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Comments and Recommendations to the Act on Foundations and Funds of the Republic of Croatia

By Petr Jan Pajas, ICNL Consultant, August 2001

1. Introduction

The intention of this paper is to provide an analysis of the present Act on Foundations of the Republic of Croatia based on a comparative study of present status of laws governing the registration, functioning and supervision of foundations in several European countries and to propose principles which might be incorporated into any further amendments of the Croatian law.

The initiative has been taken on suggestion of the International Center for Not-for Profit Law (ICNL) and the work is based on a detailed study of legal environment for foundations in Europe and several other countries of the world, as well as on the personal experience gained by the author during his participation on the process of drafting, processing and implementing the Act on Foundations and Funds and closely related Act on Public Benefit Corporations of the Czech Republic {see Ref. [10] and [11]}, as well as on drafting together with ICNL the recent Act on Non/Profit Organizations of Albania {see Ref. [25]}.

The main topics discussed are related to the definition of a foundation and to several existing alternative possibilities of legal solutions to provide for foundations either a single or several different types of legal entities, depending on the scope, purpose and type of their activities. The study continues by discussing the issues related to the regulation of activities requested by the law in a case of establishing a foundation from the founder and/or from the state organs, as well as what is needed to acquire the legal personality status by a newly established foundation, what are the conditions of its existence and how is regulated the process of registration or incorporation of such a legal entity.

The study provides also information on usual requirements concerning the purpose, initial property, statute, governance structure and decision-making rules, basic statutory activities, such as use and maintenance of endowed property and incomes generated by it, as well as incomes generated by other economic activities and about conditions, under which such activities are usually permitted. Finally, there are discussed termination modalities and use of liquidation balance upon voluntary or involuntary winding-up a foundation.

In chapters devoted to these issues, the existing propositions of the Croatian law currently in power are confronted with the practice, as applied in several European states, and followed by comments and recommendations of the author.

As the main sources for the study served directly the existing laws, mostly in the French translation^[1], as well as in German^{[2][3][4][5]}, French^{[6][7][8][8a]}, Spanish^[9], Czech^{[10][11]}, Slovak^{[12][13]} and Croatian^[14] original versions, as acquired from the ICNL Law Library in Washington, D.C. Very important new source appears to be the publication on Foundations in Europe^[15] from which additional information has been used to complete the comparative data on foundations. Some other sources are cited in the text, which follows.

2. Definition of Foundation in European Continental Context

General Remarks

Before entering the discussion on how foundations are defined, it should be mentioned the existing disproportion between the approach of the continental law applied on nearly all European countries and based on the tradition of Roman Law and the common law, the latter being applied in Europe only on British Islands (in United Kingdom with separate legislations for England, Wales, Scotland, North Ireland and Republic of Ireland)^[16] and also in U.S.A.^[17], Canada^[18] and most countries of the British Commonwealth.

As far as the foundations are concerned, the common law is concerned more with activities than with legal forms. In fact, under the common law systems the legal form of a foundation may even not exist at all, but the foundation-like organizations may be incorporated under the company law, acquiring thus several legal forms. However, it is required, that a trust, a limited liability company or other legal entity acts in compliance with, say, a Charity Act of England or Wales, or applies for tax exempt status as a not-for-profit or non-profit organization under the U.S. tax revenue legislation or the Canadian Act on Non-profit Corporations.

On the other hand, under the continental law systems, with certain exceptions discussed below, it prevails the approach adopted also in Croatia: to define foundations as a separate type of legal entity. The most detailed and elaborated legislation based on this approach is possibly available from Spain {see Ref. [9]} and also from the Czech Republic {see Ref. [10]}.

Certain exceptions exist for any general rule: In Germany, for example, the term foundation (“Stiftung”) is used to describe organizations, who take care for a given basic capital from which they provide to third persons resources for the given purpose, as given in their statute. This description is applicable to operational, project-oriented or third-person-granting type of foundation-like organizations, which provide certain free of charge benefits to third persons. However, special treatment is reserved for organizations, which serve to support just a single institution, to state run trusts or to so called public foundations, as well as to many religious charitable foundations (in Germany there are about 60,000 of so-called “Pfündestiftungen”, which take care over religious education or property of churches). As other examples may serve family foundations, known besides Germany also in Switzerland, Italy, Liechtenstein and recently introduced also in Austria or company foundations (e.g. in Belgium, France and Italy). However, in each state (“Land”) of the Federal Republic Germany there may be and is a specific law, which regulates activities of foundations on its territory.

Specific development took place in the Czech Republic and also in Slovakia: After 1989 events in these two Central European countries began a restoration of democratic legal system from previous communist regimes distortions of private and civil rights. As a result, two or even three separate legal entities have been introduced by new laws, which together cover the field of activities of foundations as known from other countries.

The present legal system of the Czech Republic distinguishes by an appropriate legal type the grant-giving foundations with initial endowment (in Czech “nadace”) from funds without initial endowment, which may collect resources for grant giving to third persons (in Czech “nada ní fond”), as well as from exclusively operational and service providing, non-

membership establishments, called public benefit corporations [institutes, companies] (in Czech „obecn prosp šná spole nost“). Similar, if not totally identical situation resulted after the split of the former Czechoslovakia also in the present Slovak Republic legal system {see Ref. [12]and [13]}.

In the following text the Croatian approach is described and confronted with the practice of other European countries and commented by the author.

Croatian Approach

In Croatia, the Act on Foundations and Funds (CAFF) {see Ref. [14]} defines foundation^[19] in its Articles 2 and 32 essentially as follows:

The foundation (in Croitian “zaklada”) or the fund (in Croitian “fundacija”) is a property assigned to serve by itself or by the incomes it acquires to the accomplishment of some generally beneficial or charitable purpose.

While a foundation is to be established for indefinite duration, a fund may be established for only a limited period of time (maximum for 5 years).

International Perspective

The CAFF definition is very close to that of Austria: *Foundation is a legal person established upon an irrevocable transfer of assets, income from which is to be applied for charitable or beneficial purposes*, which is only slightly and in some of the aspects modified in legal definitions adopted by Bulgaria (“... *gratuitously transferred property for the achievement of nonprofit purpose*”), Cyprus (“ *whole property designed to serve a specific purpose*”), Czech Republic (“... *collection of property established to accomplish generally beneficial objectives*”), France (“... *irrevocable dedication of property towards achievement of a public interest goal...*”), Greece (“... *disposition of assets ... for the pursuit of a particular durable purpose*”), Italy, Liechtenstein, Portugal (“... *a legal person ... whose property is gathered to constitute an endowment ... dedicated for a specific public purpose [- of altruistic nature – in Portugal]*”), Slovenia (“... *legal person formed to represent property tied to specific beneficial and charitable purposes*”), Spain (“... *assets serving a general interest purpose*”), Sweden (“... *money or property separated to be administrated by someone to permanently pursue a certain purpose*”), Switzerland (“... *a corporate body created by the dedication of assets for a specific purpose of a public, private or charitable character*). Very closely related are also definitions used in Belgium, Estonia, Finland, Germany (“... *foundation must be established for a concrete purpose and must be endowed by the founder by certain assets at the time of establishment*”), Hungary, Luxembourg (*the law specifies the purposes*) and Slovakia.

Lessons Derived

What lessons may we derive from the overview of definitions to the term “foundation”?

- In most countries, the foundation is defined as a legal entity that represents certain assets provided or at least irrevocably promised by its founder(s) in the act by which the foundation is being established – the endowment.
- In this study, by “endowment” shall be understood the substantial portion of the total assets of a foundation, which is dedicated to be kept intact or maintained without loss I its value during the existence of the foundation and which should be composed of

- assets that regularly generate usable income (bank accounts on high interest rates, bonds and securities of sufficiently growing market value, author or patent rights with expectable royalties, real estate to rent or to support operations of the foundation).
- In most countries, the definition of the foundation refers to the existence of an endowment initially donated by the founder(s), and to incomes generated from that endowment to support a certain well-defined purpose.
 - In many European countries the purpose of a foundation is bound to be of public interest or for public benefit, while in some countries, the purpose may be also of a purely private character (e.g. in Liechtenstein, Germany and Switzerland, as well as in Netherlands and Sweden)
 - Only in some countries (Austria, Liechtenstein, Germany, Italy, Switzerland) it is possible to established also family foundations, which serve exclusively to set aside certain family assets to be used in the future exclusively or primarily for the needs of members of that family or even to a certain group of individual persons like owners of a company.

Comments to the CAFF definition of foundations

- The economic situation of the countries of the European union (EU) and those of the Central Europe (CE) and South-Eastern Europe (SEE) differ in one important aspect: The EU countries with the only exception of the so called “Ostlände” of the Federal Republic of Germany, which used to form the former German Democratic Republic, have not underwent interruption of the free private market economy nor broad confiscation of private commercial property.
- As a result, in the CE and SEE countries, including to certain degree also Croatia, the growth of private property and its concentration into family or individual hands has been interrupted for more then four decades. During that period it was limited or even barred the process of setting aside portions of accumulated private property for altruistic or philanthropic (educational, scientific, health care, charitable, humanitarian, social welfare, etc.) purposes. In other words, the historically traditional, well-known and amply applied tradition of establishing foundations in CE and SEE countries has been interrupted for the time span of at least two generations.
- Therefore, in the EU countries the establishment of foundations may be efficiently restricted to assignment of irrevocable donation of existing and sustainable property forming an endowment, from which only the income is used for the foundation’s purposes. However, in the CE and SEE countries is a possibility to create from domestic resources sufficiently endowed foundations under current economic and social situation very limited, if not totally excluded.
- Thus, at least in the less economically developed countries, the foundations should be allowed to exist even with small or even without essential initial property as legal entities raising funds for financing public benefit objectives.
- It is also important for the CE and SEE countries to support and promote foundations serving public benefit purposes, while there is not (yet?) any special interest or need of legally supporting or even promoting family foundations or purely private purpose oriented foundations.
- The Croatian Act of Foundations and Funds (CAFF) uses the West European approach to the definition of a foundation, which either assumes sufficiently rich families or individuals in the country or speculates with foreign donors to altruistically establish foundations in Croatia. Both expectations seem to be either premature or unrealistic.

- The CAFF distinguishes between endowed foundations (“zaklada”) and temporarily existing funds (“fundacija”) basically on the basis of the use of the initial endowed property. While foundation may use incomes of the endowment to achieve its objectives, the fund may apparently use the initial donation in its entirety and should do so in less than five years.

Recommendations with Respect to the CAFF

- It is recommended to preserve the double character of the foundation / fund concept, but it may be favorable for further development of the philanthropy culture in Croatia modify the definition so as to allow for both the foundation and the fund to attract further donations and solicit for financial support of its purpose.
- The modification shall also allow for a founder by the way of the initial donation and for any further donor to provide irreversibly parts of private property or other valuable assets for the purpose to which the foundation or fund have been established.
- This approach would enable to establish foundations based upon the purpose, rather than on the existence of a concrete and from the beginning available endowment.
- It seems to be of importance to underline the difference between a foundation and a fund not so much by the term of their existence, but rather by the way of use or even obligatory existence of endowment (*see also Chapter 8 and Ref. [10]*).
- There is a good reason for keeping the funds as different legal entities from foundations, since through funds may be efficiently used such assets assigned for public benefit, which do not bear characteristics of an endowment. However, it is recommendable not to limit the term of their existence by a fixed period of time in the end clause of the first paragraph in Article 32 of the CAFF.

3. Founders and Membership in a Foundation Issues

General Remarks

Often, questions are raised such, as who may become a founder of a foundation (fund), whether there are any specific rights of founder(s) and if so, what are these rights, as well as whether there are any constraints to the rights of founders in establishing a foundation and if so, what are these constraints.

Another issue raised is related to the notion of the membership in a foundation. This seems to reflect the situation in common law legal systems, where an incorporated association may also apply for tax benefits or a charity status and be recognized as a foundation. From this point of view, it is only natural to talk about the membership in a foundation operating as an association of persons using their accumulated corporate property for a specific purpose, either not-for-profit or charitable or altruistic or even private. Even mutual benefit associations, like those of farmers to provide for common electrification or communication or utility interests or church based associations promoting education or non-liturgical spiritual activities may exist and be considered as foundations in U.S.A. and other common law countries.

Thus, a question is raised, whether a membership to a foundation (in a sense that resembles an open association) should be allowed or restricted and if allowed, what such a membership in a foundation would mean.

Croatian Approach

In Croatia, the CAFF defines the role of founder(s) of a foundation in its Article 3 as follows: *Any domestic or foreign natural person may establish a foundation.*

The CAFF does not contain any mentioning of the membership in a foundation of a fund.

International Perspective

Evidently the Croatian approach is consistent with the European context, in which the answers to the questions raised above are rather straightforward and evident.

Direct right to establish a foundation a separate legal entity is provided by all continental legal system to any natural person capable of independently concluding legal acts (adult and not proclaimed incapable of legal acts by a valid court decision) or to any legal entity (juridical or legal person). In most countries the act of establishment of a foundation may be done by a living person directly (*in vivo*), as well as by a testament to provide the property after the death of the founder (*mortis causa*).

Only few countries (e.g. Belgium and Switzerland) explicitly provide in the law regulating the foundations the rights of inheritors to attack the last will of a founder of a foundation. This does not exclude a possibility to observe such a limitation of the right to establish a foundation by a testament based upon general provisions of the Civil Code (see e.g. Czech Republic).

Many countries, as may be observed from the survey of foundation definitions above, request the founders decision of transferring initial donation to a foundation administration to be irrevocable, but some explicitly allow for taking the decision back before the foundation acquires the legal personality status.

As far as specific rights of founders, this issue is also discussed in Chapter 4, which deals with establishment issues and partially also in the Chapter 10 dealing with internal management, as well as in Chapter 11 on state supervision and public reporting issues.

The European context seems to tend to foundations being essentially related to the property and purpose for which the property should be used, while membership is reserved exclusively to collective administrative or decision-making body governing the foundation.

However, a failure to distinguish clearly between associations and foundations may create legal chaos with respect to the membership issue. The former Czechoslovakia and Czech Republic may serve as an example: When in 1992 the amended Civil Code was adopted in the former Czechoslovakia, it included also the provisions about foundations, defining them as legal entities established to fulfill publicly beneficial purposes. It was easy to establish them by submitting a statute of the foundation to the registration at one of about 80 district-based administrative offices. The Czechoslovak Civil Code also contained a provision on appropriate use for foundations of provisions regulating operation of associations. Due to this vague and misleading formulation there has been created a situation, when many civil initiatives, including those of evidently commercial or mutual-benefit purposes, sought to be

foundations, because it was much easier and cheaper than to establish a limited liability company or to bother about membership rules and other issues of an association. As a result, in 1997 there existed about 5500 foundations in the Czech Republic, many of which were based on membership of their founders or which were openly engaged in business activities or fundraising for a single entity. The new Act on Foundation and Funds enacted in 1997 require re-registering of the existing foundations either as non-membership based foundation with endowment or fund without endowment or as a non-membership commonly beneficial service providing public benefit companies (see also Chapters 5 and 8). Less than 25 per cent of hitherto existing foundations were able to do so and more than 4000 “foundations” fell into oblivion since 1998.

In almost all European countries a foundation is explicitly defined in such a way that it may not be mistaken for an association. It is mostly defined as an entity, which is not based on membership. However, community foundations may represent certain exception. They are known from German law and are often organized by community self-government together with local companies. The founding persons might reserve for themselves such positions in the internal governing structure of the foundation, that they consider themselves as members of the foundation, where their role is based on an agreement by which the foundation was established. It is hard to exclude such an interpretation of founders right in any case, but this may not be considered as an equivalent to an association, which, in general, should be open to any interested person, specifically to individual natural persons, who should have the right to participate in some or other way on the governance over the association, whose members they are.

Lessons Derived

- In almost all European countries a foundation is explicitly defined in such a way that it may not be mistaken for an association.
- Community foundations represent certain exception. They are known from German law and are often organized by community self-government together with local companies.
- Similar situation may appear to be a case of a strictly family foundation, where both the governing structures and the target group of beneficiaries belong to a family circle or other closed group of persons.
- The founding persons of a community foundation or family foundation might reserve for themselves such positions in the internal governing structure of the foundation, due to which they may actually consider themselves as members of the foundation.

Recommendations with Respect to the CAFF

- It is recommended not to change the present approach, which means to strictly interpret both foundations and funds as non-membership legal entities, which operate basically as administrators of assets provided by founders and other donors for a specified public benefit or charitable purpose.

4. Establishment Procedures and Acquiring of Legal Personality Status

General Remarks

The establishment of a foundation is a legally binding act, which is always related to the expression of the will to do so by the founder(s) of a foundation. In that regard, several questions may be raised, like what are the possible ways of establishing a foundation, what legal forms are available for that purpose, what kind of legal documentation must be prepared, what form these acts are required to have, to whom they have to be submitted and what are other rights and obligations of a founder before the foundation becomes a legal entity of its own.

Not always are these questions necessarily answered in the laws regulating the foundations. Other laws may be applied for these issues, specifically the laws regulating incorporation of any legal entity, which might be either a part of the Civil Code or of the Code of Commerce or of the Civil Procedure Code regulating certain tasks of Public Administration and/or Courts.

It is also important to distinguish two crucial events marking the beginning of a foundation: The first event is marked by the act of establishment of a foundation signing. By this act the will of a founder or a group of founders is expressed in a legally binding or transparent way. The second event is marked by the act of providing, proclaiming or any other way of giving to the foundation the status of legal personality. These two events are often called in the subsequent text “establishment” and “incorporation”, respectively. The period of time between establishment and incorporation of a foundation is characterized by the existence of the foundation *de facto* but not yet *de jure*. The title for the property of the *de facto* existing but *de jure* legally incapable foundation may remain either in the hands of the founder(s) or be kept under custody of some other third person, either public or private, natural or legal.

It is the intention of the author to provide in this chapter an overview of specific issues related to the establishment of foundations, without attempting to claim, that all these features should necessarily be reflected in a positivistic manner in any discussed law – they may also be just a good practice in some country or be imposed by court procedural decisions or even regulated by norms of lower power, like Government decrees or regulations.

Croatian Approach

In Croatia, the CAFF defines the issues related to establishment of a foundation or a fund and their acquisition of legal personality in a rather detailed way. Instead of directly rewriting the individual articles, the following description uses a modified wording of CAFF provisions, with the intention to facilitate the interpretation and contextual understanding of the text and simultaneously to concentrate on the main issues of the process.

Article 2 of CAFF stipulates among others:

The Ministry of Administration (hereafter only “the Ministry”) ***shall perform the [administrative] tasks associated with the establishment ... of a foundation (fund).***

Article 3 [in combination with provisions of Articles 7 and 8] stipulates among others:
A founder can establish a foundation ... by [submitting to the Ministry two copies of] his/her statement [or by expressing his/her will in a duly formed testament, in which case the court dealing with legacies shall inform the Ministry].
In that statement the founder must assign particular property to a particular foundation purpose. [The two copies of the document must be accompanied with a request to permit the establishment of the foundation submitted on a due request form issued by the Ministry to which necessary evidence proving the submitted information is enclosed].
The Ministry ... shall grant a permission to establish the foundation upon determining that that all legal assumptions for the establishment of a foundation have been fulfilled.
Prior to granting the permission, the Ministry is bound to acquire the consent of a respective ministry (Government department), into whose responsibility falls the implementation of the purpose of the foundation.

It also follows from the Article 4 that:

If there is a single founder, the foundation is established by founder's statement on establishment (decision, statement of the last will and similar)
If a foundation is being established during the course of life of the founder, the founder's signature on such the statement on establishment shall be certified by a court or by a public notary.
If a foundation is to be established according to the last will of a founder upon his/her death, the statement on establishment should be made in a form of a testament or a legacy.
If a foundation is to be established by several persons jointly, the act of establishment shall be made in a form of an agreement of founders.
The act of establishment of a foundation shall be drawn in a written form and it shall comprehend:

- *A statement of the will of a founder declaring that a particular property is permanently assigned to the established foundation,*
- *Data precisely determining the property assigned to the foundation purpose (basic property), together with an evaluation affidavit issued by an expert under oath on the value of the assigned property and the on anticipated incomes the property might produce*
- *The determination of generally beneficial or charitable purposes of the foundation.*

The document ... may also comprise a provision on appointment of a foundation director and other provisions obligatorily comprehended by the foundation statute.

Article 5 deals with the rights of founders and other persons to refute the statement of establishment of a foundation as follows:
The founder may recall the act on establishment of a foundation until the moment when the permission on the establishment of a foundation has been delivered to him.
The founder's inheritors may refute his/her last will statement on the establishment of a foundation according to the rules on denial of a testament. The inheritors must give such a refusal statement at the time of giving their inheritance statement or immediately after they have been informed of the last will statement on the establishment of a foundation.
If the act on establishment has been made in a form of an agreement between several founders, any of the founders may refute that document by an arraignment for the reasons making it refutable according to the general rules of the obligatory legal document.
Charges should be filed at the court of justice by the time of submitting the document to the Ministry.

If the act on establishment of a foundation has been refuted in due time or if the procedure for its refutation has been started, the Ministry can make the decision on permitting the establishment of the foundation only after the refuting procedure has been completed.

An act on establishment of a foundation may be refuted by the foundation creditors, according to the rules of refutation of the legal operation; moving a legal suit for refutation does not prevent the establishment of the foundation.

In the course of the legal suit and for the sake of protection of the foundation's rights or the rights of other co-founders, a court of justice may by its official duty or on a demand of the Ministry or on the proposal of other co-founders to rule on temporary protective measures.

Article 6 provides for the conditions under which the Ministry shall permit or decline the permission to establish a foundation:

[The Ministry] permits the establishment of the foundation if:

- *The act on the establishment of the foundation has been submitted in accordance with the requirements of the law*
- *The purpose of the foundation is generally beneficial or charitable (see Chapter 5)*
- *The foundation property is sufficient for permanent support of the purpose of the foundation.*

The foundation property is considered insufficient for a permanent fulfillment of its purpose if the anticipated income from the property allows only to maintain that property, in particular any immovable part of the property, in a permanent manner or for a longer period of time, without enabling sufficiently to support the immediate purposes of the foundation.

[The Ministry] denies to provide the permit for establishing the foundation if:

- *The purpose of the foundation is infeasible or legally or morally not allowed*
- *There is no serious reason for the establishment of a foundation, particularly if the purpose of the foundation is obviously lacking seriousness.*

Article 9 introduces the temporary custody over the property assigned by the founder(s) to the foundation during the establishment period as follows:

After receiving the act on establishment from the founder(s) or from the court [in the case of establishment by a testament], the Ministry shall without delay appoint a temporary director of the foundation. This may be the person designated as a director to the foundation in the act on establishment. In the case on no such designation is available, the Ministry may appoint a temporary director in its own duty. It may also be an official of the Ministry. (About the role of the director of a foundation see also Chapters 10 and 11.)

The procedure of permitting the establishment of a foundation by the Ministry is defined in several Articles. The following texts summaries the relevant provisions of Articles 3, 5 and 10:

The act on establishment is reviewed by the Ministry, which may (after consulting the appropriate line ministry according the Article 3) finally issue the permission to provide legal status to the foundation. (See also Chapter 6, on Registering Procedure and Foundation Register)

If the line ministry does not refuse to grant the consent within 30 days starting on the day of the delivery of the application by the founder(s), the consent is considered as being granted [Art. 5].

The Ministry makes the decision on permitting the establishment of a foundation by an official decision within 60 days starting on the day of the delivery of an orderly request submitted by the founder(s) [Art. 10].

Besides other data required by the law, the decision on permission to establish the foundation shall contain:

- *The name and seat of the foundation*
- *The purpose of the foundation*
- *The indication of the circle of persons to which the purpose of the foundation is directed [target group of beneficiaries]*
- *The name and family name of a person or the title of a foundation body authorized to represent the foundation*
- *Provision indicating that the foundation cannot perform any activity until the Ministry approves its Statute (see also Chapter 7, on Statute).*

When the decision permitting the establishment of the foundation becomes legally valid, the Ministry shall by its official duty enlist the foundation into the Foundation Register and subsequently publishes an advertisement in the Official Journal of the Republic with some details on the foundation. (See also Chapter 6 on Registering.)

The foundation acquires legal personality status by the day of being enlisted in the Foundation Register.

See also Article 17 of CAFF:

The State may become a founder or a co-founder of a foundation only through a law.

Immediate notes to the above provisions of the CAFF

- A. *The Government represented by the Ministry retains all powers to decide on feasibility, seriousness, moral qualities and need of creating a foundation, which may seriously limit the freedom of establishment of a foundation.*
- B. *The assets donated initially by a founder of the foundation may be interpreted as an endowment.*
- C. *The endowment must be sufficient for sustainable fulfillment of the purpose of the foundation.*
- D. *Not only the value of the endowment must be officially estimated, but also its income generating capacity, which makes the evaluation procedure vulnerable of mistakes and inaccuracies, as well as costly and in the worst case even corruptible.*
- E. *The Ministry of Administration is obliged to consult other departments of the Government (ministries) to ensure that the foundation will not operate in any conflict with state interests in the specific field of competence of the given department.*
- F. *The law takes into account the risks of using assignment of a property to a foundation in a manner, by which a person can try to avoid the rights of inheritors.*
- G. *The law also provides tools to co-founders to terminate the establishment process of a foundation in the case of a conflict with any of other co-founders.*
- H. *The law even allows for raising legal case against non-existing legal entity - a foundation in the process of establishment, without explicitly stating who is liable for the foundation in this stage of its existence – the Ministry or the founder(s)? .*
- I. *In general, the provisions related to the act of establishment defined as submitting the establishment documents to the Ministry for acquiring a priori permission prove the full state control over the foundation sector in the country and, in long term, may jeopardize the development of philanthropy initiatives in the country.*
- J. *The establishment procedure is complicated and entails several key activities or stages, each of which requires efforts and inevitably takes a lot of time and*

expenditures. See the following reconstruction of the sequence of the actions needed according to the law:

- i. *Writing the act on establishment of the foundation by the founder(s)*
- ii. *In case of more founders – negotiating on the agreement on establishment of the foundation*
- iii. *In any case, visiting either a court or a public notary to properly sign the all required establishment documentation [In the case of establishment by a testament the inheritance procedure must be completed after the death of the founder] – the day of establishment of the foundation in a common sense.*
- iv. *Collecting all evidence related to the establishment statement*
- v. *Contracting court expert(s) for assessment of the value and of the property assigned by the founder(s) to the foundation and of possible future incomes, which the property may generate*
- vi. *Completing the Form of Request to Obtain a Permission to Establish a Foundation issued by the Ministry*
- vii. *Submitting the Request for Permission to Establish a Foundation with the founder(s) statement on establishing the foundation and other related evidence documentation to the Ministry*
- viii. *The Ministry has to make decision about which line ministry [or even several ministries?] to ask consent to the establishment of the foundation.*
- ix. *The procedure of providing the consent of line ministry may take up to 30 days.*
- x. *Appointment of a temporary director to the foundation by the Ministry is needed.*
- xi. *Activities of the temporary director – see also details in the Chapters 6 and 11, on Registration and on State Supervision*
- xii. *Possible processing of refuting the statement on the establishment of the foundation by a founder, a co-founder or one or more inheritors*
- xiii. *Issuing the decision on the request to permit the establishment of the foundation in no more than 60 days*
- xiv. *The Ministry should inform the founder(s) on its decision– the day of establishment of the foundation, as may be interpreted from the law!!!*
- xv. *In the case of negative decision appealing to the court of justice and waiting for final ruling of the courts on the issue*
- xvi. *In the case of positive decision, the Ministry arranges entering the data on the foundation into the Foundation Register – the day on which the foundation acquires status of an independent legal person*
- xvii. *The foundation bodies or the temporary director may start to work on Statute of the Foundation*
- xviii. *Submitting the Statute for approval to the Ministry*
- xix. *The Ministry decides on approving the Statute*
- xx. *The Ministry issues the approval of the Statute to the foundation - the day of de jure ability to act as an incorporated legal entity*
- xxi. *The foundation starts its activities.*

This is a long list of non-trivial and time-taking activities, each of which may represent a lot of efforts and costly expert and/or administrative work.

Note: *The details concerning the allowed purposes of a foundation, as well as those of the decision-making process of the Ministry and its custody activities over the assigned property, which eventually lead to the registering of it in the Foundation Register by which the foundation acquires its legal personality status, are discussed under Chapters 5, 6 and 8.*

International Perspective

The comparison of existing legal approach to the issue of establishment conditions and procedures in European countries has revealed the existence of at least three categories of countries with respect to this issue:

Liberal Approach

The liberal approach to establishing foundations has been adopted by Denmark, Netherlands and Sweden, where solely the signature of the act on establishment of the foundation by the founder(s) is sufficient to acquire a legal personality. No governmental or other official approval is needed.

Similarly, but with incorporation into a public register, it is possible to establish a foundation or a foundation-like organization in England, Ireland, Liechtenstein, Scotland, Switzerland and Wales.

Court Based Incorporation Procedure

The court decides on validity of the documentation submitted for the establishment of a foundation and consequently on acquiring legal personality in Bulgaria, Czech Republic, Estonia and Hungary. Similar approach has been adopted recently also in Albania.

State Administration Based Incorporation Procedure

In Austria, Belgium, Cyprus, Finland, France, Germany, Greece, Italy, Luxembourg, Portugal, Slovakia and Slovenia, it is the Public [State] Administration who essentially decides upon the request to establish a foundation

Spain combines the registering of the establishment documents in the Foundation Register with a governmental supervisory body (Patronado) decision on whether the endowment is sufficient enough and whether the purpose of the foundation is of general interest.

The Case of Croatia

Croatia belongs clearly to the last category. However, in no other European country are the procedures as complicated as in Croatia and, to the knowledge of the author, in no other law can be found the establishment procedure to be elaborated to such a degree of detail, as is the case of the CAFF.

The Case of the Czech Republic

In the Act No. 227/1997 Col. on Foundations and Funds the Czech Republic adopted the court based incorporation procedure, which replaced the previous regional administration based procedure.

The advantage of the court-based system consists in evident independence of the decision-making and registration court from any current political and executive power. The approach also guarantees a higher level of protection of third persons dealing with the foundation, which is due to more precise and evidence based processing of the act on establishment of a foundation as submitted by the founder(s) together with documents proving or proclaiming a clear penalty record and absence of any existing conflict of interests of persons appointed by the founder(s) to form the initial board of directors, as well as documents proving the value and composition of the initial endowment donated by the founder(s). The procedure is applied also in a case of any further changes of the entries to the Foundations Register maintained by

ten commercial courts and centrally electronically available on Internet pages of the Ministry of Justice.

A disadvantage of the court based system, as applied in the Czech Republic, is the absence of any terms in which the court is assumed to take a decision. Unfortunately, several cases are known, where registration of a foundation took many months. Since it is possible to appeal against the ruling of the commercial court to higher instance courts, the juridical procedure of acquiring legal personality may take even several years. In late 2001, there are still several open cases of establishing or re-registering a foundation, which started in the spring of 1998!

The Case of Spain

The Spanish Act No. 30/1994 from November 24th, 1994, on Foundations and Fiscal Initiatives and on Private Participation in Activities of General Interest, in its Article 6 stipulates that a foundation (in Spanish "*la Fundación*") may be established by a natural person either *inter vivos* or as *mortis causa* (through a testament) or by a legal person of public or private character.

The founder must possess all rights to the property, which constitutes the endowment donated to the foundation. Private legal person may do so upon decision its highest decision-making body. The public legal bodies have the right to establish a foundation, unless otherwise specified by the acts of their establishment.

According to the Article 7 of the Act, a foundation is established by an act of establishment (in Spanish "*la Constitución*") signed in presence of notary public and prepared in a form required by the law when drawn *in vivo*. In the case of a testament, the founder may only express the will to create a foundation and explicitly dispose the rights to some of its property to become an endowment of the established foundation; in this case the *Constitución* is to be prepared by the person appointed to execute the testament or by inheritors of the founder. If no such persons are known, the task shall be taken over by the state organ appointed to care about foundations (in Spanish "*el Protectorado*").

The *Constitución* of a foundation must contain the number, identification and civil status of founders, if they are natural persons or name and seat, if they are legal persons as well as their nationality and permanent address in both cases; explicit expression of the will to set up a foundation; data on the endowment and its value assessment and the way in which it will be transferred to the foundation; identification of persons who shall form the Board of Directors (in Spanish "*el Patronado*") of the foundation and also their proclamation on taking over the responsibility, which is valid at the time of establishment.

The Statute of the foundation prepared according to the law must be attached to the *Constitución*.

The foundation acquires legal personality after publishing its *Constitución* and from the day on which the data on the foundation are entered into the Foundation Register maintained at the Ministry of Justice and Interior as a public database.

Lessons Derived

- All definitions refer in some or other way to the existence of a founding document, made by the founder(s) either during the life or in a form of a testament to be executed after the death of the founder.
- The founding document is usually required to define properly the assets and the purpose, for which these assets are to be used.
- In many cases it is required to determine, besides the name of the foundation and its seat, also the names of the members of the first governing body and the way, in which the governing body may change its composition.

- In several countries the founder(s) legally binding decision is considered sufficient to provide legal personality to a foundation.
- In most countries exist a Foundation Register, but there is no prevailing practice with regard of the authority, which maintains the register. The Foundation Register may be maintained by at a state, regional or local administration office, at the court or at an independent registering authority.
- Most European countries require an act of approval or promotion of some state authority or even a special Government Decree or a Head of State Decree to establish and subsequently to incorporate a foundation as a legal entity.
- Many countries adopted the solution to let courts to decide upon validity of legal requirements for incorporation of a foundation.
- In large majority of countries the existence of an endowment of sufficient value and income generating capacity to support the activities of the foundation in pursuing purposes of general [public] interest.
- In some CE countries the foundations or funds may be established also to collect assets for the public benefit purpose.
- When distinguishing between a foundation and a fund, the foundation is usually bound to possess an endowment of a permanent nature, while a fund may usually consume its assets in a certain period of time.

Note: *The issue of purposes for which pursue foundations may be established is discussed in Chapter 5.*

Recommendations with Respect to the CAFF

- It is highly recommendable to simplify the establishment procedure as much as possible.
- One way of simplification might consist in replacing the Ministry as the permission providing authority, which must also consult one or more other Government ministries, by an independent body appointed by the Government or by the Parliament, and to assign to this body the task to verify, whether all requirements of the law have been correctly met by the founder(s) when establishing the foundation. The same body can also maintain the Foundation Register as a document open to the public. This is a solution close to the Spanish model.
- Further simplification, or even a complete change in the basic paradigm of the CAFF may be achieved by not requiring from the founder to provide the initial donation as a sustainable and for long-term sufficient endowment, the income generated by which could permanently support the activities towards fulfillment of the purpose of the foundation.
- If it is in the interest of the Republic of Croatia to promote the existence of foundations, it may be recommended to enhance the effect of the latter recommendation on the growth of Croatian foundation sector by explicitly allowing foundations to collect donations from third persons in order to support their purposes. In that case the Czech model of foundations and funds might be found inspiring {see Ref. [10]}. In such a case, the Article 2, Paragraph 1, should define the foundation as *“a collection of property assigned by the founder(s) or collected during its existence from donors which serves directly or through incomes generated of it to the accomplishment of certain generally beneficial or*

charitable purposes". [In this proposal the ***bold italic*** represent new or modified wording compared to the existing one, which is in *simple italic*]

- The responsibility for the assets forming the initial donation or endowment to the foundation may be left with the founder or a representative appointed by the founder(s) or a person executing the last will of the deceased founder, without necessarily creating the institution of the temporary director; such an approach reflects basic trust of the state onto a founder's integrity, is more European from comparative point of view, is essentially less expensive, avoids possible personal conflicts and does not involve unnecessary bureaucracy.
- It is also questionable, whether the state administration or any other body should investigate the need for establishing a foundation for a particular purpose or even deliberate about seriousness of the founder(s) intentions to establish a foundation. This does not mean, that the state should resign on its role of the protector of public interests and rights of citizens by avoiding any considerations on the substance of the proposal of a founder(s) to establish a foundation. One of the ways to do so is to require a certain minimal value of the endowment and legally acceptable evidence documentation, as applied in several countries (*see also the case of the Czech Republic above, and Chapter 8, on Endowment*).

5. Purposes Allowed to Foundations

General Remarks

With regard to the purpose of a foundation, several basic questions are raised:

- Should there be any legal predetermination of a purpose for a foundation and what might be such legal purposes?
- Do or should foundations serve exclusively for public benefit, or may they also serve for a private purpose or both?
- What is public benefit purpose permitted by laws to foundations, if any?

First general answer to the questions above is, that any foundation should serve to a definite purpose or a well-defined set of purposes. It is often a question of either the type of foundations or of general interests of the particular state, whether to restrict the set of purposes in some way, and if so, how to do so. This chapter discusses this issue providing reflections on the case of Croatia and dwelling a bit more at the case of the Czech Republic, where the solution of legal purpose for a foundation is combined with the tax benefits on one hand and with legal type of the foundation-like organization, on the other hand.

The comparative view on purposes allowed in several European countries provides hints how to answer the second and third question above.

Croatian Approach

In Croatia, the CAFF defines the general beneficial or charitable purpose for which a foundation or a fund should be established in Par. 3 and 4 of its Article 2 as follows:
As generally beneficial it is considered the purpose, by fulfillment of which cultural, educational, scientific, spiritual, moral, sports, health care, environmental or any other social activity is generally promoted, as related to the purpose or to the material state of the society, in general.

As charitable it is considered the purpose, by fulfillment of which a support is given to persons in need.

In its Article 2 par. 5 the CAFF also requires a certain circle of beneficiaries to be defined to recognize the purpose of a foundation to be generally beneficial or charitable:

The purpose of a foundation is considered generally beneficial or charitable, if it refers to persons only belonging to a certain class or profession, nationality, language, cultural, scientific, religious or similar group, to a particular circle of persons, to persons living in a particular area or those involved in the activity of a particular association, public institution or some other legal entity.

Note: Unfortunately, the citation above is based only on the English translation of CAFF {see ref. [14]}. The copy of original text of the CAFF does not contain part of the text of the fifth paragraph of the Article 2.

Interpretation note of the author:

The provision of CAFF on beneficiaries is not quite clear. It seems to the author, that it can be interpreted as a requirement that the beneficiaries of a foundation (fund) should either live in a certain geographical region or that they should belong to a certain circle of persons with some general characteristics or be engaged in some type of activities or that they should be members of certain association or employees of a public administration body or some other legal person.

From the point of view of the mathematical set theory it seems to be equivalent to the request that beneficiaries should form an open set and that the foundation purpose should not be to serve concrete individual persons defined by the founder(s).

The author would be grateful to legal experts of Croatia to reflect on this interpretation proposal.

International Perspective

The Croatian approach, in general, reflects the tradition established already during the times of the Habsburg Monarchy, when Croatia formed a part of Austro-Hungarian Empire. The Austrian General Civil Code of 1811^[20] defined the purpose for which a foundation may be established similarly: „... *There are distinguished foundations, to which the incomes from securities, estates or rights are assigned for all future times to serve generally beneficial purposes, like: spiritual gains, schools, hospitals, refugees for people in need or feeding certain persons...*“

In Europe, many countries require a foundation to have a public benefit purpose or to serve to general interest of the public or the state. According to the Refs. [1], [15] and other sources^[21], this is notably case of Austria, Czech Republic, France, Greece (*in the case of Charitable Foundations*), Italy, Luxembourg, Slovenia, Slovakia and Spain. In Belgium, Bulgaria and Estonia the public benefit purposes are even limited to a certain closed list.

Other European countries simply require a foundation to have a clearly defined not-for-profit or otherwise altruistic purpose. In the case of public interest, it might be of importance for tax benefit or other fiscal benefits provisions. This is notably the case of: Cyprus, Finland, Germany, Greece (*durable purpose required*), Hungary, Liechtenstein, Netherlands, Portugal and Sweden.

In Switzerland, there is even the not-for-profit clause omitted, but the foundation may not serve to the interests of a closed group of individuals.

In the common law countries (England, Wales, Scotland, Ireland) and also in Denmark, the foundations are not defined as a separate legal entity and the purpose of foundation-like legal persons or other entities (e.g. trusts) without legal personality is of importance only with respect to their claims for certain tax or other benefits.

It is also important to mention a possibility to form specific types of foundations pursuing specific purposes: religious foundations (see e.g. several states of the Federal Republic of Germany, Switzerland), family foundations (abundant in Liechtenstein and recently introduced also in Austria), communal foundations (Germany) and political foundations (Germany).

In the Czech Republic the law {see Ref. [11]} requests the foundations and funds to pursue exclusively a public benefit purpose, which is defined, in particular, as the development of intellectual values, protection of human rights or of other humanitarian values, protection of the natural environment, monuments of culture and traditions, as well as the development of science, education, physical training and sports. In practice, the commercial courts when ruling about incorporation applications of founder(s) of foundations or funds are usually benevolent in accepting either broader or narrower statements about the foundation purpose. Examples exist of such accepted purposes, as promotion of civil society, support of a private school, etc. The Czech Republic legislation also strictly distinguishes foundations and funds as grant-giving organizations from so called public benefit corporations (“*obecn prosp šná spole nost*”), which are an equivalent to operating foundations. These entities are supposed to provide services in the interest of general public under equal conditions for anybody in need of them and on the not-for-profit basis.

In general, the scope of purposes considered of public benefit differs broadly from a country to a country. A table of purposes considered as of public benefit and mentioned in some way in the laws of European countries is presented in the **Appendix I**.

ICNL worked for several years with experts of the U.S.A. and Europe on the development of a Model Law on Public Benefit Organizations^[22]. An open illustrative list of purposes from this proposal is reproduced in **Appendix II**.

Lessons Derived

- In general, the Croatian approach to the requirements related to the purpose of a foundation is within the average European context.
- However, the formulation of the Article 2 may be misleading in several aspects: it is not clear what is to be understood under material state of the society and also the definition of the need to serve an open set of beneficiaries is formulated in a way, which may cause confusion.
- There exist many types of foundations in several countries, but in most countries the purpose of the foundations, which are protected by law, is usually requested to be of public benefit or generally charitable.

- The scope of purposes considered of benefit to the general public is very broad and hardly may be constructed a closed list of such purposes (see Appendix II based on Ref. [22]).

Recommendations with Respect to the CAFF

- To clarify the Par. 3 of Article 2 by adopting a less confusing wording, specifically by mentioning general interest of community instead of the material state of the society
- To use less complicated formulation of the requirement that foundations should not serve to the interests or benefit of closed circles of natural persons.
- To be aware of a possibility that a foundation may serve to general public also by supporting a single legal person, which itself serves to the general public. As examples can serve the foundations established in many countries to support universities, scientific institutions, hospitals, local public or private schools etc. Even if the second part of the Par. 5 of Article 2 seems to express similar position by mentioning as beneficiaries persons involved in the activity of an association, public institution or some other legal entity, it may be found worthwhile to reformulate the paragraph in a more straightforward way.

6. Registration Procedure and Foundation Register

General Remarks

One of the factors effecting trust of donors, benefactors and general public to foundations is transparency of the legal status of the foundation. In many European countries the system of commercial law has been developed, which is based on the existence of a public list of legal entities, which may enter into legal and business relations with third parties. The lists are in most countries based on a registering procedure. With the rapid development of information technology, these registers are more and more made available as a database, from which portions or abstracts may be made available in electronic form using the tools of Internet or other special computer software.

The most important aspect of registering is to provide to any potential third party such information on the legal entity, which makes it possible to verify the data on official documents or mutual contracts and agreements. In the case of a foundation, it might be in the interest of a donor, as well as of the potential beneficiary of the foundation, to have some evidence available, which enables to identify not only the foundation as a legal entity, but also its founder(s), its statutory purpose(s), its term of existence, and also the person(s), who is (are) entitled to act on behalf of the foundation or represent it with respect to third parties. In many countries it is also important to know, what are the decision-making mechanisms of the foundation and how it is managed and how it operates. These requirements should be reflected in the composition of the Foundation Register content, as well as in the way, by which the register is made available to general public.

This chapter shall answer some questions raised in relation to the registering procedure, like whether there should be any public or state registration of foundations and what should be the registration procedures involved or what items are usually entered into a public register of foundations, if there is any.

The European practice in registering procedures, as explicitly visible in existing laws, is summarized. However, this chapter also refers to the good practice as discussed in the Handbook prepared by an international team of experts under the direction of ICNL for the World Bank in 1996-2000^[23], interpreting the propositions of the Handbook for the case of foundations.

Croatian Approach

In Croatia, the CAFF defines the registering procedure and the Foundation register basically in its Chapter VII, Articles 36 to 41. The provisions of CAFF may be summarized and commented as follows:

The Ministry administers the Foundation Register. Both foundations and funds are registered there.

The Register consists of registering book and associated files.

The entries on foundations or funds in the register book are made in a section with a given ordinal sequential number reflecting the time of register entry. Each entry is accompanied with a file of documents providing evidence on entered data. The register maintenance is defined in detail, so as to ensure the protection of the register and files from misuse, destruction or damage.

Each entry shall contain:

- *the date of entry,*
- *the reference number of the document by which the Ministry permitted the establishment of the foundation (fund),*
- *the name of the foundation (fund),*
- *its seat address,*
- *information on its purpose and target group of persons to be benefited, and*
- *the names and addresses of persons authorized to represent the foundation (fund).*

The entries shall have space for inserting the information on any registered change of the entity statute, as well as on its transformation or a termination.

The registering books are open for inspection to any interested party in mandatory presence of a registering official. Any interested party may demand excerpts from the register books and transcripts of the documents kept in register files. The outdated information in the registered data is provided in excerpts only upon special request or if the circumstances require it.

Besides the carefully hand written register books there exists also a computerized form of the register. Data in both the book and computer register forms must be identical.

In the files associated to the entries to the register book and computer there are kept copies of all documents relevant to the entry: the permission to establish a foundation/fund issued by the Ministry, the act of establishment issued by the founder(s), the statute, all changes and amendments to statute etc.

International Perspective

The CAFF appears to be more detailed and technical compared to legislation in most of European countries. However, one has to take into account, that in many countries the registering procedure is highly developed for commercial entities and usually well defined in special court procedure codes or public administration procedures codes.

The ICNL and World Bank Handbook on Good Practices requires {see Ref. [23], Chapter D, Section 3, Provision (b)} “*laws governing foundations should be written and administered so that it is relatively quick, easy and inexpensive to establish a foundation*”. As the previous chapter demonstrates, to fulfill this requirement might seem problematic under CAFF. The Handbook also requires in the same Section by Provision (d) that “*the establishment rules should provide for default registration*”. It is apparent from the cited parts of the CAFF, that this is not the case: Although the CAFF requests the Ministry to issue the decision on permission to establish a foundation in less than 60 days, it is not quite clear, whether the text of the law may be interpreted so, as to guarantee entry into the Foundation Register and by it the legal personality status in the case, when Ministry does not decide within the legal term.

In Europe, a special Foundation Register or explicit registering of foundations in a public register is a part of legislation of Bulgaria, Cyprus, Czech Republic, Denmark, England & Wales, Estonia, Finland, Hungary, Ireland, Liechtenstein, Scotland, Slovakia, Slovenia, Spain and Switzerland.

On the other hand, according to the Ref. [15], no public register is mentioned in the case of Austria, Belgium, France, Greece, Italy, Luxembourg, Netherlands, Portugal and Sweden. In most of these countries, the information on establishment of a foundation is only published in some or other official way, starting with issuing a decree of the head of state (Royal Decree in Belgium, Presidential Decree in Greece, Grand-Ducal Decree in Luxembourg) or Government (Italy) up to publishing the information in an Official Journal (Portugal).

Croatia evidently combines all these principles: in order to establish a foundation or fund, the CAFF requires a decree of the Ministry, registration in the Foundation register and publishing information on the establishment in the Official Journal. This makes the establishment procedure unnecessarily complicated.

As mentioned above, there are countries with liberal approach to the incorporation of legal entities (notably in Netherlands and Sweden), where only the act of establishment signed by founder(s) is sufficient to create a foundation. In these countries, the law does not enforce any formal approval or registration of a foundation as a legal entity.

In the case of federal states (Austria, Germany, Switzerland) the authorities of regional or local level keep their records. However, the procedure and requirements are not unified in Germany, where some Lands maintain a Foundation Register, some do not. To fill the gap, the Federal Association of German Foundations publishes biannually, since 1992, a list of foundations operating in Germany^[24], which is based on empirical research and the address lists available to member-foundations of the association. The list contained in 1994 about 5500 foundations of 12 legal forms, some of which do not even represent a legal person. It is interesting, that the list refers to many old foundations, the oldest being established as long ago, as in the tenth century.

In the Czech Republic, the Foundation Register is kept by each of the 10 regional commercial courts. Ministry of Justice of the Czech Republic concentrates the information from these registers and provides access to the data on its homepage. By accessing the page <http://www.justice.cz> one may find the register and search in it by choosing the commercial court, legal form and/or the name or some other identification data of the foundation or any other registered legal entity. The register also provides a means to seek for names of persons

and disclose their membership in decision-making or supervisory bodies, as well as their role of founders. The excerpt from the foundation register, which is displayed, contains the following items: the date of incorporation (date of first entry to the Register), name of the foundation, seat address, identification number, purpose (as defined in the Statute), position, names, addresses and identification numbers of members of the Board of Directors and the Supervisory Board, if such exists, the way in which the foundation is to be represented and how its documents are to be authorized, the total value of the endowment and its composition. The transcript may not be used as official evidence. To obtain an official excerpt, one has to apply directly to the court and pay a fee of CZK 70 (about US\$ 1.80).

Lessons Derived

- Many countries register foundations in either special register or together with commercial or other entities, thus providing to the general public the most important data on the foundation for the purpose of safer entering into legal relations of any kind with it.
- The register of legal entities seems to be a modern way of ensuring equal access to information about the legal form, identification data, purpose, way of representation and about persons entitled to represent the legal entity towards third persons. This information is crucial to the transparency of and trust building in legal relations.
- In general, the approach used in CAFF to the existence of the Foundation Register corresponds to the good practice of many European countries. It would enhance the importance of the Foundation Register, if the procedure of entry to it were simplified.
- The Croatian Foundation Register already uses information technology to provide access to the data on registered entities, but open access based on the Internet, as e.g. in the Czech Republic, may further significantly simplify access to it.

Recommendations with Respect to the CAFF

- Having in mind the use of data in the Foundation Register in contracting and concluding other legal relation with a foundation, it is recommended to include to the set of data entered to the Foundation Register also a short description of the manner, in which persons entitled to act on behalf of the foundation sign its documents.
- In the case, when the Ministry does not decide on the approval of the establishment in the due time of 60 days, it might be reasonable to consider the approval as being given and the Ministry should be then legally bounded to rule for entering the foundation data into the Foundation Registry in less then a certain minimal number of (say 10) days, and thus to incorporate the foundation as a legal person.

7. Statute Content Issues

General Remarks

The statute, as a detailed basic document defining the organizational structure, activities, economy management, decision-making procedures and other issues, is an obligatory requirement for existence of any legal entity in most countries. The questions usually raised with respect to the statute are, what is its relation to the act on establishment of the foundation issued by the founder(s) and what is its obligatory content required by the law, if there is any. In the context of the relation of the statute to the act on establishment it is also often asked, if

and how should the law regulate alternations to the basic documents, in particular, under which circumstances might be made changes to the act of establishment and statute of a foundation?

It is the aim of this chapter to provide answers to the above questions based upon the comparative research in European countries legislation and to reflect on the relation between the data in an act on establishment and in the statute from the point of view, what can be actually directly changed in the act of establishment and what may be considered free to be overrun in it by changes in the statute.

Croatian Approach

As for the content of the act on establishment of a foundation, see Chapter 4. As for the statute, the CAFF defines the issues related to the statute of a foundation in the section 6 of the Part II, Articles 18 to 20. The recapitulation of the most important provisions of the otherwise extremely detailed text of these articles with notes pointing on special features of certain provisions follows:

In the Article 18 the CAFF essentially requires the following:

The statute of the foundation must properly define its name and seat and reflect the data on its establishment and the endowed property. Further, the purpose of the foundation, the way of use of its incomes and the target group of its beneficiaries together with applicable granting procedures must be defined.

The statute must also define the managing and representative bodies of the foundation and the way of nomination and suspension of their members.

For collective bodies of the foundation the statute should provide rules for their decision-making and for making the decisions known, as well as it should define the scope of authority of these bodies.

It is also required to provide in the statute provisions on the rights of members of the foundation bodies to a compensation for services rendered by them to the foundation and to reimbursement of expenses.

Note: *The law therefore explicitly allows for compensation of the officials of a foundation with respect to their services rendered to the foundation, if it is defined in the statute of the foundation.*

The obligatory part of the statute must also include the provisions related to submitting reports on activities of the foundation and on submitting special accounting reports to the Ministry of Administration and to the Ministry of Finance on the state of property and finances of the foundation.

Note: *This provision represents a tool for enforced reporting on economic activities to supervising governmental bodies. There are no provisions on obligatory reporting to general public, which represents a means of submitting the foundations to the state (Government) control instead of a requiring any way of general public control or supervision.*

The foundation statute must also contain provisions on the use of the liquidation balance in the case of termination of the foundation, as well as provisions on legal operations, which require preliminary consent or subsequent approval of the supervising Ministry.

Note: While it is usual to require provisions on the use of liquidation balance in the case of termination of the foundation, the requirement to include provisions limiting the sovereign decision-making of foundation bodies is another factor of the state enforcement of state control over activities of foundations, this time masked under possible submissive decision of the founder(s), who must prepare the first text of the statute (see Chapter 4). Compare it with other provisions of the law, which give the Ministry decisive powers in interpreting the will of the founder(s) and the purpose to which it should serve.

The law also enables to allow the bodies of public institutions, associations or other legal entities to play the role of the managing bodies of the foundation. This is the right automatically given to a legal entity, if it is a founder of the foundation. Other, unrelated, legal person may be assigned to such a role only after its written and properly verified consent has been obtained.

Note: This provision, when applied, makes problematic the legal independence of the foundation as a separate legal entity, even from the founding entity. Actually, it makes the foundation a part of the legal entity or public organ, whose body has been assigned the governing role over the foundation. Conflicts of interest may result from such an arrangement, whenever the target group of beneficiaries of the foundation includes persons related to the governing body.

The Ministry must approve the statute before it may be applied. The director of the foundation is obliged to submit the statute to the Ministry for the approval within 30 days from the date of his/her appointment.

The Article 19 of the CAFF regulates the statute approval procedure taken by the Ministry. It essentially requires the following:

The approval of the Statute by the Ministry is an administrative process, to which the parties are the founder(s) or inheritors of the founder(s) and the director of the foundation. The Ministry can deny approval of the statute of a foundation if it does not comply with provisions of any Croatian law or if its provisions contradict those in the act on establishment of the foundation.

The consent of living founder(s) of the foundation is a prerequisite to the approval of the statute or changes in it by the Ministry. If the founder is no longer alive, the Ministry shall consider adequate only such provisions in the statute, which are absolutely beneficiary and may be considered as conforming to the will the founder(s) if he were alive.

If the Ministry denies approval of the statute, the foundation's director is bound to submit another proposal of the statute text within 30 days after the decision on denying the approval has become valid.

The Ministry shall certify on one copy of the statute its approval and return it to the director of the foundation. Another certified copy shall be filed with the Foundation Register in which the adoption of the statute is recorded.

Note: The provision means, that the person responsible for preparing and submitted the statute is the director of the foundation, which may be even appointed by the Ministry itself (compare with Chapter 11, on State Supervision) and the Ministry has the last word on the text of the statute. This only underlines the subdued position of foundations with respect to the Government.

The Article 20 of the CAFF regulates the procedure of adopting changes to the statute of a foundation. In short it requires the following:

The foundation bodies may change or amend the statute only as far as it remains in compliance with the act on establishment, the law and the existing statute itself. In such a case the decision on the change of the statute should be submitted to the Ministry for approval.

[Let us insert here the provisions of the Article 24, which limits the scope of possible changes to the statute as follows:

The mane of a foundation may be changed only if some elements forming the name have been changed, such as the name of an entity, whose name the foundation bears, the purpose or a part of the property after which the foundation is named.

The foundation's seat may be changed.

The foundation's purpose and the target group of its beneficiaries may be changed with the approval of the Foundation Council only if without such a change the foundation would not fulfill its mission as determined by the statute or its purpose would not be considered charitable or generally beneficial.

The endowment of the foundation as listed in the statute may be changed only if the change does not decrease its value and does not threaten the fulfillment of the foundation's purpose.

The statutory provisions on foundation's bodies may be changed if the bodies are no longer existent, if they no longer act as authorized or if the change in the managing structure is purposeful for the foundation and does not violate the provisions of the act on establishment of the foundation.]

The Ministry shall decide on approval or disapproval of the changes and delivers the decision to the founder or his inheritors and to the representative of the foundation. A legally valid decision on the changes of the statute shall be delivered to the Foundation Register to enter the changes into books and registers and to file the documents on the accomplished change to accompanying files.

The Ministry shall order from the foundation managing body to decide on changes and amendments to the statute of the foundation, if it considers it appropriate in order to fulfill the will of the founder(s) or if the changed conditions require the change of the purpose of the foundation. If the foundation body does not respond properly in 30 days, the Ministry shall decide on the changes by its own authority.

The founder, inheritors of the founder and representative of the foundations are parties in the procedure of approval of statute and its changes by the Ministry. Changes of the statute enter into force after the Ministry approval becomes valid.

Note: This may hardly be interpreted as anything else as a provision giving the Government represented by the Ministry the right to enforce any changes found necessary to the purpose and management of any foundation. The implicit possibility to appeal against the decision of the Ministry does not invalidate such an assessment.

If the adopted changes to the statute include the change of the name, seat or purpose of the foundation, the information about it shall be published on the expense of the foundation in the Croatian Official Journal (“Narodni noviny”).

International Perspective

In the international context, the provisions of the CAFF related to the statute of a foundation and its changes have to be considered as strongly constraining the independence of the foundation management from the Government.

The requirements on the content of the statute in several European countries, from which the author disposes of laws regulation foundations is summarized in the table of **Appendix III**.

Lessons Derived

- Most countries require the statute of the foundation to be approved of a certain state authority before the foundation is given the status of a legal entity (juridical body).
- The minimal set of the data may be identified as containing:
 - The name, seat (address) and purpose of the foundation,
 - Identification of its founder(s),
 - Value and nature of the initial donation of founder(s) and any rules related to the use of it or incomes generated from it, including the rules for identifying the beneficiaries of the foundation support, unless the founder provides for full authority to decide upon such rules to the governing body of the foundation,
 - Provisions on how the liquidation balance upon termination of the foundation should be used, unless the founder(s) leave that decision on the governing body or court or some public body,
 - Identification and composition of the highest decision-making (statutory) body of the foundation and the way of appointing and replacing its members
- Some countries, evidently for the purpose of achieving higher transparency and trust building in operations and management of the foundation, require to provide in the statute of a foundation also
 - Identification of other bodies of the foundation and/or the rules, how these bodies should be established,
 - Rules for decision-making of the statutory body of the foundation and the decisions are to be made publicly known, whenever publishing be appropriate,
 - Rules on representing the foundation towards third persons (acting on behalf, issuing official documents),
 - Rules for making any necessary changes to the identification of the foundation, its governance, purpose and use of assets, unless explicitly forbidden by founder(s) in the act on establishment the foundation,
 - Rules on annual or any other regular form of reporting on activities of the foundation,
 - Rules on regulating administrative expenses, including the rules on compensations to members of foundation bodies for services rendered to the foundation,
 - Rules under which the foundation may be engaged in other then purpose related activities and participate on activities of third persons, if that is legal under the legal system of the country.

Recommendations with Respect to the CAFF

- In order to broaden the scope of income resources of foundations, it might be desirable to add to the requirement on obligatory content of the statute the following:
 - The nature of other incomes which might be at disposal of the foundation besides the incomes generated of the endowment (initial donation) of founder(s)
 - The conditions under which a foundation may be engaged in other than purpose related activities and participate on activities of third persons
 - Rules for representing the foundation towards third persons
 - Rules on annual or any other regular form of reporting on activities of the foundation, which might eventually replace the obligatory rules on reporting to the Ministry, providing that a copy of a general annual report will be send to the Ministry on due time after publication of the report
- The act on establishment of the foundation and the statute should also include in some appropriate form the data on personal composition of the statutory organ of the foundation (name, family name, beginning and duration of the term of service), including the denomination of those positions in this body, which are of importance with regard to the representation of the foundation (chairperson and its deputies etc.)

8. Property, Initial Donation and Income Issues

General Remarks

There are three main categories of issues related to the property and incomes of a foundation and its use.

The first category form issues related to the endowment or initial donation of founder(s) to the foundation at its establishment. This is related to the question, whether a foundation may from the beginning be defined as a collection of property or assets available, or whether it may be established with only some symbolic initial donation with a purpose to collect and use assets during its existence. Related question is, whether there is any necessity to define a minimum endowment for establishing a foundation or to require from the founder to provide an endowment sufficient to support the purpose of the foundation for long time or even forever.

With respect to the use of the property and maintenance of an endowment, a question may be raised about what will or should happen if the value of an endowment is lowered during the life of a foundation to such a degree, that it does not suffice or does not generate enough incomes to support the purpose of the foundation.

Second category of issues is related to the rights of a foundation to obtain title to immobile property (mostly land or real estate), author or patent rights, or significantly valuable assets of any other kind (jewelries, securities, bonds) and to what degree the possession of such assets is or may be in jeopardy to the mission and purpose of a foundation. This is again related to the question, whether a foundation should be an entity exclusively using its own assets or

whether it may also additionally or exclusively raise money or engage in economic activities in order to support the purpose for which it has been established. Another related question is, whether there are any regulations concerning the use of assets, specifically some regulation concerning investment of the assets of a foundation.

Finally, the third category of issues is related to the incomes and expenditure regulations. One of the issue concerns rules for how and whether to use assets and incomes of a foundation in some other way then to support third persons financially or in kind. Another issue is the right of a foundation have access to assets resulting from essentially public bodies, like national – federal, regional – state or local – municipality budgets or funds and/or from taking part on winning public procurement tenders.

With respect to the income and expenditure regulations related issue, there may also be raised question, whether the foundations, in their efforts to achieve the purpose for which they have been established, should concentrate on grant-giving to third person or may promote their purpose also or even exclusively by their own activities.

It is the aim of the discussion in this chapter to answer in general the questions raised and to provide examples from European countries representing some of the used approaches.

Croatian Approach

In Croatia, the CAFF defines the property of a foundation in Article 16, which may be summarized as follows:

The basic property (the endowment) of a foundation assigned to the foundation by the founder(s) in the act of establishment must not be wasted nor its value decreased in the course of achieving the foundation purpose. Such property must be registered and from the date of registration the foundation gets title to that property. The Ministry could undertake operations in relation to competent bodies to protect the property directly or through the temporary director even before the foundation acquired legal personality by being entered to the Foundation register.

The property of a foundation also includes resources acquired by using the endowment (e.g. by leasing it, renting it, by getting interest or dividends on it, by having income from copyright, patents, licenses, royalties etc. related to it, in the form of incomes from agricultural, forest based or similar land use), as well as through further donations. In order to enhance the value of its property, the foundation may also organize fundraising activities, like charitable actions, lottery, printing and selling publications, manufacturing and selling emblems and badges, and similar goods.

The property of a foundation may be located abroad, but any monetary assets forming a part of a donation must be reallocated into a bank, whose seat is in Croatia.

The property of a foundation may be used exclusively for attaining the purpose for which the foundation was established.

Note: *In other words, the Croatian foundations are expected to have an endowment from the very beginning, which is supposed to generate income to be used for the purposes of the foundation. The provision of the Article 16 also limit income oriented economic activities of a*

foundation to mostly non-systematic and non-commercial fundraising activities, to which the explicit list of examples provided in the text of the law evidently may be generalized. The article does not explicitly mention the right or prohibition of converting the property from one kind of assets to another one. The law only requires not to waste the endowment or to diminish its value.

However, by limiting the use of the property of a foundation exclusively for activities aimed on achieving the purpose of the foundation, it is possible to deduce that monetary assets of a foundation may not be legally used for investments into shares of stock holding companies or into bonds or other securities, which may limit the efficiency of the use of the foundation's property.

Any real estate endowed or donated to the foundation or bought by it from its interests incomes with the aim to being used for the purpose of the foundation may not be subsequently sold or exchanged for some other property with a loss that would be on the expense of already acquired financial support or its purposefully kept capital.

Note: *If understood correctly, this provision requires that any transaction related to the real estates owned by the foundation must be carried out with extreme care so as the assets of the foundation were not reduced or the possibility to achieve purpose for which the foundation has been established was not jeopardized.*

Let us also remind the provision of Article 6:

The foundation endowment is considered insufficient for a permanent fulfillment of its purpose if the anticipated income from it allows permanently or for a longer period of time only to maintain that endowment, in particular any immovable part of the endowment, without enabling sufficiently to support the immediate purposes of the foundation

Note: *In this context the provision limits the possibility, that founder(s) would endow a foundation by a real estate in such a state that it must be renovated and can be used neither for the purpose of the foundation nor for generating income by being rented or leased.*

International Perspective

Let us now confront the Croatian approach with that in some European countries.

Most European countries (Austria, Belgium, Cyprus, Denmark, Finland, France, Germany, Greece, Hungary, Liechtenstein, Netherlands, Portugal, Spain, Switzerland) apply the principle, according to which the founders must assign to the foundation a substantial endowment capable to guarantee sustainable support of the purpose of the foundation during its existence.

In France, the Law of August 9th, 1990, introduced a possibility to establish company foundations, which must be endowed by a minimum of one fifths of the total obligation of the company founding it.

In Spain, the initial endowment (in Spanish "dotación") may consist of any assets and must be adequate and sufficient for the fulfillment of the purposes of the foundation. The endowment may be provided in a successive form, in which case the initial endowment must be of at least 25% of the value of the total endowment and the rest of it must be transferred to the foundation in less then 5 years since establishment. In the case of monetary endowment,

its value must be given in ESP (*pesetas*). No monetary donations are to be expressed in ESP values and must be accompanied by the criteria used for evaluation. As donations may also be considered guaranteed liabilities of third parties, but in no case it is sufficient to simply promise a donation.

In Germany, besides the general requirement above, the individual Lands, but not all, have their own laws regulating foundations. Also the Catholic Church and Evangelic Church have special canonical laws, which govern church related foundations. In most of the German Lands distinguish endowment from other foundation property and require its preservation and special accounting for it. Only in Rheinland-Pfalz the endowment structure may be changed, if this is evidently beneficial for the achievement of the purpose of the foundation.

Only few countries require a minimal value of the endowment. The examples known to the author are these:

- Denmark requires a minimum value of the initial capital DKK 250,000 (about US\$ 30,000) and the initial capital value must be in reasonable proportion to the purpose; under special conditions the Government may allow for establishment of a foundation with endowment of less than minimal value.
- Czech Republic requires as minimum to an registered endowment CZK 500,000 (about US\$ 12,800), without any regard to the purpose

In Slovenia the law requires the initial donation of property to the foundation must be sufficient to implement the purpose of the foundation, but the sustainability of it is not the condition, leaving open a possibility to collect more property during the existence of the foundation.

Luxemburg explicitly allows collection of the property of a foundation during its existence.

Other countries just consider the property of a foundation as an essence of the legal entity representing the property, which is initially endowed or donated to the foundation by its founders and may be collected and enhanced during the existence of the foundation (e.g. Albania, Czech Republic, Netherlands, Poland, Slovakia and Sweden).

There are countries, where the Government limits the right of foundations to collect property by requiring, that any receive of a substantial immobile or otherwise valuable property is possible only with the consent of the Government (e.g. Italy, Belgium, where gifts above BEF 200,000 must be authorized by the Government,)

In the Czech Republic a new form has been allowed to exist, which resulted from a spontaneous development: In the absence of any endowed foundations after 50 years of the absence of a law that would allow their existence and due to the fact of confiscation and dissolution of all foundation existing until 1930's, the need for gathering funds to support certain purposes of public or community interest resulted in forming quasi-foundations – legal entities trying to raise funds to support certain purpose, project or activity. When the new legal framework was being discussed, there existed already more than 5000 of foundation in the Czech Republic, which would vain off if any strict requirement on having and using an endowment would be enforced by law. Thus, the Parliament amended the Governmental Draft Law on Foundation in such a way, that besides endowed foundations there may exist funds without endowment but with a bit more limited rights in the field of economic activities. As

the foundations, the funds may be established for raising funds and granting support of public benefit activities.

To the grant-giving feature of foundation

In Europe, there is not a clearly expressed tendency to consider foundations as legal entities which would restrict their activities to support of third persons by grant-giving as the only tool how to realize activities for the purpose for which they has been established. But the same holds on a tendency of foundations, to limit themselves exclusively to their own purpose-oriented activities.

As it has been demonstrated in the Chapter 2, devoted to definitions of the term “foundation”, the Czech Republic (and similarly also Slovakia) adopted a concept of separate legal forms for grant giving foundations and service providing not-for-profit entities. The reason for that separation is more in the way of relating incomes to the activities, then in distinguishing between grant giving and operational modes of activities.

Foundations (and funds) may accumulate property and use income generated from their endowments or other property to achieve their purposes.

The service providing and operating facilities (in the Czech Republic called “obecn prosp šná spole nost” – “public benefit corporation” or also “commonly beneficial company”, while in Slovakia “neinvestišná spolo nos ” – “non-investing company”) are supposed to use besides their property also the skills and labor of their employees to provide services on non-commercial basis to those who would otherwise not be able to access them. It is essential, that these entities may actually sell the services provided on non-commercial basis, but they may not sell them on a profit-making bases and if they realize any profit on such activities, they must not redistribute the profit to the founders, members of their governing bodies nor to their employees. Therefore, the distinction between these entities and foundations (fund) lies more in selling something for an acceptable price and providing something free of charge.

It may be of interest to note, that since the introduction of this legal form on January 1, 1996, there exists currently in the Czech Republic about 700 public benefit corporations working in social sphere, culture, support of civil society initiative building, municipal utilities, etc., and that similar forms has been recently enacted to cover the field of higher education or are under consideration for health care, culture and other fields of public activities.

Lessons Derived

- In most European countries, legal rules require or general practice assumes at least implicitly, that the foundations are given assets sufficient to perpetuate with the given purpose for a reasonable time.
- Several countries require even explicitly certain minimum value of the assets to be endowed to the foundation by its founders (Denmark, Czech Republic, France – in the case of company foundations) or require the yields of the endowed assets be sufficient to sustain the purpose of the foundation.
- However, some other countries do not set any conditions on the value of assets endowed to the foundation (e.g. Netherlands, Switzerland or Sweden).
- Another not clearly distinguished feature of foundations is the way of obtaining other resources then those generated by endowed property.
 - In some countries, only the endowed assets may be the source of the income to be used for the purpose of the foundation

- In other countries foundations may be engaged in some income generating activities to enlarge their property for achievement of their purpose
- In some other countries there are no definite limits to the activities of a foundation as a legal entity, with only the general requirement not to be established for industrial or commercial purposes or in the interests of the founder(s).
- In the Czech Republic, besides foundations endowed with a minimal endowment of not specifically high value a new form has been allowed to exist. These are so called funds – legal entities without any substantial initial donation from founder(s), which are established for raising money to support certain public benefit purpose, project or activity.
- A new trend in the not-for-profit sector seems to demonstrate the legal systems of the Czech Republic and Slovakia, most recently adopted also in Albania, where not-for-profit providers of publicly beneficial services sold for a reasonable, non-negotiated but justifiable price are considered to represent a different kind of a legal entity from foundations or funds, the latter being implicitly supposed to provide something free of charge to achieve their purpose.

Recommendations with Respect to the CAFF

- It may be considered to apply a more liberal approach to the use of monetary assets of a foundation, which would enable foundations to invest their money to certain degree into shares of stock holding companies or into bonds or other securities. However, as it is the case of the Czech Republic and many other European countries, this should not be allowed to do with the endowment money, unless the foundation may use certain donor's guaranty against possible losses from such a transaction.
- If the Croatian Government or Parliament would consider a possibility to support provision of certain services to the general public by private but not commercial legal entities regulated in similar way as the foundations and funds, then the example of the solution might be found in public benefit corporations of the Czech Republic.

9. Economic Activity Issues

General Remarks

A lot of discussions was held during the last decade on international forums about the question, whether the foundations (and funds) or other legal entities established on the not-for-profit principle (centers, institutes, as well as associations) should be allowed to engage in some economic (income generating) activities and if so, or whether such income generating or even profit making economic activities should be somewhat restricted or regulated.

The main problem lies in fact in two factors:

Firstly, if the Government promotes a policy supporting the development of a civil society by providing legal protection and certain tax or other fiscal benefits to the not-for-profit private based legal entities, how should it ensure, at the same time, fair competitive environment in a liberal market economy?

Secondly, if income generating and usually to the purpose of the legal entity not directly related (unrelated, non-statutory) economic activities are allowed for not-for-profit legal entities, how to or whether at all distinguish the income and value added tax treatment of related (statutory) and unrelated (non-statutory) activities, how to relate these incomes to expenditures of foundations and funds etc.

In this chapter, the European legal approaches to these problems are compared and confronted with the approach applied in Croatia and in the Czech Republic.

Croatian Approach

In Croatia, the CAFF mentions at least twice in its articles 2 and 16 the basic provision as regards the legal use of the property of a foundation (fund):

The property of a foundation may be used exclusively for attaining the purpose for which the foundation was established.

In order to enhance the value of its property, the foundation may also organize fundraising activities, like charitable actions, lottery, printing and selling publications, manufacturing and selling emblems and badges, and similar goods.

However, implicit mentioning of a possibility of certain economic activities, at least on the level of investing the monetary property of a foundation or operations on the market of securities or real estate may be derived from the text of the Article 31 of CAFF, which stipulates besides others the following:

Foundation property should be managed in a manner provided by the act on establishment or by the foundation's statute. Substantiated and documented reports on the actions taken with respect to the foundation's property (financial investments, handling of securities) are submitted to the Ministry of Administration and the Ministry of Finance. Such changes in the way of using foundation property are permitted under the condition that they do not decrease the [total] value of the foundation's property. ... If it concerns legal matters related to encumbering or alienating real estate or some particularly valuable movables, which are part of the foundation's property, the Ministry must give its consent for them to be legally valid. The Ministry will grant the permission or consent only if particular legal matters guarantee future fulfillment of the foundation purpose.

International Perspective

Following the strict interpretation of the above provisions of the CAFF means, that only such transformation of the endowment and other property of a foundation, which may enrich the foundation or provide better income generating potential, may be considered legal. This also means, that no income generating activities besides those mentioned in the Article 16 of CAFF are allowed to foundations in Croatia, which solves the problem of fair market competition and enables favorable taxation approach.

According to the findings of the author and the text of Ref [15], the similar approach to unrelated economic activities of foundations enabling some charitable and related economic activities, as that applied in Croatia, may be observed in Austria, Cyprus, Denmark, England and Wales, Greece, Ireland (*where trading is also allowed to be conducted by people, who*

shall be in that was beneficiaries of the foundation). Italy, Liechtenstein, Portugal, Slovenia and Sweden.

In other European countries the law permits economic activities, but they must not constitute a main activity of the foundation. This is the case of Albania, Finland, France, Hungary, Scotland, Spain and Switzerland. In Belgium and Germany there are tax sanctions applied, if this provision is violated.

Some European countries, like Bulgaria, Czech Republic (*see more detail below*), Estonia and Slovakia permit only a restricted scope of economic activities to foundations.

Finally, in Luxembourg and Netherlands, the additional economic activities are permitted, but are submitted to taxes as it the case of a business company.

In the Czech Republic, the law allows foundations to rent their real estate property and to organize public collections, as well as to be engaged in cultural, social care, sports and educational events. However, neither foundation nor fund may participate on any business activities in its own name. Nevertheless, there is an important exception: A foundation (but not a fund) may participate in business activities of the stock holding companies under the condition, that the total scope of the equity invested by the foundation into business activities of stock holding companies shall not accede 20 per cent of the total assets of the foundation after subtracting its endowment value and that only publicly traded securities of stock holding companies shall be bought or sold by the foundation, which may be done exclusively on public exchange market. Further, the share of a foundation on the equity of any stock holding company may not accede 20 per cent of the total equity of that stock holding company. With the exception above, neither foundations nor funds may participate on business activities of other persons.

Lessons Derived

- The decision to permit or to forbid income generating economic activities to foundations depends on how much the foundation is expected to be able to support its purpose in sustainable way from the incomes generated by its endowment.
- In those countries, where existence of a substantial endowment is considered essential for sustainability of the foundation, any economic activity of a foundation should usually be strictly limited to its purpose or charitable needs.
- In those countries, which consider foundation as a form for collecting assets for the purpose declared upon their establishment, it is usually allowed to foundations to be engaged in some forms of income generating activities, or at least to optimize the composition of their endowment to maximize income, which the endowment may generate.
- Restrictions applied on economic activities are sometimes conceived in such a manner, as to minimize potential risk of misfortunate investment and gross losses caused by misfortunate transformation of endowment or other property of a foundation.
- Croatian approach to economic activities of foundations is well in the scope of the European context, but it also belongs to the category of state intervention or supervision policies, which might be a potential source of corruption and misuse of power risks on the side of supervising governmental body.

Recommendations with Respect to the CAFF

- Without essentially changing the scope of allowed economic activities of foundations, it may be found appropriate to eliminate the necessity of seeking consent of a governmental body with reasonable transactions related to the use of the foundation property, leaving the responsibility with the governing body of the foundation.
- In order to enhance the potential for achieving the purpose of funds in a limited period of time of their existence, the funds should be given a possibility to transform their property into monetary assets under the condition that this is done without apparent loss on the value of their total property.

10. Internal Governance Issues

General Remarks

With regard to governance modalities, the question is often raised, how should a foundation be governed and what is the role and responsibility of a governing body. We may call such a governing body a board of directors, and we may ask, what are the requirements, if any, on its composition, how many members should a collective body governing a foundation have, how long should members of that body serve, what are their rights and obligations. Of interest are also issues related to regulations, if any, which concern salaries and/or remunerations for the services provided to a foundation and for expenses related to the service in the board of directors or other body of a foundation.

Another set of questions relates to the way of decision-making and whether there should be some obligatory or default way of decision making for a governing body of a foundation. Personal interests of a governing body of any legal entity always raise questions about possible Conflicts of Interest and it is a question, to which degree should the law protect a foundation, its donors and beneficiaries from any possible impacts of conflicts of interests in its governing body.

To make a decision in many occasions may involve liability issues, and questions are raised, what are the liabilities of the board of directors and its individual members with respect to decisions made on behalf of the foundation, which they represent. Another question raised is, whether it is necessary for a foundation to keep certain liability reserves and to what extent a foundation may be held liable with respect to third persons, as well as who and to what extent may be held liable for obligations, losses incurred or damages caused by a foundation or to a foundation.

Finally, the board of directors may not be the only governing body, which the law requests to be established to control or supervise the activities of a foundation. Therefore, a question is raised, whether there is a need for any regulations regarding other, non-statutory, bodies of a foundation in the law and if so, to what purpose may serve such additional bodies of a foundation.

Croatian Approach

In Croatia, the CAFF defines two levels of governing structure: one for the period of time from its establishment to incorporation and thus acquiring the status of a legal person and second for the time of existence of the foundation as a legal entity. In the first period, there should be appointed a temporary director or a director of the foundation (fund), which plays certain role in establishment of foundations bodies anticipated in the act of establishment. Because in the process of appointment of the director of a foundation the important role the CAAF gives also to the Ministry of Administration of the Croatian Government, the issue will be discussed not only in this chapter, but also in the Chapter 11, which deals with the state supervision over foundations. This is a reason for certain overlap in citation of the provisions of the CAFF in the two chapters.

Article 9 of CAFF provides for the act of appointment of a temporary director as follows: *After receiving the Statement on the Establishment of a Foundation (or after issuing the permission to establish a foundation according the a last will) the Ministry should without delay appoint a temporary director of the foundation, who will be in charge until a regular director is nominated. The person nominated in the act of establishment or in the founder's statement on establishment of the foundation may be appointed temporary director by the Ministry and later also a regular director. If no person is nominated in the establishment documents issued by the founder(s) to the position of a director, the Ministry shall appoint a temporary director upon on its own decision and the person appointed may be also an official of the Ministry.*

According to Article 10:

"In the case, when [the Ministry] decides not to permit the establishment of the foundation, the founder or the temporary director of the foundation may start an administrative dispute against [the Ministry] at the Administrative Court of the republic of Croatia."

According to the Article 12, the situation is to be changed after the Ministry issued the permission to establish the foundation, as follows:

After the document permitting the establishment of the foundation has become valid, the Ministry shall nominate a director to the foundation after asking that person for his/her consent. The person nominated for the position of the director in the founder's documents on establishment of the foundation [the founders' nominee] shall be appointed for a director of the foundation unless the Ministry comes to the opinion, that the person cannot act in a capacity of a director.

If the founders' nominee denies to accept the offered duty, [or is found not capable for the duty] and there are no other founders' nominees available or no other founders' nominee has been nominated, the Ministry, after taking into consideration the purpose of the foundation, the amount and the kind of the property [assigned to the foundation] and its features, appoints to the director a person, considered capable to carry out that duty successfully.

Article 13 of CAFF defines obligations and rights of the director of a foundation as follows: *The director of the foundation is obliged to take over (collect) the foundation's property assigned to it by the founder, to administer and to represent the foundation, unless undertaking of particular actions or legal operations in connection with the foundation are*

not reserved to the Ministry by the law, act on establishment of the foundation or by the decision made by the Ministry.

The director shall also make proposals to the Ministry concerning the statute of the foundation and the list of persons nominated for first managing and representative bodies of the foundation.

The director may be recalled and replaced by the Ministry if he/she does not orderly accomplish the duty.

The compensation and reimbursement of expenses of a director have to be paid from the foundation assets as decided by the Ministry at the time of appointing the director and subsequently as decided by the managing and representing bodies of the foundation.

In the case of disputes on the right of the director to compensation and reimbursement of expenses, the common court is competent.

Note: *Thus, it is the state authority, not the founder, who has the last word in appointing the person responsible for the property, preparation of the statute and nomination of persons to form the first bodies of the foundation. That approach may be interpreted as an attempt to guarantee the appropriate level of managerial capacity by a state intervention. However, this kind of state intervention may also become a source for corruption and conflicts of interests. If the Ministry does not accept personal proposals of the founder, there is also a risk of humiliating the founder or his/her inheritors.*

There are also certain contradictory features to the above provisions: The Ministry may appoint the temporary director – an official of the Ministry, and this person can sue the Ministry for not permitting the establishment of the foundation. There might be clearly conflicts of interest of such a person. A question is, whether it may be expected that the ministerial appointee shall behave as the protector of interests of the founder(s) and the foundation, or whether he/she shall stand on the position of his/her employer – the Ministry? Thus, the act of establishment a foundation becomes an administrative act, where the founder seems to have only limited chances to win any serious dispute with the state authority.

CAFF in Article 21 defines the regular managing and representing bodies of the foundation as follows:

At the time of submitting the statute of the foundation to the Ministry for approval, the director of the foundation is bound to propose [a list] of members of anticipated foundation bodies by name, taking into consideration persons listed for this purpose by the founder(s) in the act on establishment. These persons must provide their preliminary written and publicly verified acceptance of the duty, they should be capable in the business, and worthy of trust with respect to their professional abilities, previous work and behavior. Also, these persons can neither belong to the target group of beneficiaries of the foundation, nor can be officials of the Ministry or members of the Foundation Council [of the Government].

The Ministry shall appoint the first foundation bodies and their members according to the list proposed by the foundation's director. The Ministry may decline to appoint a person nominated by the director, if the person does not meet the requirements set by the law. In such a case, the Ministry shall order the foundation's director to propose other appropriate person within a month term.

At the date, when the appointment of the foundation bodies becomes valid, all authorities of the foundation's director terminate and they are taken over by the appointed foundation bodies. To this date, the director shall prepare a report and authorized officials shall perform a revision. Based on these documents a protocol on overtaking the management of

the foundation and an initial balance sheet are drawn. The Ministry shall discharge the director from his/her duties.

The rights and obligations of the members of the regular foundation bodies are defined in the Article 22 of CAFF as follows:

In addition to meeting the requirements set by the law for their appointment, the members of the foundation's body must perform their duty conscientiously and in compliance with the laws and other regulations, the statute and other basic documents of the foundation.

As a rule, the work in the foundation's bodies should be considered honorary and voluntary.

Members of foundation's bodies are entitled to reimbursement of the necessary expenses connected with the performance of their duty. They are entitled to a salary, only if such compensation is explicitly anticipated in the statute of the foundation, if it is an award appropriate to their activity in foundation bodies and if it is feasible with respect to available foundation's incomes. Any compensation to the members of the foundation's bodies, if there is such, must be covered from the incomes of the foundation and must not significantly influence the ability of the foundation to achieve its purpose.

When in compliance with the statute and foundation's incomes, a foundation may have professional administration, if it needs it for its operation.

Provisions related to the appointment and suspension of members of foundation bodies and for decision-making procedures form an obligatory part of the statute of the foundation. For details see Chapter 7. In the CAFF, there are no default provisions for these procedures.

It is also to be taken into account, that the CAFF does not directly mention any requirements concerning nationality of the members of the managing and representing bodies or director of a foundation. However, once these persons to be known to the Ministry, it is possible to speculate about such interpretation of this requirement, which limits a possibility to become a member of the foundation body to citizens of Croatia or at least residents in Croatia.

International Perspective

The laws governing foundations in most European countries do not have specific regulations concerning the structure of the foundation bodies. Great majority of countries do not limit the membership in the governing bodies of a foundation by any criteria besides those applicable to any other legal entity, like being of some minimal age and capability of legal actions.

Only few countries in Europe explicitly demand residency of all members (Italy) or majority of members (Liechtenstein) or at least some of the members (Denmark) of the board of directors in the country or majority of them.

In Finland, the residency of the majority of the members of the board of directors is required on the territory of the European Economic Area¹, while the chairman and one other person must be a resident of the country.

With one exception, all European countries allow founders of a foundation to become members of its bodies. The single exception seems to be Denmark, where the founders nor their relatives in direct line or inheritors or close persons may not form a majority of the governing body of a foundation without permission of a supervising state authority.

In essentially all European countries the law requires from the governing organs to take care of the assets of the foundation according to best practices and to guarantee, that the purpose and objectives of the foundation, as expressed in the will of its founder(s) be achieved or fulfilled. In Germany this is the main and only explicit requirement set by the law on the governing or administering body of the F.

In some European countries the law regulates in detail the minimal requirements on convocation of the governing bodies (*as a minimum once per year or two years, as in France*), defines the rights and obligations of the governing bodies (*see cases of Czech Republic and Spain below, but also Albania⁽²⁵⁾*).

Conflicts of interests and liability of governing bodies and their members for damage caused to the foundation or to third bodies by their decisions on behalf of the foundation are usually left to the civil code or implicitly dealt with by reference to the possibility to sue the foundation and to appeal to a court. In an explicit manner they are taken into account in legal systems of Albania, Czech Republic, Denmark and Spain).

The case of Albania concerning conflicts of interest

The Albanian approach {see Ref. [25]}, which resulted from a long drafting process with participation of experts of ICNL and the author, seems to be the most detailed of those available:

"A conflict of interests between a foundation and a member of the decision-making or executive organ or its employees shall not be permitted. The [possible] cases of conflicts [of interest] and the procedures for resolving them shall be provided in the statute and other acts [of the foundation].

Agreements between a foundation a member of its governing body or its executive organ its employee may be permitted only if they are concluded with the goal to serve to the purpose of the foundation and under the condition that they are fair and in conformity with real market value [of services or goods involved]. Such agreements may be valid only if examined beforehand by the governing body of the foundation. Interested persons shall be excluded from the discussions and the voting on [such an] agreement.

In a case of [finding] a conflict of interest [or upon discovering that] a prohibited agreement [has been concluded] or consummated, and if the above [approval] procedures have not been followed, the foundation may invalidate the agreement and bring a lawsuit in court for indemnification.

Each member of the highest decision-making or executive organ of a foundation shall withdraw from the examination and decision-making on any question where he/she or his/her family members have direct or indirect economic or personal interests.

¹ The European Economic Area is formed by the 15 countries of the European Union and other European countries, which signed with the European Union the agreements enabling the implementation of single market four freedoms: free motion of goods, persons, capital and services.

Each financial transaction [made on] the account of a foundation, [concluded] with a member of the governing or executive organ or an employee of the foundation, or [with] another legal or natural person, [with respect to which] the member of the decision-making or executive body or the employee of the foundation has a financial interest, may be concluded only upon the permission of the highest decision-making body and if the transaction contains the most favorable conditions for the foundation.

Paid employees may not be members of the decision-making body of a foundation. However, they may participate in its meetings without the right to vote.

Disagreements among the members of the [foundation bodies], between [these bodies] and the decision-making and executive organs or between the bodies and employees of a foundation shall be resolved in good faith and in conformity with the statute and the [internal] rules of the foundation; otherwise the question shall be resolved by the court."

In France, there is no explicit law, which regulates the foundations. The traditional approach is based on the case-by-case practice based on decisions of state authorities to provide the status of a public utility with protected denomination as a foundation to legal entities, which applied for such a decision. To provide certain template for internal structuring and regulation of activities of foundations, in 1983 the Government of France developed and published in the Official Journal of French Republic the "Model Statute Proposed to Establishments which Solicit to be Recognized as Establishments of Public Utility of a Foundation Quality (see Ref. [6]).

The following two cases are discussed in more detail.

The case of Spain on governing body

Spanish law on foundations is an example of detailed solution of several issues related to the governance of foundations.

Every Spanish foundation must have an administrative council, called *patronato*, which manages and represents the foundation. The *patronado* must have at least 3 members, who elect between themselves a president, unless otherwise determined in the act on establishment. The administrative work may be done by a hired person, which is not a member of the *patronado* and as such may not participate in any voting.

Only fully legally capable natural persons may be members of the *patronado*. Legal persons may constitute part of the *patronado* only through an appointed natural person representing them. The members of the *patronado* take over the duty by explicitly stating so in a written public document signed in presence of notary public or under office during the registration process. This acceptance document is filed and entered in the foundation register.

The members of the *patronado* exercise their obligations free of charge. In no case they may accept any compensation for it with the exception of reimbursement of justifiable costs related to the execution of their duties, unless otherwise stipulated by the founder. Unless prohibited in the statute, the member of the *patronado* may delegate its powers to some other member of this body, but it is not possible to delegate neither the approval of the foundation accounts, nor of any act, which requires authorization by a state supervising authority. The *patronado* is obliged to care for fulfillment of the purpose of the foundation and administer its assets and activities, maintaining them usable.

The replacement of members of the *patronado* should proceed according to the statute, unless otherwise stipulated by the law. The replacement is possible, in the case of termination of the term of the office, death of the member or in case of declaration of bankruptcy or extinction of a legal person represented in the *patronado*, when legal incapacity of a member has been declared or in the case when legal entity represented in the *patronado* has been found incompatible with the law. It is also possible to declare in a legal way, that a member of *patronado* does not perform his/her duty with required dilligency or that he/she may be held responsible for acts contrary to the interest of the foundation.

A resignation of a member of *partonado* becomes affective since the day, when change has been entered into the foundation register or by formal delivery to the *patronado* of the resignation document signed in presence of public notary. The statute may allow for other reasons of replacement of members of the *patronado*.

All changes must be reflected in the foundation register. The members of *patronado* may be held liable towards the foundation for making decisions violating the law and/or statute of the foundation or out of negligent performance.

The case of the Czech Republic on temporary and permanent foundation bodies

In all matters related to the incorporation of the foundation (fund) until the date of incorporation, the founders together or one of them authorized by others in written are entitled to deal on behalf of the foundation (fund). In the case of establishing the foundation (fund) by a testament, the entitled person is the testament executor, who assumes his/her powers from the date on which the testamentary proceedings have been closed.

The initial donations of founder(s) shall be under custody of a person (custodian) appointed by the founder(s) in the act on establishment of the foundation or by the Testament Executor. The custodian is obliged to transfer the protected property to the foundation (fund) without delay after the foundation acquires the status of legal entity or to return it to the founder(s) or to their inheritors, if the foundation (fund) has been refused to be registered by a valid decision of the court.

There is no limit for the members of the governing body based on nationality for foundations and funds, while in the case of public benefit companies the law requires two thirds to be citizens of the Czech republic. But the recently approved governmental proposal of amendments to the law provides for abolishment of this constraint.

The law extensively defines the structure, obligations and rights of the governing bodies of foundations and funds. It also provides sets of default rules, which must be applied unless otherwise explicitly stipulated in the act on establishment by the founder(s) of the foundation (fund).

So, for example, there must be a board of directors composed of at least three members, defined as a statutory body maintaining the assets of the foundation or the fund, The board is supposed to control the activity of the foundation (fund) and to decide on all its matters.

There must be also either a supervisory board of three members or an inspector, which are expected to check, whether the foundation acts in compliance with the law and statute and whether the accounting books of the foundation (fund) are kept as required by the law and whether the annual balance sheet of incomes and expenditures and the obligatory annual

report accurately reflect the property and activities of the foundation (fund), notifying the board of directors on any discovered inconsistencies and proposing recommendations how to remedy the situation.

The board of directors may delegate some of its powers on the managing director of the foundation (fund), but the law reserves for the board exclusive right or obligation to

- a) Issue the statute of the foundation and decide on its alternations
- b) Approve the budget, the annual balance sheet and the annual report on activities and economy of the foundation and alterations of these documents
- a) Decide on merging, if this is not excluded by the act on establishment
- b) Elect new members of the board of directors and of the supervisory board or the inspector, as appropriate, unless specified otherwise by the act on establishment
- c) Decide on the suspending a member of the board of directors, member of the supervisory board or the inspector, if he/she ceases to fulfill the conditions set up for the membership or the function (not sentenced for a willful criminal act and capable of legal actions)
- d) Determine the compensation for serving as a member of a governing body of the foundation (fund)
- e) Decide on the enhancement of the value of equity forming the registered endowment.

Several articles of the law are further devoted to regulations of decision-making procedures of the board, election of new members and other issues, which are to be defined in detail in the statute of the foundation.

Lessons Derived

- The issue of governing modalities is in many European countries not considered important enough for being explicitly regulated by the specific law on foundations.
- In some countries of the CE and SEE region, where the law fulfills also certain educational role due to the absence of reliable good morals, it may be considered appropriate to provide for defaults of the rules regulating the governing bodies and their decision-making.
- The detailed legal solutions might be inconsistent and even intrinsically contradictory, e.g. if requiring the statute to be in full compliance with the founder's act on establishment and at the same time requiring that both these documents should contain provisions related to issues deemed to be changed during the existence of the legal entity, like its seat, governance structure or even name. To avoid this, the law should always explicitly mention the right of the founder to prohibit some changes to provisions in the act of establishment by subsequent changes of the statute.
- There is also a possibility to elaborate and publish a model statute, as adopted in France, which might serve as a sub-legal norm or a standard supported by general provisions of a general legal code or one or more specific laws.
- In general, the foundations are supposed to be governed by a collective body entitled to make the most important decisions, like changes of statute, only in well-defined quorum, often stronger, than in the case of operating decisions.
- There are usually no explicit limits set to the membership in the governing bodies. In order to facilitate the communication with the foundation, some countries require at least a representative of the foundation to be a resident in the country.

- The issues of conflict of interest are mostly not included to the laws, but in some countries it has been found important to deal with this issue due to the risk of misuse of the foundations for individual interests.
- In European countries the founders are usually allowed to become members of decision-making bodies of the foundation established by them.

Recommendations with Respect to the CAFF

- In order to simplify the establishment procedure, it is recommendable to devolve to the founder(s) the decision on who shall take into custody the property assigned to the foundation and also reserve to the founder(s) the right to act on behalf of the foundation before its incorporation as a legal entity. In the case of establishing the foundation by a testament, the role of founder(s) should take over the testament executor. (*see the case of the Czech Republic*). In effect, this would eliminate the need of appointing a temporary director and the director of the foundation.
- The same recommendation may be applied to the issue of appointing the first bodies of the foundation – let them be appointed directly by the founder(s) or testament executor. The Ministry should intervene only in such case, when the persons appointed are found legally incapable or sentenced for criminal act of the kind, which diminishes their credibility as members of the foundation body (*see the case of the Czech Republic*).
- The drafters of the proposal of amendments to CAFF should decide, whether it would be appropriate for Croatia to introduce some defaults on decision-making rules of the highest decision-making body of the foundation and on conflict resolution. (*See the case of the Czech republic, the case of Spain and the case of Albania*).

11. State and/or General Public Supervision Issues

General Remarks

The foundations are legal entities and this status must be given them by some state authority, be it government, court or special agency to which this power is delegated by law. Every state applies certain regulations related to fiscal and tax issues, which should be applied to every legal entity.

In most countries, the foundation are considered to be legal entities *sui generis*, because they represent some property or non-material quality of perpetual value, for the use of which some natural persons must take care, without having any ownership title to such property or quality. In many countries, but not at all in all, the use of the property or quality of a foundation has to be limited to some public interest or at least to a well-defined circle of persons. Therefore, it seems natural to expect some level of legal protection for this legal form as such, as well some special treatment of it with respect to other laws regulating its relations to third parties and to the state.

There are three possible modes of the relation of the state, which represents the most common interest of its citizens and residents, towards foundations.

In the framework of liberal approach, the state treats foundations as any other legal entities and leaves to the founder(s) to shape in the act of establishment the foundation purpose, management and extinction conditions.

In the framework of democratic or popular approach, the state may limit its activities towards foundations to the period of their incorporation as legal entities, collecting afterwards only taxes or deciding on some fiscal duties or relieves extended to foundations in general, leaving the bulk of any control and supervision activities to the self-perpetual foundations bodies and to certain extent to the general public, becoming eventually a default recipient of assets remaining after the liquidation of the foundation in the case of its extinction as a legal entity.

In the framework of conservative approach, the state has the tendency to take over responsibility for the foundation from the very beginning. Thus, it may regulate by law the activities of founder(s), as well as the purpose, management minima, decision-making, use of assets, accounting and extinction conditions of the foundation. In some cases it may even try to control the appointment of person forming the governing bodies of the foundation.

In general, these are the three frameworks in which several details modalities of state intervention and supervision on activities and decision-making of foundations may be used and in which the question is raised, to what degree there is any specific need for a state (government, court, “independent” authority) intervention into and supervision over activities of a foundation (besides regular tax revenue procedures) and to what extent should that be regulated by law. Another question is how the state may assist to foundations or how it may promote or regulate their establishment and whether it is at all in the interest of the society represented by the state to support foundations. All that might result in a question as to what extent and why at all the law should be protective or restrictive with respect to foundations.

In any case of supervision, be it by the state authorities, some other authority or general public, there is a need of some form of communication between the foundation and those, who should its activities support, supervise or who are expected to benefit from its property and activities. This includes the reporting issues and leads to the questions on what besides revenue reporting might be the means by which the state, general public and/or donators may learn about or to supervise the activities of a foundation, as well as whether there should be any obligatory annual reporting to general public and what, why and to what extent should be enclosed to such a report.

This chapter summarizes some of the examples of approaches and answers to the above questions, without attempting to provide any definitive judgment on what is to be preferred and what should be avoided.

Croatian Approach

In Chapter 10, devoted to the governance issues, the approach of Croatian law to the control of the founder(s) actions and their will to provide all or part of their property to the service for a publicly beneficial objectives intermediate has been already demonstrated on provisions related to appointment of a temporary director and director of the foundation, who not only play the role of a temporary custodian of the property assigned by the founders to the foundation under establishment but instead of the founder(s), together with the Government represented by the Ministry decide about many important things related to the beginning of the foundation existence – the first foundation bodies and its statute.

In short, in the Articles already discussed in previous chapters, the CAAF provides for the following authority of the Ministry (of Administration):

The Ministry grants permission to establish a foundation after obtaining consent of a respective ministry (Government department), into whose responsibility falls the implementation of the purpose of the foundation.

The Ministry could undertake operations in relation to competent bodies to protect the property [initially donated by the founder(s) to the foundation] directly or through the temporary director even before the foundation acquired legal personality

The Ministry may propose to the court to rule on temporary protective measures for the sake of protection of the foundation's rights or the rights of other co-founders

The Ministry decides whether the purpose of the foundation is generally beneficial or charitable

The Ministry decides, whether the property initially donated by the founder(s) is sufficient for achievement of the purposes of the foundation, which the founder(s) want(s) to establish.

The Ministry decides whether the purpose of the foundation is feasible or legally or morally allowable

The Ministry decides upon the serious reason to establish a foundation.

The Ministry decides, whether the intension of the founder(s) to establish a foundation has been meant seriously or not.

The Ministry appoints temporary director, which may be also an official of the Ministry

The Ministry subsequently appoints the director of the foundation and decides, whether the person nominated by the founder(s) is able to act in that capacity.

The Ministry is obliged to decide on granting the permission to establish a foundation within 60 days from receiving orderly request by the founder(s) – [but there are no sanctions nor default solution if it does not decide in the given term]

The Ministry approves the Statute of the foundation, [which may not start any activities without that approval]

The Ministry by its official duty enlists the foundation into the Foundation Register and subsequently publishes an advertisement in the Official Journal of the Republic with some details on the foundation

The Ministry administers the Foundation Register

The Ministry [of Administration] receives reports on activities of the foundation and the together with the Ministry of Finance also the report on the state of property and finances of the foundation.

The Ministry can deny approval of the statute of a foundation if it does not comply with provisions of any Croatian law or if its provisions contradict those in the act on establishment of the foundation.

The Ministry approves changes in the statute of the foundation and in the case when the founder is no longer alive, the Ministry decides on adequacy of changes in the statute, on their absolute beneficiary effect and on their conformity with [assumed] will of the [deceased] founder(s), [as] if he were alive

The Ministry certifies on one copy of the statute its approval and returns it to the director of the foundation; another certified copy it files with the Foundation Register where it records adoption of the statute

The Ministry orders from the foundation managing body to decide on changes and amendments to the statute of the foundation, if it considers it appropriate in order to fulfill the will of the founder(s) or if the changed conditions require the change of the purpose of

the foundation. If the foundation body does not respond properly in 30 days, the Ministry decides on the changes by its own authority.

the Ministry [of Administration] and the Ministry of Finance approve any changes to the foundation's property (financial investments, handling of securities) under the condition that they do not decrease the [total] value of the foundation's property.

The Ministry gives its consent to legal matters related to encumbering or alienating real estate or some particularly valuable movables, which are part of the foundation's property under the condition, that the particular legal matters guarantee future fulfillment of the foundation purpose

The Ministry decides on what legal operations it shall not delegate to the director of the foundation

The Ministry suspends and replaces the temporary director or the director, whenever it finds it appropriate

The Ministry decides on compensations and reimbursements of the director until foundations bodies take over their duties

The Ministry decides on capability of persons listed by the director as nominees for the membership in the foundation bodies, considering their trustworthiness, professional abilities and previous work experience and behavior, as well as their potential participating on benefits provided by the foundation

The Ministry appoints the first foundation bodies and their members taking into account the list of persons proposed by the director, but may decline the appointment and order the director to propose other nominees within a month term

The Ministry discharges the director from his/her duties

Besides this long and impressive list of rights and obligations of the Ministry, the CAFF provides also other provisions, which still more demonstrate the extremely strong supervisory and control role of the Government over foundations:

According to the Article 13:

The Ministry is entitled to approve any general rules on compensations of the members of foundation's bodies, and in the case on absence of such rules every single decision on salary or compensation given to a member of foundation's bodies.

The Ministry must be notified of each subsequent nomination or suspension of a member of the foundation's bodies within 15 days of that takes place.

The Ministry shall order the members of the foundation bodies who have not performed their duties properly to remedy this in a given time.

The Ministry is bound to suspend the members of foundation's bodies if they do not meet the conditions of the law or do not perform properly after the time limit set for a remedy to them.

The Article 23 of CAFF gives further powers to the Ministry:

The Ministry shall determine a commissioner to a foundation, if the appointed managing bodies of the foundation are no longer willing or able to perform their duties, while the Ministry or other competent body have not taken the measures necessary for the replacement [of the members of the bodies] in due time and in compliance with the law or the statute of the foundation, as well as if one or more foundation bodies acts contrary to its duties and by its activity jeopardizes continuous preservation of the endowment or the fulfillment of the foundation purpose. The commissioner takes over all authorities of the foundation's managing and representing bodies since the moment of his/her appointment.

Unless otherwise specified by the foundation's statute, the commissioner has to submit in less than 30 days since his/her appointment to the Ministry a proposal for the nomination of new foundation's bodies. The commissioner is entitled to a compensation and reimbursement of expenses on the expense of the foundation.

The Ministry may, if necessary, suspend the commissioner at any time and appoint another one.

Notes: *Therefore, the State as represented by the Ministry is given authority to appoint custodian of the property initially donated to the foundation by its founder(s) and to decide upon who shall serve in first foundation's bodies or to suspend those, who do not meet the requirement of the law or, according to the opinion of the Ministry, who do not perform their duties properly.*

The supervisory powers of the State over fiscal operations of the foundation are made really very strong by the provisions on compensation rules for members of foundation's bodies. In fact, this puts the foundation into subdued position with respect to the Ministry even on personal incomes level.

All that means that the State (the Ministry) may at any time, having some indications on improper activities of foundations bodies, suspend the foundation bodies and enforce management of the foundation by persons of its own choice.

And that is not all, since the Articles 30 and 31 provide for a specific inspectorial supervision over foundations as follows:

Inspectorial supervision over the operations of foundations is administered by the Ministry [of Administration], the Ministry of Finance and the State Office of Revision [a supreme audit office].

The Ministry of Administration executes inspectorial supervision in order to check how the foundation property is being maintained and whether the foundation purpose is pursued in compliance with the regulations.

The Ministry of Finance and the State Office for Revision perform inspectorial supervision over foundation's financial operations.

In order to perform the inspectorial supervision over the operations of a foundation, the inspectors and other state officials and state administrative bodies are authorized to execute the control.

The representatives or members of foundation's bodies must not be appointed inspectors or authorized person to inspect the foundation activities.

Inspectors and other authorized state officials have the right and obligation to order the foundation to eliminate the discovered discrepancies and irregularities within a set term. They are also authorized to submit to the competent state bodies a report for penal purposes or to begin contravention procedures, as well as to undertake other measures according to the appropriate governmental regulations.

If the discovered deficiencies and irregularities are not eliminated within the set term, the Ministry shall proceed in compliance with the provisions on involuntary termination of the foundation (see comments to the Article 26 of CAFF in Chapter 12)

Note: *These provisions put the foundation under continuous supervision of state officials, making its decision fully dependent on the good will and understanding of certain state administrators. No wonder, if this supervisory role would create corruptive behavior on both sides: the foundation officials may try to bribe the state officials and the state inspectors may wait for a bribe to suppress or weaken down their inspecting initiative. Moreover, the law does not provide any definition of a minimum remedy term for a foundation, nor the conditions on when and under what conditions the inspectors may visit the foundation, what they are entitled to request for inspection needs, etc. There are also no provisions on how and when to apply penal procedures against individual persons. This situation makes the position of members of foundations bodies very difficult and exposed to risk.*

In the Articles 34 and 35 the CAFF also provides for the existence of the Foundation Council as the highest expert and advisory body with the Government. Its aim is to discuss the state of foundations and provide proposals, guidelines and opinions on matters submitted to the council by the competent ministers, to provide opinion and give proposals on regulations to be passed in view of the implementation of the Act, as well as to decide on other issues. The Foundation Council should consist of a chairman and six members appointed by the Government of Croatia from experts in the fields in which foundations are operating, as well as from renowned public servants and benefactors. The council should hold its sessions at least three times per year and makes decision by majority of all its members.

International Perspective

In nearly every European country, the laws enable the state authorities to exercise supervision and control over foundations in the manner and scope similar or identical to that used with respect to any other legal entity. Citing the scope from the Albanian law {see Ref. [25], this control usually includes the right to supervise organizations regarding the implementation of tax and customs legislation, social insurance legislation, the licensing for exercising certain economic or professional activities, the discipline with respect to exercising contracts on public and social services, the fulfillment of activities related to the use of funds from the public budgets.

According to the Ref. [15] in European countries, the supervisory and specialized monitoring authorities are as follows:

A public administration body (usually Ministry of Interior, Ministry of Justice, Registering Authority) executes the supervision in Austria, Belgium, Bulgaria, Cyprus, France, Liechtenstein (*with the Internal Revenue Office*), Luxembourg, Slovenia and Slovakia.

Only the Ministry of Finance and/or its affiliated revenue and tax supervision authorities have the necessary tools for supervision in the Czech Republic (*together with the registering court of commerce*), Denmark, Estonia, Finland, Germany (*with special arrangements in the Lands*), Italy and Portugal.

Besides a financial authority there are independent monitoring and supervising organs (commissions and authorities) in England and Wales (*the Charity Commission, the*

Companies House, the Inland Revenue Office, the Customs and Excise Office), Greece (the Council of National Bequests), Hungary (Office of the Attorney General), Ireland (the Irish Revenue Commissioners, the Commissioners for Charitable Donations and Bequests for Ireland), Scotland (Financial Intermediaries, the Claims Office, the Capital Taxes Office, the Scottish Charities Office) and Spain (Protectorados).

The regional administration is involved in the supervision in Germany, Sweden and Switzerland.

A special governmental unit or an advisory board or council responsible for relations between the state and the foundations and other civil organization exists in Belgium (*special units at line ministries*), Czech Republic (*the Council of Non-Governmental Organization headed by Minister without Portfolio and composed of representatives of line ministries and civil organization/ foundations, associations, public benefit companies, establishments of the Catholic Church and those of evangelic churches*), Denmark (*the Danish Commerce and Companies Agency*), England and Wales (*the Home Office's "Active Community Unit", the Charity Commission*), Finland (*the National Board of Patents and Registration, which maintains the Foundation Register*), Ireland (*the Commissioners for Charitable Donations and Bequests for Ireland*), Scotland (*the Scottish Charities Office*). Spain plans to establish the Superior Council of Foundations.

As far as reporting to the state authorities is concerned, the available texts of laws and Ref. [15] reveal a following situation.

No reporting is required in Ireland.

Annual reporting to either a government authority or to be filed with the Foundation Register and thus made available to the public is obligatory in Austria (*Full reporting including any major sale of assets*), Cyprus, Czech Republic (*see the case of the Czech Republic on reporting*), Denmark, Estonia, Finland, Greece, Hungary, Italy (*reporting to Parliament*), Liechtenstein, Luxembourg (*annual accounts only*), Netherlands (*no publication or filing*), Portugal, Scotland, Slovenia, Spain (*see the case of Spain on reporting*), Sweden

Special reports to several authorities are required in England and Wales,

Annual budget or financial statement reporting is required in Belgium (*annual report to Government about activities and budget not later than 2 month after budget acceptance*), France and Switzerland.

Approval of receipt of large donations is required in Belgium, France

External audits are required in the Czech Republic, Denmark, Estonia, Finland, Italy, Liechtenstein, Scotland (*only large charities*), Spain (*for very large foundations every second year*), and Switzerland (*advisable*).

Inquiry of bank accounts is possible in Greece.

The case of the Czech Republic on reporting

In the Czech Republic, when the law on foundations and funds {see Ref. [10]} was under consideration of the Parliament and Government, the discussion was raised about inclusion of a special chapter on state supervision to the law. After many difficult negotiations between the experts it has been adopted a recommendation not to do so. Instead, the supervisory role has been implicitly assigned to the general public by requesting from foundations and funds to prepare and regularly publish annual reports.

The philosophy of that approach assumes that interested public informed on activities of foundations from annual reports shall be able to execute such a pressure on foundations (funds) that would guarantee their performance in accordance to the law, act on establishment and statute of the foundation (fund). The solution adopted has been found effective, cheap and is currently accepted and respected by foundations (funds), as well as required and used by the donors, state authorities and general public.

In order to provide a detailed insight to this approach, the provisions of the Act No.227/1997 on Foundations and Funds of the Czech Republic, which deal with reporting are reproduced here.

“The board of directors of a foundation (fund) shall approve the annual balance sheet of incomes and expenditures and the annual report on activities and economy of the foundation after it has been reviewed and commented by the supervisory board (*separate body obligatory with greater foundations*) or the inspector (*replacing supervisory board in smaller foundations*) of the foundation.”

“An external auditor must review the annual balance sheet of incomes and expenditures of every foundation. In the case of a fund (*without endowment*), the audit is mandatory for a year, in which the sum of expenditures or incomes reported by the fund is in excess of CZK 3,000,000 (about US\$ 85,000).”

“The foundation (fund) prepares the annual report in the term determined by the Board of Directors, or foreseen in the Statute of the foundation (fund); however, this shall not be later than in six months following the end of the evaluated period of time.”

“The annual report should contain the review of all activities of the foundation (fund) accomplished during the evaluated period of time accompanied by evaluation of those activities. This includes, namely,

- an overview of the assets and liabilities of the foundation (fund),
- an overview of individual donators, who donated to the foundation (fund) assets in a value exceeding CZK 10,000 (about US\$ 300); in case when a donor requests anonymity to be respected, this anonymity must be respected,
- an overview of how the property of the foundation (fund) was used,
- an overview of persons who have been given grants, if the grant has been in excess of CZK 10,000, together with evaluating comments on how the grant was used for the purpose of the foundation (fund); in the case when the grant was provided to a natural person for reasons of health protection or care or for similar humanitarian needs and that person asks for anonymity preservation, the anonymity of that person must be respected,
- an evaluating commentary on how the foundation (fund) manages to adhere to the [obligatory] rule that limits its administrative expenditures,

- an evaluating commentary on basic items in the annual balance sheet of incomes and expenditures
- a summary of the external auditor report together with any significant information revealed in the auditor's report; the annual balance-sheet of incomes and expenditures should form an appendix to the annual report."

"The foundation (fund) shall deposit the annual report or its correction not later than 30 days after its approval by the board of directors at the Registering Court to be filed in the Foundation Register."

"In the case when some matters are discovered, which would require a correction in the annual report after it has been published, the foundation (fund) is obliged to make and publish such a correction without delay."

"Everybody has the right to inspect the annual report and make transcripts and excerpts of it."

"The act on establishment or the statute of the foundation (fund) may determine additional way how to publish the annual report."

The case of Spain on reporting

Another example of how a supervision of activities of foundations may be efficiently solved with a reasonable approach to the size and importance of supervised assets and activities may be found in the Spanish Act No. 30/1994 from 24. November 1994 on Foundations and Fiscal Initiatives and on Private Participation in Activities of General Interest {see Ref.[9]}, from which some provisions are reproduced in translation and after simplification of the legal text as follows:

"The *patronado* (board of directors) of a foundation should make annually an inventory of its assets and prepare the annual balance of incomes and expenditures together with a memorandum, in which the real economic, fiscal and property situation is described and which describes the activities of the F. as well as any economic activities which have influence on its incomes and includes also an exact description of the fulfillment of the purpose of the foundation. The memorandum must also describe all changes in the management membership and structure, as well as any change of the rules of representing the foundation."

"The accounts of a foundation are submitted for an external audit during the next fiscal year if the total of the assets of the foundation or its total net income is greater then 400,000,000 of ESP (about US\$ 6,000,000) an if the average number of employees during the previous year was greater then 50 persons. The audit is also required if the *patronado* or *protectorado* (the authorized state authority) point out on some extraordinary circumstances, which require such an audit."

"The annual inventory, balance sheet, memorandum on activities and the resolution of an external audit must be submitted to the *Protectorado* in less then 3 months after closing the financial affairs of the previous year."

Lessons Derived

- While the state control over legal bodies is essential in many countries, only few of the European countries apply specific supervisory measures with respect to foundations.
- In only very few European countries the law enables the state authority to exercise direct control over essential incomes and/or expenditures of a foundation.
- Some countries require not only a regular fiscal and revenue reporting, but also an annual report on activities of a foundation, from which it may be deduced, how the foundation fulfills its mission.
- In the Czech Republic, the state supervisory role has been replaced by general public supervision based upon obligatory and detailed annual reports on economy and activities of foundations, which seems to be an effective approach
- Several countries require from foundation to submit their accounting to external audit, which is enforced by law in the case of significant values of revenues or expenditures of a particular foundation.
- In many European countries the state authorities or a court have tools available to enforce better management of foundations, if discrepancies or violations of the law, acts on establishment and statutes of a particular foundation are discovered.
- In some countries there exists or is under consideration a special advisory and monitoring body, which facilitates the communication between the community of foundations on one side, and government authorities or donors on other side.
- The foundations should represent an independent and voluntarily established source for financial or indirect (in-kind) support of activities, which the given society considers of public interest. For that reason, the state should minimize its intervention to the will of founders and subsequent operations of foundations, while providing necessary protection to the property donated to foundations and assigned to serve general public from misuse and negligent management.

Recommendations with Respect to the CAFF

In the European context, it is evident that the powers of the Croatian Government as executed by the Ministry of Administration are extraordinary. This seems to be not only costly from both the founder's and public budget administrator's point of view but it may be hardly considered an acceptable practice from the point of view of persons willing to establish a foundation. While some of the provisions of the CAFF may be considered adequate, it is possible to recommend to amend the CAFF as follows:

- Wherever possible let the founder(s) or executor of the testament to act on behalf of the foundation, which is to be established.
- Reduce the powers of the government during the process of establishing a foundation to a minimum, which should guarantee fulfillment of certain basic requirements to be provided in a written act on establishment by the founder(s), like
 - Existence of evidently correct identification of the founder(s) and their rights to dispose with the property being donated to the foundation
 - Existence of sufficiently clearly defined public benefit purpose for which the foundation is being established
 - Existence of a statement on permanent and irrevocable assignment of well-defined assets to the foundation by its founder(s) containing only property capable to ensure sustainable generation of incomes

- Existence of a seat for the foundation administrative office and the right to use it
 - Existence of the provisions of the founder(s) concerning the name given to the foundation, which may not be easily misunderstood for an already existing name of an incorporated legal entity
 - Appointment of first governing body of the foundation and the existence of evidence or proclamation of honor of acceptance the duty and compliance with requirements of the law signed under office by the appointed members of the first foundation bodies
 - Appointment of a person, which shall take the property initially donated to the foundation by the founder(s) into custody during the establishment period of time
 - Existence of a proclamation of the founder(s), according to which certain provisions of the act on establishment may or must not be changed by a decision of the foundation body
- The incorporation procedure may be simplified, made limited in time (as it already probably is) and a provision can be introduced, guaranteeing the entry of the records on the foundation to the Foundation Register and filing its act on establishment automatically after the time limit given to the registering authority elapsed without action requiring prolongation of the term
 - The statute may be prepared by the first foundation's governing body in a given term after the incorporation of the foundation and filed with the Foundation Register; this would enable the governing body to define the organizational and operational details with better knowledge of real needs
 - The Czech approach to the mechanism of public supervisory role may be adopted, which may result in requiring an obligatory annual report on economy and activities of foundation and its publishing and filing in the Foundation Register
 - External audit of accounting books may be required by the law for foundations, whose annual sum of transactions have exceeded certain reasonable limit, comparable to an significant portion of total assets of the foundation; the conclusions of the auditor may become an obligatory part of the foundation's annual report
 - The Foundation Council, if established, may be a democratic or regularly reappointed body assigned besides the already defined roles also with a right to collect, investigate and report on annual reports of foundations

12. *Wind-up and Liquidation Issues*

General Remarks

Even if such an old text, as is the Austrian Imperial Patent of 1811 {see Ref. [20]} mentions foundation as property assigned for all future times to be used for [specific humanitarian purposes], it would be naïve to expect indefinite existence of all modern foundations. Still, in Germany, there are registered foundations active for already more than one thousand years, {see Ref. [24]}. However, the idea of a foundation established for a sustainable support of a certain purpose by the free decision of a private founder contains that portion of an ideal vision of uninterrupted existence for as long as a human being may feel able to see into the future.

It is therefore justified to distinguish between long-term and unconditionally irrevocable assignment of a substantial property to form an endowment of a foundation on one side and donations of assets, which may serve to a given purpose only for a limited time and may be totally and reasonably used for achieving the given objectives, forming, as it corresponds to the approach of Croatia, a basic property of funds, on the other hand.

As discussed in the Chapter 6, there is also a possibility to allow and promote existence of funds without endowment, as in the Czech Republic {see Ref. [10]}, which may start without any substantial property but be driven by a good idea to collect money for some objective of strong public or even private interest.

It is therefore legitimate to ask, under which conditions may the foundation or a fund be wind-up, both voluntarily and involuntarily. Once a possibility of winding-up a foundation (fund) is given, it is also legitimate to ask what can or must be done with the assets of a foundation in a case of its winding-up and liquidation.

On the other hand, the foundation is also an organization, which is governed by human beings and these may and should be aware of limitations given by the value of the endowment, its capacity to generate sustainable and sufficient income, as well as limits to the ability of the governors of the fund to raise money. This is often difficult to compete with a stronger foundation or a fund operating in the same field on the same territory and for the same or similar target group. Therefore, it is legitimate to provide for merging of foundations and/or funds and to ask what kind of legal acts should be done by the merging subjects and the state, to make merging of foundations possible and to protect the property and the will of founder(s) to a reasonable extent. And what is reasonable and who and how should decide about it?

And, finally, as we know from France {see Ref. [8a] and discussion in Chapter 8}, it is possible to transform a company into a foundation. Would it be appropriate to reverse this and allow transformation of a foundation into a share holding company, or into a limited liability company or into an incorporated association? This is basically a question on what is the relation of foundations (funds) to other legal forms of similar purpose and to what extent should be the activities of a foundation reserved for a specific legal form. What is more important for the beneficiaries – the legal form of a foundation or the activity the provider of the benefit?

These are the main questions and topics discussed in this chapter.

Croatian Approach

In Croatia, the CAFF deals with termination of foundations and funds in its Part III, Articles 25 to 29 basically as follows:

Article 25 in combination with Article 24 stipulates:

A foundation is terminated if it loses its property, if its property ceases to be sufficient for a permanent fulfillment of foundation's purpose and the conditions for transforming it into a fund are not met, while its purpose can be achieved by its termination and by transferring its property to another foundation pursuing the same or a similar purpose, and if the purpose of the foundation ceases to be generally beneficial or charitable or its achievement became impossible for legal or moral reasons, and the change of the purpose in the statute

is not allowed or has not been approved by the Foundation Council {see Article 24 of CAFF}.

Article 26 of CAFF regulates the procedure of the termination of a foundation. In essence it stipulates the following:

The Ministry decides on the termination of a foundation upon a proposal of the body representing the foundation or by its own official duty.

In the document on termination, the Ministry appoints a commissioner [liquidation officer] of the foundation, who immediately takes over management and representation of the foundation, its property, accounting books and other document from the hitherto existing foundation bodies.

The act of taking over shall be recorded in a protocol. In the case, when the hitherto existing foundation's bodies deny to take part in the procedure, or if they do not respond the invitation of the commissioner to participate, the commissioner prepares the protocol himself.

A copy of the protocol shall be delivered to the Ministry, which may decide upon commissioner's proposal or from its own duty on opening juridical or administrative proceedings against the members of the hitherto foundation's bodies.

The body representing the foundation can enter into an administrative dispute against the Ministry concerning the decision on termination of the foundation.

In the document on termination, the Ministry can order immediate termination of activities of the foundation even before the termination document became valid.

The valid act on termination of the foundation shall be submitted to the court competent in bankruptcy and settlement affairs for the purpose of executing the proceedings of bankruptcy or liquidation of the foundation.

After the proceedings of bankruptcy or liquidation of the foundation are accomplished the court shall send the valid document on closing the procedure to the Ministry, which shall rule for cancellation of the entry on the foundation in the Foundation register.

The existence of the foundation is terminated by the day of cancellation of the entry in the Foundation Register.

The Ministry shall publish the information of termination of the foundation in the Official Journal. The costs of publishing shall be covered by the person, to which the liquidation balance is to be transferred. If there is no property left after the liquidation process, the costs are covered by the Ministry.

Article 27 deals with the use of the liquidation balance of the terminated foundation as follows:

In the termination document, the Ministry determines the recipient of the liquidation balance of the terminated foundation.

The recipient of the liquidation balance shall be the natural or the legal person, as defined in the provisions of the act on establishment or the statute of the foundation, upon providing a written consent to it. If the consent is not obtained, the recipient shall be a foundation with a similar purpose to the purpose of the terminated foundation.

In the case that no such a recipient may be found the liquidation balance shall be assigned for some generally beneficial or charitable purpose as close to the original one, as possible.

In the case, when the foundation property is transferred to another foundation, the Ministry shall determine in the document on the transfer of the property the manner, in which the name of the founder of the terminated foundation should be protected from falling into oblivion.

All rights and titles to the property of the terminated foundation shall go over to the recipient person at the day of cancellation the entry on the foundation in the Foundation Register.

According to the Article 28, the foundations are exposed to similar bankruptcy procedures as any other legal bodies, which are carried out by a competent court. However, the liquidation balance, as shown above, must be transferred to the Ministry, which decides about its use in compliance with provisions of the law.

Note: While providing for a usual treatment of bankruptcy of foundations is rather a standard procedure, the direct involvement of the state authority in the process of final assignment of the liquidation balance is not. It seems, that there are no mechanisms available to check the righteous use of the liquidation balance by the Ministry.

It should also be noted that the law does not explicitly allow for a voluntary and negotiated merge of a foundation onto another foundation nor for a split of a foundation into two or more foundations.

Differences between Foundations and Funds and Possibility of Transformation

According to the Articles 2 and 32, the basic difference between a foundation (“zaklada”) and a fund (“fundacija”) consists in the requirement that the property of a fund shall serve for the achievement of generally beneficial purposes only for a limited period of time, not greater than five years. However, it is not appropriate to establish a fund for a single act of fulfilling a charitable purpose.

According to the Article 33 of CAFF, a foundation may be transformed in to a fund when its incomes from the endowment are no more sufficient to permanently serve for the purpose for which the foundation has been established, and when full use of the endowment may suffice to support the purpose for at least another ten years, unless the founder decides for some other solution.

The transformation must be done in accordance with the law (mainly by a change of the name and other provisions in the statute and upon approval of these changes by the Ministry) and its accomplishment must be published in the Official Journal (“Narodni noviny”)

Note: In other word, the funds might and should use all the property assigned by the founder in a limited period of time and they do not form an endowment. However, it is not possible to provide assets serving for more than five years to the given purpose, unless doing so by establishing a foundation and thus fixing the assets into a permanently usable income generating endowment. On the other hand, the possibility to terminate a foundation by its transformation into a fund creates a simple way of terminating its existence, since the law leaves the decision mostly on the foundation bodies or on the will of the founder by not giving any real measure to what is sufficient and what is not.

International Perspective

As in Croatia, in many European countries {see Ref. [15]} it is possible to wind-up the foundation upon a voluntary decision of a governing body, when its purpose has been attained or when the assets are not any more sufficient to support the purpose. This is evidently the case of Albania, Austria, Bulgaria, Czech Republic, Denmark, England and Wales, France,

Germany, Italy, Liechtenstein, Luxembourg, Poland, Portugal, Scotland, Spain and Switzerland

In some countries the termination of the foundation by a voluntary act of its administrators is excluded. This seems to be the case of Sweden

As far as it may be derived from the sources available to the author, the merging of foundations with a similar purpose is explicitly allowed in Albania, Czech Republic, Poland and Spain.

The state authority or a competent court are authorized to issue final decision on termination of a foundation either upon the proposal of the governing body of a foundation or on their own duty in Albania (Ministry of Justice), Belgium, Cyprus, Czech Republic (competent court), Denmark (Ministry of Justice), Finland, Slovenia, France (Ministry of Interior), Germany (assent of an authority is required only in some Lands), Italy (Government), Luxembourg (Ministry of Justice), Netherlands (court), Spain (*Protector*),

In Italy, the state authority may instead of terminating the F. decide on its modification taking into account possible intentions of the Founder, when it is not possible to achieve the purpose of the foundation or when its assets are not sufficient for the purpose. Such a procedure is possible only when conditions for extinction as defined in the act on establishment has been met. This approach may not be applied in the case of foundations, established for benefit of one or more families.

The use of assets upon liquidation

According to the Ref. [15] and findings of the author, the assets of a foundation remaining after its liquidation process has been legally completed are passed over to another foundation or charitable organization with similar purpose. This is the case of Austria, Bulgaria, Czech Republic, Denmark, England and Wales, France, Germany, Ireland, Italy, Liechtenstein, Luxembourg, Poland, Portugal, Scotland, Spain and Sweden.

As in Croatia, in Belgium, Cyprus, Estonia, Finland and Slovenia the same regulations apply, but the state administration plays a role of intermediary between the liquidated foundation and the recipient of the liquidation balance. In Hungary the decision is in the hands of a court.

In Netherlands, there must be defined any recipient of the liquidation balance in the statute of every foundation.

In Greece and Switzerland, the assets of a liquidated foundation may go over to the state or regional government, unless otherwise stipulated in the act on establishment or in the statute of the foundation.

The case of the Czech Republic on merging of foundations and funds

Unless prohibited by the act on establishment of any of the parties, a foundation (fund) may merge into a foundation upon the decision made by the boards of directors of the two parties and when the endowment revenues of the merging entity are not sufficient for achieving the purpose for which the foundation was established and the purpose of the accepting foundation is identical or similar to the purpose of the merging foundation (fund).

Under similar conditions as above a fund may merge into another fund.

In the case of merging of two foundations, the endowment of the accepting foundation must be enhanced by the endowment of the merging foundation.

A merge or transformation of a foundation into a fund is excluded, as is the transformation of a foundation or a fund into another type of legal entity.

The merging procedure includes signature of a merging agreement between the two parties to which there must be attached an overview of the endowment and other assets of the merging foundation or of the property of the merging fund, as well as an overview of liabilities of the merging entity. These overviews may not be made earlier than three months before the date of merge.

Upon receipt of a valid merging agreement (which must contradict the law), the registering court invalidates the files of the merging foundation (fund) in the Foundation Register, and at the same time amends the file of the accepting foundation or accepting fund.

Upon the day of invalidation of the file of the merging foundation (fund) in the Foundation Register, the titles to property of this foundation (fund), as well as its rights and liabilities are conveyed on the accepting foundation or the accepting fund.

Similar regulations are valid in Spain {see Ref. [9]} and in Albania {see ref [25]}.

Lessons Derived

- The termination of a foundation is a restricted right, whose necessity must be based on the evidence on full achievement of the purpose or insufficiency of resources to achieve the purpose of a foundation and it may not contradict the provisions of the act on establishment or contradict the will of living founder(s)
- An alternative for extinction of a foundation is its merge with another foundation of similar purpose
- It is usually excluded to transform a foundation into an entity of less protected property then applied to foundations.
- In the case of termination, the liquidation balance usually remains in the community of foundations and in any case must be used for as close a purpose as possible to the original purpose defined by the founder of the foundation.

Recommendations with Respect to the CAFF

- In order to lessen the burden of the Ministry in the process of administering the termination of a foundation or a fund, it may be found appropriate to avoid the appointment of the commissioner of a foundation and allow the highest decision body of the foundation to nominate and the competent court to appoint a liquidation officer of the foundation
- The law should explicitly allow for a merge of foundations into foundations and funds into funds or foundations based on an mutual agreement and approval of either the Ministry a court, who should only check, whether all legal conditions for the merge were and whether the merge does not contradict to the explicit will of a founder of any of the parties of the merging process. The agreement and all

documents of the merging foundation (fund) should become a part of the filed documents of the accepting entity in the Foundation Register.

- In the case, when no recipient may be found between foundations, it is recommended to offer the liquidation balance of the foundation at first to the administration of the community, where the foundation had its last seat and only if this is declined to let the Ministry to dispose with the property.

13. Conclusions and Summary of Recommendations

- A. The present study provides a confrontation of the Croatian Act on Foundations and Funds as of 1995 (CAFF) with basic ideas reflected in the laws regulating foundations in European legal systems.
- B. In separate chapters there are studied main features of the life of a foundation, its definition, role of founders, process of establishment, possible purposes, registration as a legal entity for the purpose of general public, requirement on the statute, use of endowment, other property and incomes, purpose related and unrelated economic activities, internal governance structure, rights, obligations and liabilities of administrators or governors, state or public supervision and conditions for winding-up and liquidation of a foundation.
- C. Untreated remained the issues of benefits provided by the law to foundations as compared with other legal entities (specifically the tax and other fiscal benefits), as well as issues related to possible sanctions for violating law. These issues are sometimes mentioned in the texts. A systematic analysis of conditions under which the benefits are provided and sanctions are applied, as well as of manner and technical arrangements for implementation of these rules would require a separate study and more space than available for the present one.
- D. The discussion in each of the chapters starts with general considerations introducing the topic and illustrating the issue by asking or reminding typical questions related to it.
- E. The introduction to each topic is followed by a detailed citation from the CAFF, to which are sometimes attached notes of the author, the aim of which is either to underline a specific or remarkable feature of the law or to provide an interpretation of otherwise complicated and excessively long legal text. It has not been the intention to reproduce the text in full and as it is in the available English translation. Nevertheless, a preference has been given to as complete and detailed reproduction of the content of the Articles of the law as to allow a comprehensive understanding and further interpretation of it, without following the structure of the law. In some technical parts the complicated legal text was replaced by a more narrative one with the aim to provide better insight into the procedures or sequence of actions.
- F. Every chapter summarizes the situation in legal systems of European countries. The summaries are made according to the topics, rather than by country. In more complicated issues are also used tables and lists placed to Appendices.
- G. The lessons learned from both the Croatian and other European legal texts are summarized at the end of each chapter, followed by general recommendations with regard possible amendments to the CAFF.

- H. The most general conclusions of the comparative analysis with respect to the CAFF are as follows:
- i. The main features of the Croatian legal approach to the foundations are fully in the context of the European tradition: a foundation being defined as a property permanently assigned by a private person to generate resources administered by a body of governors so as to serve certain public benefit or charitable purpose reflecting needs of a certain open set of beneficiaries.
 - ii. The main paradigm of the Croatian approach lies in giving the full responsibility for correct use of the originally private property to the hands of the public administration, which may effectively control all economical and personal aspects of the life of a foundation.
 - iii. The above paradigm is reflected in the law by systematically concentrating all basic decisions on the choice of persons responsible for the foundation and on main turning points in the life of the foundation into hands of the Ministry of Administration.
 - iv. The implications of the approach are clearly a complicated, costly and staff requiring process of establishing the foundation as a legal entity, lack of rights of founder(s) to influence in a decisive way the life of a foundation, which creates a potential for building special personal and economical relations to officials of the Ministry, who have a lot of decision-making, permission-providing or denying powers.
 - v. Even if the law allows the founders, their inheritors and certain persons affiliated with the foundation to be a part of the establishment or termination process at the Ministry level, it is clear, that the chance to win any substantial dispute with the Ministry in an administrative procedural cases is minimal.
 - vi. This approach makes it difficult to promote the growth of the foundation sector in Croatia, which is a country without social and economical infrastructure beneficial to promotion of philanthropy and altruism.
 - vii. For several reasons the solutions or current state of affairs in countries of similar political, economical and social development in the last century might prove of greater value than those applicable or traditionally existing in the most economically developed countries of Europe or world.
 - viii. Specifically, there are many common features between Croatia on one side and the Czech Republic, Slovakia, Slovenia, Hungary and Poland in the Central Europe and Spain and Portugal in the South Western Europe.
 - ix. In the above mentioned countries with less developed economy and population not fully accommodated in all generations to democracy and free market economy and in average not very rich private sector still competing with state owned companies, it is hard to expect many persons as rich as to be able to establish strong, rich and really long-term sustainable foundations.

- x. Therefore, it may be important to allow not only for existence of funds of short-term duration, but also for fund as defined in the Czech Republic, which are established without essential endowment but may collect money and other assets for a public benefit purpose – to support a private school, a hospital or for renovation of some historical or cultural monument etc. These entities might become essential enrichment of the civil society and a tool of citizens' participation on philanthropic activities based on smaller contribution of many individuals.

I. The most important recommendations selected and generalized from those in individual chapters of the present study are summarized here:

- Foundations or funds should be allowed to exist even with a small or even without essential initial property as legal entities raising funds for financing public benefit objectives
- It is important to support and promote foundations serving public benefit or charitable purposes
- It does not seem important to follow example of the European German speaking countries, where it is possible to establish also family foundations or purely private purpose oriented foundations.
- The time limit term of five years for the existence of funds should be prolonged to ten years to be consistent with the Article 33 or cancelled in both Article 32 and Article 33 of CAFF.
- It is highly recommendable to simplify the establishment procedure as much as possible.
- One way of simplification might consist in replacing the Ministry as the permission providing authority by an independent body appointed by the Government or by the Parliament, and to assign to this body the task to verify, whether all requirements of the law have been correctly met by the founder(s) when establishing the foundation. The same body can also maintain the Foundation Register as a document open to the public.
- Further simplification may be achieved by not requiring from the founder to provide the initial donation as a sustainable and for long-term sufficient endowment, the income generated by which could permanently support the activities towards fulfillment of the purpose of the foundation.
- In order to promote the establishment of foundations and funds, it may be helpful to explicitly allow to both foundations and funds to collect donations from third persons in order to support their purposes. In that case the Czech model of foundations and funds might be found inspiring and the Article 2, First Paragraph may redefine the foundation as *“a collection of property assigned by the founder(s) or collected during its existence from donors, which serves directly or through incomes generated of it to the accomplishment of certain generally beneficial or charitable purposes”*.
- The responsibility for the assets forming the initial donation or endowment to the foundation may be left with the founder or a representative appointed by the founder(s) or a person executing the last will of the deceased founder, without necessarily creating the institution of the temporary director; such an approach reflects basic trust in the founder's integrity, it is essentially less expensive, and does not create potential corruptive or conflict of interest environment by unnecessarily involving bureaucracy.

- It is questionable, whether the state administration or any other body should investigate the need for establishing a foundation for a particular purpose or even deliberate about seriousness of the founder(s) intentions to establish a foundation. This does not mean, that the state should resign on its role of the protector of public interests and rights of citizens by avoiding any considerations on the substance of the proposal of a founder(s) to establish a foundation. However, it is possible to limit the requirements of the law on a certain minimal value of the endowment.
- It is advisable to reduce the powers of the Ministry during the process of establishing a foundation to a minimum, which will still guarantee fulfillment of certain basic requirements to be provided in a written act on establishment by the founder(s), like
 - Existence of evidently correct identification of the founder(s) and their rights to dispose with the property being donated to the foundation
 - Existence of sufficiently clearly defined public benefit purpose for which the foundation is being established
 - Existence of a statement on permanent and irrevocable assignment on well-defined assets to the foundation by its founder(s) containing only property capable to ensure sustainable generation of incomes
 - Existence of a seat for the foundation administrative office and the right to use it
 - Existence of the provisions of the founder(s) concerning the name given to the foundation, which may not be easily misunderstood for an already existing name of an incorporated legal entity
 - Appointment of first governing body of the foundation and the existence of evidence or proclamation of honor of acceptance the duty and compliance with requirements of the law signed under office by the appointed members of the first foundation bodies
 - Appointment of a person, which shall take the property initially donated to the foundation by the founder(s) into custody during the establishment period of time
 - Existence of a proclamation of the founder(s), according to which certain provisions of the act on establishment may or must not be changed by a decision of the foundation body
- Having in mind the use of data in the Foundation Register may serve to third persons in concluding contracts or other legal relation with a foundation or a fund, it is recommended to include to the set of data entered to the Foundation Register also a short description of the manner, in which persons entitled to act on behalf of the foundation (fund) sign the documents of the foundation (fund).
- In the case, when the Ministry does not decide on the approval of the establishment in the due time of 60 days, it might be reasonable to consider the approval as being given and the Ministry should be then legally bounded to rule for entering the foundation data into the Foundation Registry in less then a certain minimal number of (say 10) days, and thus to incorporate the foundation as a legal person.
- In order to broaden the scope of income resources of foundations, it might be desirable to add to the requirement on obligatory content of the statute the following:

- The nature of other incomes which might be at disposal of the foundation besides the incomes generated of the endowment (initial donation) of founder(s)
 - The conditions under which a foundation may be engaged in other than purpose related activities and participate on activities of third persons
 - Rules for representing the foundation towards third persons
 - Rules on annual or any other regular form of reporting about activities of the foundation
- The act on establishment of the foundation and the statute should include in some appropriate form the data on personal composition of the statutory organ of the foundation (name, family name, beginning and duration of the term of service), including the denomination of those positions in this body, which are of importance with regard to the representation of the foundation (chairperson and its deputies etc.)
 - Without essentially changing the scope of allowed economic activities of foundations, it may be appropriate to eliminate the necessity of seeking consent of a governmental body with reasonable transactions related to the use of the foundation property, leaving the responsibility with the governing body of the foundation
 - In order to enhance the potential for achieving the purpose of funds in a limited period of time of their existence, the funds should be given a possibility to transform their property into monetary assets under the condition that this is done without apparent loss on the value of their total property
 - The statute may be prepared by the first foundation's governing body in a given term after the incorporation of the foundation and filed with the Foundation Register; this would enable the governing body to define the organizational and operational details with better knowledge of real needs
 - The Czech approach to the mechanism of public supervisory role may be adopted, which may result in requiring an obligatory annual report on economy and activities of foundation and its publishing and filing in the Foundation Register
 - External audit of accounting books may be required by the law for foundations, whose annual sum of transactions have exceeded certain reasonable limit, comparable to a significant portion of total assets of the foundation; the conclusions of the auditor may become an obligatory part of the foundation's annual report
 - The Foundation Council, if established, may be a democratic or regularly reappointed body assigned besides the already defined roles also with a right to collect, investigate and report on annual reports of foundations
 - In order to further lessen the burden of the Ministry in the process of administering the termination of a foundation or a fund, it may be found appropriate to avoid the appointment of the commissioner of a foundation and allow the highest decision body of the foundation to nominate and the competent court to appoint a liquidation officer of the foundation.
 - The law should explicitly allow for a merge of foundations into foundations and funds into funds or foundations based on a mutual agreement and approval of either the Ministry or a court, who should only check, whether all legal conditions for the merge were and whether the

merge does not contradict to the explicit will of a founder of any of the parties of the merging process. The agreement and all documents of the merging foundation (fund) should become a part of the filed documents of the accepting entity in the Foundation Register.

- If the Croatian Government or Parliament would consider a possibility to support provision of certain services to the general public by private but not commercial legal entities regulated in similar way as the foundations and funds, then the example of the solution might be found in public benefit corporations of the Czech Republic

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Appendix I

Public Benefit Purposes as mentioned in the Laws of European Countries.

Purpose: (protection of, promotion of, support of)	Albania	Austria	Belgium	Cyprus	Czechia	Denmark	England&Wales	Estonia	Finland	Germany	Greece	Hungary	Ireland	Italy	Liechtenstein	Lithuania	Luxembourg	Netherlands	Macedonia	Poland	Portugal	Rusia	Scotland	Slovakia	Slovenia	Spain	Switzerland	Ukraine
advance to community at large	y	p					y		y	y	y	y	y					y			y	y						
alternative energy production																												
Arts		y			d			d				d												d				y
Assistance to refugees												y																y
citizens participation on decision-making																												y
civil and human rights					y			d				y																y
civil initiatives																												y
Consumers rights												y																y
Culture	y				y			y	d			y		y														y
disaster prevention												y																y
development in economy									d																			y
development of good customs/democracy	y																											
development of intellectual values					y			d				d																
education, knowledge dissemination	y	y			y		y	d			y	y	y	y	y													y
employment rehabilitation																												
environmental protection	y				d			y	d			y																y
equal opportunities for handicapped												y																y
ethnic minorities												y																y
Euroatlantic integration (EU&NATO)												y																
family, motherhood, fatherhood												y																y
fine arts					d			y	d																			y
help and support in cases of misfortune	y																											

Purpose: (protection of, promotion of, support of)	Albania	Austria	Belgium	Cyprus	Czechia	Denmark	England&Wales	Estonia	Finland	Germany	Greece	Hungary	Ireland	Italy	Liechtenstein	Lithuania	Luxembourg	Netherlands	Macedonia	Poland	Portugal	Rusia	Scotland	Slovakia	Slovenia	Spain	Switzerland	Ukraine	
history and traditions	y				y				p					y								y		y				y	
children and youth												y	y								y		y					y	
legislation furtherance												y																	
life and health of a person	y														d	y								d					
Literature			d	d	d		d	d	d			d	y		d									d	d			y	
material profit																													
mutual services for public benefit organizations												y	y									y							
national and local defence													y																
peace and international cooperation													y																
philantropy, charity			y	d	d				d	y	y											y						y	
preservation of nature and animals												y																y	
prevention of criminality																												y	
protection of historical monuments																												y	
providing public and social services	y								d	d	d	y																y	
public health care	y								d	y	y	y	y															y	
public housing																													
public interest at large	y																												
public order																													
relief of poverty																													
Religion																													
research and development																													
Science	y																												
social welfare/care	y																												
spiritual and humanitarian values	y																												
sports, physical education	y																												
support of governmental organizations																													
traffic safety																													

Purpose: (protection of, promotion of, support of)	Albania	Austria	Belgium	Cyprus	Czechia	Denmark	England&Wales	Estonia	Finland	Germany	Greece	Hungary	Ireland	Italy	Liechtenstein	Lithuania	Luxembourg	Netherlands	Macedonia	Poland	Portugal	Rusia	Scotland	Slovakia	Slovenia	Spain	Switzerland	Ukraine	
transportation infrastructure development	y	y	n	y	y	y	y	y	y																				
usefull according to prevailing opinion						y			y			y																	
vocational training for unemployed											y	y										y						y	
volunteering promotion																						y						y	
open end of the list	y	y	n	y	y	y	y	y	y																y				
not permitted purposes:																													
- for closed group of individuals																													
- material profit			y																										y
- support of founders and their relatives																													
- threatening basic rights of individuals				y																									y
- threatening public health				y																									
- threatening public morals				y																									
- threatening public order				y																									
- threatening the security of the country				y																									

Abbreviations used

Yes	y
yes for public benefit corporation	bbc
Derivable	d
no, not allowed	n

Appendix II

Public Benefit Activity

According to the Model Provisions for Laws Affecting Public Benefit Organizations {Ref. [22]}

A Public Benefit Activity is any lawful activity that supports or promotes public benefit by supporting or promoting one or more of the following:

- a) Amateur athletics (sports),
- b) Arts,
- c) Assistance to, or protection of physically or mentally handicapped people,
- d) Assistance to refugees,
- e) Charity,
- f) Civil or human rights,
- g) Consumer protection,
- h) Culture,
- i) Democracy,
- j) Ecology or the protection of environment,
- k) Education, training, and enlightenment,
- l) Elimination of discrimination based on race, ethnicity, religion, or any other legally proscribed form of discrimination,
- m) Elimination of poverty,
- n) Health or physical well-being,
- o) Historical preservation,
- p) Humanitarian or disaster relief,
- q) Medical care,
- r) Protection of children, youth, and disadvantaged individuals,
- s) Protection or care of injured or vulnerable animals,
- t) Relieving the burdens of government,
- u) Religion,
- v) Science,
- w) Social cohesion,
- x) Social or economic development,
- y) Social welfare,
- z) Any other activity that is determined to be in the public interest.

The above list contains virtually all of the Public Benefit Activities recognized in one or more countries in Central and Eastern Europe, but no list can be comprehensive. The list may be too extensive for any particular country. What is most needed is that the list be interpreted and applied to promote activities that are beneficial to the public. Any list of Public Benefit Activities, of course, should reflect the needs, values, and traditions of the country in question. Further, no list of Public Benefit Activities should be closed, for the needs and values of any society change and evolve.

Appendix III

Overview of Requirements on the Content of a Statute of a Foundation in Some European Countries

Statute requirement	Albania	Belgium	Croatia	Czechia	Danemark	France	Germany	Italy	Netherlands	Poland	Slovakia	Slovenia	Spain	Switzerland
General identification data::														
identification of founder(s)	a	a	a	a	a	a	a				y	a	a	a
name	a	y	y	y	y	a	y	y	y	y	y	y	y	a
- name must include word distinguishing the foundation			y	y	y	a								
seat	a	y	y	y	y	a	y	y	y	y	y	y	y	y
- seat must be on the territory of the country		y	y	y	y									
term of existence (duration)	a	a	a		a					y				
logo	y													
purpose of establishment	a	y	a	a	y	a	y	y	a	y	a	y	a	a
territorial scope of activities										y		y		
Property and income regulations														
value and nature of initial donation of founder(s)	a	a	a	y	a	a	y	y	a	a			a	a
identification of temporary custodian of the endowment	a		a						p		y		a	
identification of the permanent custodian of the endowment		p								y				
sources of income of the foundation								y						
limits on administration expenditures	y		a											
prohibition of profit distribution	y													
property rights of founder(s) or other persons	p	p		y						p				
use of assets in case of dissolution	p	y	p	y	y	y	y	y	y	p	y			

Statute requirement	Albania	Belgium	Croatia	Czechia	Danemark	France	Germany	Italy	Netherlands	Poland	Slovakia	Slovenia	Spain	Switzerland
Governing Structure														
identification of governing structure and modalities	Y	y	a	a	a	a	a	y	y	y	y	y	y	
- number of governors or composition	Y	y	a	y	mx 12	y			y	y	y	y		
- term of service						y								
- name	Y	y	a	a	a						y	a	a	
- first name	Y	y	a	a	a						y	a	a	
- profession		y												
- permanent address		y	a		a					y				
- nationality		y			a									
- age indication					a									
way of appointing and recalling administrators	Y	y	y	y	a	y	y	y	y	y	a	y	y	
responsibilities and rights of B.D.		p	y			y	y			y				
provisions for creating other bodies									p					
Governance rules														
rules of decision making	Y	y	y	y	a	y	y	y	y	y	y	y	y	
rules for making changes in statute	Y					y								
rules for wages and compensations			y							y				
rules for determining beneficiaries			y	pa						y		y		
rules for decisions on grant-making		y	y	pa										
rules for disposition with incomes	Y	y	y									y		
rules for representing and acting on behalf of the F.	Y		y									y	y	
rules on forms and scope of activities										y				
rules on reporting			y	y										
rules on possible economic activities										p				
rules and conditions for merging/terminating	Y					y	f	f	p	p			y	
rules and conditions for changing statute and purpose						y	f	f	p	p	y			

Statute requirement	Albania	Belgium	Croatia	Czechia	Danemark	France	Germany	Italy	Netherlands	Poland	Slovakia	Slovenia	Spain	Switzerland
rules for reporting on activities and finances to Government		y												
rules for submitting decisions to government approval		y												
first proposal of a budget					a									
first proposal of internal regulation					a							y		
any other provisions according to the founder's will		y												
Conditions for adoption of statute and changes to it														
compliance with act on establishment		y	y								y			
adoption and changes by statutory organ	y	y	y	y	y		y				y			
term of adoption (submission) after incorporation		30 d	30 d	90 d	90 d						90 d			
approval of the Government needed	y	y					y							
Publicity appropriations														
obligatory made available for general public			y						y					
publication in official journal		y												
filing with register or other state authority									y					
Other features														
membership allowed	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.			n.a.		n.a.	n.a.	n.a.	n.a.

Abbreviations used	
must be included	y
may be included	p
required to be (also) in the act on establishment	a
not allowed	n.a.
Day	d

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