

Planet Brussels?

Many foundations have the feeling that Brussels is akin to Mars, that it's somewhere 'out there' with little relevance to the work of foundations in the UK. But Brussels is not in outer space, it's right here in the heart of Europe, writes Gerry Salole, Chief Executive of the European Foundation Centre (EFC).

Understanding what goes on in Brussels, and how this affects and is affected by foundations and trusts across Europe, can benefit all organisations in our sector – from knowing about the EU-level advocacy work being done by foundations from across Europe, to being aware of European Court of Justice (ECJ) decisions affecting foundations, to understanding EC Treaty infringement procedures.

EU-level decisions impact on 80% of national-level legislation, but it's also important to understand that legislation does not 'come out' of Brussels à la Neil Armstrong's warbled messages from the moon. In many cases it results from co-decisions between the European Parliament and the 27 Member States gathered in the Council of Ministers. The Lisbon Treaty has also changed the way decisions are made in Brussels. The Parliament must now give its approval for legislation proposals tabled by the European Commission to be considered by the Council of Ministers for adoption.

Funding priorities

Staying on top of EU funding priorities and procedures is also critical for European foundations. Astrid Bonfield, Chief Executive of the Diana, Princess of Wales Memorial Fund, wrote in the Spring 2010 issue of the EFC's *Effect*



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magazine: *"If we do not understand how the work we support fits into this broader funding picture, we lose the opportunity to deal with more than symptoms and actually tackle root causes."*

"Many opportunities are also opening up for foundations thanks to the Lisbon Treaty"

When it comes to advocacy, foundations are increasingly active at EU level. In the latest issue of *Effect* several EFC members write about how their foundations work and advocate for better policy in the fields of research, climate change, culture and disabilities. These foundations are making a difference by adding their unique voices and know-how to the

shaping of policy in these fields, which often has a direct impact on EU legislation and policy. As the interconnectedness between national, European and global levels of work becomes more and more apparent, foundations may find a growing need and opportunity to further their missions through advocacy at both national level and beyond. Being aware of and learning from other foundations' work in this area is also crucial to the success of new foundations getting into the advocacy arena.

Lisbon Treaty

Many opportunities are also opening up for foundations thanks to the Lisbon Treaty. Pavol Demes of the German Marshall Fund of the United States writes in *Effect*: *"Foundations should first carefully review their position and*

the new opportunities to act that have emerged in the public policy arena within the EU and beyond. This new period in European history has opened up space for defending foundations' values and interests. It is of the utmost importance that we as foundations be better organised and focused, and that we make sure that when we speak, our voices are heard."

Tax law

Regarding ECJ cases affecting foundations, two ground-breaking decisions by the Court have significantly changed national foundation tax law. In the so-called 'Stauffer' case (C-386/04), the ECJ decided in September 2006 against national foundation laws that discriminate against foreign-based public benefit organisations only because of their residence in another Member State. In 2009 the Court ruled in the so-called 'Persche' decision (C-318/07) that donors giving to a public benefit organisation based in another Member State should receive the same tax treatment as they would if they were giving to a local organisation, as long as the foreign-based organisation fulfils the national legal requirements for tax exemption (apart from the residence).

The European Commission has also started a series of infringement procedures against national governments because they may have acted against the EC Treaty. The problem lies in the double standards several national governments have when it comes to the tax treatment of public benefit organisations based in their own country, versus those based in other Member States. For example, some only give personal or corporate income tax relief for donations to organisations based

in their own countries, while some national governments only offer a gift and inheritance tax exemption for donations/legacies to organisations based within their borders. Some tax corporate income of non-resident public benefit organisations differently from that of domestic ones. And some even practice all three types of discrimination. As of December 2009 there were 19 cases pending and 11 successfully closed.

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The current infringement cases could be an important breakthrough for cross-border giving and foundation tax law in Europe. Many Member States have now introduced tax deductibility of cross-border donations, following infringement procedures against their countries – most recently Luxembourg, Belgium, France, Germany, Ireland and the UK. However, there is no guarantee how Member States will react to these procedures.

Possible abolition

It is possible that Member States could limit or even abolish tax incentives to domestic grant-giving as a remedy, as the governments in Poland and Bulgaria recently tried to do. It was only after intensive advocacy work from the charitable sector that the laws were changed

and tax benefits kept and extended to charitable donations to other EU Member States.

Tax coordination

Another area affecting foundations is the issue of tax coordination in the field of foundation law. The European Commission contacted the EFC in the Summer of 2007 to review the issue of tax coordination in the field of charities. With 27 different tax systems, the national legislations are in some cases incompatible with each other, with the EC Treaty, or with both.

In 2007 the UK Government initiated a coordination working group gathering some 17 Member States to help document and understand the various national and regional tax systems; to review how to make them compatible with the Treaty and with each other; and to see how to avoid creating new obstacles to transnational giving and cross-border investments. Discussions are currently on hold but additional Member States have recently changed their legislation in 2010 to comply with EU law, e.g. the UK and Ireland.

Foundations have a voice

Clearly Brussels and what happens there fundamentally impact on the legal, fiscal and operational environments of foundations across Europe. Let's hope that Brussels comes back down to Earth in the minds of foundation leaders across Europe, and begins to feel more like a place that is accessible and inviting, a place where foundations feel they have a voice and can make change. ■

ACF will be providing a briefing on cross-border giving in the next issue of Funders' News.

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