



**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 5 June 2014
(OR. en)**

**Interinstitutional File:
2012/0022 (APP)**

**9428/2/14
REV 2**

LIMITE

**DRS 58
SOC 328**

NOTE

From: General Secretariat of the Council
On: 15 May 2014
To: Delegations

No. prev. doc.: 7673/14 DRS 23 SOC 118
No. Cion doc.: 6580/12 DRS 28 SOC 125 + ADD1 + ADD2

Subject: Proposal for a Council Regulation on the Statute for a European Foundation
(FE)
- Examination of the Presidency compromise text

In view of the meeting of the Working Party on Company Law (Attachés) on 10 June 2014, delegations will find in the Annex a compromise text prepared by the Presidency.

Changes compared to the previous Presidency compromise text (doc. 9428/14) are marked.

Presidency Compromise

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 Parliament¹,

Having regard to the opinion of the European Economic and Social Committee²,

Having regard to the opinion of the Committee of the Regions³,

Acting in accordance with a special legislative procedure,

Whereas:

1. **General interest** ~~Public benefit purpose~~ entities, through their activities in numerous areas, contribute to the fundamental values and objectives of the Union such as respect for human rights, protection of minorities, employment and social progress, the protection, conservation and improvement of the environment or the promotion of scientific and technological advances.

¹ OJ C , , p. .

² OJ C , , p. .

³ OJ C , , p. .

2. The legal framework in which **general interest** ~~public benefit purpose~~ entities carry out their activities in the Union is based on national laws, without harmonisation at Union level. In addition, there are substantial differences between civil and tax laws across the Member States. Such differences make cross-border operations of **general interest** ~~public benefit purpose~~ entities costly and cumbersome. As a result, the cross-border channelling of funds to **general interest** ~~public benefit~~ purposes remains largely underexploited.
3. In view of the problems faced by **general interest** ~~public benefit purpose~~ entities and the fact that there is no other European legal form which they could use for their activities, a European form specifically designed for such entities, which could be created throughout the Union, should be provided for. This legal form should be as uniform as possible across the Union to best promote cross-border ~~public benefit purpose~~ activities **in the general interest**.
4. The European Parliament adopted resolutions on 6 April 2011 on a Single Market for Europeans⁴, on 19 February 2009 on Social Economy⁵, and on 4 July 2006 on recent developments and prospects in relation to company law⁶, and issued a written declaration on 10 March 2011 on establishing European statutes for mutual societies, associations and foundations⁷, in which it called for a Statute for a European Foundation.
5. The European Economic and Social Committee issued an opinion on 28 April 2010 on the European Foundation Statute⁸. The Committee of the Regions issued an opinion on 1 April 2011 on the Single Market Act⁹. Both opinions supported the initiative of the Commission to establish a Statute for a European Foundation.
6. The European Foundation (hereinafter 'FE') should be governed by the substantive rules set out in this Regulation and by the statutes of the FE. Provisions of national law applicable to **general interest** ~~public benefit purpose~~ entities 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.

⁴ 2010/2278(INI).

⁵ 2008/2250(INI).

⁶ 2006/2051(INI).

⁷ Written declaration 84/2010, P7_DCL(2010)0084.

⁸ INT/498 - CESE 634/2010 - April 2010.

⁹ CdR 330/2010 fin.

7. The FE should promote ~~public benefit~~ **general interest** purposes only, understood as benefiting a broadly defined group of beneficiaries. Since activities of **general interest** ~~public benefit~~ ~~purpose~~ entities focus on areas that are important for European citizens and the European economy, such scope would bring the highest social, economic and environmental benefits. In order to ensure legal certainty, the ~~public benefit~~ **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. The notion of **general interest** ~~public benefit~~ ~~purpose~~ 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 ~~public benefit~~ **general interest** purpose.
8. Given the FE's obligation to pursue solely its ~~public benefit~~ **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 ~~public benefit~~ **general interest** purposes. Moreover, all FE's assets should be irrevocably dedicated to the ~~public benefit~~ **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 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 ~~public benefit~~ purpose **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 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.
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 ~~public benefit~~ **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 ~~public benefit~~ **general interest** purpose, as long as they are in line with its statutes and this Regulation.

13. The ability to carry out economic activities, both related and unrelated to its ~~public benefit~~ **general interest** purpose, would provide the FE with a substantial source of finance and means of increasing the funds available for ~~public benefit~~ **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 ~~public benefit~~ **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 ~~public benefit purpose~~ **general interest** entities or by converting national ~~public benefit purpose~~ **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 legal entities without membership with the same characteristics formed in accordance with the law of one of the Member States.** Foundations with a ~~public benefit~~ **general interest** purpose and similar legal entities without membership with a ~~public benefit~~ **general interest** purpose, but not necessarily recognised in their Member State as having a **general interest** ~~public benefit~~ 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 ~~public benefit purpose~~ **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 ~~public benefit purpose~~ **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 ~~public benefit purpose~~ **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 ~~public benefit purpose~~ **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 ~~public benefit purpose~~ **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 comply with EU law. ~~Some~~ **The information about national registries should notify the Commission of their registered FEs should be stored in a common repository.**

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 ~~public benefit~~ **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 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 ~~public benefit~~ **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/EEC¹⁰ 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.
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 all Member States for national ~~public benefit purpose~~ **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 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.

¹⁰ OJ L 157, 9.6.2006, p. 87.

23. The Internal Market Information System (IMI) established by Regulation (EU) No 1024/2012 of the European Parliament and of the Council¹¹ 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** ~~to cover the exchange of information under~~ this Regulation.
24. Member States enjoy broad freedom to determine the tax treatment applicable to ~~public benefit purpose~~ **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.
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 employees¹².

¹¹ OJ L 316, 14.11.2012, p.1.

¹² OJ L 122, 16.5.2009, p. 28.

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 ~~public benefit purpose~~ **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 ~~public benefit purpose~~ **general interest** entities cannot be sufficiently achieved by the Member States in so far as they involve the creation of a ~~public benefit purpose~~ **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 funding¹³.

HAS ADOPTED THIS REGULATION:

¹³ OJ L 297, 15.11.2003, p. 1.

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;
- (2) 'unrelated economic activities' means ancillary economic activities of the FE, not serving directly the ~~public benefit~~ **general interest** purpose of the ~~public benefit purpose~~ **general interest** entity. This does not include normal management of its assets by the FE;
- (3) '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;
- (4) 'general interest entity' means a foundation which benefits and serves the interest of the public at large and/or similar legal entity without membership which benefits and serves the interest of the public at large formed in accordance with the law of one of the Member States.

- (5) 'home Member State' means the Member State in which the FE has its registered office and its central administration.
- (6) '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 ~~public benefit purpose~~ **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 the national provisions referred to in paragraph 2(a), the **type of national general interest entity which would determine the** national laws ~~which would~~ **also applicable** to FEs in accordance with paragraph 2(b) and any future changes thereto. The Commission will make this information public.

Article 4
Disclosure

1. Information concerning the FE to be disclosed pursuant to this Regulation shall be disclosed in accordance with the applicable national law in such a way that it is easily accessible to the public.

2. The letters and order forms of the FE, whether they are in paper or electronic form, as well as any website of the FE shall state the following particulars:
 - (a) the information necessary to identify the registry referred to in Article 22(1) and, where applicable, the number of entry of the FE in that registry;

 - (b) the name of the FE, the Member State in which the FE has its registered office 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 of the FE

1. The FE shall be a separately constituted entity, 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;
- (f) civilian crisis preparedness and humanitarian or disaster relief;
- (g) development aid and development cooperation;
- (h) assistance to refugees or immigrants;
- (i) protection of, and support for, children, youth or elderly;
- (j) assistance to, or protection of, people with disabilities;
- (k) protection of animals;
- (l) science, research and innovation;
- (m) education and training;

- (n) European and international understanding;
- (o) health, well-being and medical care;
- (p) consumer protection;
- (q) assistance to, or protection of vulnerable and disadvantaged persons;
- (r) assistance to, or protection of victims of terrorism and violence;
- (s) amateur sports;
- (t) infrastructure support for ~~public benefit~~ **general interest** purpose organisations.

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.
2. The FE shall have assets equivalent to at least EUR 50 000. It shall maintain the value of these minimum assets throughout its life time, unless it is established for a limited period of time in accordance with Article 12(2).
3. 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 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** ~~public benefit~~ purpose and is in compliance with this Regulation.
3. Unless restricted by its statutes, the FE may carry out activities in any third country.

Article 11

Economic activities

1. Unless restricted by its statutes, the FE may engage in economic activities inextricably related to its **general interest** ~~public benefit~~ purpose provided that any profit is exclusively used in pursuance of its **general interest** ~~public benefit~~ 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** ~~public benefit~~ 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** ~~public benefit purpose~~ 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** ~~public benefit purpose~~ 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** ~~public benefit~~ purpose(s) of the FE.

Article 14

Formation by merger

1. The FE may be created by a merger between **general interest** ~~public benefit purpose~~ entities legally established in one or more Member States provided that the following conditions are met:
 - (a) the merger between national **general interest** ~~public benefit purpose~~ 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** ~~public benefit purpose~~ entity wanting to merge with another national **general interest** ~~public benefit purpose~~ 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** ~~public benefit purpose~~ 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** ~~public benefit purpose~~ entities legally established in the same Member State shall take place in accordance with the applicable national law.

A merger between **general interest** ~~public benefit purpose~~ 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** ~~public benefit purpose~~ 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** ~~public benefit purpose~~ entities and, where applicable, their numbers of entry in the registry;
 - (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** ~~public benefit purpose~~ 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, ~~and/or~~ 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** ~~public benefit purpose~~ 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 responsible registry shall notify, without delay, the authorities referred to in paragraph 1 and, where applicable, the authorities responsible for the registration of the **general interest** ~~public benefit purpose~~ entities dissolved by the merger.

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

Article 16
Consequences of the 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** ~~public benefit purpose~~ 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** ~~public benefit purpose~~ entity being absorbed shall be transferred to the absorbing **general interest** ~~public benefit purpose~~ entity, the entity being absorbed shall cease to exist and the absorbing legal person shall become the FE.

Article 17
Formation by conversion

1. The FE may be formed by conversion of a **general interest** ~~public benefit purpose~~ 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** ~~public benefit purpose~~ 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** ~~public benefit purpose~~ entity wanting to merge with another national **general interest** ~~public benefit purpose~~ entity, or, in the absence of such rules, the requirements that apply to the national **general interest** ~~public benefit purpose~~ 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** ~~public benefit purpose~~ entity or any loss or interruption of its legal personality or affect any right or obligation existing before the conversion.

Article 18

Request for conversion

1. A 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 register of the converting **general interest** ~~public benefit purpose~~ 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** ~~public benefit purpose~~ 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** ~~public benefit purpose~~ 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 responsible registry shall notify, without delay, the responsible authority referred to in paragraph 1 and where applicable, the authority responsible for the registration of the converting **general interest** ~~public benefit purpose~~ 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** ~~public benefit~~ 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. The FE formed by a merger between two **general interest** ~~public benefit purpose~~ entities legally established in the same Member State shall be registered in that Member State.
3. The FE formed by a cross-border merger shall be registered in one of the Member States where the merging entities were legally established.

4. The FE formed by conversion shall be registered in the Member State where the converted entity was legally established.
5. In case an FE pursues on a continuous basis substantial activities in a host Member State, this Member State may require a registration of an office.

Article 22

National registries and common repository

1. Each Member State shall designate one or more bodies for the registration of FEs and, where applicable their offices, 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 shall cooperate with each other with regard to the documents, information and particulars concerning the FEs.

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

The repository shall be established by the means of the IMI system.

The information **necessary to identify the existing FEs** shall be made available to the public.

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 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 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 responsible registry and, where applicable, the number of entry in the registry;
 - (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 registry 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 registry or, where applicable, any other responsible authority, shall check whether the applicant complies with the requirements of this Regulation.
3. The registry 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 together with the information referred to in points (a) and (d) to (h) of paragraph 1 of this Article shall be disclosed.

Article 23a
Formalities relating to registration of offices of an FE

In case a Member State requires in accordance with Article 21, 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 registry referred to in Article 22(1), in which the FE is registered;
- (b) a description of **general interest** ~~public benefit~~ 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;
- (d) ~~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,
- ~~(e)~~ whether the persons in points (i) and (ii) of point (e) represent the FE individually or jointly;

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

Article 24
Changes to documents and particulars submitted for registration

1. The governing board or any person authorised to represent the FE shall submit any change with respect to the documents or particulars referred to in Article 23(1) to the registry within 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 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** ~~public benefit~~ 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** ~~public benefit~~ 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.

The chairperson and the majority of the members of the governing ~~or supervisory~~ board, shall not be managing directors at the same time. **No members of the supervisory board shall be managing directors 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 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 registries 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 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 ~~public benefit~~ 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 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 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 registry referred to in Article 22(1) and, where applicable, the number of entry of the FE in that registry;
 - (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** ~~public benefit purpose~~ 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 responsible registry 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** ~~public benefit purpose~~ entity.

6. The responsible registry 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 responsible registry of the home Member State of the registration of the FE in the host Member State.

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

Chapter V
Involvement of employees

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

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

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 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** ~~public benefit purpose~~ 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** ~~public benefit purpose~~ 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** ~~public benefit purpose~~ 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** ~~public benefit purpose~~ 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** ~~public benefit purpose~~ 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 registry.
5. Upon receipt of the approved request for dissolution by conversion and creation of the converted **general interest** ~~public benefit purpose~~ entity in accordance with the rules of that Member State, the responsible registry shall remove the FE from the registry without delay.
6. The conversion shall take effect when the FE is deleted from the responsible registry.
The conversion shall be disclosed.

Article 43

Decision to wind up

1. The governing board of the FE may decide to wind up the FE in one of the following cases:
 - (a) the purpose of the FE has been achieved or cannot be achieved;
 - (b) the time for which it was set up has expired;
 - (c) it has 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** ~~public benefit purpose~~ entity with a similar **general interest** ~~public benefit~~ purpose or otherwise used for **general interest** ~~public benefit~~ purposes as close as possible to those for which the FE was created.
3. Final accounts until the date when the winding up takes effect shall be sent to the 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 issue warnings to the FE, to order 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 order 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 no power to act in 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** ~~exchanging information on issues referred to in~~ 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.

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. 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 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
