



Enlarging the Space for European Philanthropy

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EXECUTIVE SUMMARY

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Executive Summary

How big is the space for philanthropy in Europe today and what can be done to protect and enlarge the space? This DAFNE/EFC jointly commissioned report by Oonagh B. Breen undertakes a scanning of the horizon of philanthropy's operating space.

The report defines 'the philanthropic space', which it distinguishes from civil society space more generally, as the environment within which donors/funders and the philanthropic organisations they create, are facilitated in their use of their assets for the public benefit. It recognises that institutional philanthropy can take many different forms (both unincorporated and incorporated). Legal, fiscal and administrative obstacles may impact the "philanthropic space" and its potential to define, advocate for and achieve the public good.

The report discusses the Structural Space for Philanthropy within the EU and wider Europe. It examines what the EU Treaties/Fundamental Freedoms and European Fundamental Rights offer for philanthropy as well as the lessons learnt from previous European experiences of attempting to create supranational philanthropic structures to facilitate cross border activities.

Three broad areas relevant to the functioning of philanthropic space are analysed in detail, namely a) legal/regulatory measures; b) fiscal measures; and c) guidance/soft law and the report explains the place of each of these mechanisms within the EU and maps out their broad interaction with each other.

International and European regulatory measures that have impacted the philanthropic space, ranging from the Financial Action Task Force's implementation of Recommendation 8 ('R8') and the interrelation of the EU's anti-money laundering directive, to the EU's most recent attempts at supra-national risk assessment and emerging trends in some European countries towards the adoption of foreign agents' laws are reviewed.

Fiscal developments, with a special emphasis on cross-border philanthropy taxation, are analysed in light of the recent EFC and TGE *Boosting Cross Border Philanthropy Report 2017*.

The study explores possible future policy avenues that may exist to facilitate philanthropy in Europe.

Starting from the premise that "If you always do what you've always done, you will get what you've always gotten", a changed approach is recommended if we are serious about enabling the space for philanthropy.

Regarding the potential development of **non-profit oriented European regulatory measures** (e.g. new European legal forms), overcoming the unanimity requirement in the Council, which has been a constant stumbling block for European non-profit regulation, is recommended. One proposal could be to avail of the 'enhanced cooperation' mechanism for developing a supranational legal form regulation or to consider the potential for an EU Directive that would create a new legal form for institutional philanthropy at national level with a minimum common denominator in all EU countries. The Directive

could allow Member States the freedom to decide how to introduce such a legal form at national level, whether by way of an additional instrument or an instrument replacing currently existing legal forms.

Ongoing EU efforts to **counter-terrorism financing** and **money laundering** have continued to view the non-profit sector, including philanthropic money flows, as vulnerable to exploitation. Efforts are needed to ensure that measures intended to protect the sector are risk-based, proportionate and evidenced-based. In addition, policy makers must engage and consult with philanthropic institutions when assessing and addressing risks, both in the context of the FATF and at national and European levels.

More effort should be invested in developing **soft-law mechanisms** at national and European levels, specifically in the context of addressing potential terrorism financing and money laundering risks. There is a window of opportunity available to philanthropic organisations to engage with the Commission and national competent authorities in facilitating more informed conversations around the risks and how to address them. Philanthropy should also continue to engage via the Global NPO Coalition on FATF ('the Platform'), which has helped to bring about incremental reform of the guidance documents related to R8 and more recently reform of R8 itself. The culmination of this collaboration with the formal inclusion of the Platform and philanthropy on the Private Sector Consultative Forum (PSCF) has shored up the legally enabling environment for philanthropy, even as efforts continue through the Platform to ensure that philanthropic actors and the wider NPO sector play a full role in the site evaluation visits of countries undergoing their Mutual Evaluation assessments.

The continued existence of **fiscal and legal barriers to cross-border philanthropy** arising from incompatible and EU law conflicting laws and practices is identified as an ongoing challenge. National laws must be in line with the EU Treaties. Treaty infringement procedures provide a useful tool to address conflicts that arise, as borne out over the past 10 years in the challenged violations of the free movement of capital and the non-discrimination principles in the field of cross-border philanthropy taxation. It is interesting to note in this regard the EU Commission's launch of infringement proceedings against Hungary in July 2017 as the first EU country to introduce restrictions on foreign funding to NGOs, making the infringement procedure mechanism one of the most effective tool available to the EU in protecting the philanthropic space.

One of the main problems when it comes to enabling the fiscal space for cross-border philanthropy in Europe is the **lack of publicly available information** and a lack of clarity around comparability processes operated by Member State tax authorities when faced with cross-border philanthropy cases. The report recommends the creation of a website resource and the pooling of national knowledge and knowhow, providing details on existing or emerging Member State tax authority procedures, coupled with the explanatory guidance or links to the relevant application forms. It is less convinced of the prospect for success of a proposal for determining comparability between local and foreign based public benefit organisations, broadened to look at core principles of public benefit, given the recent reluctance of Member States to support a European Foundation Statute with tax implications.

As the **current squeezing of civil society space** in some parts of Europe reverberates in the philanthropic space, the need for European protective measures and perhaps greater joined up thinking by stakeholder institutions to keep open the space for philanthropy is required. The role of the Fundamental Rights Agency, The Council of Europe, the European Court of Human Rights and OSCE also for philanthropy should be further reviewed.

The report also identifies the need to further explore and better understand the potential and, equally, the limitations of emerging forms of venture philanthropy and social investment to provide new tools for facilitating philanthropic growth and outreach in Europe.



European Foundation Centre

The EFC is the platform for and champion of institutional philanthropy – with a focus on Europe, but also with an eye to the global philanthropic landscape. With the aim of being the voice of institutional philanthropy in Europe, we communicate to stakeholders the value of organised philanthropy to society, to help nurture an environment in which it can flourish. We serve as a hub of sector exchange and intelligence, to help our members increase the impact of their added value in society. With over 25 years of experience and over 200 member organisations, the EFC gives its members access to a wealth of knowledge on the sector and to long-term relationships with philanthropic peers and external actors. Building on relationships and dialogue with policymakers which span several years, we help our members engage with high-level decision-makers. We also partner with a range of actors and catalyse joint projects which tackle many of today's greatest challenges.

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The Donors and Foundations Networks in Europe, DAFNE, is Europe's largest network of donors and foundations associations. With 25 member associations with a collective membership of more than 10,000 foundations and grant-makers, DAFNE is a leading voice of European foundations. It underpins individual activities of its members by encouraging dialogue and collaboration between the national associations. DAFNE is currently chaired by Felix Oldenburg, General Secretary of the Association of German Foundations. He is supported by a Steering Committee comprising Magdalena Pekacka – Polish Donors Forum, Beate Eckhardt – SwissFoundations, and Beatrice de Durtfort – Centre Francais des Fonds et Fondations.

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