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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) - Agreement in principle

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#### **I. INTRODUCTION**

1. Foundations play a fundamental societal role across the European Union, operating for the public good in such important fields as education, arts and culture, research and innovation, social and health provision and protection of the environment. Their projects often have an impact far beyond national borders. As highlighted by the Single Market Act I, it is in particular in cross-border situations that foundations face difficulties in establishing themselves in other Member States or pooling their assets. Therefore, foundations deserve particular attention by the European legislators.

2. In order to facilitate the establishment, recognition 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). 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.
3. On 2 July 2013, the European Parliament adopted its Interim resolution expressing strong support for the Statute for a European Foundation.
4. Since February 2012, the Working Party on Company Law has examined the proposal at eleven occasions.
5. The Permanent Representatives Committee discussed the main outstanding issues - provisions on tax treatment and on minimum assets of the European Foundation - on 8 November 2013 and on 18 June 2014. As regards the first issue, the Committee agreed to delete tax related provisions from the proposal. As regards the second issue, the discussion showed a diversity of views within the Committee, with both presented options, i.e. a fixed amount of required minimum assets and the introduction of a minimum and a maximum threshold for the minimum asset requirement gaining some support, and with some additional options being proposed. Diverging views were also expressed as regards the amount of a potential fixed minimum asset requirement. The Committee concluded that further work was necessary on this issue.

## II. THE PRESIDENCY COMPROMISE PACKAGE

6. The Italian Presidency has worked on refining the provision on minimum assets on the basis of the guidance given by the Committee as well as on solving the other outstanding issues with a view to accommodate delegations' remaining concerns. The aim of the Presidency was to provide some flexibility for Member States to take into account their national specificities, but to keep the added-value of the Statute by facilitating the recognition and operation of foundations with a real cross-border interest under the legal personality of the European Foundation.
7. Delegations will find in Annex I an explanatory note on the main elements of the Presidency compromise package and in Annex II the text of the proposed compromise.

## III. CONCLUSION

**The Permanent Representatives Committee is invited to discuss the Presidency compromise package set out in ANNEX II with a view to reaching an "Agreement in principle" which would then be submitted to the European Parliament for its consent.**

## **Explanatory note regarding the main elements of the Presidency compromise package**

- **Minimum founding assets: Article 2, 7, 23, 47, 53 and 54, and the related recitals 8, 10 and 10 a**
  - Article 7 was redrafted to clarify that the basic requirement of minimum founding assets refers to "net assets" (net assets = assets – liabilities), as requested by some Member States in order to ensure that the requirement for a founding amount does indeed usefully ensure an FE's trustworthiness. The introduction of “net” does not involve a change of substance as the aim of the proposal has always been to require FEs to have a specified minimum amount of assets (initially 25 000 EUR) above their liabilities. The amount has been adapted to EUR 20 000 following comments from a number of delegations arguing that otherwise their foundations would not be able to afford to benefit from the Statute.
  - In addition, it is now proposed to allow Member States to set a minimum amount of assets (understood as overall assets) that the FEs registered in their territory need to set aside for their purpose(s), not higher than EUR 100 000. Some substantive criteria were added on the basis of which Member States would fix such a minimum amount of assets such as solvency and fulfilment of purposes in a lasting and sustainable way, which were seen as important by some delegations. This approach would allow Member States some flexibility on the amount of assets that they require from FEs registered in their territory while ensuring that the basic net requirement is kept for all FEs across the EU.

- Such an option is proposed given the diversity of opinions among Member States as to the preferred minimum amount and in order to ensure at least some predictability and legal certainty for European Foundations across the EU. It aims at reconciling the concerns of some Member States that the minimum assets should not be too high and should not make it difficult for foundations to use the Statute, with the wish of some others to maintain a higher minimum requirement in order to guarantee trustworthiness of foundations.
- The use of the term "net assets" prompts adaptations in Article 7 as well as Article 23 and 54. Article 23 now clarifies that also information on the net assets should be submitted at registration as this is necessary in order to assess whether the minimum net asset requirement is fulfilled at registration.
- It is not considered necessary to maintain a definition of "assets" (Article 2(1)). Its main function was to clarify that assets comprise both tangible and intangible resources and it is thought that this clarification fits better in recitals (it has been moved to recital 8).
- In order to group all provisions relating to the use of euro or national currency for expressing the relevant amounts together, former Article 7(1) has been moved to Article 53(1).
- In Article 47, the reference to "net" assets has been removed as this provision should refer to "assets" in general. Other occurrences of the word "assets" throughout the text have been left unchanged as the overall assets of an FE are being referred to.
- Recital 10 was adapted to changes introduced in Article 7.

- Furthermore, recital 10a was added to clarify that an authority responsible for supervision could take into account a number of factors (e.g. depreciation, temporary significant outlays for a large fundraiser, etc.) when judging how the FE fulfils the above-mentioned minimum requirements, and therefore allow for small and temporary variations. This would allow for a practical application of the requirements in the Regulation while having regard to the ability of the FE to operate effectively and meet its liabilities. In addition, it is clarified that a founder should be able to require that an FE maintains during its lifetime a higher amount of net assets or assets than just the minimum amount it had at registration.
  
- **Notion of a “general interest entity” and the purpose of the entity: Article 2(4), Article 5, Article 14(1)(a) including the relevant recitals 7, 15 and 15-a**
  - It is suggested to keep the overall aim of the definition of the general interest entity in Article 2(4) the same, i.e. to still focus on the general interest foundations because they are the main actors who should benefit from the Statute and to also allow merging and converting into an FE for those general interest entities which are very similar in what they do to foundations but which – due to specific national legal traditions or systems – take different forms than foundations or are structured in a different way.
  
  - However, it is suggested instead of using the characteristic of non-membership to focus on the not for profit character of these other legal entities. This change should address the concerns of Member States with general interest entities with members but it still would narrow down the group of entities who could convert or merge into an FE in line with the overall aim of the proposal. Due to this change, recital 15-a would not be required anymore and is deleted. Recital 15 is adapted to reflect the changes in Article 2(4).

- In addition, it is suggested to clarify in Article 5 that the FE resulting from the conversion or merger would need to be without membership. This was implicitly understood before but should be now clearly stated given the change to the definition in Article 2(4).
  - Change in Article 14 is suggested to clarify that the potential mergers between different general interest entities, e.g. foundations and associations, could take place if they were permitted according to national laws.
  - It is suggested to introduce some changes in the list of general interest purposes in Article 5 to further clarify the scope of some of the purposes and to adapt the list following requests of some national delegations. Similarly, it is suggested to adapt the related recital 7, including some additional clarifications about the purposes listed in Article 5.
- **Foundations of banking origin: Article 3(4a) and Articles 14 and 17 and the related recitals 6a and 15a**
    - Following the views exchanged on this issue at the latest June Working Party, it is suggested to make a general exclusion clause in Article 3 with conditions (e.g. being of national character, under specific supervisory system) for determining which entities would be excluded from converting or merging into an FE. The aim of these conditions would be to limit the exclusion clause in scope and to lay down the specific reasons for which it appears justified to exclude certain foundations from the scope, e.g. by reference to national character or specific supervisory system (e.g. relating to financial sector). The references to the exclusion of banking foundations are therefore taken out of Articles 14 and 17. At the same time, these Articles now include a reference to Article 3(4a) for clarity's sake.

- Given the change of article in which the exclusion is included, the content of the recital is also moved from recital 15a to recital 6a and the latter now mentions foundations of banking origin as an example of entities which exclusion from the Regulation would be well justified.
  
- **Legal capacity of the FE: recital 12 (linked to Article 10)**
  - Recital 12 was redrafted to clarify that the national procedural requirements such as e.g. authorisation requirements for certain types of donations are not affected by the provisions of this Regulation, provided that they comply with EU law. This redrafting reflects a similar drafting that was included during discussions on national authorisations for specific activities in recital 17.
  
- **Registration of an FE: Articles 21, 22 and 23, recital 17, and all references to “registries” throughout the text of the proposal**
  - Article 21(2) now provides that Member States would be able to decide whether they wish to use a registry, including a business register, or any other specified storage system for the purposes of registration of FEs.
  
  - It is proposed to stipulate in Articles 22 and 23 that only the minimum information entered in the common repository would need to be disclosed; the rest of the information supplied for registration would need to be stored so that it could be made available upon request. In addition, an address of the body responsible for registration is required as part of the data to include into the common repository in order for interested parties to know whom to contact to request access to data if necessary.

- It is proposed to - instead of using “registries” – refer to “bodies responsible for registration” where reference is made to the responsible authority or to “a specified storage system” where reference is made to the registry as storage system. The aim of this change is to respond to concerns of some delegations due to specificities of their national systems for foundations.

A new Recital 17-a is introduced to reflect the changes made to the relevant Articles.

- **Registration of an office of an FE: Article 21(6), 23a and recital 17a**

- Article 21(6) has been redrafted following comments and concerns from some delegations to further clarify when a registration of an office could be required by a Member State and to make a clearer link with "establishment-like" cases (by talking of “stable and continuous” activities and “carrying out a substantial part of activities”). The aim of this provision is to set out the Member State option and any other detail would be for Member States to lay down in the national legislation in case they chose to take up this option. Recital 17a reflects the changes in Article 21(6), provides further clarification and also makes clear that the FE should remain free to choose the form of its secondary establishment.
- Even if this provision might limit to some extent the absolute freedom of FEs to carry out all their activities in the EU, it would provide an added value compared to the current situation where requirements and conditions for foundations to carry out activities in another MS are very diverse.

- In addition, a deadline for the body responsible for registration was added in Article 23a dealing with the registration of an office of an FE for reasons of proportionality and to prevent divergent deadlines for such registration in different Member States, and therefore, unnecessary obstacles for the FEs concerned. It seemed reasonable to provide for a much shorter deadline than for the registration of an FE (Article 23(3)).
  
- **Employee involvement in FEs: Articles 38 and 39 and recital 25a**
  - It is suggested to add a new threshold in Article 38(3) for big FEs with at least 1000 employees so that they are treated in the same way as undertakings under the EWC Directive (which is for undertakings with at least 1000 employees).
  
  - A new wording is also added in the same paragraph to clarify that the governing board or, where applicable, the managing directors of an FE would be the contact points for employees as regards sending in the requests/discussing regarding the establishment of an EWC.
  
  - The new wording in paragraph 3 also includes articles 8, 9 and 10 of the EWC Directive among the measures to be taken into account when a EWC is established in an FE. These articles deal with confidentiality of information, employees engaged in consultation/information procedures receiving training and being paid when carrying their information/consultation related duties for EWCs in companies and it is logical to also make these articles applicable to EWCs in FEs. The provisions mentioned in this paragraph should be taken into account whenever any EWC is established and a clarification to that effect is included in article 39(3).

- A new paragraph 4 is also suggested in line with Article 4 of EWC Directive, in order to underline the responsibility of the governing board/managing directors of an FE to obtain and provide its employees with all the relevant information regarding employee involvement requirements under this Regulation.
- A new recital clarifies that this Regulation is to be interpreted in line with the definitions regarding employee consultation and information set out in the EWC Directive. It also includes a clarification regarding the application of article 8(3) of the EWC Directive.
- **Powers and duties of national authorities responsible for supervision: Art 46 and 47a and the related recitals 22-a and 22a**
  - Article 46(2)(c) was redrafted to take into account concerns of some Member States that the list of powers for the authorities responsible for supervision would weigh too heavily on their national authorities responsible. The new drafting underlines the need to take appropriate and proportionate measures and includes specific examples of actions that an authority responsible for supervision might take.

- Article 46(3) was redrafted to clarify that a national authority could not take over the administration and itself run an FE in case of difficulties, due to the need for FEs to maintain their independence. However, this would not prohibit a national authority from taking some temporary and individual measures for the purpose of ensuring that an FE acts in line with the Regulation, its statutes and the applicable national law. All possible measures are not included in the list of powers in article 46(2) in order not to make this list too detailed; article 46(2) sets out the main minimum powers but Member States can introduce additional and more detailed ones in their national laws.
  
- A new Article 47a was added to clarify that the Regulation would not prejudice the duties and powers of the national supervisory authorities in a MS where an FE has its activities to take measures towards that FE in case it infringes national laws outside of the scope of this Regulation. A new recital 22-a was added to reflect the introduction of this new Article.
  
- A new recital 22a was also included to clarify that the provisions on supervision in the Regulation are without prejudice to the right of parties concerned to seek redress before the courts as the latter is in line with the general right to an effective remedy and the right to a fair trial laid down in the Charter of Fundamental Rights of the EU.

- Following the discussion in the latest Working Party in June, the clarification in that the governing board/the authority responsible should ensure compliance of the FE also with the will of the founder was removed from Articles 29, 43, 46 and 47 as some Member States had concerns with this addition. A corresponding clarification is now contained in recitals 18 and 22.
  
- **Review clause: Article 47(4) and 54**
  - It is proposed to add a number of specific issues to the review clause in Article 54 (i.e. including minimum asset requirement, representation of employees, registration, the use of IMI/BRIS for the purpose of this Regulation) to make sure that particular attention is drawn to these points when reviewing the application of the Regulation. In this context, the reference to the evaluation of the IMI pilot project is moved from Article 47(4) second paragraph to Article 54.

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>1</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>2</sup>,

Having regard to the opinion of the Committee of the Regions<sup>3</sup>,

Acting in accordance with a special legislative procedure,

Whereas:

1. General interest 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.

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<sup>1</sup> OJ C , , p. .

<sup>2</sup> OJ C , , p. .

<sup>3</sup> OJ C , , p. .

2. The legal framework in which general interest 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 general interest entities costly and cumbersome. As a result, the cross-border channelling of funds to general interest purposes remains largely underexploited.
3. In view of the problems faced by general interest 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 activities in the general interest.
4. The European Parliament adopted resolutions on 6 April 2011 on a Single Market for Europeans<sup>4</sup>, on 19 February 2009 on Social Economy<sup>5</sup>, and on 4 July 2006 on recent developments and prospects in relation to company law<sup>6</sup>, and issued a written declaration on 10 March 2011 on establishing European statutes for mutual societies, associations and foundations<sup>7</sup>, in which it called for a Statute for a European Foundation.

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<sup>4</sup> 2010/2278(INI).

<sup>5</sup> 2008/2250(INI).

<sup>6</sup> 2006/2051(INI).

<sup>7</sup> Written declaration 84/2010, P7\_DCL(2010)0084.

5. The European Economic and Social Committee issued an opinion on 28 April 2010 on the European Foundation Statute<sup>8</sup>. The Committee of the Regions issued an opinion on 1 April 2011 on the Single Market Act<sup>9</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, **where expressly authorised by this Regulation**, by the statutes of the FE. Provisions of **the** national law applicable to general interest entities **of the FE's home Member State** should apply to matters that are not regulated by the Regulation or, where expressly authorised by the Regulation, by the statutes of the FE or are only partly regulated by them.
- 6a. In some Member States there exist certain general interest entities of a special national interest, such as for instance foundations of banking origin established pursuant to the Spanish law 26/2013 of 27 December 2013 or pursuant to the Italian legislative Decree of 17 May 1999, n. 153, and subsequent amendments to these laws. The application of this Regulation to such entities could undermine the fulfilment of a special mission entrusted to them under national law, such as for instance to support economic development of local communities. It could also undermine the effectiveness of special supervisory regimes applicable to them in the context of specific measures taken to reinforce financial sector stability or to safeguard and guarantee assets which originated from the community savings and are managed by the foundations to those communities’ benefit. It is, therefore, appropriate to exclude them from the application of this Regulation, provided they meet a set of conditions laid down in the Regulation. In particular, these entities should not be able to merge or convert into an FE.**

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<sup>8</sup> INT/498 - CESE 634/2010 - April 2010.

<sup>9</sup> CdR 330/2010 fin.

7. The FE should promote general interest purposes only, understood as benefiting a broadly defined group of beneficiaries. Since activities of general interest 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 general interest purpose of the FE should be defined by means of a comprehensive list of purposes and the FE should only promote the purposes listed in the Regulation. **This list should set out the general purposes and should be interpreted to also cover therefore all the related specific areas. For instance, assistance to, or protection of vulnerable and disadvantaged persons should be understood to also cover specific services to support these groups such as, for instance tourism activities for vulnerable and disadvantaged people. Similarly, infrastructure support for organisations pursuing general interest purposes should be understood as applying to a number of relevant organisations such as foundations, associations or social enterprises.** The notion of general interest used in this Regulation does not refer to any specific recognition procedure or status that may exist in Member States' civil or tax laws. Instead, this notion should be interpreted as defined in this Regulation and in line with the jurisprudence of the Court of Justice of the European Union in an autonomous and uniform manner, and might therefore not necessarily have the same meaning as the same term under the relevant laws of Member States. The FE may not use its assets to support political parties or candidates for elections, or undertake any political activities that would be unrelated to its general interest purpose.

8. Given the FE's obligation to pursue solely its general interest purposes, it should have a non-profit character, which is underlined by the fact that any profits that may result from an FE's related or unrelated economic activities should be exclusively used in pursuance of its general interest purposes. Moreover, all FE's assets, **i.e. any tangible or intangible resource of the FE**, should be irrevocably dedicated to the general interest purposes for which the FE was established. In addition, FE's assets may not be distributed to any founder, member of the governing or supervisory board, member of any other body, managing director or auditor, independent third party, nor extended to any person having a business or close family relationship with them, unless it is for the performance of their duties within or for the FE or if such distribution is part of the FE's objective to service the **general** public interest ~~at large~~.
  
9. 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 general interest entities that, except in well justified and time-limited cases, throughout their lifetime carry out activities in at least two Member States and have the statutory objective, of doing so. One of these Member States should be the home Member State of the FE. It should be the duty of the governing board of the FE, under the supervision of the national responsible authorities, to ensure that the FE meets the above cross-border requirement and where in exceptional cases it only has activities in one Member State, to ensure that this is well-justified and time-limited. For instance, a case of an FE which needs to wait for completion of certain procedures or formalities before it can take up activities in another Member State and therefore only has activities in one country could be seen as well justified. In addition, such case could be seen as time-limited if it is of a temporary nature and limited to the period of time necessary to finalise such procedures or formalities.

10. The FE should have ~~and maintain~~ **net** 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 **net** assets should not make the European Foundation too costly to establish and thus make it more difficult to use such a legal form nor should it prevent European Foundations from being able to pursue objectives which are limited in time. **At the same time, Member States who wish to lay down for FEs registered in their territory a minimum amount of assets, understood as overall assets, which they need to set aside for their purpose(s), should be able to do so within the limit laid down in this Regulation if this is considered necessary to ensure that these FEs can honour their obligations as they fall due in the normal course of activities and to fulfil their purpose(s) in a lasting and sustainable manner.**

**10a. In order to ensure continued trustworthiness and ability of the FE to fulfil its general interest purpose(s), the FE should be obliged to maintain the value of the minimum net assets, and, if applicable, the value of the overall assets throughout its lifetime. For reasons of practicability and to allow the FE to operate effectively while meeting its liabilities and fulfilling its general interest purpose(s), small and temporary variations in these values during an FE's lifetime might be considered as acceptable by the authority responsible for supervision for the purpose of FEs' compliance with the above-mentioned requirements. The above-mentioned provisions should not affect the right of the founder to establish in the statutes and/or the founding documents that assets of a higher value should be maintained.**

11. A considerable proportion, that is a significant percentage, of the overall income in a given financial year should in principle be spent within the four years following that year in order to ensure that this income is in fact used for the general interest purposes for which the income was generated, unless accumulating this income is necessary to finance a more long-term project of an FE.
12. 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 general interest purpose, as long as they are in line with its statutes and this Regulation, **including the right to own movable and immovable property, to make grants, to raise funds, to receive and hold donations of any kind, inheritances and gifts ‘in kind’ from any lawful source including from third countries. However, the ability of an FE to receive donations should not prohibit national procedural requirements, such as authorisation requirements, which Member States apply to certain types of donations provided that they comply with EU law.**
13. The ability to carry out economic activities, both related and unrelated to its general interest purpose, would provide the FE with a substantial source of finance and means of increasing the funds available for general interest purposes, and should be permitted. Economic activities related to the general interest purpose may, for instance, include providing trainings by a foundation in education sector; economic activities unrelated to the purpose may, for instance, include organising concerts to raise additional funds. However, in the interest of ensuring appropriate use of assets and creditor protection, a threshold for permitted unrelated economic activities should be set and any profits from any related or unrelated economic activities should be exclusively used in pursuance of its general interest purposes.

14. 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.
15. 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 general interest entities or by converting national general interest entities into the FE. General interest entities should be understood as foundations which benefit and serve the interest of the public at large, i.e. benefit a section of the public which is not too limited and is open to any member of the public coming clearly within its scope, and ~~or similar~~ **other not for profit** legal entities ~~without membership~~ **which purpose is to benefits and serves the interest of the public at large** ~~with the same characteristics~~ formed in accordance with the law of one of the Member States. Foundations with a general interest purpose and ~~similar~~ **other not for profit** legal entities ~~without membership~~ with a general interest purpose, but not necessarily recognised in their Member State as having a general interest status, should be able to directly convert and merge into an FE if they meet all the requirements set out in the Statute.
- ~~15 a. Where in certain Member States members of the governing board of general interest entities are also considered to be the only members of the entity itself, these entities should for the purpose of this Regulation be nevertheless allowed to merge or convert into an FE.~~

- ~~15a. At the same time, this Regulation should not apply to national general interest entities, which are regulated by national law to achieve specific objectives of a national character and whose assets are dedicated to the fulfillment of these objectives predominantly in a delimited national local area, such as foundations of the banking origin. These entities should not be able to merge or convert into an FE.~~
16. 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 general interest entities having their registered office in the same Member State should be governed by the law of that Member State. Member States should have a broad discretion to refuse requests for a cross-border merger or a conversion into an FE, for a cross-border transfer of an FE or a conversion from an FE into a national general interest entity on the basis of grounds specified in the Regulation, including where such procedures would be contrary to public policy. The concept of ‘public policy’, as interpreted by the Court of Justice of the European Union, covers the protection against a genuine and sufficiently serious threat affecting one of the fundamental interests of society.
17. In order not to impose unnecessary burdens on general interest entities, the formalities for the registration of the FE should be limited to those requirements which are necessary to ensure legal certainty. Member States should not require any further authorisations for the establishment of the FE after its registration. This should, however, not prohibit authorisations which Member States require from all legal entities for specific activities, such as, for instance, running a hospital or an orphanage ~~and which~~ **provided that they** comply with EU law. Some information about registered FEs should be stored in a common repository.

**17-a. For the purpose of registration, Member States should be able to use a register, including a central register, commercial register or companies register as referred to in Article 3 of Directive 2009/101/EC of the European Parliament and of the Council of 16 September 2009 on coordination of safeguards which, for the protection of the interests of members and third parties, are required by Member States of companies within the meaning of the second paragraph of Article 48 of the Treaty, with a view to making such safeguards equivalent<sup>10</sup>, or any other specified storage system kept by a body responsible for registration designated for this purpose in accordance with this Regulation.**

**17a. FEs which are registered in one Member State, but carry out on a stable and continuous basis a substantial part of their activities in the territory of another Member State may have in this latter Member State, in certain respects, a social and economic influence comparable with FEs registered in that Member State. Therefore, that latter Member State might have a public interest in identifying and registering the FEs concerned, also in the interest of third parties dealing with them. Therefore, a Member State should be able to require that FEs which are registered in another Member State, but which decide to pursue on a stable and continuous basis a substantial part of their activities in its territory register an office in that territory. The stable and continuous nature of the activities carried out should be determined in the light of the case law of the Court of Justice of the European Union relating to the freedom of establishment. An application for registration of an office of the FE should be subject to a reduced set of formalities and be carried out in a shorter time than in case of the application for registration of the FE. The FE should remain free to choose the form of its secondary establishment.**

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<sup>10</sup> **OJ L 258, 1.10.2009, p. 11.**

18. 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 members of the governing board should act in the best interest of the FE and its general interest purposes, and observe a duty of loyalty to the FE. It should be the duty of the governing board of the FE to ensure that the FE meets all the requirements set out in this Regulation and acts in accordance with this Regulation, its statutes, **setting out or, where applicable, reflecting the will of the founder in line with the founding documents**, and the applicable national law. 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 board members should be governed by the applicable national law.
19. It is essential that the assets of the FE are used for the furtherance of its general interest 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.

20. For the sake of credibility and trustworthiness, the FE should apply high standards of transparency and accountability. The FE should keep records of its transactions and annual accounts. The accounts of larger FEs 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>11</sup> and be disclosed. The accounts of other FEs should at least be examined by an independent third party, understood as any independent party with sufficient knowledge and experience to review accounts, and be disclosed. Independence should be understood in this context as the absence of a business, family or other relationship with the founder, governing or supervisory board members, member of any other body of an FE, managing director or the FE itself that could create an actual or potential conflict of interest such as to impair that independent third party's judgement.
21. In order to enable the FE to reap the full benefits of the single market, it should be able to transfer its registered office and central administration from one Member State to another.

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<sup>11</sup> OJ L 157, 9.6.2006, p. 87.

22. Given the specific characteristics of the FE, it should be supervised by one or more authorities designated by Member States for that purpose. This is currently the case in ~~most~~ Member States for national general interest 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 authorities responsible for supervision across the Union. These authorities can act on their own initiative or on the basis of complaints in case they have indications or evidence that an FE did not act in accordance with this Regulation, its statutes, **setting out or, where applicable, reflecting the will of the founder in line with the founding documents**, or the applicable national law. It is for each Member State to decide on the organisation of the national supervision and the authorities. For the sake of efficient supervision, cooperation between the authorities of Member States responsible for supervision should be ensured.

**22-a. The provisions of this Regulation on powers of the authorities responsible for supervision should not affect the right of Member States to ensure compliance of an FE with national laws governing matters outside the scope of this Regulation. In particular, these provisions should not prejudice the right of the authorities responsible for supervision of the Member States where the FE carries out its activities to adopt all necessary measures or actions, in accordance with national law, to ensure compliance with national legislation with respect to matters falling outside the scope of the Regulation, including, in exceptional circumstances such as threats to public security, public policy or public health, suspension of the right of the FE to pursue activities in this Member State.**

**22a. Nothing in the Regulation should prejudice the right of the parties concerned, such as donors, creditors, or employees, to an effective remedy and to a fair trial, as provided by Article 47 of the Charter on Fundamental Rights of the European Union. Consequently, this Regulation should not prevent these parties from exercising their right of access to the judicial system, and in particular from submitting their complaints directly to the national courts in accordance with the applicable national law.**

23. The Internal Market Information System (IMI) established by Regulation (EU) No 1024/2012 of the European Parliament and of the Council<sup>12</sup> could provide a useful electronic means to facilitate and enhance administrative cooperation managing the exchange of information on the basis of simple and unified procedures overcoming language barriers and to record information about registered FEs. A pilot project should consequently be launched to test the suitability of the use of IMI for the purpose of practical implementation of this Regulation.
24. Member States enjoy broad freedom to determine the tax treatment applicable to general interest entities, their donors and beneficiaries 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. As this Regulation does not include tax provisions, the tax treatment of FEs, their donors and beneficiaries should be governed by the applicable national tax law and in accordance with the case law of the Court of Justice of the European Union.

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<sup>12</sup> OJ L 316, 14.11.2012, p.1.

25. 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 purposes of informing and consulting employees<sup>13</sup>.

**25a. Provisions on involvement of employees in this Regulation should be interpreted in accordance with the relevant definitions in Directive 2009/38/EC, and in particular those laying down how information and consultation should be understood, set out in Article 2(1)(d), (f) to (h) and 2(2) of that Directive. In cases where Article 8(3) of that Directive would be relevant for FEs, it should be applied restrictively and should only concern the provisions already existing in the national legislation at the time of the adoption of Directive 94/45/EC of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees<sup>14</sup>.**

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<sup>13</sup> OJ L 122, 16.5.2009, p. 28.

<sup>14</sup> **OJ L 254, 30.9.94, p. 64.**

26. 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 general interest entities governed by national law.
27. 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.
28. Since the objectives of the proposed action to facilitate cross-border activities of general interest entities cannot be sufficiently achieved by the Member States in so far as they involve the creation of a general interest 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.
29. 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>15</sup>.

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<sup>15</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 to produce value;~~  
(12) 'unrelated economic activities' means ancillary economic activities of the FE, not serving directly the general interest purpose of the general interest entity. This does not include normal management of its assets by the FE;

- (23) 'public body' means any entity, whether or not legally part of the state, a national, regional or local government, or other legally constituted public authority, which provides public services or carries out public functions on a statutory basis;
- (34) 'general interest entity' means a foundation which benefits and serves the interest of the public at large and/or similar **other not for profit** legal entities ~~without membership~~ which **purpose is to** benefits and serves the interest of the public at large formed in accordance with the law of one of the Member States.
- (45) 'home Member State' means the Member State in which the FE has its registered office and its central administration.
- (56) 'host Member State' means the Member State to which the registered office and central administration of the FE is transferred.

### *Article 3*

#### *Rules applicable to the FE*

1. The FE shall be governed by this Regulation, and where expressly authorised by the Regulation, by the statutes of the FE.
2. In matters that are not, or are only partly, regulated by this Regulation, the FE shall be governed by the following rules:
  - (a) the provisions adopted by the FE's home Member State 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 general interest entities of the FE's home Member State.

3. The statutes of the FE shall comply with this Regulation and the applicable law of its home Member State.

4. Member States shall notify to the Commission:

**(a)** the **main** national provisions referred to in paragraph 2(a),

**(b)** the type of national general interest entity which would determine the national laws also applicable to FEs in accordance with paragraph 2(b),

and any future changes thereto. The Commission will make this information public.

**4a. This Regulation shall not apply to national general interest entities, which meet at least two of the following conditions:**

**(a) are entrusted by national law with achieving specific objectives of a national interest;**

- (b) their assets originate from the savings of the local communities and serve the fulfillment of these objectives predominantly in a delimited national local area;**
- (c) are subject, in the context of specific measures taken to reinforce financial sector stability or to safeguard and guarantee assets which originated from the community savings and are managed by the foundations to those communities' benefit, to supervision by a particular national or regional authority entrusted with specific powers, different from the supervision exercised over other national general interest 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 **body responsible for registry** referred to in Article 22(1) and, where applicable, the number of entry of the FE in ~~the~~ **that registry or in the specified storage system;**

- (b) the name of the FE, the Member State in which the FE has its registered office and central administration, the address of its registered office and central administration,
- (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*

#### *Purpose and characteristics of the FE*

1. The FE shall be a separately constituted entity **without membership**, which shall benefit and serve the interest of the public 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 **and inclusion of those furthest removed from the labour market;**
- (f) civilian crisis preparedness and humanitarian or disaster relief;
- (g) development aid and development cooperation;
- (h) **humanitarian** 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) **formal and informal** 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) assistance to, or protection of victims of terrorism and violence;
- (s) local and regional development;**
- ~~(s) amateur sports;~~
- (s†) infrastructure support for general interest purpose organisations pursuing general interest purposes.**

*Article 6*  
*Cross-border component*

The FE shall have a statutory objective of carrying out activities in at least two Member States and shall, except in well justified and time-limited cases, have throughout its lifetime such activities in at least two Member States.

These Member States shall include at least the home Member State of the FE.

*Article 7*  
*Assets and income*

~~1. The assets of the FE shall be expressed in euro, without prejudice to Article 53.~~

~~12.~~ The FE shall have **net** assets equivalent to at least EUR ~~250~~ 000.

**2. In addition to the requirement laid down in the first paragraph, Member States may set a minimum amount of assets that FEs registered in their territory have to set aside for their purpose(s), if this is considered necessary to ensure that they can honour their obligations as they fall due in the normal course of activities and fulfil their purpose(s) in a lasting and sustainable manner.**

**However, this minimum amount of assets shall not exceed EUR 100 000.**

**3. The FE** shall maintain the value of ~~these~~ **the** minimum **net** assets referred to in paragraph 1, and, if applicable, the value of the assets referred to in paragraph 2, throughout its life time, unless it is established for a limited period of time in accordance with Article 12(2).

**43.** The FE shall spend a considerable proportion of its overall income of a given financial year within four years following the end of that year, unless accumulating this income is proven necessary to finance a project of the FE that will be executed within a longer period of time.

Such accumulated income shall be disclosed in the annual accounts of the FE.

*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 when it is entered in the registry or a specified storage system 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 purpose(s) and activities, including the right to own movable and immovable property, to make grants, to raise funds, to receive and hold donations of any kind, 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 general interest 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 may engage in economic activities inextricably related to its general interest purpose provided that any profit is exclusively used in pursuance of its general interest purpose(s).
  
2. Unrelated economic activities of the FE are only allowed up to 10% of the annual net turnover of the FE in the year preceding the relevant financial year and up to a maximum of EUR 50,000 provided that any profit is exclusively used in pursuance of its general interest purpose(s) and that the results from unrelated economic 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 in accordance with and if permitted by the applicable national law, 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 general interest entities legally established in one or more Member States, or an equivalent procedure, as provided for in Articles 14, 15 and 16;
  - (d) conversion of a national general interest entity legally established in a Member State into the FE, or an equivalent procedure, as provided for in Articles 17 and 18.
2. The FE shall be set up for an indefinite period of time. Where expressly laid down in its statutes, it may be set up for a limited period of time, of not less than six years, in case such a limited period of time is appropriate to achieve the objectives of the FE.

### *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 general interest purpose(s) of the FE.

*Article 14*  
*Formation by merger*

1. **Without prejudice to Article 3(4a),** ~~t~~The FE may be created by a merger between general interest entities legally established in one or more Member States provided that the following conditions are met:

- (a) the merger between **those** national general interest entities, or an equivalent procedure, is permitted under the applicable national laws;
- (b) the merger, or an equivalent procedure, is permitted under the statutes or the founding documents of each of the merging entities.

~~—— Foundations of a banking origin established pursuant to the Spanish law 26/2013 of 27 December 2013 and the Italian law XX/XXX of ....., shall be excluded from the possibility to merge into an FE.~~

2. Each of the merging entities shall decide on the merger. The decision shall meet the quorum and majority requirements that would apply, pursuant to the applicable law, to a national general interest entity wanting to merge with another national general interest entity, or, in the absence of such rules, the requirements that apply to the amendments of the statutes or the founding documents of national general interest entities and, where applicable, the additional requirements set out in the statutes or the founding documents of the merging entities.

3. Without prejudice to Article 16, a formation by merger between general interest entities legally established in the same Member State shall take place in accordance with the applicable national law.

A merger between general interest entities legally established in different Member States shall take place in accordance with the procedure laid down in Article 15 and in accordance with requirements of the applicable national law with regard to the protection of creditors and employees of the merging general interest entities.

#### *Article 15*

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

1. A request for a merger decided pursuant to Article 14(2) shall be submitted by the merging entity to the responsible authority of the Member State where it is legally established.
2. The request for a merger shall include the decision 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 general interest entities and, where applicable, their numbers of entry in the registry **or in the specified storage system**;
  - (b) the name and address of the intended registered office and central administration of the FE;
  - (c) the proposed statutes of the FE;
  - (d) how the rights of creditors and employees of the merging entities will be protected.

- 2a. The request for a merger shall be disclosed in accordance with Article 4. The entities' creditors and employees shall be entitled to examine the request for a merger referred to in paragraph 2 and to obtain copies of it free of charge.
3. Each responsible authority shall treat the request for a merger in accordance with the same procedures, including those regarding the protection of creditors and employees, as if it had been a request for a merger resulting in a national general interest entity. The responsible authority may refuse the request for a cross-border merger only on the grounds that the documents referred to in paragraph 2 are not in conformity with this Regulation, that the rights of creditors, employees and/or of holders of other rights in respect of the FE (including those of public bodies) are not adequately protected, that the merger would be contrary to the will of the founder, insofar as expressed in the statutes and/or the founding documents, or to public policy, that it would not be conducive to the purpose of the general interest entity or in cases where any of the merging entities are the subject of supervisory powers, when they are in dissolution or if proceedings for winding-up, insolvency or similar proceedings have been brought against them.
4. Where the request for the merger is approved, the responsible authorities 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 **body** responsible **for** registry~~ation~~ shall notify, without delay, the authorities referred to in paragraph 1 and, where applicable, the **bodies**~~authorities~~ responsible for ~~the~~ registration of the general interest 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 formation by merger*

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

*Article 17*

*Formation by conversion*

1. **Without prejudice to Article 3(4a),** ~~t~~The FE may be formed by conversion of a general interest entity legally established in a Member State, provided that conversion, or an equivalent procedure, is permitted under the applicable national law and the statutes or the founding documents of the converting entity, and would be conducive to the purpose of the general interest entity.

~~Foundations of a banking origin established pursuant to the Spanish law 26/2013 of 27 December 2013 and the Italian law XX/XXX of ....., shall be excluded from the possibility to convert into an FE.~~

2. The entity shall decide on the conversion to the FE and the statutes of the FE. The decision shall meet the quorum and majority requirements that would apply, pursuant to the applicable law, to a national general interest entity wanting to merge with another national general interest entity, or, in the absence of such rules, the requirements that apply to the national general interest entities wanting to amend their statutes or the founding documents.
3. The formation of the FE by conversion shall not result in the winding up of the converting general interest 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 request for conversion decided pursuant to Article 17(2) shall be submitted to the responsible authority in the Member State where the entity is legally established.
2. The request for conversion shall include the decision referred to in Article 17(2) and the draft terms of conversion containing at least the following particulars:
  - (a) the name, address and, where applicable, the number of entry in the registry **or in the specified storage system** of the converting general interest entity;
  - (b) the name and the address of the intended registered office and central administration of the FE;
  - (c) the proposed statutes of the FE;
  - (d) how the rights of creditors and employees of the converting entity will be protected.
- 2a. The request for conversion shall be disclosed in accordance with Article 4. The entities' creditors and employees shall be entitled to examine the request for conversion referred to in paragraph 2 and to obtain copies of it free of charge.

3. The responsible authority shall treat the request for conversion in accordance with the same procedures as if it had been a request to amend the statutes or the founding documents of the national general interest entity. The responsible authority may refuse the request for conversion only on the grounds that the documents referred to in paragraph 2 are not in conformity with this Regulation, that the rights of creditors and/or employees are not adequately protected, that the conversion would be contrary to the will of the founder, insofar as expressed in the statutes and/or the founding documents, or to public policy, that it would not be conducive to the purpose of the general interest entity or in cases where the converting entity is the subject of supervisory powers, when it is in dissolution or if proceedings for winding-up, insolvency or similar proceedings have been brought against it.
4. Where the request for the conversion is approved, the responsible 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 Articles 21, 22 and 23, the **body** responsible **for registry~~ation~~** shall notify, without delay, the responsible authority referred to in paragraph 1 and where applicable, the **body ~~authority~~** responsible for ~~the~~ registration of the converting general interest entity. The conversion shall be effective upon registration of the FE.

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 and central administration of the FE;
  - (d) a description of its general interest purpose(s);
  - (e) the assets at the time of formation of the FE;
  - (f) the financial year of the FE;
  - (g) the number of members of the governing board or a minimum and/or a maximum number, and, where applicable, the designation of roles in the composition of the board;
  - (h) the bodies of the FE other than the governing board and their competences, where applicable;
  - (i) rules on the appointment and dismissal of the members of the governing board and, where applicable, the supervisory board and other bodies of the FE;
  - (j) the procedure for amending the statutes;
  - (k) the period of time the FE shall exist for, if it is not established for an indefinite period of time;
  - (l) the distribution of 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 to amend the statutes. Such amendment shall be in line with article 19(2).
2. The purpose of the FE may only be changed if its purpose has been achieved or cannot be achieved or where the current purpose 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, insofar as expressed in the statutes and/or the founding documents.
4. The governing board shall adopt any change to the purpose of the FE with a majority of two thirds of its members, unless the statutes foresee a different majority, and submit it to the authority responsible for supervision of the home Member State for approval.

## SECTION 3 REGISTRATION

### *Article 21*

#### *Registration*

1. The FE shall be registered in one Member State.
  
- 2. For the purposes of paragraph 1, Member States may decide to use a registry, including a central register, commercial register or companies register as referred to in Article 3 of Directive 2009/101/EC of the European Parliament and of the Council, or any other specified storage system kept by a body responsible for registration designated for this purpose in accordance with Article 22 (1).**
  
23. The FE formed by a merger between two general interest entities legally established in the same Member State shall be registered in that Member State.
  
34. The FE formed by a cross-border merger shall be registered in one of the Member States where the merging entities were legally established.
  
45. The FE formed by conversion shall be registered in the Member State where the converted entity was legally established.

56. A Member State may require that FEs, which are registered in another Member State and decide In case an FE to pursues on a stable and continuous basis a substantial part of their activities in a host Member State its territory, register this Member State may require a registration of an office in that territory.

*Article 22*

*National ~~registries~~ **bodies responsible for registration** and common repository*

1. Each Member State shall designate one or more bodies for the registration of FEs and, where applicable their offices, in accordance with Article 21 and notify the Commission thereof.
2. ~~The registries designated pursuant to paragraph 1 shall be responsible for storing information about FEs registered in that Member State.~~

These ~~registries~~ **bodies responsible for registration designated pursuant to paragraph 1** shall cooperate with each other with regard to the documents, information and particulars concerning the FEs.

3. To facilitate information sharing between the ~~registries~~ **bodies responsible for registration** referred to in paragraph 1 and enable authorities to fulfill the tasks provided for under this Regulation, a common repository allowing ~~the registries~~ to record the information on ~~each new FEs registered or removed from the registry in that Member State~~ shall be set up. The repository of the FEs shall include at least the name of the FE, address of the registered office and central administration, **name and address of the body responsible for registration**, where applicable, the number of entry in the registry **or in the specified storage system**, its general interest purpose(s) and Member States other than the home Member State where the FE intends to carry out its activities.

The information **recorded in the common repository and** necessary to identify the existing FEs shall be made available to the public.

- 4. The bodies responsible for registration shall be responsible for providing to the common repository the information specified in paragraph 3 about each new FE registered in that Member State and about the removal of an FE from the registry or a specified storage system in that Member State.**

*Article 23*

*Formalities relating to registration*

1. Application for registration of the 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 and central administration;
  - (b) the founding documents;
  - (c) a signed statement of the assets, **specifying also net assets**, to be set aside for the purpose(s) 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 full name and address, and any other information necessary, in accordance with the applicable national law, to identify
    - (i) each member of the governing board, and his/her alternates, if any,
    - (ii) any other person who is authorised to represent the FE in dealings with third parties and in legal proceedings,
  - (f) whether the persons in points (i) and (ii) of point (e) represent the FE individually or jointly;
  - (g) the full names and addresses, and any other information necessary, in accordance with the applicable national law, of the founders where these are natural persons; the names, purposes, official addresses and, where applicable, the numbers of entry in the registry **or in the specified storage system** of the founding persons 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 **body** responsible **for** registration and, where applicable, the number of entry in the registry **or in the specified storage system**;
- (i) where the FE was formed as a result of a merger
  - (i) the common 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
  - (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 creditors and employees have been complied with;
- (k) a certificate issued by the competent judicial or administrative authority in the country of origin or the country where the person resides that the members of the governing board have not been disqualified from serving as a board member, or where the country in question does not issue such a certificate, a declaration of the members of the governing board;
- (l) Member States other than the home Member State where the FE intends to carry out its activities.

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

The **body responsible for registration** or, where applicable, other responsible authority, shall check the conformity of the documents and particulars with the requirements of this Regulation and the applicable national law.

2. The **body responsible for registration** or, where applicable, any other responsible authority, shall check whether the applicant complies with the requirements of this Regulation.
3. The **body responsible for registration** shall register the FE where all documents and particulars referred to in paragraph 1 have been submitted 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 for an FE to become a legal person with full legal capacity in accordance with Article 10.

4. The decision of the registry **in accordance with paragraph 3** together with the information **available in the common repository** referred to in ~~points (a) and (d) to (h) of paragraph 1 of this Article~~ **22(3)** shall be disclosed.

**The body responsible for registration shall store the remaining information referred to this Article in an appropriate manner so that it can make it available upon request.**

*Article 23a*

*Formalities relating to registration of offices of an FE*

In case a Member State requires in accordance with Article 21(5), the registration of an office of an FE, requests for registration 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 information necessary to identify the **body responsible for registration** referred to in Article 22(1), in which the FE is registered;
- (b) a description of general interest purpose(s) of the office in case of the purpose(s) being more restrictive than the purpose(s) of the FE;
- (c) the address of the office of the FE **and its name if that is different from the name of the FE**;
- (d) the full name and address, and any other information necessary, in accordance with the applicable national law, to identify
  - (i) each member of the governing board, and his/her alternates, if any,
  - (ii) any other person who is authorised to represent the FE in dealings with third parties and in legal proceedings,
- (e) whether the persons in points (i) and (ii) of point (d) represent the FE individually or jointly.

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

**2. The body responsible for registration shall register the office of the FE where all documents and particulars referred to in paragraph 1 have been submitted within /two weeks/ from the date of application.**

#### *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 **body responsible for registry** within 28 calendar days of the day on which the change takes place.
2. After every amendment to the statutes, the governing board or any person authorised to represent the FE shall submit the complete text of the amended statutes to the **body responsible for registry**. 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 a 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.
2. Each member of the board shall have one vote when voting on the resolutions.
3. Unless a higher majority is provided for in this Regulation or in the statutes of the FE, 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 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 authority responsible for supervision 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 this Regulation, the statutes of the FE, ~~the will of the founder, insofar as expressed in the statutes and/or the founding document~~ and the applicable national law.

2. Members of the governing board shall act in the best interest of the FE and its general interest purpose(s), with the required care and skill, fairly and in good faith and observe a duty of loyalty in the exercise of their responsibilities. Where the statutes of the FE allow remuneration to be paid to members of the governing board of the FE it shall be reasonable and proportionate, and the amounts shall be disclosed in the annual accounts of the FE.
3. The liability of board members shall be governed by the applicable national law.

*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 instructions.
2. Managing directors shall act in the best interest of the FE and its general interest purpose(s), with the required care and skill, fairly and in good faith and observe a duty of loyalty in the exercise of their responsibilities. Remuneration to be paid to managing directors shall be reasonable and proportionate and the amounts shall be disclosed in the annual accounts of the FE.

*Article 31*

*Other bodies of the FE*

1. Without prejudice to Article 29, the statutes of the FE may provide for a supervisory board and other bodies that can be delegated specific competences and tasks.
2. Where the statutes of the FE allow remuneration to be paid to the members of the other bodies of the FE it shall be reasonable and proportionate, and the amounts shall be disclosed in the annual accounts of the FE.

*Article 32*  
*Conflicts of interest*

1. 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 take part in the decisions taken relevant to issues with conflict of interest.
2. No person may at the same time be a member of both the governing board and the supervisory board.

~~Neither the chairperson nor any member of the supervisory board and the majority of the members of the governing board shall at the same time not be managing directors of an FFE at the same time. Only less than half of the~~ No members of the **governing** supervisory board ~~can at the same time~~ shall be managing directors **of an FE** at the same time.

3. No benefit, direct or indirect, may be distributed to any founder, governing or supervisory board member, member of any other body, managing director or auditor, independent third party, as referred to in Article 34 paragraph 5, nor extended to any person having a business or close family relationship with them, unless it is for the performance of their duties within or for the FE or if such distribution is part of the FE's objective to serve the **general public** interest at large. Any such benefit distributed shall be disclosed in the annual activity report of 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 transactions.
2. The FE shall draw up and forward to the relevant **bodies responsible for registration** in its home Member State its 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 **or a specified storage system** 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) a description of the way the general interest purpose(s) 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 that have, during the relevant financial year, either an annual income of 2 000 000 EUR, or **on** average assets worth more than 500 000 EUR or, on average more than 50 employees, 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 of the FE not exceeding the thresholds in paragraph 4 shall at least be examined by an independent third party and where national law provides for an independent third party, the provisions of national law shall apply.
6. The annual accounts, duly approved by the governing board, together with the opinion submitted by the person responsible for auditing/examining the accounts, and the annual activity report shall be disclosed by the FE in accordance with national law.

## **Chapter IV**

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

#### *Article 35*

#### *Seat of the FE*

The FE shall have its registered office and its central administration in the same Member State. A Member State may in addition impose on FEs registered in its territory the obligation to have their registered office and central administration at the same address.

*Article 36*  
*Transfer of registered office*

1. The FE may transfer its registered office and central administration from one Member State to another.

Such transfer shall not result in the winding up of the FE or affect any right or obligation existing before the transfer, unless those rights are intrinsically linked to the home Member State.

2. The transfer shall take effect upon the 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); or, 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 **or a specified storage system** in the home Member State shall be disclosed.

*Article 37*  
*Transfer procedure*

1. The governing board of the FE shall submit a transfer request to the responsible authority of the home Member State.
  
2. The transfer request shall include at least the following particulars:
  - (a) the name of the FE, the address of its registered office and central administration in the home Member State, the information necessary to identify the **body responsible for registry** referred to in Article 22(1) and, where applicable, the number of entry of the FE in ~~that~~ **the registry or in the specified storage system**;
  - (b) if there will be a change of name, the proposed name of the FE and the address of its intended registered office and central administration in the host Member State;
  - (c) the amended statutes of the FE;
  - (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.
  
- 2a. The transfer request shall be disclosed in accordance with Article 4. The entities' creditors and employees shall be entitled to examine the transfer request referred to in paragraph 2 and to obtain copies of it free of charge.

3. The responsible authority of the home Member State may refuse the request for transfer on the grounds that the FE is in one of the situations listed in Article 36(3), that the documents in paragraph 2 of this Article are not included in the request or incomplete, that the rights of creditors, employees and/or of holders of other rights in respect of the FE (including those of public bodies) are not adequately protected in accordance with requirements of the applicable national law or that the transfer would be contrary to the will of the founder, insofar as expressed in the statutes and/or the founding documents, or public policy or that it would not be conducive to the purpose of the general interest entity. Where the request is approved, the responsible authority of the home Member State shall 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 responsible authority in the host Member State:
  - (a) the certificate referred to in paragraph 3;
  - (b) the transfer request approved by the governing board;
  - (c) the documents and particulars listed in Article 23(1).
5. The responsible authority of the host Member State shall verify, without undue delay, whether 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 **body** responsible **for** **registration** of the host Member State.

The responsible authority of the host Member State can refuse the transfer on the grounds that the substantive and formal conditions provided for under this Chapter for the transfer of the registered office are not met, that the rights of creditors and/or employees are not adequately protected in accordance with requirements of the applicable national law or that the transfer would be contrary to the will of the founder, insofar as expressed in the statutes and/or the founding documents, or public policy or that it would not be conducive to the purpose of the general interest entity.

6. The **body** responsible **for** registry<sup>ation</sup> of the host Member State shall register the FE after approval of the transfer by the responsible authority referred to in paragraph 5 of this Article. It shall notify, without delay, the **body** responsible **for** registry<sup>ation</sup> of the home Member State of the registration of the FE in the host Member State.

The **body** responsible **for** registry<sup>ation</sup> of the home Member State shall remove the FE from the registry **or a specified storage system** without delay but not before the notification has been received.

## Chapter V

### Involvement of employees

#### *Article 38*

#### *Representation of employees*

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 **but less than 1000** 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 FE with at least 1000 employees shall establish a European Works Council on the request of at least 100 of its employees in at least two Member States or representatives of those employees.**

**The request for establishment of a European Works Council as referred to in this paragraph shall be submitted to the governing board or, where applicable, to the managing directors of the FE.**

**3.** The national measures **set out in Articles 8 to 10 of Directive 2009/38/EC of the European Parliament and of the Council and the national measures** on the subsidiary requirements set out in subpoints (a) to (e) of point 1 of Annex I to **that** Directive ~~2009/38/EC of the European Parliament and of the Council~~ shall apply to the establishment **and operation** of the European Works Council.

**4.** **The governing board or, where applicable, the managing directors of the FE shall be responsible for obtaining and transmitting to the parties concerned by the application of the provisions on involvement of employees in this Regulation the information required for requesting a creation of a European Works Council, in particular the numbers of the FE's employees referred to in paragraphs 1 and 2 of this Article.**

#### *Article 39*

#### *Information and consultation of employees*

1. The employees 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 **and in the provisions referred to in Article 38(3)** 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 general interest entity under national law, as provided for in Articles 41 and 42;
- (b) winding up the FE, as provided for in Articles 43 and 44.

*Article 41*

*Dissolution by conversion*

1. The FE may be converted into a general interest entity governed by the law of the Member State in which it has its registered office and central administration, provided that conversion, or an equivalent procedure, is permitted under the applicable national law and the statutes of the FE, and would be conducive to the purpose of the FE.

The conversion may only take place two years after 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 affect any right or obligation existing before the conversion.

*Article 42*

*Request for dissolution by conversion*

1. The FE shall submit a request for dissolution by conversion to the responsible authority in the Member State where it has its registered office and central administration in accordance with the law of that Member State and, where applicable, this request shall be published in accordance with the rules 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 and central administration of the converting FE, the proposed name, address and the statutes or the founding document of the new general interest entity, and how the rights of the creditors and employees of the converting FE are protected.
3. The responsible authority may refuse the request for dissolution by conversion only on the grounds that the documents referred to in paragraph 2 are not in conformity with this Regulation, that the rights of creditors and/or employees are not adequately protected, that the proposed general interest entity does not meet the requirements for such entities flowing from the law of the Member State in question, that the dissolution would be contrary to the will of the founder, insofar as expressed in the statutes and/or the founding documents, or public policy, that it would not be conducive to the purpose of the general interest entity or in cases where the converting FE is the subject of supervisory powers, when it is in dissolution or if proceedings for winding-up, insolvency or similar proceedings have been brought against it.
4. Where the responsible authority of the Member State concerned approves the request for dissolution by conversion, it shall forward it to the **body** responsible **for** registry**ation**.

5. Upon receipt of the approved request for dissolution by conversion and creation of the converted general interest entity in accordance with the rules of that Member State, the **body** responsible **for** registry~~ation~~ shall remove the FE from the registry **or a specified storage system** without delay.
6. The conversion shall take effect when the FE is deleted from the responsible registry **or specified storage system**.

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 exhausted its assets.

The governing board shall submit its decision to wind up the FE to the authority responsible for supervision of the home Member State for approval.

2. The authority responsible for supervision in the home Member State may, on its own initiative or on the basis of requests of creditors or employees, and 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 has seriously violated and/or is continuously violating this Regulation, the statutes of the FE, ~~the will of the founder, insofar as expressed in the statutes and/or the founding document~~ or the applicable national law.

*Article 44*

*Winding up*

1. Where the authority responsible for supervision in the home Member State has approved the decision of the governing board pursuant to the second subparagraph of Article 43(1) or where the authority responsible for supervision 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 ~~net~~ assets of the FE shall, be transferred to another general interest entity with a similar general interest purpose or otherwise used for general interest 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 authority responsible for supervision in the home Member State by the governing board or the liquidator responsible for the winding up together with a report including information on the distribution of the remaining ~~net~~-assets. These documents shall be disclosed.
4. The procedure for winding up of the FE shall be governed by the law of its home Member State.

## **Chapter VII**

### **Member State supervision**

#### *Article 45*

#### *Authority responsible for supervision*

Each Member State shall designate one or more authorities at its choice, including from among those that were designated for other purposes under this Regulation, that are responsible for the effective supervision of FEs registered in that Member State. They shall notify the Commission thereof.

## *Article 46*

### *Powers and duties of the authority responsible for supervision*

1. The authority responsible for supervision shall ensure that the FEs act in accordance with this Regulation, their statutes, ~~the will of the founder, insofar as expressed in the statutes and/or the founding document~~ and the applicable national law. It may act on its own initiative or on the basis of complaints.
2. The authority responsible for supervision shall have the power to approve the change of 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 authority responsible for supervision shall have at least the following powers:

- (a) where it has indications that the FE is not acting in accordance with this Regulation, the statutes of the FE, ~~the will of the founder, insofar as expressed in the statutes and/or the founding document~~ or the applicable national law, to inquire into the affairs of that FE and, for that purpose, to require the governing board and other bodies of the FE as well as its auditor or the independent third party, as referred to in Article 34 paragraph 5, 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 FE has not acted in accordance with this Regulation, the statutes of the FE, ~~the will of the founder, insofar as expressed in the statutes and/or the founding document~~ or the applicable national law, to **take appropriate and proportionate measures, such as issuing** issue warnings to the FE, ~~to ordering~~ **it** to comply with this Regulation, the statutes of the FE, ~~the will of the founder, insofar as expressed in the statutes and/or the founding document~~ and the applicable national law, or ~~to ordering~~ **the FE** to change the governing board, within a specified period of time;
- (d) to dismiss a member of the governing or supervisory 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), and/or to suspend such member for the period of time until the court has made a decision;
- (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 authority responsible for supervision shall ~~have not power~~ **itself take over and be in charge of** ~~to act in~~ the administration of the FE; **it may however, for the purposes of paragraph 1, take temporary or individual measures relating to the administration of the FE.**

*Article 47*

*Co-operation between authorities responsible for supervision*

1. In order to carry out supervisory powers and take the necessary steps provided for in Article 46, the authority responsible for supervision of the home Member State and the authorities responsible for supervision of the Member State where the FE carries out activities shall cooperate with each other.
2. They shall provide each other with the necessary information in the event of infringements by the FE of this Regulation, the statutes of the FE, ~~the will of the founder, insofar as expressed in the statutes and/or the founding document~~ or the applicable national law.
3. On request of the authority responsible for supervision of a Member State where the FE carries out its activities, the authority responsible for supervision of the Member State where the FE has its registered office and central administration shall investigate suspected infringements by that FE and shall take the appropriate action in accordance with the applicable national law.

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

4. To test the suitability of using the Internal Market Information System (IMI) established by Regulation (EU) No. 1024/2012 for the purpose of practical implementation of Articles 15(5), ~~22(2), 22(3)~~, 37(6) and 47 a pilot project shall be launched at the latest [*2 years from the entry into force of this Regulation*].

~~If the pilot is deemed successful, the use of IMI shall be formalised by an amendment of the IMI Regulation.~~

#### *Article 48*

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

1. The authority responsible for supervision of the home Member State of the FE 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 outcome of those inquiries as well as about any warnings issued or sanctions imposed.

*Article 48a*

**Powers and duties of national authorities with respect to matters falling outside the scope of this Regulation**

**The provisions of this Chapter and measures taken in pursuance thereof shall not prejudice the right of Member States to ensure compliance by an FE with national laws governing matters falling outside the scope of this Regulation. In particular, those provisions shall not prejudice the powers and duties of the authority responsible for supervision of the Member State where the FE carries out its activities, as vested in this authority by national law, with respect to matters falling outside the scope of this Regulation.**

**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*

*Use of national currency*

1. **The assets of the FE shall be expressed in euro. However** Member States in which the third phase of the economic and monetary union (EMU) does not apply may require FEs having their registered office and central administration in their territory to express their assets in the national currency. An FE may also express its assets in euro. The national currency/euro conversion rate shall be as on the last day of the month preceding the registration of the FE.
2. An FE may prepare and publish its annual accounts in euro in Member States where the third phase of the economic and monetary union (EMU) does not apply. However such Member States may also require FEs to prepare and publish their annual accounts in the national currency in accordance with the applicable national law.

*Article 54*

*Review of the Regulation*

Seven years after the entry into force of this Regulation, the Commission **shall review its application, in particular with regards to:**

- (a) **the provisions on minimum net assets and the effect of permitting Member States to set an additional amount of assets that FEs registered in their territory have to set aside for their purposes;**

- (b) the thresholds set for involvement of employees in Article 38 paragraphs 1 and 2;**
- (c) the provisions regarding national bodies responsible for registration and the common repository, in particular with a view to achieving transparency on FEs;**
- (d) the suitability of using IMI in the framework of the pilot project referred to in Article 37(4) in accordance with Article 4(2) of Regulation (EU) No. 1024/2012 and possibilities to use the system of interconnection of central, commercial and companies registers as established in accordance with Article 4a(2) of Directive 2009/101/EC for some tasks under 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,

*For the Council*

*The President*

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