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SHOULD THE RULES GOVERNING FOUNDATIONS BE PLACED IN A CIVIL CODE?

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The question of whether legal provisions governing foundations (and also associations) should be placed in a Civil Code, or in one or more separate instruments, is not only an issue of legislative drafting. This question does not arise, of course, in those countries which do not have a Civil Code; for example, England, Wales, Scotland, Ireland, Cyprus and Scandinavia. But for the Continental countries with civil codes, this issue is one that has led to divisive results.

The civil codes enacted in the 19th century, for example in France (likewise in Belgium, Luxembourg, Spain, and Austria), do not contain provisions on foundations. The basis for this phenomenon is ideological: after the French Revolution, the state was hostile against any intermediary powers that might interfere with the direct relationship between state and society. The same was true for the civil codes in the Communist/Socialist states of Eastern Europe. In both groups of countries (except Hungary), foundations are regulated by special legislation outside the civil codes.

In contrast, the civil codes enacted in the 20th century recognized the need for civil society by inserting rules on foundations (and associations) into the civil codes. They were usually placed at the beginning of the codes, following the provisions on natural persons. The lead was taken by the German Civil Code of 1900, followed by the Swiss Code of 1907, the Greek, the Italian and the Portuguese Codes of 1946, 1942, and 1967, respectively, and finally, the Dutch Code (Book Two on Legal Entities, 1976).

Today, civil society, which can be rendered by devoting assets to a publicly useful purpose, is becoming more widely recognized and publicly supported. The civil codes as the most basic instruments containing the general legal rules for relations between citizens are therefore the most suitable and appropriate frameworks for dealing with foundations (and associations).