

**Opinion of the Committee of the Regions on 'The Statute for a European Foundation'**

(2013/C 17/13)

## THE COMMITTEE OF THE REGIONS

- supports the Commission's proposed draft regulation on the Statute for a European Foundation (FE), and feels that it follows on well from the adoption of the Regulation on the European citizens' initiative;
- therefore supports the Commission's proposed draft regulation on the Statute for a European Foundation (FE), and recognises that it follows on from the adoption of the Regulation on the European citizens' initiative and of the Regulation on a European grouping of territorial cooperation (EGTC), which aimed to facilitate and promote cross-border, transnational and interregional cooperation at Community level;
- argues that this statute needs to ensure simplification and effectiveness for foundations, so that they can work more effectively on cross-border and transnational projects, either on their own or in partnership with national, regional and local stakeholders; it must at the same time respond to a desire to establish legal safeguards and provide greater clarity for the public regarding foundations' operation and funding;
- understands the desire to strike a balance between the requirements of national law in the various Member States regarding the minimum level of assets required for a foundation and the aim of facilitating the creation of FEs throughout the EU. The Committee is, however, keen to ensure that donors and the public have adequate guarantees regarding the financial soundness of FEs. It calls for the minimum level of assets required for registration of an FE to be increased to EUR 50 000 instead of EUR 25 000, which it considers to be too low, and for this level of assets to be maintained throughout the lifetime of the FE, on pain of dissolution;

<b>Rapporteur</b>	Ms BRUNET – LECHENAU (FR/PES), Vice-President of the Saône et Loire General Council )
<b>Reference document</b>	Proposal for a Council Regulation on the Statute for a European Foundation (FE) COM(2012) 35 final

## I. INTRODUCTION

### THE COMMITTEE OF THE REGIONS

1. is aware of the economic importance of and vital role played by foundations throughout Europe in all areas of public interest, particularly those within the ambit of local and regional authorities such as social and health services, social security, arts and culture, education and training, science, research and innovation, and the environment;

2. understands and laments the difficulties encountered by foundations attempting to overcome national barriers to work on cross-border or transnational projects. They are forced to spend considerable sums on advice or structural costs, which could otherwise have been used more effectively to fulfil their social role;

3. supports the Commission's proposed draft regulation on the Statute for a European Foundation (FE), and feels that it follows on well from the adoption of the Regulation on the European citizens' initiative;

4. also welcomes the fact that the Commission's proposal fits within the broader context of placing the activities of the social and solidarity-based economy on a secure footing within the internal market and thus hopes that the adoption of a statute for a European foundation will pave the way for a statute for a European mutual society;

5. argues that this statute needs to reflect a need for simplification, effectiveness and legal safeguards for foundations, so that they can work more effectively on cross-border and transnational projects, either on their own or in partnership with national, regional and local stakeholders;

6. also stresses that this statute must aim to clarify the operation and funding of foundations for the general public;

7. would like FEs to have a stronger European dimension, not only when they are first established but throughout their lifetimes, and calls for the legal provisions applicable to them to

be based as far as possible on the draft Regulation and on their own statutes, with limited reference to national law;

8. points out that, where FEs are able to raise private funds or receive public financing to achieve their objectives, they must be subject to accounting requirements regarding the use of these funds, both towards their financial backers and towards all citizens of the European Union;

## II. POLICY RECOMMENDATIONS

### THE COMMITTEE OF THE REGIONS

#### The economic importance of the foundation sector

9. notes that the foundation sector is of considerable economic importance, accounting for annual global expenditure in the region of EUR 150 billion and providing direct full-time employment for almost 1 million people throughout the EU;

10. notes that it is in foundations' interest to operate beyond their national borders to respond globally to cross-cutting issues such as migration, socio-economic development, scientific excellence, human rights, the environment, etc.;

11. highlights, in particular, the role that foundations can play through the harnessing of their resources and creativity in a period of major political, financial and social crisis in Europe, in which it is vital to explore all possibilities for strengthening the European Union and guaranteeing its citizens a future and prospects for growth;

#### Burdensome and expensive administrative constraints

12. notes that foundations may encounter difficulties when operating at transnational or cross-border level, because of rules imposed by national legislation that require them to spend around EUR 90-102 million a year on various consultancy and administrative costs, rather than spending these funds on implementing public-interest projects, whether on their own or in partnership with other foundations or local or regional authorities;

### **For a statute boosting the European citizens' initiative through the role of foundations**

13. stresses that the activities of foundations – which are usually set up on the initiative of private parties (individuals or businesses) – relate to public interest projects that are very important to European citizens and often involve matters falling within the competence of local and regional authorities, such as social and health services, social security, arts and culture, education and training, science, research and innovation, etc.;

14. feels that the option of a new legal form as an alternative to national statutes, corresponding to a statute for a "European foundation", would be a key element in improving the role of foundations throughout the European Union;

15. therefore supports the Commission's proposed draft regulation on the Statute for a European Foundation (FE), and recognises that it follows on from the adoption of the Regulation on the European citizens' initiative and of the Regulation on a European grouping of territorial cooperation (EGTC), which aimed to facilitate and promote cross-border, transnational and interregional cooperation at Community level;

16. sees Article 352 TFEU – which allows the Council, acting unanimously on a proposal from the Commission and after obtaining the consent of the European Parliament, to adopt appropriate measures to attain one of the objectives set out in the Treaties – as the only relevant legal basis for this proposed regulation, in the absence of specific provisions in the Treaties explicitly giving the EU institutions competence in this respect. This choice of legal basis matches that chosen in the past for adopting provisions on other statutes, such as those for the European company or the European economic interest grouping, and in no way affects national regulations governing foundations. The Committee would also note that, in connection with the early warning system on the application of the subsidiarity principle, the proposed regulation has attracted just one reasoned opinion from the 19 national parliaments that examined the matter;

17. argues that this statute needs to ensure simplification and effectiveness for foundations, so that they can work more effectively on cross-border and transnational projects, either on their own or in partnership with national, regional and local stakeholders; it must at the same time respond to a desire to establish legal safeguards and provide greater clarity for the public regarding foundations' operation and funding;

### **Highlighting the European dimension**

18. would like the European dimension of FEs to be highlighted more strongly by requiring them to undertake, or aim to undertake, transnational or cross-border activities both when they are first established and throughout their lifetimes;

19. finds it regrettable, in this regard, that the draft regulation frequently refers to the national legislation of the Member States, as it considers this approach to be a source of legal uncertainty for FEs in the absence of rules on harmonisation;

### **Need for clarity, reliability and transparency**

20. points out that the fact that FEs can raise private funds and receive public funding to achieve their goals means that they must be able to provide their donors and financial backers – and more generally all citizens in the European Union – with the greatest possible security regarding their soundness, and with complete transparency regarding their governance and the use of the funds they are given;

### **Clarification of the objective of FEs**

21. argues that, in some Member States, "public benefit" and "public interest" cover different concepts, and may in some cases refer either to a particular legal status or procedure under national law or to a specifically tax-based approach. It therefore suggests that the terminology used should be harmonised to refer to the "public interest", which should be used uniformly in each Member State when determining the purpose of the FE, beyond any tax-based approach;

22. would also like the expression "amateur sports" in Article 5 of the draft to be defined such that it excludes any shift in the actions of FEs towards supporting activities more associated with professional sports;

### **Towards greater reliability**

23. understands the desire to strike a balance between the requirements of national law in the various Member States regarding the minimum level of assets required for a foundation and the aim of facilitating the creation of FEs throughout the EU. The Committee is, however, keen to ensure that donors and the public have adequate guarantees regarding the financial soundness of FEs. It calls for the minimum level of assets required for registration of an FE to be increased to EUR 50 000 instead of EUR 25 000, which it considers to be too low, and for this level of assets to be maintained throughout the lifetime of the FE, on pain of dissolution;

24. regards it as self-evident that FEs should not be for-profit entities, but acknowledges that they may engage in economic activities in order to fulfil their public benefit role, and suggests that Article 11 should be amended to define more clearly the limits within which FEs may engage in economic activities;

25. feels that the issue of remuneration for members of the governing and supervisory bodies of FEs is a corollary of their not-for-profit nature, and that the draft should establish some basic rules in this regard;

26. would like the principles regarding prevention of conflicts of interest to be clarified, as it feels that the current wording is open to varying interpretations that could have the opposite effect to that intended;

27. endorses the rules set out regarding accountability and transparency, but suggests that the procedures for auditing and publishing the activities of FEs should be clarified and made more specific;

#### Need for harmonisation

28. is conscious of the need for budgetary discipline that has informed the decision to establish a supervisory authority for FEs at national level instead of developing a procedure and monitoring authority at European level;

29. acknowledges the benefit in incorporating tax provisions in the draft statute, but has reservations concerning the automatic extension to FEs of the tax treatment applicable to national public interest entities, on account of the significant disparities between Member States in terms of the conditions for granting these national favourable tax regimes.

### III. RECOMMENDATIONS FOR AMENDMENTS

#### Amendment 1

##### Article 2(5)

Text proposed by the Commission	CoR amendment
<p>For the purposes of this Regulation, the following definitions apply:</p> <p>(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;</p>	<p>For the purposes of this Regulation, the following definitions apply:</p> <p>(5) 'public <del>benefit purpose</del> <u>interest</u> entity' means a foundation with a public <del>benefit</del> <u>interest</u> purpose and/or similar public <del>benefit purpose</del> <u>interest</u> corporate body without membership formed in accordance with the law of one of the Member States;</p>

#### Reason

In her first amendment, the rapporteur proposes that "public benefit purpose" be replaced with "public interest".

#### Amendment 2

##### Article 5(1)

Text proposed by the Commission	CoR amendment
<p>Article 5</p> <p><b>Public benefit purpose</b></p> <p>1. The FE shall be a separately constituted entity for a public benefit purpose.</p>	<p>Article 5</p> <p><b>Public <del>benefit</del> <u>interest</u> purpose</b></p> <p>1. The FE shall be a separately constituted entity for a public <del>benefit</del> <u>interest</u> purpose.</p>

#### Reason

The term "public interest" harmonises the concepts of "public benefit" and "public interest" and reduces the risk of confusion with tax law or public law concepts used in certain Member States with regard to granting foundations a particular tax status or treatment under national law.

**Amendment 3**

## Article 5(2)

Text proposed by the Commission	CoR amendment
<p>Article 5</p> <p><b>Public benefit purpose</b></p> <p>2. The FE shall serve the public interest at large.</p> <p>It may be created only for the following purposes, to which its assets shall be irrevocably dedicated:</p> <p>(a) [...]</p> <p>(r) amateur sports;</p> <p>[...].</p>	<p>Article 5</p> <p><b>Public benefit purpose</b></p> <p>2. The FE shall serve the public interest at large.</p> <p>It may be created only for the following purposes, to which its assets shall be irrevocably dedicated:</p> <p>(a) [...]</p> <p>(r) amateur sports, <u>defined as sporting activities engaged in by people who do not derive substantial, regular income from said activities;</u></p> <p>(s) [...]</p> <p>(t) <u>the defence of victims of violence of all kinds.</u></p>

**Reason**

In our view, it is worth defining the concept of amateur sports precisely, given that practices vary between Member States, depending on the sport in question, and that certain sports, although regarded as amateur, are practised at a level and in conditions similar to engaging in a professional activity and do not serve the public interest. It is also worth referring to the defence of victims of violence of all kinds to underline the importance of cooperation with third countries mentioned in the following paragraph.

**Amendment 4**

## Article 6

Text proposed by the Commission	CoR amendment
<p>Article 6</p> <p><b>Cross-border component</b></p> <p>At the time of registration, the FE shall have activities or a statutory objective of carrying out activities in at least two Member States.</p>	<p>Article 6</p> <p><del>Cross-border</del> <b>European component</b></p> <p>At the time of registration, the FE shall have <del>activities or</del> a statutory objective of carrying out activities in at least two Member States.</p> <p><u>Once registered, the FE shall have activities in at least two Member States.</u></p> <p><u>It must continue to carry out these activities in at least two Member States throughout its existence.</u></p>

**Reason**

The proposed amendment is intended to strengthen the European dimension of FEs, by ensuring that they really do carry out activities in several Member States throughout their lifetime, not just when they are first set up. In the case of a newly created FE, which cannot carry out activities at the time of its registration, its statutory objective must include a European dimension, hence the change of wording.

**Amendment 5**

## Article 7(2)

Text proposed by the Commission	CoR amendment
Article 7	Article 7
<b>Assets</b>	<b>Assets</b>
2. The FE shall have assets equivalent to at least EUR 25 000.	2. The FE shall have assets equivalent to at least EUR <del>25 000</del> 50 000 at the time it is registered and throughout <u>its existence</u> .

**Reason**

In order to better safeguard the soundness and reliability necessary in FEs, the Committee proposes that the minimum level of assets required at the point when they are created should be increased to EUR 50 000 and that it should be maintained throughout their existence.

**Amendment 6**

## Article 10(1)

Text proposed by the Commission	CoR amendment
Article 10	Article 10
<b>Legal capacity</b>	<b>Legal capacity</b>
1. The FE shall have full legal capacity in all Member States.	1. The FE shall have full legal capacity in all Member States <u>unless restricted by this regulation</u> .
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.	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.	Where necessary for the pursuance of its activities, the FE shall have the right of establishment in any Member State.

**Reason**

The point that FE shall have full legal capacity in all Member States needs to be amended, in view of the restrictions on economic activities in Article 11 (pursuance of public interest purpose; economic activities unrelated to the public interest purpose of the FE are only allowed up to 10% of the annual net turnover of the FE and provided that their results are presented separately in the accounts and that they are used exclusively for public interest tasks).

## Amendment 7

## Article 11

Text proposed by the Commission	CoR amendment
<p><i>Article 11</i></p> <p><b>Economic Activities</b></p> <p>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).</p> <p>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.</p>	<p><i>Article 11</i></p> <p><b>Economic Activities</b></p> <p>1. <u>Unless restricted by its statutes, the FE shall have the capacity to engage in economic activities provided these are inextricably linked with its public interest tasks and remain ancillary in nature any profit is used in pursuance of its public interest purpose.</u> <del>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).</del></p> <p>2. Economic activities unrelated to the public <del>benefit</del> <u>interest</u> purpose of the FE are <u>only</u> allowed up to a <u>limit</u> of 10% of the annual net <del>turnover</del> <u>resources</u> of the FE, provided that the results from unrelated activities are presented separately in the accounts <u>and are fully dedicated to pursuing its public interest tasks.</u></p>

**Reason**

The aim of the proposed amendment is to provide clearer parameters for an FE's capacity to engage in economic activities, so as to ensure that they do not lose their basic character as not-for-profit bodies by making improper use of purely commercial operations unrelated to their purpose.

## Amendment 8

## Article 21

Text proposed by the Commission	CoR amendment
<p><i>Article 21</i></p> <p><b>Registration</b></p> <p>1. The FE shall be registered in one Member State.</p> <p>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.</p> <p>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.</p> <p>4. The FE formed by conversion shall be registered in the Member State where the converted entity was originally legally established.</p>	<p><i>Article 21</i></p> <p><b>Registration</b></p> <p>1. The FE shall be registered in <del>one</del> <u>the</u> Member State <u>in which it has established its registered office.</u></p> <p>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.</p> <p>3. The FE formed by a cross-border merger shall be registered in <del>one of</del> the Member States where the <del>merging entities were legally established</del> <u>the absorbing foundation has established its registered office.</u></p> <p>4. The FE formed by conversion shall be registered in the Member State where the converted entity was originally legally established.</p>

**Reason**

For the sake of legal certainty, it is proposed that the point of personal connection of the place of the registered offices of the foundation be taken into account as the second criterion for determining where the foundation should be registered.

**Amendment 9**

Insert a new article after Article 31

Text proposed by the Commission	CoR amendment
	<p><b>Governance principles</b></p> <p>1. <u>No person may at the same time be a member of both the governing board and the supervisory board.</u></p> <p>2. <u>Members of the governing board and supervisory board shall perform their duties free of charge. They may be compensated for costs incurred in performing their duties, under the conditions set out in the statutes.</u></p> <p>3. <u>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.</u></p>

**Reason**

The proposed amendment reflects the Committee's desire to provide more specific governance and ethics rules that are in line with the essentially not-for-profit nature of FEs and meet the need for clarity and transparency.

**Amendment 10**

Article 32

Text proposed by the Commission	CoR amendment
<p>Article 32</p> <p><b>Conflicts of interest</b></p> <p>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.</p> <p>2. No person may at the same time be a member of both the governing board and the supervisory board.</p> <p>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.</p>	<p>Article 32</p> <p><b>Conflicts of interest</b></p> <p>1. <del>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.</del> <u>Members of the governing or supervisory board must inform the FE in writing of any direct or indirect interest in a third party that may create a conflict between the interests of the FE and their personal interest or that of a person with whom they have a personal or business relationship.</u></p> <p>2. <del>No person may at the same time be a member of both the governing board and the supervisory board.</del> <u>All governing and supervisory board members must, on a case-by-case basis, refrain from attending and participating in any deliberation or decision in discussions involving an issue concerning an entity or person with whom they have a family or business relationship or in which they have a direct or indirect interest.</u></p> <p>3. <del>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.</del></p>



**Reason**

The proposed amendment reflects the Committee's desire to strengthen the governance and ethics rules, which must provide the clarity and transparency expected from FEs by their donors and the general public.

**Amendment 11**

## Article 33

Text proposed by the Commission	CoR amendment
<i>Article 33</i>	<i>Article 33</i>
<b>Representation of the FE in relation to third parties</b>	<b>Representation of the FE in relation to third parties</b>
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.	The governing board, as well as any other person that the governing board has authorised, <del>and</del> is under its instructions <u>and is entered in the registry</u> , may represent the FE in relations with third parties and in legal proceedings.

**Reason**

The amendment spells out that only persons entered in the registry as authorised representatives may represent the FE in relations with third parties and in legal proceedings, as stated in Article 23(1)(e)(ii) of the draft regulation.

**Amendment 12**

## Article 34(5)

Text proposed by the Commission	CoR amendment
<i>Article 34</i>	<i>Article 34</i>
<b>Transparency and accountability</b>	<b>Transparency and accountability</b>
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.	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. <u>They must, as a minimum, be accessible to all European Union citizens on the FE's website.</u>

**Reason**

This amendment reflects the Committee's desire to strengthen the governance and ethics rules, which must provide the clarity and transparency expected from FEs by their donors and the general public.

**Amendment 13**

## Article 43(2)

Text proposed by the Commission	CoR amendment
<b>Decision to wind up</b>	<b>Decision to wind up</b>
[...]	[...]

Text proposed by the Commission	CoR amendment
<p>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:</p> <p>a) where the governing board has not acted in the cases referred to in paragraph 1.</p> <p>b) where the FE continuously violates its statutes, this Regulation or the applicable national law.</p>	<p>2. The supervisory authority may, after having heard the governing board of the FE, decide to wind up the FE <u>and appoint a liquidator</u> or, where provided for in the applicable national law, to propose its winding up <u>and a person to act as liquidator</u> to a competent court in one of the following situations:</p> <p>a) where the governing board has not acted in the cases referred to in paragraph 1.</p> <p>b) where the FE continuously violates its statutes, this Regulation or the applicable national law.</p>

#### Amendment 14

##### Article 44(1)

Text proposed by the Commission	CoR amendment
<p><b>Winding up</b></p> <p>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.</p> <p>[...].</p>	<p><b>Winding up</b></p> <p>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. <u>The costs of winding up shall be borne by the FE.</u></p> <p>[...].</p>

Brussels, 29 November 2012.

*The President*  
of the Committee of the Regions  
Ramón Luis VALCÁRCEL SISO