



European Foundation Centre (EFC) European Union Committee

Code of Practice Working Group Meeting

Brussels, 23rd March 2006

List of Participants

Rien van Gendt, Van Leer Group Foundation (Chair)
Ana Sastre, Fundación ONCE
Robin Stephenson, The Health Foundation
Volker Then, Bertelsmann Stiftung
Liesbeth Zwitter, Bernard van Leer Foundation

EFC Secretariat

Gerard Salole, Chief Executive
Emmanuelle Faure, Director European Affairs
Christian Iversen, European Affairs Intern

Apologies

Marco Demarie, Fondazione Giovanni Agnelli
Iwona Jaworska, Leopold Kronenberg Foundation

Note of 23rd March 2006

The EFC Code of Practice (COP) Working Group convened on 23rd March 2006 in Brussels. Apologies were received from Marco Demarie and Iwona Jaworska.

Volker Then informed the group that he will be leaving the BertelsmannStiftung for the position of Chief Executive of the newly set up Centre for Social investment based at the Heidelberg University in Germany. He will continue contributing to the Working Group in his new capacity. Liesbeth Zwitter will confirm her continued participation in the group for the year to come.

1. Approval of the minutes and review of actions points of the last meeting

Participants approved the minutes of the last meeting held in Brussels on 28th September 2006.

2. Review of EFC Code of Practice

2.1. Report on the Recommendations of the EFC Governing Council

Volker Then reported on the Working Group's work and preliminary recommendations regarding the implementation of the Principles of Good Practice at the meeting of the EFC Governing Council (GC) on 8th November 2005. He presented the revised Principles to the Council, outlining the following points:

- the Working was tasked by the EU Committee to review and update the EFC 1996 Principles of Good Practice and to make proposals as regard its implementation and promotion.
- the Group decided to restructure the 1996 EFC document and to develop it around issues rather than stakeholders.
- the Group based the new text on core values which covers a concise number of principles of good practice, 7 in total, that address compliance; governance; policies, operations and support programmes; management and finance; disclosure and communication; monitoring and evaluation; and cooperation. Each of the principles is defined in a short descriptive sentence followed by a longer illustration of the topic it addresses.

Volker Then also outlined key recommendations of the Working Group as regards the implementation of the Principles, as follows:

- Consultation of EFC membership: The working group recommends that the Governing Council, and EFC key committees (Resource and Development, EU, International) as well as the National Associations of Donors (NADs) be invited to give their input on the draft document by the end of 2005. Their input would be further reviewed by the Working group in 2006 before its submission to the EFC General Assembly of Members in May 2006. EFC members will also be invited to comment on the proposal early 2006
- The EFC Resource Development Committee (RDC) should examine the implications of the Principles for EFC membership application process and procedures to ensure that applicant organisations are aware of this set of principles. It also recommends that the RDC reviews how the Centre would respond if one of its members was accused of wrongdoing.
- EFC members should be encouraged to publicise their adherence to the principles in their internal external communications.
- The EFC's peer learning and training events should incorporate the 7 Principles of Good Practice.
- The EFC should step up its work to document these issues and foundation practices.
- The Principles should be reviewed every four or five years to reflect changes in the operating environments of foundations and to assess how the EFC should best promote good practices.

Key comments from the EFC Governing Council were as follows.

- The Working Group had done an excellent job so far;
- The EFC needs a “code of practice” type of document as a form of self-regulation as this is seen clearly preferable to government regulation;
- It would be difficult for some members to sign up to the Principles as they stand at present.
- The principles should be tested against various situations at the national level.

Individual board members’ comments included the following:

- Membership recruitment might be hampered if new members were asked to sign the document
- The EFC should be careful and avoid a situation where it is asked to take action against one of its members.
- The situation in the US was noted. Foundations in the US are facing Congressional inquiries into their tax-exempt status, as are all non-profit organisations in the US. A Code of Practice for EFC members would be beneficial in this kind of situation in Europe.
- It is crucial for the EFC to review its 1996 “Code of Practice” if it wants to take a leadership role in European civil society. Such a document should be seen as a way to inspire and invite incoming members.

EFC Chair noted his agreement that a document of this kind is necessary and that its structure and implementation must be discussed in depth. The Governing Council invited Mr Then to relay the debate to the Code of Practice Working Group and to review the document to reflect the proposals and suggestions made by Council members. The Working Group was invited to provide a revised proposal before the next Governing Council meeting in spring 2006.

2.2. Revised Draft and Revised Strategy

The COP Working Group discussed the outcomes of the Governing Council meeting, and its implication as regards the revision of the text and timing of the consultation and adoption process.

Following the recommendations of the Governing Council, the EFC secretariat revised the draft Principles of Good Practice document. Three important changes were introduced in the revised document (Version n°9 of November 2005)

- The draft text has now been divided into two different documents, distinguishing between on the one hand the EFC Principles of Good Practice themselves, and on the other hand a series of illustrative practices stemming out from the 7 Principles.
 - The Principles are very concisely formulated. They are not only meant for EFC members but for the wider foundation community as it is important for the Centre to set a level of aspiration for the larger community.
 - The practice options are meant as mere illustrations, not prescriptions, to reflect the variety of practices linked to the diversity of the sector.
- **Draft EFC Principles of Good Practice**

The new draft document (November 2005 version n°9) is still structured into four main sections, starting with the background section and a preamble. The third section now only addresses foundations' values – instead of values and principles - whereas the fourth and last section has been renamed Principles, instead of practices.

This fourth section focuses on key/core principles. Each of the 7 principles is now “captured” in one sentence.

The Working agreed upon the new structure and recommended to incorporate a few additional modifications, as follows:

- *Preamble*. The third paragraph will read as follows: “These guiding Principles aspire to accommodate the approach of every individual foundation. Foundations are encouraged to respect the spirit in which they are drafted to the extent that individual circumstances and operation procedures permit and even to use them as guidelines when reshaping their formal or informal ways of working.”

It was agreed that the revised version of the principles *do* aspire to accommodate every foundation, meaning that there consists of a minimum of core requirements that members are asked to adhere to, whilst the more detailed illustrative practices now listed in a separate

document will cover various types of practices which members can use to implement the Principles.

- *Principle 1*: will now read: “Foundations comply with the laws of the state in which they are based, and act in accordance with their bylaws”, instead of “Foundations comply with the law”.
- *Principle 2*: will now read: “Foundations have an identifiable decision-making body whose members and successors should be nominated and should act in accordance with established principles and procedures, and the highest ethical standards.”
- *Principle 4*: A second paragraph will be incorporated to tackle accounting issues as follows: “Foundations ensure proper accounting/book-keeping according to established rules in the state in which they are headquartered. They may complement such rules with additional measures on a voluntary basis.”
- *Principle 7*: This principle will be reworded as follows: “Foundations share their know-how and experience with peer-organisations and other relevant stakeholders to advance good practice and cooperate whenever appropriate to maximise their impact in their respective fields of activity instead of “(...) to advance good practice and effectiveness in their respective fields of activity.”

• **Draft Illustrative Practices Options for foundations**

Participants reviewed the draft document “Implementing the EFC Principles of Good Practice: Illustrative Practice Options for Foundations” (version March 2006). This new document aims to outline a series of illustrative practices options that foundations may want to use to facilitate and guide their implementation of the EFC proposed seven Principles of Good Practice, while taking into account of various national situations and individual approaches.

The text details the key elements of each of the seven principles, setting out various examples of implementation practices as follows:

- Compliance illustrative practice options relate to statutory obligations and compliance tools
- Governance illustrative practice options address the composition and terms of the board; its role and accountability; performance; and ethical behaviour
- Policies and programmes practice options relate to relationships and mutual respect; data protection; open and fair policies and practices
- Stewardship practices include sound management policies; sound investment policies; internal control and external verification
- Disclosure practice options cover open communications and periodic reporting examples

Finally the text address some practices regarding Monitoring/Evaluation and cooperation

Participants agreed on the following changes:

- The secretariat will further edit the paper and remove any notion of obligation from the text (e.g. should, comply...) It was agreed to make the following changes to the document. :
- The document should state in its introduction that the list of practice options is neither prescriptive nor exhaustive, and will evolve.
- *Principle 1: Compliance*:
The first bullet of the “Statutory obligations” subsection referring to compliance obligations in the jurisdiction in which foundation are based should be deleted as it has been reformulated as a core principle in the first document.
- *Principle 2 - Governance*: The last bullet of the section ‘Ethical behaviour’ will now read: “Compensations, where they exist, should be approved by the full board and be fair and reasonable and comply with the foundations’ bylaws and policies on conflict of interest and proscription of personal gain and benefit.
- *Principle 3 - Informed policies, operations and support programmes*:
A new section entitled ‘known your partner’ is to be added to address the importance of choosing and knowing the partners and beneficiaries of the foundations.

The last section ‘Open and fair policies and practices for support programmes’ will now

read: “Once awarded, support is not withdrawn or terminated, other than in exceptional circumstances and for well-founded reasons.

➤ *Principle 4 – Stewardship (management and finance):*

The section relating to sound management policies should also address the practice of using formal financial channels for foundations’ transactions.

The last bullet of section ‘Internal control and external verification’ will now read:

“Foundations ensure external independent audit to review the fairness and completeness of the financial statements.”

• **Comparative review of EFC Draft Principles with new national EU and international Codes and recommendations**

Following discussion at the 2005 November EFC Governing Council the secretariat thought it was useful to compare EFC’s Principles both with newly developed (or under development) national and with recommended EU and international transparency and accountability standards. The review covers the latest documents from the European Commission¹, the International Financial Action Task Force on money laundering and terrorist financing (FATF)², as well as the Swiss Foundations Governance Code and the Deutscher Stiftungen recommendations and principles

The types of issues addressed by these codes include the following topics:

- Establishment of the foundation
- Governance (appointment procedures, decision-making, conflict of interest policies)
- Compliance issues
- Disclosure
- Monitoring
- Cooperation
- Supervision
- Policies and operations
- Finances; investment and accounting

The EFC texts cover all issues to some extent except the establishment of the foundation dealt with in the Swiss governance Code for medium-sized and large grantmaking foundations.

Specific issues are not covered in the EFC Principles text itself, but in the EFC Illustrative Practice Options document. This is the case for issues such as conflict of interest policies; using formal financial channels for transactions; providing up-to-date information on the foundation, its policies and programmes, conducting internal and external controls of the accounting; or controlling the use of the funds; and the importance for the foundation to choose and know its partners

The EFC Principles do not address some of the topics covered by the EU and FATF papers, namely the recommendation to non-profit organisations (NPOs)

- to keep important documents on file for a determined period (5 years) The EFC Principles outline that the foundation must comply with accounting rules.’

- to keep full and accurate audit trails of funds transferred outside its jurisdiction/ country and of funds transferred to any person delivering service on behalf of the originator NPO.

The EFC has a softer approach of the “know your beneficiary rule”, outlined in the EFC Illustrative Practice Options document.

2.3. Dissemination and consultation

• **Report of the National Associations of Donors meeting**

Building on the recommendations of the EFC Governing Council at its November 2006 meeting, Liesbeth Zwitter, member of the Working Group, presented the EFC revised document at the NADs meeting in the Hague on January 25-26th 2006. Furthermore, a written consultation of the

¹ Communication “The Prevention of and Fight against Terrorist Financing through enhanced national level coordination and greater transparency of the non-profit sector, COM (2005) 620 – 29/11/2005

² 2006 Interpretative Note to Special Recommendation VIII: Non-Profit Organisations on terrorist financing and the non-profit sector of the Financial Action Task Force (FATF). <http://www.fatf-gafi.org>

NADs has been organised in January and February to collect input and test the documents against national “realities”. Written feedback was received from French and Dutch NAD members.

- **Next steps**

Participants agreed that the secretariat will amend the Principles and Illustrative Practices according to the Working Group comments, and NADS input, where available. The revised versions will be circulated by e-mail to the members of the Group for their approval by the end of April before they are sent to the Members of the EFC Governing Council for review at the meeting of May 26th 2006.

Rien Van Gendt will present the revised document and new timetable to the board at its May meeting. Should the board approve of the new draft Principles, it was proposed to:

- present the revised texts to the members at the General Assembly on May 28th 2006.
- to organise a consultation of EFC committees (i.e. Resource, EU and international) by the end of October 2006.
- to invite other parties, including NADS, and members to provide comments through a web-based consultation by the end of September 2006.

The Code of Practice Working Group will hold a debriefing meeting after the Governing Council to confirm the proposals, follow-up actions and the time-table.

3. Code of Practice Working Group recommendations on implementation mechanisms

Members of the EFC Code of Practice Working Group re-examined the recommendations relating to the implementation of the Principles in the light of the comments made by the EFC Governing Council and the revised time-table.

It was agreed that, given the diversity of situations and organisations, EFC members should only subscribe to the set of core principles, which would not be in conflict with the varying environments in which they operate. EFC members would be expected to adhere to 7 Principles or at least commit themselves to working actively on trying to live up to them.

Participants reviewed the 7 recommendations about “implementation” mechanisms they developed at their September meeting.

Recommendations n°1: To reflect the seven key Principles in the EFC membership application document

Liesbeth Zwitzer reported on the discussion of the RDC meeting of March 10th regarding the EFC membership application procedures. RDC members proposed to review and simplify the EFC membership application form. The Committee agreed that one of the requirements for membership applicants will remain the signing up to the EFC’s Principles, in addition to providing their latest annual report and their founding documents/bylaws. Thus the Principles would not be reflected in the application documents as such, but applicant organisations would be invited to sign up to them when they want to join. The new membership form should be ready by September 2006.

Recommendations n°2 & 3: To set up a mechanism to address potential abuse; To ask applicant organisations to review if they comply with the 7 Principles

The RDC did not examine the recommendations to set up of a policy/ mechanism to address potential and actual abuse by Members at its March meeting.

Members of the Working Group felt that the issue should actually be dealt with by the Management Committee of the EFC rather than by the RDC. This mechanism should also cover proposals to invite applicant organisations to review if they comply with the 7 principles (current recommendations n°3). In particular applicant members could be invited to agree to cooperate with the EFC secretariat if and when they would be required to supply information/ documents

A new recommendation will be made in this regard. It was recalled that at present EFC bylaws foresee two cases of exclusion of members:

- the non-payment of the membership fee

- a conduct which is deemed by the EFC General Assembly (2/3 majority vote) to be capable of causing prejudice to the EFC's reputation and good standing.

The Management Committee may choose to consult EFC Committees on the matter, where appropriate.

Recommendations n°4: To inform EFC members and applicant organisations of the consequences /potential sanctions of a breach of the Principles

This recommendation should be reviewed by the Management Committee as part of the policy to address potential abuse.

Recommendations n°5/6/7 regarding compliance of members:

Participants confirmed that the following recommendations regarding the compliance of members are still valid:

- members should be invited to review compliance with the Principles at their board meetings
- they should be encouraged to publicise their adherence to the Principles on their website:

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- they should also share the document with their staff.

4. Code of Practice Working Group recommendations on peer learning and information tools

The Working Group believes that the role of the EFC secretariat is to help EFC members to comply with the principles, and develop as appropriate the necessary mechanisms to facilitate members' compliance. Two sets of action are recommended in this regard as follows:

Recommendations n°9

The EFC Philanthropy Institute Programme (PIP) which serve as a professional development framework for foundations should align its content with the seven principles and organise practical roundtable sessions around them. In particular the PIP symposia should be used to develop with members in an interactive way self assessment tools to implement the Principles.

Recommendation n°10

The Centre should step up work to better document existing resources on foundation practices, in areas such as evaluation, governance, investment etc., preferably through the development of an online database of relevant materials, tools and actors in the field.

These recommendations should be addressed to the EFC Management Committee.

5. EU Developments: an update

The secretariat gave an update on EU proposals and latest decisions regarding the accountability and transparency of the non-profit sector and the prevention of terrorist financing.

On 29th November 2005, the European Commission released a Communication³ on the "Prevention of and Fight against Terrorist Financing through enhanced national level coordination and greater transparency of the non-profit sector". The text build on a consultation process organised during the summer. The EFC and its members provided some extensive comments⁴ on the draft consultation paper published by the Commission on the matter last July to warn against the danger of a one-size fit all approach.

The November Communication aims to encourage Member States to strengthen their fight against the financing of terrorism and provides new guidelines addressing on the one hand national level coordination and information exchange structures and on the other hand vulnerabilities of the non-profit sector to terrorist financing and other criminal abuse. Overall the paper outlines that higher and/or more systematic standards of transparency and accountability applied by non-profit organisations (NPOs) will help to "strengthen" the sector against criminal abuse. Specifically, the Communication addresses a "Recommendation" to EU Member States covering three areas:

- A more coordinated oversight of the non-profit sector;

³ A Communication is a policy document it is not legally binding.

⁴ http://www.efc.be/ftp/public/eu/jai/2005_EFCCommentsJAI_Code.pdf

- Outreach and vulnerabilities of NPOs to terrorist financing (including assessment tools and awareness programme for NPOs and the private sector e.g. accountants, auditors).
- Encouraging NPOs to comply with transparency and accountability” standards”: The Communication reiterates a proposal that the EFC questioned in the consultation document (audit trail), fearing that it could hinder in particular the cross-border work of foundations. However there is no reference to an EU Code for NPOs as such any longer; and the recommendations take better account of the diversity of the sector. The Commission proposals also cover the development of compliance mechanisms, e.g. certification model. Private monitoring bodies or non-profit umbrella organisations are encouraged to establish seals of approval or similar mechanisms for NPOs complying with the principles set out in the proposed framework for a Code of Conduct.

As a follow-up to the publication of the proposals, the Commission will organise a conference on “Transparent NPO Governance” with representatives of the non-profit sector and other relevant stakeholders early 2007 to help find a common understanding of the issues presented in the Communication. The EFC secretariat participated in a preparatory meeting convened by the Commission on March 13th 2006 to discuss the content and structure of the proposed event, and to review the setting of a “contact group” between NPOs, Member State representative and the Commission.

The second important development is the 2005 December meeting of Council of EU ministers responsible for Justice and Home Affairs. The Council agreed a new EU anti-terrorism strategy on December 1st - 2nd 2005, and further reaffirmed the declaration of 13th July 2005 that EU Member States will support the combating of terrorist financing by agreeing a Code of Conduct to prevent the misuse of the non-profit/charitable sector by terrorists. This initiative is to a large extent the EU’s response to the Special Recommendation VIII on terrorist financing and the non-profit sector of the Financial Action Task Force (FATF), which invited countries to review the adequacy of their laws and regulations that relate to entities that can be abused for the financing of terrorism.

At the same time the Council invited the Member States to commit themselves to implementing domestic measures to prevent terrorist abuse of the non-profit sector, taking account of key principles, including the need for a better understanding and dialogue between public authorities and the sector, dialogue that the EFC has called for. They also outlined that oversight measures should be proportionate.

At the international level, the FATF adopted in February 2006 an “interpretative note” on their special recommendation on NPO and terrorist financing adopted in 2001. The FATF recommendations on NPO accountability and transparency are very similar to the Commission’s proposals. The Note also outlines a series of measures that countries can use to ensure that NPOs are not misused by terrorist organisations, namely, outreach to the NPO sector concerning terrorist financing issues; supervision or monitoring of the NPO sector; effective information gathering and investigation; and effective capacity to respond to international requests for information about an NPO of concern.

Participants outlined the importance of the work of the EFC Good Practice Group in the context of both European and international developments. They agreed that foundations’ views should be included in the Commission proposed event, while the EFC will be involved in the EC contact group, still to be established.

6. EFC – US Council on Foundations joint project

The Chair gave an update on the work of the EFC and US Council on Foundations (EFC-COF) on “Principles of Accountability in International Philanthropy”. In spring 2005 both organisations set up a joint group to develop a set of principles of accountability specifically related to international. The goal is to develop a brief document for their respective members and others interested parties.

Participants reviewed the second draft of the document. The draft was discussed at a consultation meeting with foundation and NGO stakeholders in South Africa on February 1-3 2006. The draft principles of accountability for international philanthropy and related practice options represent a first attempt to articulate some of the themes and good practices that have emerged from the consultations and working group discussions to date. The draft principles are as follows:

- First, do no harm

- Develop a realistic strategy and focus for your international philanthropy.
- Don't act in isolation
- Respect, engage and support your international partners and beneficiaries
- Comply with all relevant legal requirements
- Ensure good stewardship of your philanthropic resources
- Communicate openly and often with stakeholders
- Learn from what you are doing and share your knowledge with others
- Be an advocate
- Take risks.

A revised version of the document will be presented at the Council and the EFC 2006 annual conferences, respectively. Some of the proposed principles will probably be merged into a reduced number of core principles, illustrated by a series of practices along the lines of the EFC Principles for Good Practice. Participants were invited to send their comments on the draft to the EFC secretariat by the end of June 2006.

7. EFC Annual General Assembly (AGA): COP Session May 2006

The EFC Code of Practice Working Group has proposed a session looking at issues at stake in Europe concerning the transparency, accountability and 'good governance' of foundations to take place at the 2006 AGA and Conference on 27th May. It will review the recent initiatives to reinforce accountability and transparency of the foundation sector across Europe, in the light of the EU and national measures that have been proposed to prevent foundations from being misused for financing terrorism and other types of crimes. Panellists will address EU proposals for code of conduct for NGOs, review foundations work in the field, including the EFC's proposals, and debate the need and scope for common frameworks.

It was agreed that Rien van Gendt will chair the session and Robin Stephenson will present the work of Group. SwissFoundations which outlined their interest in the topic could also be contacted for the session.

The EFC will invite the European Commission DG Justice, freedom and security to present give the Commission's recommendations on a framework for increased transparency of NGOs. Alternatively, a member of the Working Group could give a presentation on the latest developments.

The EFC secretariat will prepare copies of the Principles and illustrative Practice for distribution at the session, as well as the General Assembly of EFC members if the Governing Council endorses the revised text at its meeting on 25th May 2006.

8. Date of the next meetings

The next meetings of the EFC Code of Practice Working Group will take place on

- Debriefing meeting at the Sheraton hotel in Brussels (date to be confirmed)
- 24th October 2006 at the EFC in Brussels 11:30 a.m. to 3 p.m.

Action points

1. EFC to revise the Draft Principles for Good Practice and Illustrative Practice Options and circulate the new draft to the Group for review by the end of April, before sending the documents to EFC Board
2. Working Group Chair to present the revised drafts to the EFC Governing Council at its May Meeting
3. EFC secretariat to update the Illustrative Practice Options for Foundations, according to the comments made at the meeting.
4. EFC secretariat to update the recommendations relating to the implementation of the Principles
5. EFC secretariat to confirm the date of the Debriefing meeting to Members of the Working Group
6. EFC Secretariat to move forward with the proposed consultation process of EFC committees, members and NADs once the Governing Council approves of the revised plan.