



**COUNCIL OF  
THE EUROPEAN UNION**

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**NOTE**

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From: General Secretariat of the Council  
To: Permanent Representatives Committee

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Subject: Proposal for a COUNCIL REGULATION on the Statute for a European  
Foundation (FE)  
- Guidance for future work

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**I. INTRODUCTION**

1. In April 2011, the Single Market Act I underlined that although foundations contribute to the financing of initiatives of general interest, they still face difficulties in establishing themselves in other Member States or pooling their assets on a cross-border basis. When foundations decide to operate across borders, they 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.

2. In order to overcome these difficulties and to facilitate the establishment and operation of foundations in the single market the Commission submitted, on 8 February 2012, a proposal for a Council Regulation on the Statute for a European Foundation (FE).
3. The particular objective of the proposal is to create a new European legal form (without replacing national legal forms for foundations with a general interest) allowing foundations to more efficiently channel private funds to general interest purposes on a cross-border basis in the EU. The legal basis of the proposal is Article 352 of the TFEU which requires unanimity in the Council, as well as the consent of the European Parliament.
4. The Working Party on Company Law examined the proposal at eleven occasions since February 2012, including at four occasions under the Hellenic Presidency.
5. On 2 July 2013, the European Parliament adopted its Interim resolution expressing strong support for the Statute for a European Foundation. As regards the minimum asset requirement, the European Parliament resolution suggested that the minimum assets should be maintained throughout the lifetime of the FE and that a specific disbursement requirement should be added to ensure that an FE spends its income on its purposes within a specified period of time. At the same time, the resolution did not comment on the specific amount of assets.

6. The tax treatment of European Foundations was an important difficulty that focused the attention of delegations at the beginning of the examination of the proposal. Guidance was sought from the Committee of Permanent Representatives on 8 November 2013 under the Lithuanian Presidency. The Committee agreed to delete tax related provisions from the proposal. Even after this deletion, the foundation sector remains of the opinion that there is a real added value to this proposal and that it would facilitate cross-border activities of foundations with a general interest across the EU.
7. The issue of taxes being settled, it allowed for further examination of the proposal at technical level. Many additional questions were raised by delegations, and the Presidency undertook to address them in cooperation with the Commission and those delegations. As a result most issues could be satisfactorily resolved.
8. Although some issues still remain to be fully addressed in order to reach a compromise satisfactory to all delegations, one issue in particular needs guidance from the Committee in order to allow for further progress in the Working Party, namely the minimum assets required for the European Foundation (Article 7(2)).
9. To facilitate the discussion in the Committee, the Presidency has prepared a brief explanation on the issue of assets for European Foundations followed by two options under point II of the present note.

## II. QUESTION ON THE MINIMUM ASSETS OF EUROPEAN FOUNDATIONS

10. The initial Commission proposal provides for a minimum asset requirement of EUR 25 000. This amount was considered a reasonable compromise between provisions in Member States that have no or low minimum requirements and those that require higher amount of assets to set up a foundation under national law. The objective of the proposed requirement was to reduce costs and uncertainty related to different national legal and/or administrative requirements for foundations across the EU.
11. Following discussions in the Working Party, the Lithuanian Presidency proposed to raise the amount of minimum assets to EUR 50 000.
12. Still, a number of delegations do not agree with this amount, despite several discussions. Some delegations are of the opinion that even EUR 25 000 would be too high a threshold for their national foundations to use the Statute; some other delegations request assets higher than EUR 50 000 (up to EUR 100 000). This is the reason why the Presidency wishes to seek guidance from the Committee.

### Option 1

Keep a **fixed amount** of required minimum assets<sup>1</sup>.

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<sup>1</sup> This amount could be for instance EUR 25 000 or EUR 50 000 or any amount between those figures.

## **Option 2**

Introduce a **minimum and a maximum threshold** for the minimum asset requirement, for instance a minimum of **EUR 25 000** and a maximum **EUR 75 000**.

This would allow national authorities to require FEs registered in their territory to have minimum assets within a range between EUR 25 000 and EUR 75 000, depending on which amount they consider necessary for the pursuit of an FE's general interest purpose(s).

13. In view of the above, delegations are invited to indicate which option would be preferable so that a common ground for future work can be found.

## **III. CONCLUSION**

**The Permanent Representatives Committee is invited to give guidance to the Working Party on Company Law on the issue of minimum assets of European Foundations on the basis of the options set out in point II.**

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