



## European Foundation Centre (EFC) European Union Committee

### Special Code of Practice Working Group Meeting

Budapest, 3<sup>rd</sup> June 2005

#### **List of Participants**

Rien Van Gendt, Van Leer Group Foundation (Chair)

Francis Charhon, Fondation de France

Iwona Jaworska, Leopold Kronenberg Foundation

Char Mollison, US Council on Foundations

Gerry Salole, Ford Foundation

Volker Then, Bertelsmann Stiftung

Liesbeth Zwitter, Bernard van Leer Foundation

George Whitman, Ontario Institute for Studies in Education of the University of Toronto

#### **EFC Secretariat**

Emmanuelle Faure

Robert Plummer

#### ***Apologies***

Marco Demarie, Fondazione Giovanni Agnelli

Ana Sastre, Fundación ONCE

Robin Stephenson, The Health Foundation

## **Special Code of Practice Working Group Meeting**

Note of 3 June 2005

A special meeting of the EFC Code of Practice Working Group took place in Budapest on 3<sup>rd</sup> June 2005, prior to the EFC Annual General Assembly (AGA) and Conference.

### **1. Welcome and introduction**

The group was pleased to welcome Char Mollison, Vice President, Constituency Services of the US Council on Foundations. Apologies were received from Marco Demarie, Ana Sastre and Robin Stephenson.

### **2. Approval of the minutes of the last meeting**

Participants approved the minutes of the last meeting held in Brussels on 16<sup>th</sup> February 2005. It was agreed to review action points arising from this meeting at the next encounter on 28<sup>th</sup> September 2005.

### **3. Monitoring and implementing Codes of Practice**

The June meeting focused on the implementation of codes and principles of good practice by foundations' umbrella organisations. So far, the EFC Code of Practice Working Group has concentrated its work on reviewing and, where necessary, updating the current EFC Code. This review is now at an advanced stage and the Group felt that it was time to begin to address the second aspect of its mandate, namely, the implementation of the revised EFC Code. To this end the group invited Char Mollison to present the work that the US Council on Foundations (CoF) has undertaken to review and implement codes and principles of good practice for its membership.

#### **3.1. A US perspective – presentation by Char Mollison, US Council on Foundations**

- **The role of the Council on Foundations in developing/promoting codes, standards or stewardship principles for foundations and corporate funders**

In developing, and promoting standards, the role of the Council has evolved from doing the necessary work to prevent excessive government regulation to an expected leadership in self-regulation. The Council board now expects CoF to take a leading role in supporting the development of standards and principles for organised philanthropy.

- **Three types of “codes” can be found at the Council:**

- Signatory: the *Principles and Practices for Effective Grantmaking (1980 revised in 2002)*, which members are required to sign at the application stage and renewal of membership. They could be replaced in the near future by a code of ethics, which would cover governance as well as grant making.
- Aspirational: there are a number of voluntary constituency-specific codes for corporate funders (2004), independent (2005) and family foundations (2004) that address governance, management and grant making.
- Specific standards were also developed for community foundations (CFs) in 2000. They are considered a minimum requirement for an organisation to be

called a CF. In 1999 the Council provided staff leadership and support to volunteers to create National Standards for US community foundations. These standards and the consensus-building process, which led to their creation, has facilitated their acceptance and inspired the new strategic direction of the Council.

- **Compliance** with the Council Principles is reviewed at the time of the application for membership. When organisations apply, there is an initial review of their by-laws and federal Form 990. Applications can be rejected if there is evidence of unexplained, excessively high compensation, self-dealing or a lack of charitable activity.
  - Community foundations have implemented a *voluntary confirmation of compliance process*, based on peer-reviews. It is not required for membership of the CoF but to have access to specific marketing materials tailored to CFs and for them to use a special mark on their promotional materials. The Council's website provides a map of the US and a locator to show where the various CFs can be found. This conveys which CFs have the "seal of compliance" from the Council and is seen as one of the advantages that CF can gain from participating in the "confirmation of compliance" scheme. This process grew out of a desire to "brand" the idea of a CF to attract donors. Lessons drawn from this experience indicate that the scheme requires staffing support and training for reviewers, it should cover non-member organisations as well as members, it also implies to develop an appeal system.
  - Overall the Council has chosen to not require standards or certification of its members, rather it opens its membership to the broader field and encourages the adoption of high standards and principles through education and examples. There may be however a public perception that membership of the Council means that it approves of the governance, management and grantmaking practices of any given member.
- **Implementation tools** developed by CoF include
  - Professional development programmes including the organising of conferences, regional workshops, training courses, retreats for chief executives – which content was realigned to advance CoF principles and standards - and Council member discounts in programmes offered by other organisations, including some profit making organisations;
  - Strong service departments for assistance to members, using full-time staff, particularly for the largest constituencies; and
  - The development of web-based services including a "best practices" database that is linked to standards and principles and on-line basic courses.

#### • **Trends and challenges in monitoring, certification and self-regulation in the US**

The Council of Foundations supports more effective government enforcement of the law through regular audits of foundations. In recent years, however, the number of government run audits has been in decline, while there has been a dramatic growth in the number of foundations and their assets during the 1980's and 1990's.

Associations that self-regulate charge fees to cover their associated costs. This fee needs to be a reasonable one in order to assure confidence in the process. Monitoring a foundation can mean setting your organisation up for legal liability. Associations that conduct monitoring assume legal risks if certification affects career opportunities or accreditation is used to eliminate competition. To prevent this, one of the solutions is to create a separate organisation to conduct the monitoring process.

CoF has reviewed the issue of certification of individuals and accreditation of organisations for a number of years. The number of professional certification programmes has increased in recent years as well as academic programmes providing certification in non-profit management and philanthropy. The interest among Council members in certification remains moderate, although they believe it would elevate the practice of grantmaking, promote standards and ensure recognition in grantmaker's expertise. In addition, certification by the Council could not be financially sustainable as foundations look for a wide range of skills when they hire staff.

The notion of accreditation shows that an organisation has met a series of standards at a certain time. Although, it is a voluntary approach it can be critical for organisations that need to attract customers/donors. There seems to be a growing interest in the idea of accrediting foundations, but for the time being there is no overall perceived value in doing it across the board. It also raises a series of questions regarding litigation and liability of the certification/accreditation organisation as outlined above.

- **Mechanisms and procedures for alleged abuse from members**

The Council has recently strengthened its scheme for reviewing alleged legal or ethical violations to include a more defined process and the establishment of a *Review Panel*. It consists of six individuals, half of whom are not Council “insiders”

The procedure is as follows: the Council’s attorneys will first determine if a reported action is considered to violate legal or ethical standards and if it appears likely that the allegations are true. They then report their views to the chair of the Council’s Board and the chief executive who determine whether the case should be referred to the Panel. The Review Panel evaluates whether action is necessary and makes a recommendation to the Board executive committee, which makes the final decision.

Possible action by the Council includes private censure, probation of membership, revocation of membership, public censure. From past experiences, the Council has found that a mere call to the concerned members can encourage them to revise their practices in a positive way; or they would drop out. In both cases the membership and reputation of the Council are strengthened as representing high standards. Details of the procedure will be shared with the Group.

- **Collaboration with regional associations of grantmakers**

There are some 30 independent regional associations of foundations in the US, which are not uniform in their structure, size or membership. There are also some separate regional associations of community foundations or corporate grantmakers.

Some of the regional associations have initiated their own principles of good practice. These are often based on the Council’s principles and practices for effective grantmakers. Regional participation is important to raise awareness beyond the membership of the Council, co-organised peer-learning events for sharing of information and best practices. It is also very important at an implementation level.

In the field of community foundations initial separate efforts launched to set standards have now unified from reciprocal agreements and contracts from the Council of Foundations to selected regional associations for confirmation of compliance work.

Some challenges may arise in such cooperative efforts as not all regional associations have the resources to cooperate effectively, while others may be reluctant to share visibility.

- **Concluding remarks**

Overall, developing and promoting good practice/principles and standards requires to allow time and create the fora for consensus –building. Diversity of approaches based on a common ground combining high-level performance and public good- can be an added value to meet the various needs of the membership, as illustrated by CoF. However, there is no single valid approach even within the same organisation. It depends on the needs, expectations and requirements of the membership in a given environment. In this context the membership, leadership and staff must all regard the matter as a core priority of the organisation across the board. In addition the organisation Board and staff leadership must be willing to allocate or raise the funds to do a quality job.

The group thanked Char Mollison for her very informative presentation.

Volker Then noted that in Germany the community foundations affinity group of the Bundesverband Deutscher Stiftungen developed a list of 10 criteria which defines the key characteristics of a community foundation (CF) and serve as a basis for the granting of a CF “quality” seal that can be used by “certified” organisations for two years. The first CF quality

seals were granted in 2003, some 60 CFs use this seal at present. This scheme has grown both from the need to attract and reassure donors and an increasing competition in the field for the same funds. [www.die-deutschen-buergerstiftungen.de/](http://www.die-deutschen-buergerstiftungen.de/)

A similar trend can be found in the UK at the Community Foundation network, which has just engaged this year in the process of developing a “quality mark” for community foundations.

Francis Charhon informed the Group about the Charter Committee on Professional Ethics in France. Its purpose is to strengthen self-regulation and professional ethics of foundations and associations collecting funds from the general public. By undertaking to comply with common rules, foundations and associations aim to provide donors with better information about their tasks and how they use the funds raised. Joining this scheme is voluntary but it is generally considered to be to the benefit of the organisation concerned. [www.comitecharte.org](http://www.comitecharte.org). The system may have some unexpected impact, namely that those organisations, which actually disclose information, are de facto under increased scrutiny in particular from the media, than those organisations, which are reticent to communicate openly data on activity, accounts and fundraising. The Charter Committee is one of the members in Europe of the International Committee on Fundraising Organization (ICFO) an association bringing together 10 national monitoring agencies. Details are available at [www.icfo.de](http://www.icfo.de)

#### **4. Revised draft EFC Code of Practice**

The EFC secretariat updated the draft EFC Code of Practice following comments by the Working Group at its February 2005 meeting. It was also agreed at the last meeting to forward the new revised draft version to the Working Group, including members who could not attend the February meeting, to collect their input by early May. The timing would enable to present the draft to the EFC Board in June. Comments had been received from Rien van Gendt, Marco Demarie and Robin Stephenson.

Participants examined the revised draft EFC Code of Practice, which focus changed from stakeholders’ “rights” (1996 version) to pay specific attention to a range of key topics. The revised Code is now structured as follows:

1. Background
2. Preamble
3. Values and principles
4. Practices
  - Compliance
  - Good governance
  - Informed policy, effective operations and support programmes
  - Good stewardship – management and finance
  - Disclosure and open communication
  - Monitoring and evaluation; and
  - Cooperation

#### ➤ Next steps

The Chair of the Working Group will present the new version (version 7) of the Draft Code to the EFC Board as a working document at its meeting on 4<sup>th</sup> June 4 2005 and call for input and comments. These will be examined at the September meeting, after which the Draft Code could be shared with the EFC membership for wider consultation.

Liesbeth Zwitser observed that clarification about the specific target(s) audience of the document would be useful. In this regard the preamble could be further refined. Group members were invited to send any further proposals for amendments to the draft Code in writing to the Secretariat by 25 July 2005, for review at the September meeting.

It was suggested that a minimum set of requirements could be established/ identified in the Code, to which organisations must adhere in order to be a member of the EFC. It was also felt, however, that adoption of the code should remain voluntary. With this in mind, the Group

may review the possibility of backing up these minimum requirements with a series of recommendations, the adoption of which would be made on a voluntary basis and at the discretion of the individual organisation concerned.

The EFC secretariat recalled that when the EFC Code was initially developed in 1994 there were few other codes of conduct & principles for foundations in the EU. The Association of Charitable Foundations in the UK was working on guidelines for effective grantmaking which were aimed at private and public donors at the national and local levels released in 1997. The situation is very different today, as several national foundation networks and donors' fora have engaged or are engaging in the process.

The Chair suggested that the EFC Working Group could involve national foundation networks in the promotion of codes of practice. The implementation of the EFC Code could also be discussed with the networks to examine the state of play, issues at stake and challenges at the national level. The EFC Code could be used as a benchmark in countries where there are no NADs or national level codes, and be a useful tool or benchmark in other countries.

The Working Group agreed that a common review of these issues would be a mutually beneficial exercise for both the EFC and the national networks and could be examined at the next national associations of donors (NADs) meeting. The Working Group Chair and secretariat will review the issue. The next NADs meeting is to take place in the Netherlands in the early part of 2006.

The EFC Secretariat informed the group about a WINGS (World-wide initiatives for grantmaker support) peer-learning event on developing standards in the EU and beyond, which took place on 22<sup>nd</sup> May 2002 in London. Emmanuelle Faure represented the EFC Secretariat at this meeting. One of the conclusions from this event was that there is not just one way to implement a code of practice. Some associations of foundations have chosen to tailor recommended practice and principles to various membership clusters, while others have an overall document with compulsory adherence scheme. Further details are available from Wings website at [www.wingsweb.org](http://www.wingsweb.org)

## 5. AOB

- **Preventing terrorist financing via the non-profit sector: European Commission Draft Action Plan – “Proposals for transparency and accountability measures”.** Financial Action Task Force (FATF) Draft interpretive Note.

On 12<sup>th</sup> April 2005, the European Commission organised a second roundtable meeting on the prevention of terrorist financing<sup>1</sup>. This event brought together representatives of the European Commission, Member States' law enforcement and oversight agencies, public authorities, and few representatives of the non-profit sector, including the EFC.

The roundtable is part of the Commission's initiative – launched at the request of the November 2004 European Council – to propose concrete measures by the end of 2005 to prevent terrorist financing in the EU. The Commission drafted an Action Plan that was tabled for review at the April meeting.

The EFC was invited to present its work on the European Foundation Statute to determine whether it could become one of the EU mechanisms to promote transparency and accountability measures in the sector, and whether it could be used as a good practice benchmark.

One of the concrete proposals suggested by participants at the April meeting was for the EU to develop a code of conduct/statement to be adopted by the European Council at the end of 2005 to encourage higher standards of transparency and accountability in the non-profit sector as a means of preventing the sector's use for terrorist financing. A further roundtable

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<sup>1</sup> An initial meeting took place on 29<sup>th</sup> October 2004

meeting may take place before autumn 2005 to fine-tune recommendations on EU-level measures.

In terms of international developments, participants at the April roundtable meeting were invited to review whether additional measures should also be taken within the framework of the Financial Action Task Force (FATF) on money laundering. FATF is an inter-governmental body whose purpose is the development and promotion of policies to combat money laundering and terrorist financing. In October 2001 FATF issued international standards for combating terrorist financing and in particular the "Special Recommendation VIII", which instructs FATF member countries to ensure that non-profit organisations cannot be misused to finance terrorism. A year later FATF released a set of best international practices in the field. The issue at present is to examine if FATF should go further and either revise its best practice compendium, or develop some additional guidance and compliance tools focusing on the identification of high-risk non-profit organisations, the development of licensing or registration systems, and disclosure obligations.

The EFC will comment on the Commission proposed draft Action Plan following the Budapest Annual Conference. The Centre will provide input on transparency and accountability issues, building on its legal work with the Model Law on public benefit foundations, the European Foundation Statute proposal, and on the recent proposals by the EFC Code of Practice Working Group. The EFC secretariat informed the group that the Centre has some concerns over the wording of parts of the Action Plan, including the proposed checklist to assess the risk of abuse of non-profit organisations for terrorist financing. It was felt that it could be arduous for foundations operating on the international scale to answer and comply with all the points mentioned. The Group proposed that preliminary comments on the proposals would be sent to members of the EFC Code of Practice Working Group for them to provide written feedback. This issue will be reviewed at the September meeting of the Group.

Preliminary discussions of the Action Plan took place at the meeting. It was felt that the implementation of the Plan would vary at the national level from country to country, given the variety of legal frameworks, oversight structures and reporting requirements. It is also important to remember that any code of conduct, which may come out of this Plan will not be a legally binding document. However, it is important to ensure that any future EU recommendation does not have a detrimental impact on foundations work in particular on their European and international activities. It was also recommended to alert the Commission to the EFC's work including the joint project with the Council on Foundations on accountability of international philanthropy.

## **6. Date of the next meeting**

The next meeting of the EFC Code of Practice Working Group will take place on 28<sup>th</sup> September 2005 at the EFC in Brussels between 10:30 and 15:30.

## **Action points**

1. Working Group to review action points arising from its February 2005 meeting at the September event.
2. Working Group Chair to present the draft revised EFC Code to the EFC Governing Council at its meeting of 4<sup>th</sup> June 2005 and invite comments from governors.
3. Working Group members to supply any new comments on the last version (version 7 may 2005) in writing to the EFC secretariat by 30 July
4. The Working Group Chair and secretariat to review the possibility to discuss the EFC code of practice/ and other standards with national associations of donors (NADs) at their meeting in 2006.
5. EFC secretariat to forward preliminary recommendations on the Commission draft Action Plan to members of the Group for written feedback.