



## European Foundation Centre (EFC) European Union Committee

### Code of Practice Working Group Meeting

Brussels, 13 October 2004

#### List of Participants

Rien Van Gendt, Van Leer Group Foundation (Chair)

Ana Sastre, Fundación ONCE

Robin Stephenson, The Health Foundation

Liesbeth Zwitter, Bernard van Leer Foundation

#### EFC Secretariat

Emmanuelle Faure

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#### Apologies

Marco Demarie, Fondazione Giovanni Agnelli

Ewa Kulik-Bielinska, Stefan Batory Foundation

Danielle Walker, Joseph Roundtree Foundation



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Note of 13 October 2004

#### 1. Introduction

The first meeting of the EFC EUC Code of Practice Working Group took place in Brussels on 13 October 2004. The meeting began with a series of brief introductions from the participants, explaining their backgrounds and the expertise they will bring to the working group as follows:

*Rien Van Gendt*: Executive Director of the Van Leer Group Foundation, former chair of the EFC International Committee and Board member of the US Council on Foundations. Mr Van Gendt is currently on the board of "Rockefeller Philanthropy Advisors" which addresses transparency issues and BoardSource, a US based charity which provides information, training and leadership development for board members of nonprofit organisations worldwide. He also participated in the working group which finalised the code of practice of Dutch Association of Foundations.

*Ana Sastre*: Programme and Policy Officer for Fundación ONCE in Spain and member of the EFC European Union Committee (EUC). Mrs Sastre is involved in social responsibility issues within the foundation, including good practice against discrimination, which is an important element that the Working group may be looking at.

*Robin Stephenson*: Director of Corporate Affairs of The Health Foundation in the United Kingdom and member of the EUC. Mr Stephenson is a lawyer and has previously worked on governance issues notably at Hewlett Packard. He served as an executive of the Association of Charitable Foundations and a member of the charity law group in the UK.

*Liesbeth Zwitter*: Senior Adviser at the Bernard van Leer Foundation and former Member of the Board of the Dutch Association on Foundations. As the vice-chair of the EFC Resource Development Committee (RDC) underlined the necessity to maintain links between this Working Group and the RDC.

#### 2. Mandate and objectives of the Code of Practice Working Group

##### 2.1. Background

At its meeting of 6<sup>th</sup> October 2003, the EUC decided to establish a small working group to re-examine the EFC Code of Practice taking into account new trends within the foundation community as well as developments affecting the sector. The EUC recommended that the group comprise representatives of other key EFC Committees, namely the Resource Development Committee and the International Committee. The Working Group has a 2-year mandate in which it is to make a series of recommendations to the EFC Governing Council about how to move forward with the EFC Code of Practice, with specific reference to the following issues:

### **A review and update of the EFC Code.**

New issues have emerged and need to be dealt with. They relate to cross-border giving, international grant-making and effective philanthropy in an environment where the prevention of the abuse of non-profit organisations for the financing of terrorism has emerged a key concern. Social responsibility as well as good governance have become of paramount importance in the corporate as well as the non-profit sectors. On the investment side the coherence between spending and investment policies is to be addressed, beyond the issue of social investment.

The nature of the Code should be looked at. It currently encompasses a set of general recommendations to further good practice, openness and accountability in the sector.

**The implementation of the Code** among the EFC membership bearing in mind the variety of foundations' structure and size.

The implementation is a key aspect of the Code. Monitoring and evaluation systems should be strengthened. Should the EFC refine the tools to monitor the implementation, how can it help members to apply the principles and recommendations enshrined in the Code? One may also review the scope of the Code and therefore the constituency. Should it be limited to EFC members or embrace the larger community of independent funders in Europe?

### **The promotion of the Code**

The promotion of the Code in the foundation sector and the third parties needs to be reinforced as well as the promotion of good practices through initiatives such as information, training and peer-learning activities. This is the third element that the Working Group will be invited to review covering both communications and educational aspects to reinforce good practices in the field as well as effectiveness.

#### **a) Origin of the Code, current implementation and promotion activities**

In 1994 the European Foundation Centre (EFC) started work on good practice and effective grantmaking in the foundation community following the adoption by its membership of the Prague Declaration in the course of the EFC Fourth Annual General Meeting. The Declaration reaffirmed not only the fundamental objectives of the independent funding sector but also the sector's commitment to operate within clearly defined and transparent parameters of disclosure and accountability. Building on the declaration, an EFC Code of Practice Task Force was set up to provide guidance on the development of principles of good practice, transparency and accountability for EFC membership. This work resulted in the drafting and approval by EFC membership of the EFC Code of Practice for independent funders at its Annual General Meeting in Seville in November 1995. The Code was further revised in 1996. The Code enjoins foundations to act for public benefit according to the law in democratic societies. It covers responsibilities and requirements in relation to transparency and accountability in the internal management of foundations, their relationships with the general public, the organisations they support and public authorities.

The Code constitutes a general recommendation to reinforce good practice in the European independent funding community. As such it is intended to be of application both within the European Union and in the context of the wider Europe. The Code underlines that independent funders encompass a broad variety of organisations with diverse structures, cultures and activities and disparate concerns and policies. Accordingly, the Code cannot aspire to accommodate the approach of every individual funder, nor will it be fully applicable in all instances. It is hoped, however, that funders will respect the spirit in which it is drafted to the extent that individual circumstances and operating procedures permit.

To increase the visibility and ensure the wider circulation of the Code, the EFC has proposed that the document be translated by EFC member organisations and disseminated to independent funders at the national level. At present the Code is available in Dutch, German, French and Italian.

The EFC maintains a resource document on existing codes of practice, self-regulatory initiatives and publications. This resource document is updated on a regular basis.

The EFC also started to organise workshops addressing specific topics arising from its code of practice (such as evaluation of foundation programmes, foundations and public information) during the course of its Annual General Assembly, and more recently at the occasion of the Summer Academy, and the spring and autumn symposia.

### **b) Development across Europe: an inventory**

The EFC secretariat compiled a table of the various codes of practices developed by donors' associations and foundations support organisations across Europe in order to provide an overview of the degree of establishment and implementation of codes in the different countries. At present 8 of 17 associations of foundations in Europe, including Russia, have developed codes of practices or standards, 4 of which were drawn up over the last two years. Besides the EFC code, they include Belgium, Czech Republic, Finland, Poland, The Netherlands, Russia, Slovakia and the United Kingdom. Copies of the English version of the various codes were provided to the Working Group, where available.

The EFC secretariat will update this table according to new developments, such as the Standards of Operations of a Polish Local Philanthropic Organisation, which were brought to the attention of the EFC. The members of the Local philanthropic Organisation Network and the Academy for the Development of Philanthropy in Poland drafted the text in 2000.

It was suggested that the codes of practice for foundations and other donor organisations, in those countries where the information is available should be examined in conjunction with the review of the EFC's Code. This will help identify key issues at the country level, which could be further addressed by the EFC, where appropriate. The EFC secretariat will undertake this comparative review and present a progress report at the next meeting.

Examples of the work undertaken by US umbrella organisations will also be provided for review at the next meeting. A representative of the Council on Foundations could also be invited to make a presentation to the Working group at the occasion of the EFC annual Conference in Budapest in June 2005.

Participants reviewed a summary of the discussions on codes of practice by the National Associations of Donors at their meetings of May 29<sup>th</sup> and February 5-6<sup>th</sup> 2004. This included a review of the pros and cons of voluntary codes of practice and self-regulation. Working members stressed one of the drawbacks of codes of practice, which in some cases can prevent some foundations from joining a membership-based organisation. The need to draw up some form of publication to assist foundations to comply with the established principles of a code was underlined.

Finally it was suggested to compile a few examples of codes of ethics drawn up by individual foundations. The work carried by Ford was mentioned in particular as regards prevention of terrorism financing. The EFC secretariat will make examples of these codes to members of the Working Group in time for the next meeting.

## **2.2. Setting out the Group's work programme**

### **a) Assessing and reviewing the code of practice**

Participants review a preliminary list of key topics prepared by the secretariat to help identify priority issues to incorporate in the revised EFC Code (annex 4.1). The list reviews the main elements already covered in the Code, and outlines other issues, which should be addressed as outline below.

#### **SCOPE**

It was noted that umbrella organisations and networks amongst which the US Council of foundations have engaged in a similar review process and drawn up various codes for their different stakeholders i.e. large private foundations, family foundations, corporate funders, community foundations etc. The Working Group received a brief document reviewing EFC

membership by types (annex 4.3) as well as distribution of members according to their expenditure and assets.

Participants recommended that the scope of the EFC Code, which currently addresses and applies to all types of independent funders should remain unchanged. It covers all foundations, whatever type and size, as well as all corporate funders. The revised EFC Code should not be too lengthy and remain at a generic level so that it can be interpreted and implemented according to individual situations. Overall the Code should accommodate the variety, realities and various sensibilities in the sector.

However, additional issue-specific guidelines can be further drawn up, where required, for instance as regards accountable and effective cross-border grantmaking. Such a task goes beyond the current mandate of the Working group, nevertheless the Group may recommend to draw up further guidelines or initiate specific task forces to undertake the work. This is an important element to agree upon at a time when the EFC Community Philanthropy Initiative has decided to review the possibilities to draw up a code of conduct or standards for community-based organisations including community foundations.

The Group also supported the launch of the EFC-Council on Foundations joint project to develop a set of stewardship principles and practices for Accountable and effective international grantmaking. A snapshot of the proposal was provided to participants (annex 4.4). It was recalled that expenses other than those relating to the group core meetings would need to be budgeted & resourced separately (e.g. invitations of experts to meetings, setting up of working groups, development of resources tools and promotional tools). Development of the project will be reported to the Working group at the next meeting.

## **STRUCTURE**

The Working Group recommended that the current structure of the Code of Practice should be kept at the time being. The document is divided into four main sections setting out the principles and commitments to which EFC members are requested to subscribe. These relate to independent funders practices towards the public at large, towards those supported, towards authorities and finally towards independent funders themselves.

## **TOPICS – update of the content of the Code**

The Working group made the following recommendations:

The Code is about compliance but it also needs to stimulate foundations and bring compliance issues in good balance with effective support as well as innovation. The Code should not lose sight of performance. This notion could be reflected in the revised document

### *Preamble*

Foundations' basic values and principles currently set out in the preamble should be built into the core document. The new section on overarching values and principles could be fleshed out, and above all should be better highlighted in the document.

### *Section 1: Towards the public at large*

Transparency and public information regarding:

- Policy and programmes – The section should also address the need for independent funders to communicate on their impact and their effectiveness.
- Governance – The section on information about independent funders' governance should be enhanced in particular as regards good practice concerning:
  - The recruitment of the board: having clear procedures to recruit board members
  - The composition of the board. It should take account of experience, diversity as well as mobility (terms of office). The composition of the board has to be reviewed on a regular basis.

- The role of the board. It is usually of a strategic nature and different to the operational function of the executive usually carried out by a different body or by the staff for those foundations and corporate donors that do have in-house employees.
- Board performance review should also become standard practice.
- Finance – A new section should make recommendations regarding the publication of independent funders' investment policy.
- Annual reporting – The section on annual reporting could include some recommendations to report on outputs and achievements including funder's impact. It was agreed that this point would be readdressed at the next meeting of the Working Group when further information has been gathered relating to existing codes of practice for foundations and organisations in Europe.

### *Section 2: Towards those supported*

The term grantmaking should be replaced by “support” to better reflect the variety of the types of support and products provided by funders including programme-related investments.

The working group identified four key areas to include in this section of the Code, namely, transparency of procedures, fairness of decision-making, and effectiveness of support (grantmaking and assistance practices) and relationship between grantmakers and beneficiaries.

The first two items are already covered in the EFC document and the other two need to be added. In addition the following recommendations were made:

- The new paragraph on donors/grantees relationship should focus on ethics and mutual obligations.
- The section on the transparency of procedures should address payment procedures
- The paragraph on fairness of decision making procedures should include a recommendations to funders to motivate their decision
- The paragraph on effectiveness should include the need to spread/disseminate (project/evaluation) results.
- A statement on terrorism should also be added to the text. Participants were provided with a questionnaire sent by the European Commission to all EU member States concerning the regulation of the nonprofit/charitable sector and the prevention of terrorism, as well as information on the Financial Action Task Force in particular its special recommendations on terrorist financing.

### *Section 3: Towards authorities*

No further recommendation needs to be incorporated at this stage

### *Section 4: Towards self*

- Sustainable management / Sound management policies

The inclusion of further recommendations on good governance was deemed essential. They relate to the following:

- Conflict of interest /self dealing issues at the level of the board & staff should be addressed
- A Periodic evaluation principle should be added to the text
- Recommendations on compensations policy and practices for trustees and executives should also be tackled, after the Group has better documented applicable laws and current practices.
- Additional issues will be reviewed at the next meetings. They include:
  - Policies concerning administrative costs and payout practices for

grantmaking foundations. The topic is relevant but not to all foundations and organisations. This is an area that still requires further review before a decision is made about whether it should be included in the updated version of the Code of practice

- Reference to internal corporate social responsibility" e.g. human resource issues (Recruitment, training & development/diversity of staff /volunteers / board° and health & safety issues and
- Reference to external corporate social responsibility e.g. external impact on the community, the environment.

- Sustainable Financial Management

The Working Group agreed that foundations need to understand and acknowledge that they are large investors and have proportionate responsibility in managing and investing these assets to meet the purpose of the organisation but also to benefit society. This topic should be included in the EFC Code of Practice.

- Evaluation and monitoring

The current text does not address the means of both financial and activity evaluation.

Participants suggested that a self-evaluation method/tool-kit could be included in the updated version of the EFC Code. The proposal will be further examined at the next meeting

## **b) Implementation and promotion tools**

The successful implementation and promotion of an updated EFC Code of Practice has been identified as one of the main challenges that faces the Working Group. However, the full compliance to the principles of the Code of practice and their implementation should not overcome or hinder the need for independent funders to be efficient in the way they operate and the impact they have.

A review of EFC members' activity and finance is done when they apply for membership, coupled with a sort of peer review undertaken by members in the same country, where appropriate. Applicant organisation have to fill out and sign a membership form by which they agree to adhere to the EFC Code of Practice. No further review of the new member is undertaken after the application stage, except the publication every two years of a standard profile of the member's mission, activity, resources and board members for the EFC's database and in-print members' directory.

### ***Reviewing EFC application documents***

It was agreed that the EFC should reassess its membership application documents. This could start with a review of the criteria for membership (and rejection of applications) for full members and guests as well as for associate organisations. The issue of what happens if a member or potential member is unable or fails to comply with the conditions that are laid out in the EFC Code of Practice was also raised. Some mechanism and criteria for terminating membership, including an appeal system could also be addressed.

### ***Drawing up a monitoring system and assistance tools***

The EFC should also refine the tools to monitor the implementation of the Code by the members.

Firstly, implementation could be achieved through self-regulation by EFC members, with them reporting back to the EFC secretariat about how the implementation process is progressing.

Secondly, although joining the EFC implies that the member subscribes to the Code, the EFC should help support and advise foundations and organisations, which want to become members about what they need to do in order to comply with the Code. This could include the drawing up of recommendations and other assistance tools to advise and counsel members

on how to comply with and implement the provisions of the Code. Such tools can take the form of induction packs which have been developed for instance for foundations' board members in the UK, or good governance check lists. This work could be carried out with the cooperation of EFC Committees, the EFC Resources and Development Committee and the EUC Legal Task Force where appropriate.

A support mechanism could be developed for members and new members wanting to comply with the Code but are having problems to do so. The development of this support facility is an on-going process.

### ***Branding and labelling***

Working Group members also stressed the importance to make foundations aware of the necessity of self-regulation. Here members have a key role to play in terms of communications by publicising that they are members of the EFC and adhere to its Code of practice. This could take the form of a statement that they publicise on their public documents, letterhead, website, annual report etc.

### ***Promoting good practice in the field***

- Peer-learning

In recent years the EFC has organised a number of seminars, roundtables and symposia that addressed the professional development needs of European foundations and corporate funders. These events took place within the framework of the EFC Annual General Assembly and Conference (AGA) and the EFC's capacity- building programme, Philanthropy Institute Programme / Professionalism in Philanthropy (PIP/PIP). The following events took place in 2003/04

2004

- "Evaluation Techniques", Symposium, Paris, France, February
- "Annual Reporting", Roundtable, Brussels, March
- "Communication: the duties of the Foundation's Chief Executive", Symposium, Siena, April
- "Grants Guidelines", PIP Roundtable, Brussels, June
- "The Vital Role of Strategic Communications – Why Secret Philanthropy is Bad Practice", AGA, Athens, June
- Beyond Project Management – Create More Impact with What You Know", Athens, June
- Summer Academy on Philanthropy held in Amsterdam, August .

2003

- "The Role of Foundation Chief Executives", Symposium, Rome, Italy, March
- "Towards a Common Understanding of Governance", AGA, Lisbon, June
- "Transparency – From Grantees's Assessment to Impact Evaluation" Lisbon, June
- "Strategic Planning in Foundations – Practices and Lessons Learned", Lisbon, June
- Summer Academy held in Bologna, August.

Participants of the Working Group stressed the need to step up EFC efforts on peer learning exchange of good practice and educational work within the framework of the EFC Philanthropy Institute Programme / Professionalism in Philanthropy (PIP-PIP). These are to be discussed in greater detail at the next meeting. The Group could also make a series of recommendations as regards the development of these events, the themes and the organisation of future capacity building/ peer-learning sessions.

At the level of national associations of donors the EFC can make its reference file on codes and self-regulation available to assist other donors' fora to develop such codes where appropriate.

- Reference materials

The EFC secretariat has produced a resource document relating to information about self-regulation and good practices in the independent funders community (annex 5.2). It reviews

existing codes and statements of good practice in the sector in European and other world regions; and includes a selected bibliography of reference books on self-regulation and good practices in the fields of management, governance, investment >, reporting, communications, evaluation. The Chair of the Working Group invited members to forward any publication they deem relevant to this document to the EFC secretariat for inclusion in the bibliography.

Participants also briefly review the possibility for the EFC to develop concrete, concise and reader-friendly "How to manuals" that would review independent funders' grantmaking and operational procedures e.g. public information, reporting tools, governance, management and evaluation. These manuals would focus on providing access to key documentary resources and contacts in the fields under review. The issue will be reviewed at the next meeting.

- Other tools

Individual and umbrella organisations have developed other tools to promote excellence and good practices in the foundation and corporate funders sector. They range from prize giving to the identification and publication of examples of good practices regarding independent funders' activity and impact. The Working Group could examine such instruments at a later stage.

### **3. Organisation and Calendar**

#### **3.1. Composition of the Group**

The Code of Practice Working Group is comprised of the following members:

Rien Van Gendt, Van Leer Group Foundation (Chair)

Marco Demarie, Fondazione Giovanni Agnelli

Ana Sastre, Fundación ONCE

Robin Stephenson, The Health Foundation

Two additional EFC members were also invited to join the group but had not yet confirmed their participation. It was agreed that the EFC secretariat would contact EFC members who expressed an interest in the Working Group, in order to confirm their involvement. All together the Group will comprise some seven members. Participants agreed to review the possibility to increase the membership at a later stage.

#### **3.2. Working methods and activities for the period 2004 – 2006**

The Working Group, with the help of the EFC secretariat, will work towards updating, promoting and implementing the EFC Code of Practice within the agreed mandate of 2 years. Initial recommendations by the group could be presented to the EFC board and membership during the course of the forthcoming EFC Annual General Conference in Budapest Hungary (June 4-6th 2005). The final outcome could be examined at the 2006 EFC Spring Conference.

As regards time requirements, we anticipate that the group will convene 2 to 3 times (1/2 day – 1 day) per year. Members' involvement will also require the review of materials and input for these meetings.

### **4. Date of the Next Meeting**

The next meeting of the EFC Code of Practice Working Group will take place on 16 February 2005 at the EFC in Brussels from 10:30 to 15:30.

A further meeting of the Working Group has also been arranged to take place prior to the EFC's Annual conference and Assembly (AGA) in Budapest on 3<sup>rd</sup> June 2005 between 10:00 and 14:00.

## Action Points

1. EFC secretariat to update the table of the codes of pPractice of donors / foundations associations and support organisations across Europe –”,
2. EFC secretariat to provide examples of US Codes for grant makers and their support organisations for the next meeting
3. EFC secretariat to update the existing Code in accordance with the comments made by the Working Group and present a revised version of the Code at the next meeting.
4. EFC secretariat to prepare a revised list of priority topics which could potentially be incorporated in the revised Code for discussion at the next meeting, including issues unsettled at the last meeting ( e.g recommendations on policies concerning administrative costs and payout practices, disclosure of financial information by board and staff, internal and external accountability etc..)
5. EFC secretariat to report on the EFC–COF project on effective and accountable international grantmaking
6. Working group to discuss the last meeting proposal to develop a self-evaluation method/tool kit to be annexed to the version of the Code
7. Working Group members to review the need to develop additional issue-specific guidelines directly or through a specific task force.
8. Working Group to draw up recommendations to the EFC to reassess its membership application documents, membership criteria, grounds for rejection and appeal system
9. Working Group to develop recommendations on the nature and procedures to develop the necessary assistance tools and support mechanism to advise and counsel members on how to comply with and implement the provisions of the Code.
10. Working Group to draw up recommendations to encourage EFC members to publicise their commitment to the EFC Code of Practice
11. Working Group members to review existing EFC training and information activities on good practice with a view to advancing and reinforcing this work,
12. Working Group members to assess the need to develop new information and promotion tools with potential partners, where appropriate
13. Members of the Working Group to provide the EFC secretariat with publications they deem relevant for inclusion in the resource document about self-regulation and good practices in the independent funders community.
14. EFC secretariat to invite a representative of the Council on Foundations to attend the June meeting of the Working Group in Budapest to update members on US developments.