sup> OJ L 157, 9.6.2006, p. 87.

purposes of informing and consulting employees<sup>23</sup>. In view of the importance of volunteering in foundations, long-term volunteers should be involved in the process of information and consultation in the FE.

- (24) For the effective application of this Regulation, Member States should ensure that the provisions they adopt in relation to this Regulation do not result in disproportionate regulatory restrictions with respect to the FE or in discriminatory treatment of the FE as compared with public benefit purpose entities governed by national law.
- (25) Member States should lay down rules on penalties applicable to infringements of the provisions of this Regulation, including infringement of the obligation to regulate in the statutes of the FE the matters prescribed by this Regulation, and should ensure that they are enforced. Those penalties must be effective, proportionate and dissuasive.
- (26) The Treaty on the Functioning of the European Union does not provide, for the adoption of this Regulation, powers other than those under Article 352.
- (27) Since the objectives of the proposed action to facilitate cross-border activities of public benefit purpose entities cannot be sufficiently achieved by the Member States in so far as they involve the creation of a public benefit purpose entity form with common features throughout the Union and can therefore, by reason of the scale of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity laid down in Article 5 of the Treaty on the European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary to achieve those objectives.
- (28) This Regulation is without prejudice to the rules on political foundations at European level laid down by Regulation (EC) N° 2004/2003 of the European Parliament and of the Council of 4 November 2003 on the regulations governing political parties at European level and the rules regarding their funding<sup>24</sup>.

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<sup>23</sup> OJ L 122, 16.5.2009, p. 28.

<sup>24</sup> OJ L 297, 15.11.2003, p. 1.

HAS ADOPTED THIS REGULATION:

## **Chapter 1**

### **General provisions**

#### **SECTION 1**

##### **SUBJECT MATTER, APPLICABLE RULES AND DEFINITIONS**

###### *Article 1*

###### *Subject matter*

This Regulation lays down the conditions governing the establishment and operation of a European Foundation (*Fundatio Europaea*, hereinafter 'FE').

###### *Article 2*

###### *Definitions*

For the purposes of this Regulation, the following definitions apply:

- (1) 'assets' means any tangible or intangible resource capable of being owned or controlled to produce value;
- (2) 'unrelated economic activity' means an economic activity of the FE, not serving directly the public benefit purpose of the public benefit purpose entity;
- (3) 'testamentary disposition' means any legal document, according to the national law of the Member State where the testator is resident, which describes how the testator's property is to be managed and distributed after his/her death;
- (4) 'public body' means any entity, whether or not legally part of the state, national, regional or local government, or other legally constituted public authority, which provides public services or carries out public functions on a statutory basis;
- (5) 'public benefit purpose entity' means a foundation with a public benefit purpose and/or similar public benefit purpose corporate body without membership formed in accordance with the law of one of the Member States;
- (6) 'home Member State' means the Member State in which the FE has its registered office immediately before the transfer of its registered office to another Member State;

- (7) 'host Member State' means the Member State to which the registered office of the FE is transferred.

### *Article 3*

#### *Rules applicable to the FE*

1. The FE shall be governed by this Regulation and the statutes of the FE.
2. In matters that are not, or are only partly, regulated by this Regulation and/or the statutes of the FE, the FE shall be governed by the following rules:
  - (a) the provisions adopted by Member States in order to ensure the effective application of this Regulation;
  - (b) for matters not covered by point (a), the provisions of the national law applicable to public benefit purpose entities.

### *Article 4*

#### *Disclosure*

1. Information concerning the FE to be disclosed pursuant to this Regulation shall be disclosed in accordance with the applicable national law in such a way that it is easily accessible to the public.
2. The letters and order forms of the FE, whether they are in paper or electronic form, as well as any website of the FE shall state the following particulars:
  - (a) the information necessary to identify the registry referred to in Article 22(1), with the number of entry of the FE in that registry;
  - (b) the name of the FE, the Member State in which the FE has its registered office, the address of its registered office and,
  - (c) where appropriate, the fact that the FE is the subject of insolvency or dissolution proceedings.

## SECTION 2

### GENERAL REQUIREMENTS FOR THE FE

#### *Article 5*

##### *Public benefit purpose*

1. The FE shall be a separately constituted entity for a public benefit purpose.
2. The FE shall serve the public interest at large.

It may be created only for the following purposes, to which its assets shall be irrevocably dedicated:

- (a) arts, culture or historical preservation;
- (b) environmental protection;
- (c) civil or human rights;
- (d) elimination of discrimination based on gender, race, ethnicity, religion, disability, sexual orientation or any other legally prescribed form of discrimination;
- (e) social welfare, including prevention or relief of poverty;
- (f) humanitarian or disaster relief;
- (g) development aid and development cooperation;
- (h) assistance to refugees or immigrants;
- (i) protection of, and support for, children, youth or elderly;
- (j) assistance to, or protection of, people with disabilities;
- (k) protection of animals;
- (l) science, research and innovation;
- (m) education and training;
- (n) European and international understanding;
- (o) health, well-being and medical care;
- (p) consumer protection;

- (q) assistance to, or protection of vulnerable and disadvantaged persons;
- (r) amateur sports;
- (s) infrastructure support for public benefit purpose organisations.

#### *Article 6*

##### *Cross-border component*

At the time of registration, the FE shall have activities or a statutory objective of carrying out activities in at least two Member States.

#### *Article 7*

##### *Assets*

1. The assets of the FE shall be expressed in euro.
2. The FE shall have assets equivalent to at least EUR 25 000.

#### *Article 8*

##### *Liability*

The liability of the FE shall be limited to its assets.

### **SECTION 3**

#### **LEGAL PERSONALITY AND LEGAL CAPACITY**

#### *Article 9*

##### *Legal personality*

The FE shall have legal personality in all Member States.

The FE shall acquire legal personality on the date on which it is entered in the registry in accordance with Articles 21, 22 and 23.

## *Article 10*

### *Legal capacity*

1. The FE shall have full legal capacity in all Member States.

Unless restricted by its statutes, the FE shall have all rights necessary to pursue its activities, including the right to own movable and immovable property, to make grants, to raise funds, to receive and hold donations of any kind, including shares and other negotiable instruments, inheritances and gifts 'in kind' from any lawful source including from third countries.

Where necessary for the pursuance of its activities, the FE shall have the right of establishment in any Member State.

2. The FE may act in pursuit of its purpose in any lawful manner allowed by its statutes which is consistent with its public benefit purpose and is in compliance with this Regulation.
3. Unless restricted by its statutes, the FE may carry out activities in any third country.

## *Article 11*

### *Economic activities*

1. Unless restricted by its statutes, the FE shall have the capacity and be free to engage in trading or other economic activities provided that any profit is exclusively used in pursuance of its public benefit purpose(s).
2. Economic activities unrelated to the public benefit purpose of the FE are allowed up to 10% of the annual net turnover of the FE provided that the results from unrelated activities are presented separately in the accounts.

## **Chapter II**

### **Formation**

#### **SECTION 1**

##### **METHODS OF FORMATION**

###### *Article 12*

###### *Methods of formation*

1. The FE may be formed by one of the following methods:
  - (a) testamentary disposition of any natural person, as provided for in Article 13;
  - (b) notarial deed or written declaration of any natural and/or legal person(s) or public body(ies) in accordance with the applicable national law, as provided for in Article 13;
  - (c) merger of public benefit purpose entities legally established in one or more Member States, as provided for in Articles 14, 15 and 16;
  - (d) conversion of a national public benefit purpose entity legally established in a Member State into the FE, as provided for in Articles 17 and 18.
2. The FE shall be set up for an indefinite period of time or, where expressly laid down in its statutes, for a specified period of time of not less than two years.

###### *Article 13*

###### *Formation by testamentary disposition, notarial deed or written declaration*

The testamentary disposition, notarial deed or written declaration shall at least:

- (a) express the intention to establish the FE;
- (b) express the intention to donate to the FE;
- (c) determine the FE's initial assets;
- (d) determine the public benefit purpose of the FE.

## *Article 14*

### *Formation by merger*

1. The FE may be created by a merger between public benefit purpose entities legally established in one or more Member States provided that the following conditions are met:
  - (a) the merger between national public benefit purpose entities is permitted under the applicable national law;
  - (b) the merger is permitted under the statutes of each of the merging entities.
2. The governing board of each of the merging entities shall decide on the merger. The decision shall meet the quorum and majority requirements that would apply to a national public benefit purpose entity wanting to merge with another national public benefit purpose entity, or, in the absence of such rules, the requirements that would apply to a national public benefit purpose entity wanting to amend its statutes.
3. Without prejudice to Article 16, a merger between public benefit purpose entities legally established in the same Member State shall take place in accordance with the applicable national law.

A merger between public benefit purpose entities legally established in different Member States shall take place in accordance with Article 15.

## *Article 15*

### *Request for a cross-border merger*

1. A detailed request for a merger decided by the governing boards pursuant to Article 14(2) shall be submitted by each of the merging entities to the competent authority in the Member State where each entity is legally established, and, where applicable, published in accordance with the rules of that Member State.
2. The request for a merger shall include the decision of the governing board referred to in Article 14(2) and the common draft terms of merger containing at least the following particulars:
  - (a) the name and address of each of the merging public benefit purpose entities;
  - (b) the name and address of the intended registered office for the FE;
  - (c) the proposed statutes of the FE;
  - (d) the forms of protection of the rights of creditors and employees of the merging entities.

3. Each competent authority shall treat the request for a merger in accordance with the same procedures and principles as if it had been a request for a merger resulting in a national public benefit purpose entity.
4. In each Member State concerned, the competent authority shall issue, without undue delay, a certificate of the completion of the pre-merger acts and formalities.
5. Following the registration of the FE pursuant to Articles 21, 22 and 23, the registry shall notify, without delay, the competent authorities referred to in paragraph 1 and where applicable, the authority responsible for the registration of the public benefit purpose entities dissolved by the merger.

Removal of the old registration, where applicable, shall be effected without delay but not before the notification has been received.

### *Article 16*

#### *Consequences of the merger*

1. In case of merger by the formation of a new legal person, all assets and liabilities of each public benefit purpose entity shall be transferred to the new FE, and the merging entities shall cease to exist.
2. In case of merger by absorption, all assets and liabilities of the public benefit purpose entity being absorbed shall be transferred to the absorbing public benefit purpose entity, the entity being absorbed shall cease to exist and the absorbing legal person shall become the FE.

### *Article 17*

#### *Formation by conversion*

1. The FE may be formed by conversion of a public benefit purpose entity legally established in a Member State, provided that it is permitted under the statutes of the converting entity.
2. The governing board of the entity shall decide on the conversion to the FE and the necessary amendments to the statutes.
3. The formation of the FE by conversion shall not result in the winding up of the converting public benefit purpose entity or any loss or interruption of its legal personality or affect any right or obligation existing before the conversion.

## *Article 18*

### *Request for conversion*

1. A detailed request for conversion decided by the governing board pursuant to Article 17(2) shall be submitted to the competent authority in the Member State where the entity is legally established, and, where applicable, published in accordance with the rules of that Member State.
2. The request for conversion shall include the decision of the governing board referred to in Article 17(2) and the draft terms of conversion containing at least the following particulars:
  - (a) the name and address of the converting public benefit purpose entity;
  - (b) the name and the address of the intended registered office for the FE;
  - (c) the proposed statutes of the FE;
  - (d) the forms of protection of the rights of the employees of the converting public benefit purpose entity.
3. The competent authority shall treat the request for conversion in accordance with the same procedures and principles as if it had been a request to amend the statutes of the public benefit purpose entity.
4. The competent authority shall issue, without undue delay, a certificate of completion of the pre-conversion acts and formalities.
5. Following the registration of the FE pursuant to Article 21, 22 and 23, the registry shall notify, without delay, the competent authority referred to in paragraph 1 and where applicable, the authority responsible for the registration of the converting public benefit purpose entity.

Removal of the old registration, where applicable, shall be effected without delay but not before the notification has been received.

## **SECTION 2**

### **STATUTES**

## *Article 19*

### *Minimum content of the statutes*

1. The statutes of the FE shall include at least:
  - (a) the names of the founders

- (b) the name of the FE
  - (c) the address of the registered office
  - (d) a description of its public benefit purposes
  - (e) the assets at the time of formation
  - (f) the financial year of the FE
  - (g) the number of members of the governing board
  - (h) rules on the appointment and dismissal of the governing board
  - (i) the bodies of the FE other than the governing board and their functions, where applicable
  - (j) the procedure for amending the statutes
  - (k) the specified period of time the FE shall exist for if it is not established for an indefinite period of time
  - (l) the distribution of net assets after winding up
  - (m) the date when the statutes were adopted
2. The statutes of the FE shall be in writing and subject to the formal requirements of the applicable national law.

#### *Article 20*

##### *Amendment of statutes*

1. Where the existing statutes have become inappropriate for the functioning of the FE the governing board may decide on amendment to the statutes.
2. The purpose of the FE may only be changed if the current purpose has been achieved or cannot be achieved or where the current purpose(s) have clearly ceased to provide a suitable and effective method of using the FE's assets.
3. Any amendment of the statutes, insofar it affects the purpose of the FE, shall be consistent with the will of the founder.
4. The governing board shall adopt by unanimity any change to the purpose of the FE and submit it to the supervisory authority for approval.

## SECTION 3

### REGISTRATION

#### *Article 21*

##### *Registration*

1. The FE shall be registered in one Member State.
2. The FE formed by a merger between two public benefit purpose entities legally established in the same Member State shall be registered in that Member State.
3. The FE formed by a cross-border merger shall be registered in one of the Member States where the merging entities were legally established.
4. The FE formed by conversion shall be registered in the Member State where the converted entity was originally legally established.

#### *Article 22*

##### *Registry*

1. Each Member State shall designate a registry for the purposes of registration of the FE and notify the Commission thereof.
2. The registries designated pursuant to paragraph 1 shall be responsible for storing information about registered FEs.  
  
The registries shall cooperate with each other with regard to the documents, information and particulars concerning the FEs.
3. The registries shall notify the Commission, by 31 March each year, of the name, the address of the registered office, registration number and sector of activity of the FE registered in, and removed from, the registry in the preceding calendar year as well as the total number of the registered FEs at 31 December of the preceding year.

#### *Article 23*

##### *Formalities relating to registration*

1. Applications for registration as FE shall be accompanied by the following documents and particulars in the language required by the applicable national law:

- (a) the name of the FE and the address of its intended registered office in the European Union;
- (b) the founding documents;
- (c) a signed statement of the assets to be set aside for the purposes of the FE or other proof of the payment of consideration in cash or of the provision of consideration in kind, and details thereof;
- (d) the statutes of the FE;
- (e) the names and addresses, and any other information necessary, in accordance with the applicable national law, to identify
  - (i) all members of the governing board, and their alternates, if any,
  - (ii) any other person who is authorised to represent the FE in dealings with third parties and in legal proceedings,
  - (iii) the auditor(s) of the FE;
- (f) whether the persons in points (i) and (ii) of point (e) represent the FE individually or jointly;
- (g) the names, purposes and addresses of founding organisations where these are legal entities, or similar relevant information as regards public bodies;
- (h) the names and addresses of offices of the FE, if any and the information necessary to identify the competent registry and the number of entry;
- (i) where the FE was formed as a result of a merger, the following documents
  - (i) the terms of merger;
  - (ii) the certificates referred to in Article 15(4), issued less than six months before the date of submission of the application;
  - (iii) proof that the requirements of the applicable national law as regards the protection of creditors and employees have been complied with;
- (j) where the FE was formed as a result of a conversion, the following documents
  - (i) the terms of conversion;
  - (ii) the certificate referred to in Article 18(4), issued less than six months before the date of submission of the application;
  - (iii) proof that the requirements of the applicable national law as regards the protection of employees have been complied with;
- (k) a certificate from the criminal records office and a declaration of the members of the governing board that they have not been disqualified from serving as a board member.

Member States shall require no other documents or particulars for the registration.

The registry or, where applicable, other competent authority shall check the conformity of the documents and particulars with the requirements of this Regulation and the applicable national law.

2. The registry or, where applicable, any other competent authority, shall check whether the applicant complies with the requirements of this Regulation.
3. The registry shall register the FE where it has submitted all documents and particulars referred to in paragraph 1 and where it complies with the requirements of this Regulation within twelve weeks from the date of application.

No further authorisation by Member State shall be required after registration.

4. The decision of the registry together with the information referred to in points (a) and (d) to (h) of paragraph 1 of this Article shall be disclosed.

#### *Article 24*

##### *Changes to documents and particulars submitted for registration*

1. The governing board or any person authorised to represent the FE shall submit any change with respect to the documents or particulars referred to in Article 23(1) to the registry within 14 calendar days of the day on which the change takes place.
2. After every amendment to the statutes, the FE shall submit the complete text of the statutes to the registry as amended to date. Any submission of a change in the registered information shall be accompanied by documentary evidence that the change has been decided lawfully.
3. The registration of changes with respect to the documents and particulars referred to in Article 23(4) shall be disclosed.

#### *Article 25*

##### *Name of the FE*

1. The name of the FE shall include the abbreviation 'FE'.
2. Only the FE may use the abbreviation 'FE' in its name.

However, entities the names of which contain 'FE' or are followed by the abbreviation 'FE' and were registered in a Member State before the date of entry into force of this Regulation shall not be required to alter their names or that abbreviation.

## Article 26

### *Liability for acts undertaken before the registration of the FE*

Liability for acts undertaken before the registration of the FE shall be governed by the applicable national law.

## Chapter III

### Organisation of the FE

## Article 27

### *Governing board*

1. The FE shall be governed by a governing board composed of an uneven number of at least three members as laid down in the statutes of the FE.
2. Each member of the board shall have one vote when voting on the resolutions.
3. Unless otherwise provided for in the statutes of the FE or this Regulation, the board shall decide by the majority of its members.

## Article 28

### *Members of governing board*

1. Members of the governing board shall have full legal capacity and not be disqualified under the laws of any Member State or a judicial or administrative decision in any Member State from serving as a board member.
2. Members of the governing board may resign at any moment.

A member of the governing board shall resign in any of the following situations:

- (a) the member does not meet the requirements set out in paragraph 1;
- (b) the member does not meet the admission requirements set out in the founding documents or the statutes of the FE;
- (c) the member is found guilty by a court of financial impropriety;
- (d) the member has been proven, by the member's acts or omissions, to be clearly unfit to fulfil the duties of a board member.

3. Where the statutes of the FE so provide, the governing board or the supervisory board may dismiss a member of the governing board for the reasons set out in the second subparagraph of paragraph 2.

The supervisory authority may dismiss a member of the governing board for the reasons set out in the second subparagraph of paragraph 2 or where provided for in the applicable national law, propose the dismissal to a competent court.

## *Article 29*

### *Duties of the governing board and its members*

1. The governing board shall have the following duties:
  - (a) take responsibility for the proper administration, management and conduct of the FE's activities;
  - (b) ensure compliance with the statutes of the FE, this Regulation and the applicable national law.
2. Members of the governing board shall act in the best interest of the FE and its public benefit purpose and observe a duty of loyalty in the exercise of their responsibilities.

## *Article 30*

### *Managing directors*

1. The governing board may nominate one or more managing directors to be responsible for the day-to-day management of the FE, subject to its directions.

The chairman and the majority of the members of the governing board shall not be managing directors at the same time.
2. Managing directors shall act in the best interest of the FE and its public benefit purpose and observe a duty of loyalty in the exercise of their responsibilities.

## *Article 31*

### *Other bodies of the FE*

The statutes of the FE may provide for a supervisory board and other bodies.

## Article 32

### *Conflicts of interest*

1. The founder and any other board members who may have a business, family or other relationship with the founder or with each other, that could create an actual or potential conflict of interest such as to impair his/her judgment, shall not constitute the majority of the governing board.
2. No person may at the same time be a member of both the governing board and the supervisory board.
3. No benefit, direct or indirect, may be distributed to any founder, governing or supervisory board member, managing director or auditor, nor extended to any person having a business or close family relationship with them, unless it is for the performance of their duties within the FE.

## Article 33

### *Representation of the FE in relation to third parties*

The governing board, as well as any other person that the governing board has authorised and is under its instructions, may represent the FE in relations with third parties and in legal proceedings.

## Article 34

### *Transparency and accountability*

1. The FE shall keep full and accurate records of all financial transactions.
2. The FE shall draw up and forward to the competent national registry and to the supervisory authority annual accounts and an annual activity report within six months from the end of the financial year.

The first reporting period shall be from the date on which the FE is entered into the registry in accordance with Articles 21, 22 and 23 to the last day of the financial year as laid down in the statutes of the FE.

3. The annual activity report shall contain at least the following:
  - (a) information on the activities of the FE;
  - (b) description of the way the public benefit purposes for which the FE has been established have been promoted during the given financial year;
  - (c) a list of the grants distributed, taking into account the right of privacy of the beneficiaries.

4. The annual accounts of the FE shall be audited by one or more persons approved to carry out statutory audits in accordance with the national rules adopted pursuant to Directive 2006/43/EC of the European Parliament and of the Council.
5. The annual accounts, duly approved by the governing board, together with the opinion submitted by the person responsible for auditing the accounts, and the activity report shall be disclosed.

## **Chapter IV**

### **Registered office and its transfer**

#### *Article 35*

#### *Seat of the FE*

The FE shall have its registered office and its central administration or principal place of activities in the European Union.

#### *Article 36*

#### *Transfer of registered office*

1. The FE may transfer its registered office from one Member State to another.  
  
Such transfer shall not result in the winding up of the FE or the creation of a new legal entity or affect any right or obligation existing before the transfer.
2. The transfer shall take effect on the date of registration of the FE in the host Member State.
3. The FE shall not transfer its registered office where it is the subject of the use of supervisory powers laid down in the second subparagraph of Article 46(2), when it is in dissolution in accordance with Article 40, or if proceedings for winding-up, insolvency or similar proceedings have been brought against it or where the transfer is against the statutes of the FE or would jeopardize the fulfilment of the purpose of the FE.
4. Registration in the host Member State and removal from the registry in the home Member State shall be disclosed.

## Article 37

### *Transfer procedure*

1. The governing board of the FE shall submit a transfer proposal to the competent authority of the home Member State.
2. The transfer proposal shall include at least the following particulars:
  - (a) the name of the FE, the address of its registered office in the home Member State, the information necessary to identify the registry referred to in Article 22(1) and the number of the FE in that registry;
  - (b) the proposed name of the FE and the address of its intended registered office in the host Member State;
  - (c) the amended statutes of the FE, where appropriate;
  - (d) the proposed timetable for the transfer;
  - (e) a report explaining and substantiating the legal and economic aspects of the proposed transfer and explaining the implications of the transfer for creditors and employees of the FE.
3. The competent authority of the home Member State shall verify that the situations listed in Article 36(3) are not met and issue, without undue delay, a certificate attesting to the completion of the acts and formalities to be accomplished before the transfer.
4. The FE shall submit the following documents and particulars to the competent authority in the host Member State:
  - (a) the certificate referred to in paragraph 3;
  - (b) the transfer proposal approved by the governing board;
  - (c) the documents and particulars listed in Article 23(1).
5. The competent authority of the host Member State shall verify, without undue delay, that the substantive and formal conditions provided for under this Chapter for the transfer of the registered office are met and communicate its decision to the competent registry of the host Member State.

The competent authority of the host Member State can refuse the transfer only on the grounds that the conditions referred to in the previous subparagraph are not met.
6. The competent registry of the host Member State shall register the FE. The competent authority of the host Member State shall notify, without delay, the competent registry of the home Member State of the registration of the FE in the host Member State.

The competent registry of the home Member State shall remove the FE from the registry without delay but not before the notification has been received.

## **Chapter V**

### **Involvement of employees and volunteers**

#### *Article 38*

##### *Representation of employees and volunteers*

1. Where the total number of employees employed within the Union by the FE and its offices reaches or exceeds 50 and at least 10 in each of at least two Member States, the FE shall establish a European Works Council representing the employees of the FE in accordance with paragraph 2.
2. The FE with up to 200 employees shall establish a European Works Council on the request of at least 20 of its employees in at least two Member States or representatives of those employees.

The FE with more than 200 employees shall establish a European Works Council on the request of at least 10% of its employees in at least two Member States or representatives of those employees.

The national measures on the subsidiary requirements set out in subpoints (a) to (e) of point 1 of Annex I to Directive 2009/38/EC of the European Parliament and of the Council shall apply to the establishment of the European Works Council.

3. Representatives of volunteers engaged in formal volunteering activities in the FE for a sustained period shall be given an observer status in the European Works Council.

The number of such representatives shall be of at least one per Member State in which at least 10 such volunteers are present.

#### *Article 39*

##### *Information and consultation of employees and volunteers*

1. The employees and volunteers of the FE shall be informed and consulted at Union level on the situation, evolution, organisation and employment matters of that FE through the European Works Council established in accordance with Article 38.
2. The European Works Council and the governing board or, where applicable, the managing directors of the FE may conclude an agreement on practical arrangements for the information and consultation of employees in the FE.

3. Where no such agreement is concluded or to matters not covered by such agreement, the national measures on the subsidiary requirements set out in points 2-6 of Annex I to Directive 2009/38/EC of the European Parliament and of the Council shall apply.

## **Chapter VI**

### **Dissolution of the FE**

#### *Article 40*

##### *Methods of dissolution*

The FE may be dissolved by one of the following methods:

- (a) conversion of the FE into a public benefit purpose entity under national law, as provided for in Article 41 and 42;
- (b) winding up the FE, as provided for in Article 43 and 44.

#### *Article 41*

##### *Dissolution by conversion*

1. The FE may be converted into a public benefit purpose entity governed by the law of the Member State in which it has its registered office, provided that the conversion is permitted under the statutes of the FE.

The conversion may only take place after two years from the registration of the FE.

2. The governing board of the FE shall decide on the conversion and the necessary amendments to the statutes.
3. The conversion shall not result in winding up of the entity or in the creation of a new legal person or affect any right or obligation existing before the conversion.

#### *Article 42*

##### *Request for dissolution by conversion*

1. The FE shall submit a detailed request for dissolution by conversion to the competent authority in the Member State where it has its registered office in accordance with the law of that Member State.
2. The request for dissolution by conversion shall include the decision of the governing board of the FE referred to in Article 41(2), name and address of the registered office

of the converting FE, the proposed name, address and the statutes of the new public benefit purpose entity, and the forms of protection of the rights of the employees of the converting FE.

3. Where the competent authority approves the request for dissolution by conversion, it shall forward it to the registry and, where applicable, to the authority responsible for the registration of the new public benefit purpose entity.
4. Upon receipt of the approved request for dissolution by conversion, the registry shall remove the FE from the registry without delay, provided that the legal establishment of the new public benefit entity has been completed.
5. The conversion shall take effect on the date on which the FE is deleted from the competent registry.

The conversion shall be disclosed.

### *Article 43*

#### *Decision to wind up*

1. The governing board of the FE may decide to wind up the FE in one of the following cases:
  - (a) the purpose of the FE has been achieved or cannot be achieved;
  - (b) the time for which it was set up has expired;
  - (c) it has lost all its assets.

The governing board shall submit its decision to wind up the FE to the supervisory authority for approval.

2. The supervisory authority may, after having heard the governing board of the FE, decide to wind up the FE or, where provided for in the applicable national law, to propose its winding up to a competent court in one of the following situations:
  - (a) where the governing board has not acted in the cases referred to in paragraph 1;
  - (b) where the FE continuously violates its statutes, this Regulation or the applicable national law.

### *Article 44*

#### *Winding up*

1. Where the supervisory authority has approved the decision of the governing board pursuant to the second subparagraph of Article 43(1) or where the supervisory

authority or, where applicable, a court has decided to wind up the FE, the assets of the FE shall be used in accordance with paragraph 2 of this Article.

2. Once the creditors of the FE have been paid in full, any remaining assets of the FE shall be transferred to another public benefit purpose entity with a similar public benefit purpose or otherwise used for public benefit purposes as close as possible to those for which the FE was created.
3. Final accounts until the date when the winding up takes effect shall be sent to the supervisory authority by the governing board or the liquidator responsible for the winding up together with a report including information on the distribution of the remaining assets. These documents shall be disclosed.

## **Chapter VII**

### **Member State supervision**

#### *Article 45*

##### *Supervisory authority*

Each Member State shall designate a supervisory authority for the purpose of supervising FEs registered in that Member State and notify the Commission thereof.

#### *Article 46*

##### *Powers and duties of the supervisory authority*

1. The supervisory authority shall ensure that the governing board acts in accordance with the statutes of the FE, this Regulation and the applicable national law.
2. The supervisory authority shall have the power to approve the change to the purpose of the FE pursuant to Article 20(4) and the winding up of the FE pursuant to second subparagraph of Article 43(1).

For the purposes of paragraph 1, the supervisory authority shall have at least the following powers:

- (a) where the supervisory authority has reasonable grounds to believe that the governing board of the FE is not acting in accordance with the statutes of the FE, this Regulation or the applicable national law, to inquire into the affairs of that FE and, for that purpose, to require the directors and employees of the FE as well as its auditor(s) to make available all necessary information and evidence;

- (b) where there is evidence of financial impropriety, serious mismanagement or abuse, to appoint an independent expert to inquire into the affairs of the FE at the expense of the FE;
  - (c) where there is evidence that the governing board has not acted in accordance with the statutes of the FE, this Regulation or the applicable national law, to issue warnings to the governing board and to order the governing board to comply with the statutes of the FE, this Regulation and the applicable national law;
  - (d) to dismiss a member of the governing board or where provided for in the applicable national law, to propose the dismissal to a competent court in accordance with the second subparagraph of Article 28(3);
  - (e) to decide to wind up the FE or, where provided for in the applicable national law, to propose the winding up of the FE to a competent court in accordance with Article 43(2).
3. Notwithstanding paragraph 2, the supervisory authority shall have no power to act in the administration of the FE.

#### *Article 47*

##### *Co-operation between supervisory authorities*

1. In order to carry out supervisory powers and take the necessary steps provided for in Article 46, the supervisory authority of Member State where the FE has its registered office and the supervisory authorities of Member States where the FE carries out its activities shall cooperate with each other.
2. The supervisory authorities shall provide each other with all relevant information in the event of infringements or suspected infringements by the FE of its statutes, this Regulation or the applicable national law.
3. On request of the supervisory authority of a Member State where the FE carries out its activities, the supervisory authority of the Member State where the FE has its registered office shall investigate suspected infringements by that FE.

The requested supervisory authority shall inform the requesting supervisory authority of the conclusions which it draws from the information available to it and of any action taken.

#### *Article 48*

##### *Co-operation with tax authorities*

1. The supervisory authority of the Member State where the FE has its registered office shall inform the tax authorities of that Member State as soon as it starts an inquiry

into suspected irregularities pursuant to point (a) of the second subparagraph of Article 46(2) as well as when it designates an independent expert pursuant to point (b) of the second subparagraph of Article 46(2).

2. It shall also inform those tax authorities of the progress and outcome of those inquiries as well as about any warnings issued or sanctions imposed.
3. The registry as well as the supervisory authority of the Member State where the FE has its registered office shall make available to the tax authority of any Member State, on its request, any documents or information concerning the FE.

## **Chapter VIII**

### **Tax treatment**

#### *Article 49*

##### *Tax treatment of the FE*

1. With respect to income and capital gains taxes, gift and inheritance taxes, property and land taxes, transfer taxes, registration taxes, stamp duties and similar taxes, the Member State where the FE has its registered office shall subject the FE to the same tax treatment as is applicable to public benefit purpose entities established in that Member State.
2. With regard to the taxes referred to in paragraph 1, Member States other than those in which the FE has its registered office shall subject the FE to the same tax treatment as is applicable to public benefit purpose entities established in those Member States.
3. For the purposes of paragraphs 1 and 2, the FE shall be regarded as equivalent to public benefit purpose entities established pursuant to the law of the Member States concerned.

#### *Article 50*

##### *Tax treatment of donors to the FE*

1. Any natural or legal person donating to the FE within or across borders shall be subject, with respect to income taxes, gift taxes, transfer taxes, registration taxes, stamp duties and similar taxes, to the same tax treatment that is applicable to donations made to public benefit purpose entities established in the Member State where the donor is resident for tax purposes.

2. For the purposes of paragraph 1, the FE receiving the donation shall be regarded as equivalent to public benefit purpose entities established pursuant to the law of the Member State where the donor is resident for tax purposes.

#### *Article 51*

##### *Tax treatment of beneficiaries of the FE*

Beneficiaries of the FE shall be treated, with respect to the grants or other benefits received, as if they were given by a public benefit purpose entity established in the Member State in which the beneficiary is resident for tax purposes.

## **Chapter IX**

### **Final provisions**

#### *Article 52*

##### *Effective application*

Member States shall make such provision as is appropriate to ensure the effective application of this Regulation two years after its entry into force at the latest.

#### *Article 53*

##### *Penalties*

Member States shall lay down rules on penalties applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. Member States shall notify those provisions to the Commission by *[two years following the entry into force]* at the latest and shall notify it without undue delay of any subsequent amendment affecting them.

#### *Article 54*

##### *Review of the Regulation*

Seven years after the entry into force of this Regulation, the Commission shall forward to the Council and the European Parliament a report on the application of the Regulation and proposals for amendments, where appropriate.

*Article 55*

*Entry into force*

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from [2 years from the entry into force].

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 8.2.2012

*For the Council*  
*The President*