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## **Fundatio Europaea: general provisions of the project**

**Abstract.** The Proposal for the Council Regulation on the Statute for a European Foundation was presented on 8 February 2012. The Proposal aims to establish a European Foundation Statute and becomes the answer to the “Single Market Act” call for action to remove the obstacles that foundations face in operating on a cross-border basis and, therefore, to promote their development in the EU. The article deals with the preconditions for the creation of European Foundation. The paper consistently examines the sources of legal regulation and ways of foundation of a European Foundation, addresses the general provisions of the Proposal for the Regulation, as well as the advantages of the European Foundation, which define the effectiveness of their activities. The article analyses the development of the project and explains the reasons of substantial controversies on key matters, which predetermined the withdrawal of the proposal. The paper also presents the conclusions and suggestions.

**Keywords:** European Foundation, EU law, Regulation, supranational character, Proposal for a Council Regulation on the Statute for a European Foundation, public benefit purpose entities.

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## **Fundatio Europaea: projekta pamatnoteikumi**

**Anotācija.** Eiropas Savienības Padomes Regulas projekts par Eiropas nodibinājuma statūtiem tika ierosināts 2012. gada 8. februārī. Priekšlikums paredz Eiropas nodibinājuma izveidošanu un kļuva par atbildi uz vienotā tirgus aktā iekļauto aicinājumu novērst šķēršļus, ar kuriem saskaras nodibinājumi, veicot pārrobežu darbības un, tādejādi, veicināt to attīstību ES valstīs. Rakstā tiek izskatīti priekšnoteikumi Eiropas nodibinājuma izveidei. Konsekventi tiek izpētīti tiesiskās regulēšanas avoti un Eiropas nodibinājuma dibināšanas noteikumi, tiek izskatīti projekta vispārīgi noteikumi, kā arī Eiropas nodibinājuma priekšrocības, kas nosaka tās darbības efektivitāti. Autori vērtē projekta attīstību un nosaka svarīgu domstarpību iemeslus galvenajos jautājumos, kas izraisīja projekta atsaukšanu. Rakstā arī izteikti secinājumi un ieteikumi.

**Atslēgas vārdi:** Eiropas nodibinājums, ES tiesības, Regula, starpvalstu īpašības, Regulas projekts par Eiropas nodibinājuma statūtiem, sabiedriskā labuma struktūra.

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## **Fundatio Europaea: основные положения проекта**

**Аннотация.** Проект Регламента Совета ЕС об Уставе Европейского учреждения был предложен 8 февраля 2012 года. Проект предусматривает создание Европейского учреждения и является ответом на призыв «Закона о едином рынке» устранить препятствия, с которыми учреждения сталкиваются при работе на трансграничной основе, что, таким образом, будет содействовать их развитию в государствах ЕС. В статье рассматриваются предпосылки создания Европейского учреждения. Последовательно анализируются источники правового регулирования и создания Европейского учреждения, рассматриваются основные положения проекта Регламента, а также преимущества Европейского учреждения, устанавливающие эффективность применения данной формы для осуществления деятельности. Авторами дается оценка развития проекта и объясняются причины значительных разногласий по ключевым вопросам, которые предопределили отзыв проекта. В статье также представлены выводы и предложения.

**Ключевые слова:** Европейское учреждение, право ЕС, регламент, наднациональный характер, проект Регламента Совета ЕС об Уставе Европейского учреждения, предприятия общественной пользы.

**The statement of the problem and relevance:** Foundations play an important role in the European Union (hereinafter – EU), because they carry out activities in most areas which are important for European citizens and the economy of the EU. Indeed, the number of foundations in the EU ranges between 90,000 and 110,000 with up 1 million full time employed staff. Foundations carry out activities in the areas of education and research, social and health services, arts and culture.

The well-being of foundations' requires an environment that enables and encourages them to work in ways that are effective, efficient, accountable and sustainable. Naturally the legislations governing foundations varies from country to country. They reflect the culture, traditions and context in which the legal system and the foundation sector have developed in any given Member State of the EU. That is why considerable regulatory differences were found, which reduce the ability of foundations to ensure cross-border activities.

The “Single Market Act” called for action to remove obstacles that foundations face in

operating on a cross-border basis. There are three important obstacles that should be mentioned. First, there are legal barriers to cross-border activities of foundations of the EU Member States both in civil law and in tax law. The highest barriers exist when a foundation considers transferring its seat to another Member State of the EU. In accordance to barriers in tax law a vast majority of the Member States of the EU only grant tax benefits to a resident foundation. Second, the cost level to ensure different legal requirements, laid down by the different national laws, is relatively high. Third, there is an uncertainty about recognition as a public benefit purpose foundation in other Member States of the EU, the costs of pooling and distributing funds on a cross-border basis as well as limited cross-border donations.

The Proposal for a Council Regulation on the Statute for a European Foundation aims to facilitate the establishment and operation of foundations in the Single Market. It will allow foundations to more efficiently channel private funds to public benefit purposes on the cross-border basis in the EU. The creation of a new European legal form targeting the purpose of

public benefit solves the problem in the best way by offering a legal form featuring uniform rules on formation and operation throughout the EU, thus, saving the costs. It would also offer foundations a European label and, therefore, make cross-border activities easier.

The creation of the Proposal for a Council Regulation on the Statute for a European Foundation has contributed to the problem of the mobility of public benefit foundations across the EU. At the same time, the problem of European Foundation conformity with the status of supranational legal entity was formed.

At the moment supranational legal entities, including the European Economic Interest Grouping, the European Company and the European Cooperative Society, rather have a "supranational" character. Notwithstanding the fact that the Proposal aims to reduce the lack of unified rules for governing all aspects of the activities of foundations, the European Foundation has also a "supranational" character. At the same time, it is essential to solve the controversies on key matters related to this legal entity under EU legislation.

**The analysis of research and publications:** Because the idea of creating the legal form of a legal entity under EU legislation was first introduced and further developed in Europe, the research and publications on the subject are mostly the works of European authors. In recent decades' European scientists, legal experts and the responsible institutions of the EU have been actively working on modernization of the EU law. One of the results was the establishment of the organizational-legal forms of supranational legal entities. The creation of the Proposal for a Council Regulation on the Statute for a European Foundation has predetermined further interest and appearance of studies and publications on this subject. The study of the problems of regulation of the European Foundation was conducted by the following authors: Then V. (Then V., 2006, 2009), Walkenhorst P. (Walkenhorst P., 2001), Hopt Klaus J. (Hopt Klaus J., 2006, 2009), Reimer E. (Reimer E., 2009), Anheier H. (Anheier H., 2009). An important role in the study of foundations belongs to different researchers of the European Foundation Centre.

The author of this article used the official texts of regulations, legal acts, various publications and press releases posted on the official website of the European Commission as well as other Internet resources related to the topic of the article.

**The aim of the research:** The aim of this research was the study of the legal status of the European Foundation, the identification of features of the legal regulation of its establishment and operating activities, the identification of its advantages, as well as the analysis of historical development of the proposal and underlying controversies on key matters of European legal form developed for foundations.

As known, the idea of the creation of supranational legal entities was based on the need to achieve main objectives of regulation of legal entities in the EU law, in particular, the freedom of establishment of legal entities on the territory of any EU Member State, the establishment of common minimum requirements for legal entities, providing the same protection for shareholders and creditors of legal entities throughout the EU, as well as facilitating the activities of companies by eliminating differences between national legal systems. As the result three supranational legal entities have been created – the European Economic Interest Grouping, the European company and the European Cooperative Society.

These legal entities have certain general features. First of all, the Regulations relating to the status of supranational legal entities are directly applicable legal acts and vest the supranational legal entities with legal capacity, which, therefore, has a European, rather than national origin. Second, the transnational structure of the founders means that founders should fully or partly belong to the law order of at least two different EU Member States. Third, the ability to change the location of a company within the EU Member States without the need for passing the liquidation procedure of the company in the Member State of the original location.

The idea of the creation of European Foundation was developed in different ways. The first steps in the creation of the idea of European Foundation were two publications on the law of a foundation and empirical information

about foundations [1]. Later these publications led to the project on drafting a Statute for the European Foundation publication [2, 7]. In parallel, the European Foundation Centre also published its own recommendations for the European Foundation statute [3, 25].

On the other side, taking into account the successful experience of the creation of the above mentioned supranational legal entities, as well as because of the important role of foundations in a number of areas (education, research, social and health services, culture and the protection of the environment) and in the economy of the EU, the Commission intended to begin the assessment of the need for the creation of a statute for the European Foundation in its Action Plan of 21 May 2003 on Modernising Company Law and Enhancing Corporate Governance in the EU [4]. It should be noted, that the basis of this assessment was set by some recommendations in Final Report of the High Level Group of Company Law Experts on a Modern Regulatory Framework for Company Law in Europe [5].

The public hearing and consultations on the future priorities for the Action Plan were carried out in 2006 demonstrating the need for further work in this area [6]. The Commission defined the importance of developing European legal forms for entities in the social economy sector and launched the study aimed at assessing the feasibility of the Statute for a European Foundation. The feasibility study was commissioned by the Commission in 2007 and was carried out jointly by the Max Planck Institute for Comparative and International Private Law in Hamburg and the University of Heidelberg.

The feasibility study was published in 2008. It covers seven main objectives and therefore:

- 1) offers an overview of the main types of foundations in the EU Member States;
- 2) presents estimates of the economic scale of the European foundation sector, also in comparison with the United States;
- 3) examines the main regulatory differences in the legal treatment of foundations across the EU;
- 4) estimates cross-border activities as well as barriers and their economic relevance;
- 5) analyses the importance and cost implications of these barriers;
- 6) explores possible modalities of eliminating existing barriers;
- 7) assesses further possible effects of a European Foundation Statute [2, 2-6].

For each objective this study brings into focus several key findings. In particular, the European foundation sector is important for the economy of the EU and makes significant contributions to the public good of Europe.

The public benefit foundation is the only type of foundation which is accepted in every Member State of the EU and in practice a public benefit foundation is the most important type of foundation.

Despite the significant regulatory differences in each EU Member State there are important similarities regarding the public benefit foundations. One of the most striking differences is that almost half of the EU Member States accept also other foundation types apart from public benefit foundations. It should be noted, that Latvia is among the countries (also Estonia and the Netherlands) where public benefit foundations are not the most significant type of foundation [2, 28]. With respect to the type of a public benefit foundation the most important issues are the foundation assets, the private supervisory instruments and in particular the scope of economic activities.

One more finding concerns the existing legal barriers to cross-border activities of foundations of the EU Member States both in civil law and in tax law. The most significant barriers exist when a foundation considers transferring or has effectively transferred its seat to another EU Member State. In addition to this there are some other civil law barriers in some Member States of the EU. In tax law the vast majority of the EU Member States only grant tax benefits to resident foundations but not to non-resident foundations.

The increase of costs for foundations follows the existing legal barriers to cross-border activities of foundations. Indeed, one of the ways to overcome the existing tax law barriers seems to be to establish another foundation which complies with national laws of the states in which these foundations intend to develop their activities. This means

the increase of costs for foundations. At the same time, costs may also be additionally increased by different personal environment and the fact that there are much fewer professional lawyers in the national and foreign foundation law and in the provisions for national and foreign tax benefits for public benefit institutions.

One of the most important findings of the feasibility study is the point that the European Foundation would be an additional and optional instrument like other existing supranational legal entities. The European Foundation Statute will entitle existing national foundations to transform into a European Foundation and lead to the cost reduction.

In addition to the cost effects, the European Foundation may have some other effects. For example, it may encourage foundations to become internationally active and attract more international contributions to the foundations in the EU as well as it could encourage a larger amount of private contributions in Europe through much improved visibility of the legal form.

In 2009 the Commission held a public consultation on the recommendations of the feasibility study. On the one hand, the existing foundations expressed a strong support for the European Foundation Statute, on the other hand, national authorities and partly business organizations were more skeptical. Consultations were extended on the Communication "Towards the Single Market Act" in 2010-2011.

At the same time, the Commission collected information on the relevant national legislation from national authorities and gathered additional information about concrete problems related to foundations. The Commission took these comments and concerns into account when drafting the Proposal.

Finally, the Commission brought into focus the importance of developing European legal forms for entities in the social economy sector, including foundations, in its "Social Business Initiative" Communication of 25 October 2011 [7].

The Proposal for a Council Regulation on the Statute for a European Foundation was presented on 8 February 2012 [8]. Regulation as a legal act was chosen in order to ensure

the uniformity of the Statute in all EU Member States and direct application of its rules across the EU. The Proposal was created in order to solve some key problems. The overall problem identified was the fact that the diversity of national civil and tax rules made cross-border operations foundations expensive. It should be noted, that foundations in each EU Member State carry out their activities based on national laws, without them being harmonized at the EU level. There were also some specific problems, for example, uncertainty about recognition as a public benefit purpose foundation in other Member States of the EU, the costs of pooling and distributing funds on a cross-border basis as well as limited cross-border donations.

The Proposal for a Council Regulation on the Statute for a European Foundation requires the establishment of an alternative legal form for foundations. This legal form would exist in parallel with domestic foundations and its use would be voluntary [9, 261].

The European Foundation should be governed by the rules of Regulation and by the statutes of the European Foundation. The Proposal uses the practice of existing supranational legal entities to apply the appropriate provisions of national law to matters that are not regulated by the Regulation or the statutes or are only partly regulated by them. National law governs, for example, such important matters as the liability of directors, formation methods, requirements of minimum content of the statute or auditing of the European Foundation. It means that the Proposal for a Council Regulation on the Statute for a European Foundation offers a possibility of the foundation of a legal entity, which rather has a "supranational" character. As it is known, at the moment the existing organizational-legal forms of supranational companies also have a "supranational" character, mostly, because of the significant influence of the applicable national law of the EU Member States in the management of their activities and because of the lack of unified rules for governing all aspects of the activities of these legal entities.

In accordance with the Proposal, the European Foundation is a separately constituted entity for the purpose of a public benefit with



legal personality and full legal capacity in all EU Member States. In contrast to the provisions of the Proposal for a Statute for the European Private Company, the Proposal for a Council Regulation on the Statute for a European Foundation has a cross-border dimension in terms of activities or a statutory objective of carrying out activities in at least two EU Member States.

In order to become a European Foundation, the Proposal lays down certain requirements to minimum founding assets. The European Foundation shall have assets equivalent to at least 25,000 EUR. On the one hand, such requirement makes the European Foundation trustworthy for donors and public authorities and proves the seriousness of its purpose. On the other hand, the requirement of a minimum value of assets should not make a European Foundation too costly to establish. It should be noted, that the detection of the minimum level of assets required for registration of the European Foundation will face controversies between different approaches later, for example, some researchers support the early idea presented by European Foundation Centre to set up the requirement for foundation assets of at least 50,000 EUR [3, 26].

Despite the requirement of the provision that European Foundations may be created only for a closed list of purposes, they are allowed to engage in economic activities as long as the profit is used in pursuance of the public benefit purposes, unless restricted by respective statutes. The Proposal also prescribes the rule that economic activities unrelated to the public benefit purpose of a foundation are allowed up to 10% of the foundation annual net turnover.

European Foundations may be created by one or more natural or legal persons or public bodies. Therefore, the Proposal does not have any restriction on the manner of creation of a European Foundation comparing to the creation of a European Company. Indeed, a European Company may be formed only by at least two legal entities from different Member States of the EU. In turn a European Foundation may be formed by one of four different methods:

1) a testamentary disposition of any natural person;

- 2) a notarial deed or written declaration of any natural and/or legal person(s) or public body(ies) in accordance with the applicable national law;
- 3) the merger of public benefit purpose entities legally established in one or more EU Member States;
- 4) the conversion of a national public benefit purpose entity legally established in a any EU Member State into the European Foundation [8].

The Proposal prescribes that a European Foundation shall be set up for an indefinite period of time or for a specified period of time of not less than two years, where expressly laid down in its statute.

The minimum content of the statutes and the name of a European Foundation, as well as the registration requirements are laid down in the Proposal. These provisions are created in order to correspond to the provisions of the First Company Law Directive [10, 41-45] amended later by Directive 2009/101/EC of the European Parliament and of the Council of 16 September 2009 [11, 11-17]. Therefore, first, the statutes of the European Foundations shall be in writing and subject to the formal requirements of the applicable national law, second, the name of a European Foundation shall include the abbreviation "FE", third, for the registration of a European Foundation the register of every EU Member State may require only a closed list of documents. Moreover, in order to facilitate the process of registration, the Registries of different EU Member States are required to cooperate with each other with regard to the documents and particulars of a relevant European Foundation.

The internal organization of a European Foundation is subject to the Proposal of the Regulation. A European Foundation is governed by a governing board composed of an uneven number of at least three members with one vote each. The governing board is responsible for the proper administration, management and conduct of the foundation activities and it ensures compliance with the statutes of the foundation, the provisions of the Regulation and the applicable national law. Members of the governing board act in the best interest of the foundation and its public benefit purpose.

One more important requirement is connected with the obligation of a European Foundation to ensure its credibility and trustworthiness. It means that a European Foundation has to apply high standards of transparency and accountability. That is why European Foundations have to not only keep full and accurate records of all financial transactions, but also have to ensure the audit of their annual accounts in accordance with the national rules adopted pursuant to Directive 2006/43/EC [12, 87-107].

A European Foundation shall have its registered office and its central administration or principal place of activities in the EU. As well as other supranational legal entities a European Foundation can transfer its registered office to another Member State of the EU. In accordance to the Proposal such transfer shall not result in the winding up of a European Foundation or the creation of a new legal entity or affect any right or obligation existing before the transfer.

Since Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for the European company entered into force on 8 October 2004, the creation of new proposals is inseparably linked with the question of employee participation. The Proposal does not contain rules on employee participation in the board, mainly because board-level participation in public benefit purpose entities exists in very few EU Member States. At the same time, the Proposal contains rules concerning informing and consulting with the employees and volunteers, in accordance with the relevant EU law.

In order to underline voluntary use of this legal form the Proposal contains two methods of dissolution of a European Foundation. First, the Proposal allows the conversion of a European Foundation back into a public benefit purpose entity governed by the law of the EU Member State in which it has its registered office upon the condition that the conversion is permissible under the statutes of the relevant European Foundation. Taking into account that a European Foundation may be set up for an indefinite period of time or for a specified period of time of not less than two years, the conversion may only take place after

two years from the registration of a European Foundation. The Proposal also contains rules on winding up in cases where the purpose of a European Foundation has been achieved or cannot be achieved, the time for which it was set up has expired or it has lost all its assets.

One of the key objectives is connected with the responsibility of a supervisory authority of each EU Member State to oversee the activities of the foundations registered in that Member State. That is why the competent national authorities are vested with a wide range of rights. They have, for example, the power to approve a change the purpose of a European Foundation, the power to inquire into the affairs of a European Foundation (in case when the supervisory authority has reasonable grounds to believe that the governing board of the foundation is not acting in accordance with the statutes of the foundation, provisions of this Proposal or the applicable national law) or the power to decide to wind up a European Foundation or to propose the winding up of the foundation to a competent court. Supervisory authorities from different Member States of the EU have to cooperate and exchange information with each other, as well as have to ensure cooperation with registries and tax authorities.

Tax treatment was among the most important problems which hinder cross-border activities of public benefit purpose entities. The Proposal provides for the automatic application to the European Foundation and its donors of the same tax treatment and benefits granted to domestic public benefit purpose entities. Indeed, referring to income and capital gain taxes, gift and inheritance taxes, property and land taxes, transfer taxes, registration taxes, stamp duties and similar taxes, the same tax treatment is applicable to European Foundations which have their registered offices in any EU Member State and to public benefit purpose entities established in that Member State. The same principle is applied to donors and beneficiaries of a European Foundation.

By choosing the form of a European Foundation the public benefit purpose entities may receive a number of advantages ensured by the Proposal for a Council Regulation on the

Statute of a European Foundation. The most important advantages of a European Foundation are the following:

- 1) the opportunity to conduct activities throughout all EU Member States and the “European label” of a European Foundation;
- 2) relieved formation of a foundation based on the same and flexible legal provisions and certainty of the legal process of foundations;
- 3) reduction of costs on cross-border operations, thus stimulating activities and the development of European Foundations within the EU Member States;
- 4) the application of the same tax treatment for all European Foundations which have their registered offices in the EU Member State and for public benefit purpose entities established in that EU Member State.

In addition, the Proposal allows benefiting from a European Foundation for the EU citizens and for the EU economy. The EU citizens may benefit as main beneficiaries, because foundations should be able to channel more resources into their public benefit purpose activities, but the EU economy may benefit because of more funding becoming available for important fields such as arts, culture or historical preservation, environmental protection, education, research and innovation, social and health services.

Despite of European Foundation advantages and ability to ensure the development in the EU Member States, no consensus has been reached on legislative measures, because of substantial controversies on some key matters:

- 1) the terminology used to key terms of the Proposal;
- 2) the minimum period of time of activities of a European Foundation and requirements to cross-border component and activities;
- 3) the minimum level of assets required for registration of a European Foundation (on the one hand, the aim of facilitating the creation of European Foundations throughout the EU, on the other hand, the aim to ensure the financial soundness of foundations);
- 4) transparency and accountability provisions (including threshold requirements for auditing);

5) the possibility of having a registered office and the headquarters in different EU Member States;

6) frequent references to the national legislation of the EU Member States in the Proposal (which has become a source of legal uncertainty for European Foundations in the absence of rules on harmonization).

The Commission decided to consult the European Economic and Social Committee (EESC) on the Proposal for a Council Regulation on the Statute for a European Foundation in May 2012 [13, 57-60]. The EESC supported the Proposal and recommended that the European Parliament and the Council adopt the Proposal without delay. At the same time, the EESC made some noticeable comments. First, the EESC had to take note of the translation of specific terms in the Proposal, namely the concept of public benefit, which in some languages may be translated as public utility or general interest. Second, European Foundations set up in perpetuity should spend their annual income in a reasonable period of time, for example, within a period of 4 years. Third, the EESC had to point out that the Proposal's requirements in terms of transparency are more demanding for European Foundations in relation to the size of their required assets than existing requirements for national foundations across the EU. Consequently, the requirements to auditing should be effective only above certain threshold.

The opinion of the Committee of the Regions on “The Statute for a European Foundation” was published in January 2013 [14, 81-90]. The Committee of the Regions also supported the Proposal and made some initiatives. First, the terminology used should be harmonized to refer to the “public interest”, which should be used uniformly in each EU Member State when determining the purpose of a European Foundation. It is necessary, because “public benefit” and “public interest” cover different concepts in some Member States. Second, the Proposal should be amended with precise definition of the limits of economic activities of European Foundations. It is necessary to ensure that European Foundations do not lose their basic character as not-for-profit bodies. Third, the European Foundations should undertake



cross-border activities both when they are first established and throughout their lifetimes. It will ensure activities of European Foundations in several EU Member States throughout their lifetime, not just when they are first set up. Fourth, the minimum level of assets required for registration of a European Foundation should be increased to 50,000 EUR in order to ensure the financial soundness, and this level of assets should be maintained throughout the lifetime of a European Foundation. Fifth, the procedures for auditing of European Foundations should be clarified and made more specific.

The Committee on Legal Affairs adopted an Interim report on the Proposal for a Council Regulation on the Statute for a European Foundation in June 2013 [15]. This report had the following recommendations. First, the existence of a European Foundation in any Member State should be open-ended or set for a specified period of time of not less than 4 years (with an exception in some cases – 2 years). Second, the minimum level of assets of 25,000 EUR should be maintained throughout the lifetime of the foundation. Third, the threshold for auditing of foundations should take into account the total assets (of 200,000 EUR), the annual income (of 2 million EUR) and the number of employees (an average of 50 employees). Fourth, the registered office and the administrative headquarters of a European Foundation should be in the EU Member State in which it is established, in order to ensure effective overseeing.

The European Parliament in its resolution of 2 July 2013 on the Proposal for a Council regulation on the Statute for a European Foundation accepted recommendations made in Interim report of the Committee on Legal Affairs [16].

Despite the fact that some debates took place in the Council in February 2014, with the adoption of the Commission's Work Program for 2015 in December 2014, the Commission decided on the withdrawal of 73 pending legislative proposals, and among them was the Proposal for a Council Regulation on the Statute for a European Foundation. The Commission withdrew the Proposal on 7 March 2015 [17, 17-23]. The official reason of withdrawal was

deficiency of progress and unanimity in the Council and, therefore, prospects to reach an agreement.

At the moment the Commission has not made any announcements concerning presentation of new proposals in order to regulate the activities of foundations or mutual societies either in Work Program 2015 or in Work Program 2016.

**The main results of the research and conclusions:** Summing up the above mentioned with respect to a European Foundation, it is important to note the following:

1. A European Foundation is a separately constituted entity for a public benefit purpose which foundation is available in each EU Member State. It should carry out activities in at least two EU Member States. This legal form would exist in parallel with domestic foundations and its use would be voluntary. European Foundations have to stimulate cross-border activities as well as reduce costs.
2. The Proposal for the Council Regulation on the Statute of a European Foundation vests this European legal form with the prominent features of supranational legal entity. First, taking into account that the Regulation is directly applicable legal act, the Proposal vests the European Foundation with legal personality and full legal capacity in all the EU Member States, which, therefore, has a European, rather than national origin. Second, a European Foundation has a cross-border dimension in terms of activities or a statutory objective of carrying out activities in at least two EU Member States, as well as there is an availability of cross-border component in some circumstances for the foundation of a European Foundation (cross-border merger of public benefit purpose entities legally established in at least two EU Member States). Third, the ability of a European Foundation to transfer its registered office from one EU Member State to another without the need for winding up or the creation of a new legal entity.
3. The Proposal for the Council Regulation on the Statute of a European Foundation allows the creation of a legal entity which has a "supranational" character. Firstly,

the lack of unified rules for governing all aspects of the European Foundation activities. For instance, the annual accounts of a European Foundation should be audited in accordance with the applicable national law. Secondly, the need to identify a single registry at the EU level, in which a European Foundation should be registered. Indeed, in accordance with the Proposal, European Foundations shall be registered in one Member State of the EU and each Member State shall designate a registry for the purposes of their registration.

4. The European Foundation has a number of advantages that may ensure the growth and development of foundations and their integration in the Single Market. The first advantage is the opportunity to conduct activities throughout the EU Member States and the “European label” of a European Foundation. The second advantage is the relieved formation of a foundation based on uniform and flexible legal provisions and the certainty of a legal process of foundations. The third advantage is the reduction of costs in cross-border operations, thus stimulating activities and the development of European Foundations within the EU Member States. The fourth advantage is the application of the same tax treatment both for a European Foundation which has its registered office in any EU Member State and for public benefit purpose entities established in that Member State.
5. The Council had no feasible solutions of substantial controversies on several key matters: the minimum period of time for the activities of a European Foundation

and requirements to cross-border component and activities, the minimum level of assets required for registration of a European Foundation, transparency and accountability provisions, the possibility of having a registered office and the headquarters in different EU Member States. Therefore, the Commission included the Proposal for a Council Regulation on the Statute for a European Foundation in the list of proposals it intends to withdraw.

It should be noted, that this Proposal joined the other three proposals (the Proposal on the Statute for a European association, the Proposal on the Statute for a European mutual society and Proposal on the Statute of a European Private Company) which also were withdrawn by the Commission due to lack of progress in the legislative process and deficiency of progress to reach an agreement.

In addition, the Commission’s Work Program 2015 and Work Program 2016 do not contain any proposals for new European legal forms. Taking into account that the existing supranational legal entities (the European Economic Interest Grouping, the European company and the European Cooperative Society) have a wide range of disadvantages, the above mentioned situation reflects an important defeat of the image of legal entities under the EU legislation as well as an increase of significance of legal entities founded under applicable national law of the EU Member States. Granting the lack of economic growth in Europe and the political differences, the choice of business may be persuaded in favor of national forms of legal entities.

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