



Abbe Jodi Bertog

Public Reporting in Foundations:

Regulatory Bodies and Self-regulatory Reporting Initiatives
for Foundations in Germany and the UK

The Author

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Contents

- 1. Introduction 4
- 2. What is public reporting? 4
- 3. Country Profiles..... 6
 - 3.1. UK's Regulatory System..... 6
 - 3.2. Germany's Regulatory System 8
- 4. The Historical and Legal Context..... 10
- 5. Self-regulatory Public Reporting Initiatives 11
 - 5.1. Transparency Award 12
 - 5.2. Transparent Civil Society Initiative 13
 - 5.3. Declaration of Voluntary Agreement..... 14
 - 5.4. Seal of Approval 14
- 6. Reluctances Surrounding Public Reporting 14
- 7. Benefits of Public Reporting - Making a case for 'it' 15
- Literature 17

1. Introduction

The non-profit sector as a whole is talking about it...

... and has been talking about it all the more intensely in recent years.

There are very good examples of it happening.

There are also many examples of it not happening at all.

Its implementation varies drastically across Europe...

... it can be legally binding or it can be achieved through self-regulatory efforts.

This 'it' is public reporting.

The landscape of public reporting in the non-profit sector is rather varied. Public reporting requires commitment to being open, honest, sharing, taking responsibility for what is done and how it is done: it requires being accountable and transparent, internally and externally. Surely these are qualities which all non-profit organisations (NPOs) should aspire to having their name to? What is it then that is preventing public reporting from being implemented across the board? From an historical point of view, the reason seems simple: it stems from the Christian ethic – no one should boast about the fact that they are doing something good for others.¹

This essay looks at the implementation of public reporting, specifically in the foundation sector in two European countries - Germany and the UK. Having initially focused on the definition of what public reporting embraces, it then takes a comparative look at the regulatory bodies for foundations in both countries, specifically focusing on the extent and exact requirements of their reporting regulations. In order to put the differences that arise between the two countries into perspective, there follows a short description of the historical and legal context in which foundations have operated and currently operate in. Furthermore, a handful of self-regulatory public reporting efforts are presented, exclusively in Germany, focusing on the impact they have as well as the extent of their take-up. Finally, giving attention to some of the reasons why foundations are reluctant to fully embrace public reporting, the essay concludes with the reasons why public reporting should be fully embraced, and consequently, makes a case for obligatory public reporting in foundations.

2. What is public reporting?

Public reporting is, as its name explicitly suggests, a means of reporting to the public; it is the end product of a foundation striving to be transparent. Transparency can be understood as: “an obligation or willingness... to publish and make available relevant data

¹ Compare: Graf Strachwitz, Rupert (2010), pg.4

to stakeholders and the public”². The European Center for Not-for-Profit Law (ECNL) makes a differentiation between three types of transparency. The first, organisational, refers to the availability of information, related to the registration and establishment of the organisation. This information allows a third party to identify the organisation and make contact to acquire further information. The second, programmatic, refers to information which enables a third party to assess the effectiveness and efficiency of the organisation, namely information relating to the organisation's activities and services. And the third, financial transparency, relates to the organisation's financial information required by the legal frameworks within the said country.³

Given that reporting can be embraced at many different levels, the resulting spectrum of documents or information sources available to the public is also inevitably effected, as highlighted in the European Foundation Centre's (EFC⁴) and Donors and Foundations' Networks in Europe's (DAFNE⁵) study: “... there are great differences between the content and form of these reports and how these are submitted and made available for the public, as well as the extent of the reporting (e.g., whether an audited report is required or not)”⁶. That means there is no one standard type of report. In its most traditional context, public reporting takes form of an annual report, concentrating predominantly on the foundation's financial data and internal structures. It must be questioned however whether we get a sufficient insight into a foundation's workings from this information alone? What about the foundation's activities, the success of these and the effect they have? As PHINEO⁷ advocates, transparency should embrace far more than just financial and structural information. In PHINEO's Position Paper, published in November 2011, they call for a more comprehensive understanding of transparency which additionally embraces the impact of not just foundations' activities, but charities' activities generally (*Wirkungstransparenz*)⁸. A study⁹ into the *Wirkungstransparenz* of charities highlights that there is an increasing impetus in the UK and the USA towards extended impact reporting.¹⁰ In stating this, PHINEO draws attention to two separate British reports: Talking about Results¹¹ and Impact Reporting in the UK Charity Sector¹². A comparable

² European Foundation Centre (2011), pg.6. The study, “Exploring Transparency and Accountability: Regulation of Public-benefit Foundations in Europe” is a mapping and analysis of how the transparency and accountability of foundations is framed by legal and tax legislation and self-regulatory initiatives across Europe

³ Compare: European Center for Not-for-Profit Law (2009), pg.11

⁴ See: <http://www.efc.be> (current on 07/10/14). The EFC is an international membership association representing public-benefit foundations and corporate funders active in philanthropy in Europe. With an emphasis on transparency and best practice, all members sign up to and uphold the EFC Principles of Good Practice

⁵ See: <http://www.dafne-online.eu> (current on 07/10/14). DAFNE is a network with its own governance structure, bringing together 24 donors' and foundations' networks from across Europe

⁶ EFC (2011), pg.16-17

⁷ See: <http://www.phineo.org> (current on 07/10/14). PHINEO is a not-for-profit corporation offering guidance to social investors

⁸ Compare: PHINEO (2011a)

⁹ PHINEO (2011b)

¹⁰ Compare: PHINEO (2011b), pg.4

¹¹ New Philanthropy Capital (2010)

¹² Breckell/Harrison/Robert (2011)

step in this direction in Germany can be found with the Social Reporting Standard (SRS)¹³. This approach to impact is also taken by the UK's Charity Commission: "We would encourage all trustees to use their Annual Reports and accounts to communicate with stakeholders and the wider public about their work – explaining the work their charities do and the achievements that result."¹⁴ PricewaterhouseCoopers likewise draws attention to a focus on public reporting which goes beyond pure financial or structural information and thereby covers the effect of the charity's activities achieved within society. Reporting which is informative and clear and describes the structures, aims and activities of an organisation, as well as its implementation of funding and the effect of its activities, is the basis of transparency.¹⁵

Finally, it should be said that in order for a foundation to be successfully transparent, it also needs to be accountable: "transparency is considered an indispensable mechanism for enacting accountability... foundations can only account for their actions towards their multiple stakeholders if they share relevant and sufficient information about themselves."¹⁶ This is also stated by ECNL: "Both are important and neither is sufficient on its own", who defines accountability as being: "an obligation or willingness by the NPO to accept responsibility or to account for its actions... the NPO holds itself accountable towards its multiple stakeholders and ensures that it meets the various stakeholder needs and interests."¹⁷

3. Country Profiles

3.1. UK's Regulatory System

The United Kingdom has a long-standing tradition of regulation of NPOs, namely through the Charity Commission¹⁸. The Charity Commission is the independent regulator of charities in England and Wales¹⁹. "The Commission has statutory objectives to ensure trustees comply with their legal obligations in managing charities and to increase public trust and confidence in charities. They also have a statutory function to identify and investigate abuse and mismanagement of charities."²⁰ Consequently, the Commission administers a publicly available Register of removed trustees. This contains the names of previous trustees, who, on the grounds of mismanagement or misconduct for example, have been removed. The Charity Commission is accountable to Parliament and the

¹³ Social Reporting Standard (2014). See: <http://www.social-reporting-standard.de/en> (current on 07/10/14). The SRS proposes a single framework for reporting. In 2011, Social Reporting Initiative e.V. was founded as a German non-profit association and now holds the rights to SRS

¹⁴ Charity Commission (2013), pg.2

¹⁵ Compare: <http://www.pwc.de/de/engagement/transparenzpreis-2012.jhtml> (current on 07/10/14)

¹⁶ European Foundation Centre (2011), pg.43-44

¹⁷ European Center for Not-for-Profit Law (2009), pg.11

¹⁸ See: <http://www.charitycommission.gov.uk> (current on 07/10/14)

¹⁹ Scotland and Northern Ireland are regulated separately by the Office of the Scottish Charity Sector and the Charity Commission for Northern Ireland respectively

²⁰ European Foundation Centre (2011a), pg.34

public, and is a Non-Ministerial Government Department. It does not therefore belong to The Cabinet Office, which sits at the very centre of government and is responsible for the development of Charity Law, and is therefore not subject to the direction or control of ministers.

Charity legislation is set out in The Charities Act 2011²¹ (Part 8 deals specifically with the framework for charity accounts, reports and returns, and external scrutiny), as well as in The Charities (Accounts and Reports) Regulations 2008²². The latter contains more detailed rules on charity accounting and the trustees' annual report. These pieces of legislation are then supplemented by the Statement of Recommended Practice (SORP) – Accounting and Reporting by Charities²³. This summarises all of the legal requirements and accounting standards for charities preparing their accounts on the accruals basis, including guidance on what should be included in the Trustees' Annual Report.

Most charities have to register with the Charity Commission. According to the EFC, foundations in 28 of the 30 countries²⁴ reported on in its Comparative Highlights of Foundation Laws, have to register with an authority or a court. All charities with an annual income of more than £10,000 have to provide the Charity Commission with information on an annual basis. Regardless of whether a charity is registered with the Charity Commission or not, all charities have to prepare Accounts and, if requested, make them available. All registered charities are additionally required to prepare an Annual Report, and, if requested, make it available. The Accounts and Annual Report of all Charitable Incorporated Organisations and all registered charity's with a gross income of more than £25,000, are to be filed online, within 10 months of the end of the financial year, with the Charity Commission. Furthermore, all Charitable Incorporated Organisations and all registered charities with a gross annual income exceeding £10,000 are legally required to prepare an Annual Return form and file it with the Charity Commission online. The Annual Return form has to be completed online and the information given is publicly available via the online register of charities²⁵, usually within one working day of submitting the form. The following information must be provided: the registered charity number (and company number if applicable); the charity's bank or building society details; the charity's accounts and trustees' annual report (this is not applicable to charities whose income is below £25,000); the charity's contact details; and, the names, dates of birth and contact details for the charity's trustees. The Annual Return form requires further financial information

²¹ See: <http://www.legislation.gov.uk/ukpga/2011/25/contents> (current on 07/10/14)

²² See: http://www.legislation.gov.uk/ukxi/2008/629/pdfs/ukxi_20080629_en.pdf (current on 07/10/14)

²³ The Charities SORP was issued in March 2005. See:

<http://www.charitycommission.gov.uk/media/95505/sorp05textcolour.pdf> (current on 07/10/14)

²⁴ European Foundation Centre (2011a), pg.6

²⁵ See: <http://www.charitycommission.gov.uk/find-charities/> (current on 07/10/14)

from a charity whose income exceeds £500,000 and additional information covering the charity's key aims, activities and achievements if the charity's income is higher than £1 million. A registered charity with a gross income of less than £10,000 is required to complete an Annual Update form.

A charity's accounts can be prepared on the receipts and payments basis providing the charity is a non-company charity and its annual gross income does not exceed £250,000. If, however, the charity is a charitable company or the charity's annual gross income does exceed £250,000, their accounts have to be prepared on the accruals basis. The Charity Commission provides non-company charities with online packs for both types of accounting. These act as a template, ensuring that legal requirements and also the Charities SORP's recommendations are met.

Whether a charity's accounts have to be audited or independently examined likewise depends on the charity's gross income. Should the charity's gross income exceed £25,000, the charity's accounts have to be independently examined, and an audit of the charity's accounts is required when its gross income is above £500,000²⁶.

3.2. Germany's Regulatory System

The prerequisites for founding a foundation in Germany are laid out in §§ 80 - 84 of the German Civil Code (*Bürgerliches Gesetzbuch*, BGB). In addition to the German Civil Code, each individual German state has its own supplementing state foundation law, as well as its own state regulatory authority. Regional bodies undertaking the supervision of foundations are also to be found in Sweden and Switzerland.²⁷ The state regulatory authorities in Germany, having granted a foundation its legal capacity, ensure that the will of the founder is observed and check whether the foundation's Charter meets the requirements as set down in the foundation law, and whether the work carried out by the foundation is fulfilled as specified in the foundation's Charter. Should the foundation conduct activities which are illegal or do not conform to the founder's will, the state authority is able to object and insist that the foundation's board takes specific action. The same applies to decisions made by the organs of the foundation.

Taking Bavaria as an example, each of the seven district governments (for example, Middle Franconia, Lower Bavaria etc.) act as regulatory bodies, granting new foundations legal capacity and conducting other duties as already described above. The State Ministry of Science, Research and Art is assigned responsibility for foundations focusing on science, research, art and monument or home preservation; the State Ministry of

²⁶ "An audit will also be needed if total assets (before liabilities) exceed 3.26mGBP, and the charity's gross income is more than 250,000GBP", Charity Commission (2013), pg.4

²⁷ Compare: European Foundation Centre (2011b), pg.19

Education and Cultural Affairs is assigned responsibility for foundations addressing religion, education, schooling or sport; and the State Ministry of Home Affairs overviews all remaining foundations. Bavaria's State Office for Statistics and Data Processing administers a publicly available (online) catalogue²⁸ of all legally registered foundations (excluding ecclesiastic foundations), as described in the Bavarian foundation law (*Bayerischer Stiftungsgesetz*, BayStG²⁹). Each foundation appears in the catalogue with the following information³⁰ assigned to its entry: name of the foundation; legal status and type; location; purpose; body; legal representation; name of the founder; date of founding and termination; and office address.

According to Article 16 of the BayStG, foundations are obliged to conduct adequate and orderly accounting but can decide themselves which type of bookkeeping they implement as long as it is in accordance with the provision of the law. Before each financial year begins, each foundation has to compile a budget which provides the basis for all receipts and expenses. Within 6 months of the financial year's closure, each foundation has to submit its balance of accounts and statement of assets (annual financial statement) to the regulatory authority. Additionally, the foundation must provide the regulatory authority with a report on its delivery of the foundations objective/purpose/aim.

German foundations, unlike in the UK, are however, under no legal obligation to present this information to the general public.³¹ Presentation of information to the public which is purely voluntary leads to charities publishing information which is convenient or agreeable to them, or in the worst case scenario, not at all. Both Dr S. Nährlich and Dr. R. Speth in their contributions to *Aktive Bürgerschaft aktuell* state that mandatory regulation is the only way of ensuring transparency and accountability.³² The *Paritätische* in a press release³³ likewise calls for financial reporting which is legally binding as well as an obligation to disclose information publicly for all charities, as is the case under commercial/trade law.

As is stated in EFC's report, Germany is one of five countries³⁴ in which reporting does not have to be made publicly available. It is not surprising therefore to hear that only 13% of foundations in Germany publish financial details in the form of a printed annual report and a mere 9% of foundations make this information available online.³⁵ This is despite the

²⁸ See: <http://www.stiftungen.bayern.de/> (current on 07/10/14)

²⁹ See: http://www.stiftungsgesetze.de/pdfs/Stiftungsgesetz_Bayern.pdf (current on 07/10/14)

³⁰ Bayerischer Stiftungsgesetz (2008), 1. Titel, Art. 4, (2)

³¹ Compare: PricewaterhouseCoopers (2011), pg.25

³² Compare: *Aktive Bürgerschaft aktuell* (2010) and *Aktive Bürgerschaft aktuell* (2008) respectively

³³ *Paritätischer* (2010)

³⁴ The other countries include: Austria, Latvia, Slovenia and Turkey. Compare: European Foundation Centre (2011b), pg.18

³⁵ Compare: Bundesverband Deutscher Stiftungen (2010), pg.7

Bundesverband Deutscher Stiftungen reporting that foundations are increasingly implementing transparency to include the public³⁶. Noteworthy is also the fact that 53% of foundations have their annual accounts audited by a chartered accountant, despite the fact that this is not legally stipulated.³⁷

Foundations on the whole account for their financial developments by compiling either annual accounts which include a balance sheet and also a profit and loss statement, or an annual financial statement with cash-based accounting. Only half of the surveyed foundations however, support this financial report with accompanying notes and a management report. The omission of this information, particularly with larger foundations, means that outsiders are not able to reliably evaluate the figures, nor make any form of comparison with other foundations.³⁸

4. The Historical and Legal Context

What should be considered when comparing the regulation of foundations in the UK and Germany is not only the difference in the legal framework between the two countries, but also their varying historical and cultural factors. As stated by ECNL, the need to overcome these differences: “may make any attempt at a pan-European regulatory or self-regulatory initiative particularly challenging.”³⁹

The UK is governed by the common law system, and Germany, like all other states in the EU, by the civil law system. The legal concept of charity, focusing on activity as opposed to legal form, is what distinguishes the treatment of NPOs in common law. This approach has established itself through case-law over many centuries and means that a charity's role and operating space is well developed not only within the legal system, but within society generally. The concept of charity and charitable activity implies that the organisation serves public benefit purposes. Charities need to register to be recognised and become eligible to receive tax exemptions. In the civil law system however, the treatment of NPOs is based on their legal forms and not their activity. The purpose of registration here is to obtain legal personality and basic tax exemptions, the level of which is defined by their legal form. This: “subsidiarity principle, governing relationships between the state and community-based service providers, goes back to the 19th century.”⁴⁰

The ECNL study highlights that the two fundamentally different legal systems makes for

³⁶ Compare: *Bundesverband Deutscher Stiftungen* (2010), pg.7

³⁷ Compare: *Bundesverband Deutscher Stiftungen* (2010), pg.7

³⁸ Compare: *Bundesverband Deutscher Stiftungen* (2010), pg.7

³⁹ European Center for Not-for-Profit Law (2009), pg.15

⁴⁰ European Center for Not-for-Profit Law (2009), pg.14

restricted transferring of regulatory practices from one legal system to another.⁴¹ However, this should not prevent isolated principles or solutions from being followed or even partially adapted by regulators and NPOs in both types of jurisdictions. It is for this reason that the ECNL incorporates a handful of good practice examples from the UK, namely the Charity Commission, which it refers to as: “a unique model for a regulatory agency for charities/public benefit NPOs.”⁴²

5. Self-regulatory Public Reporting Initiatives

On comparing the implementation of public regulation and self-regulation in the UK, it can be said that the development of both has been parallel and as a result, they have equal importance. However, in Germany, as with other: “old’ EU member states with a civil law, public regulation plays a slightly bigger role than self-regulation.”⁴³

Due to the absence of legally binding reporting requirements within Germany, this section takes a look at specific self-regulatory reporting initiatives within Germany. The idea is to demonstrate how and to what extent the German foundation sector is being transparent.

Within Germany there are a handful of initiatives which campaign for more transparency in a NPO's reporting. By signing up to said-initiatives, organisations are able to demonstrate their willingness to openly and accurately present information to the public. Not all of these initiatives focus exclusively on transparency, but cover other important areas such as governance (for example, *Deutsches Zentralinstitut für Soziale Fragen* (DZI) and *Verbands Entwicklungspolitik Deutscher Nichtregierungsorganisationen e.V.* (VENRO)) and the effect of an organisation's activities (for example, PHINEO and Social Reporting Standards (SRS)).

In 2011, a VENRO working group conducted a survey⁴⁴ on current transparency initiatives, giving an overview and evaluation of them; four of these initiatives, in bold, are described in more detail below. The initiatives were categorised by VENRO under three headings, depending on whether their transparency was as a result of:

1) Disclosure of information⁴⁵:

1. Transparency International's *Initiative Transparente Zivilgesellschaft*
(Transparent Civil Society Initiative)

⁴¹ Compare: European Center for Not-for-Profit Law (2009), pg.13-14

⁴² European Center for Not-for-Profit Law (2009), pg.14

⁴³ European Center for Not-for-Profit Law (2009), pg.16

⁴⁴ See: <http://venro.org/themen/ab-hier-alte-seiten/transparenz0/transparenzinitiativen-internet0/> (current on 07/10/14)

⁴⁵ Compare also: Wilke, Burkhard (2009): “direkte Transparenz”

2. CharityWatch
 3. betterplace.org
 4. International Aid Transparency Initiative (IATI)
- 2) Compliance with joint voluntary agreements⁴⁶
1. VENRO's *Verhaltenskodex* (Code of Conduct on Transparency and Governance)
 2. Social Reporting Standards (SRS)
 3. *Deutscher Spendenrat e.V.'s Selbstverpflichtungserklärung (Declaration of Voluntary Agreement, German Donating Counsel)*
- 3) Compliance with externally audited standards⁴⁷
1. *Deutsches Zentralinstitut für soziale Fragen's (DZI) Spenden-Siegel (Seal of Approval, German Central Institute for Social Issues)*
 2. PricewaterhouseCoopers' *Transparenzpreis (Transparency Award)*
 3. PHINEO

5.1. Transparency Award

The Transparency Award was first awarded in 2005 as a means of encouraging German NPOs to review and improve their reporting standards, particularly because, unlike other European countries, Germany has no set legal reporting requirements. 2012 was the 7th year of honouring the award to NPOs for their “exemplary and transparent information policies”⁴⁸. A total of 55 organisations were able to take part, of which 9⁴⁹ were foundations. In line with PHINEO's call for more *Wirkungstransparenz*, the future focus of the Awards shall also embrace this dimension: there will be a shift in focus from a purely input-oriented view towards a much stronger orientation on impact.⁵⁰

Furthermore, PricewaterhouseCoopers offers a *Transparenz-Check*⁵¹ (transparency evaluation). This is a form of self-evaluation and is available online, free of charge and to all. Upon answering the questions, the said organisation is provided with an overview of reporting areas where improvement is still required. The Reporting Guidelines⁵² complement the *Transparenz-Check* and, via examples of best practice, demonstrate what information should be made publicly available and how this should be achieved.

⁴⁶ Compare also: Wilke, Burkhard (2009): “*Selbstregulierung*”

⁴⁷ Compare also: Wilke, Burkhard (2009): “*geprüfte Transparenz*”

⁴⁸ See: <http://www.pwc.de/en/engagement/transparenzpreis-2012-preisverleihung.ihmtl> (current on 07/10/14)

⁴⁹ PricewaterhouseCoopers (2012), pg.14

⁵⁰ Compare: PricewaterhouseCoopers (2012), pg.16

⁵¹ See: <http://www.transparenz-check.de> (current on 07/10/14)

⁵² PricewaterhouseCoopers (2013)

The Institute of Chartered Accountants in England and Wales (ICAEW)⁵³ presents comparable awards (Charities Online Financial Report and Accounts Awards) to charities registered in the UK: “which prepare their accounts in line with the charities’ SORP or other Charity Commission... guidance for small charities.”⁵⁴ The purpose of the Awards is threefold: firstly, to increase transparency, by rewarding best practice in financial reporting; secondly, to raise the standard of web-based financial reporting for greater impact and accessibility; and thirdly, to encourage more charities to do their financial reporting online. ICAEW presents the awards to charities falling into five different categories, according to their total income: above £30m, between £5m and £30m, between £1m and £5m, between £250k and £1m, and below £250k.

5.2. Transparent Civil Society Initiative

This initiative was founded by *Transparency Deutschland e.V.* in 2010 because of the lack of uniform disclosure requirements in Germany. The Initiative believes that those who engage themselves in benefiting public welfare should be in a position to tell the community exactly what its aims are, where it gets its funding from, how that funding is used, as well as who its decision makers are.⁵⁵ It specifies that the following 10 pieces of information should be made publicly available by every civil society organisation: the organisation's contact details (name, location, address) and year founded; the Articles of Association or Constitution; the tax authority assessment; the names and positions of all Managing Directors; the organisation's activities; the organisation's personnel structure; information on the organisation's funding sources; information on the organisation's funding implementation; information on corporate affinities; and the names of legal entities/people.

It currently has 9 providers⁵⁶ and 572 signatories⁵⁷, of which 76 are foundations⁵⁸. Signatories of the initiative are obliged to disclose these 10 pieces of information on their website as well as endorse their signature on the voluntary agreement. All NPOs, regardless of their size, legal form, or field of activity, are able to sign up to the agreement. Examples of foundations who have signed up to the initiative include the *Martha-Maria*

⁵³ Founded in 1880 and with ca.142,000 chartered accountants (members) worldwide

⁵⁴ See: <http://www.icaew.com/en/about-icaew/what-we-do/volunteering-and-awards/icaew-charities-online-financial-reporting-awards> (current on 07/10/14)

⁵⁵ See: <http://www.transparency.de/Initiative-Transparente-Zivilg.1612.0.html> (current on 07/10/14)

⁵⁶ Transparency Deutschland e.V., Bundesverband deutscher Stiftungen, Deutsche Zentralinstitut für soziale Fragen (DZI), Deutscher Fundraising Verband, Deutscher Naturschutzring, Deutscher Spendenrat, Maecenata Institut für Philanthropie und Zivilgesellschaft, Verband Entwicklungspolitik deutscher Nichtregierungsorganisationen e.V. (VENRO)

⁵⁷ See: <http://www.transparency.de/Die-Unterzeichner.2050.0.html> (current on 07/10/14)

⁵⁸ See: <http://www.transparency.de/Die-Unterzeichner.2050.0.html> (current on 07/10/14)

*Stiftung*⁵⁹ and the *Stiftung Persönlichkeit*⁶⁰.

5.3. Declaration of Voluntary Agreement

One of the *Deutscher Spendenrat e.V.*'s eight aims is to ensure transparency towards donors and the interested public. In turn, it has provided organisations with the option of signing up to its declaration of voluntary agreement⁶¹ since October 1993. It currently has 65⁶² member organisations all of which commit to joint standards of action and transparency; have to publish their annual reports online; and as of a certain size (in excess of 250.000€) have to have their accounts audited by a chartered accountant.

5.4. Seal of Approval

The DZI enables charities who: “solicit donations supra-regionally”⁶³ to apply for its Seal-of-Approval. This Seal was initiated in 1992 and since 2004 is open to all public benefit organisations (except for political parties) in Germany. There are currently 230⁶⁴ organisations with the Seal, of which 34⁶⁵ are foundations. All Seal organisations voluntarily commit themselves to fulfilling the DZI Standards⁶⁶ and thereby do justice to the highest of quality expectations.

The *Bundesverband Deutscher Stiftungen*, in its statistics for 2013, recorded a total of 20,150⁶⁷ foundations in Germany. What is immediately obvious from these few examples of self-regulatory initiatives in Germany is therefore their extremely limited take-up of public reporting.

6. Reluctances Surrounding Public Reporting

Other than stating the obvious reason as to why public reporting does not have a dominant presence in the German foundation landscape – it is not legally required – other reasons should also be considered. There is the argument that extensive reporting requires a significant investment of time and money in order to accomplish it – hence, an

⁵⁹ See: <http://martha-maria.de/diakoniewerk-martha-maria/martha-maria-stiftung/selbstverpflichtung.php> (current on 07/10/14)

⁶⁰ See: <http://www.stiftung-persoenlichkeit.de/transparency.html> (current on 07/10/14)

⁶¹ See: <http://www.spendenrat.de/index.php?selbstverpflichtungserkla> (current on 07/10/14)

⁶² See: <http://www.spendenrat.de/index.php?id=38,40,0,0,1,0> (current on 07/10/14)

⁶³ See: <http://www.dzi.de/dzi-institut/german-central-institute-for-social-issues/> (current on 07/10/14)

⁶⁴ See:

http://www.dzi.de/spenderberatung/datenbanksuchmaske/suchergebnisse/seite/1/?typ=mit_siegel&keyword=&bereiche=alle&laender=alle&sitz=alle (current on 07/10/14)

⁶⁵ See:

http://www.dzi.de/spenderberatung/datenbanksuchmaske/suchergebnisse/seite/1/?typ=mit_siegel&keyword=stiftung&bereiche=alle&laender=alle&sitz=alle (current on 07/10/14)

Deutsches Zentralinstitut für soziale Fragen (2012)

⁶⁷ See:

http://www.stiftungen.org/uploads/tx_templavoila/P_05Web_Zoom_VerzDtStift2014_BdZDF_PresseGrafikenAlle.jpg (current on 07/10/14)

increased administrative burden. This, at a time of limited funding, is inevitably not welcomed because it impacts on the material and personnel which is to hand. However, due to the prevalence of an organisation's internet presence, it could be said that this argument has become obsolete⁶⁸. There is an additional concern that by presenting information to the public, a foundation's competitiveness and security could be compromised and elements of confidentiality could be breached. This argument is likewise raised in EFC's study: "arguments in favour of transparency and accountability are subject to constraints imposed by the need for confidentiality regarding certain types of information that are usually protected under national laws, such as privacy of donors, funders and beneficiaries as well as trade secrets, patents etc."⁶⁹

7. Benefits of Public Reporting - Making a case for 'it'

The reluctances surrounding public reporting, as given above, can be seen as valid points but somehow miss the broader picture of what public reporting is all about and what advantages it brings, not only for the foundation directly, but for the non-profit sector as a whole.

A foundation owes 'it' to the public

The *Bundesverband Deutscher Stiftungen*, in its Guiding Principles of Good Practice for Foundations (*Grundsätze Guter Stiftungspraxis*⁷⁰), states that the mandate for transparency is one of the Principles' most important propositions: a willingness to present information is a manifestation of the distinct responsibility each charity has towards society.⁷¹ Foundations, in aiming to tackle problems in society and bring about social change, have a duty to account to the public: "the public at large (therefore) has a legitimate interest in obtaining information about foundations."⁷² At the beginning of 2010, the *Bundesverband Deutscher Stiftungen*, with support from *KPMG AG Wirtschaftsprüfungsgesellschaft*, carried out a representative survey into the structure, way of working and organisation of foundations, analysing their management tools and means of operation. At the time of the survey, 79% of the *Bundesverband Deutscher Stiftungen* members and 52% of non-members were aware of the Guiding Principles of Good Practice. Furthermore, 24% of the foundations questioned stated that they implement the Guiding Principles and 12% stated that they have used the Guiding Principles as a basis to create their own guidelines.⁷³

⁶⁸ Compare: Graf Strachwitz, Rupert (2010), pg.21

⁶⁹ European Foundation Centre (2011), pg.10

⁷⁰ Bundesverband Deutscher Stiftungen (2013). Passed by donors and foundations on 11th May 2006

⁷¹ Compare: Bundesverband Deutscher Stiftungen (2013), pg.3

⁷² European Foundation Centre (2011), pg.10

⁷³ Compare: Bundesverband Deutscher Stiftungen (2010), pg.4-5

'It' creates a culture of mutual respect and trust

When providing the public with information on the foundation's financial situation and its affairs ("especially the purpose of the foundation, the attainment of goals for the respective reporting period, funding criteria and information on the members of its bodies"⁷⁴), the Principles of Good Practice highlight that transparency becomes a vehicle for building trust. *Aktive Bürgerschaft* in its *Positionspapier* makes this statement likewise: confidence in charities becomes long-term.⁷⁵

'It' justifies foundations' exemptions from tax

"In exchange for tax benefits, the state (including tax payers), expects a foundation to undergo more detailed accountability requirements to show that it supports the general public interest. In short, governments give up part of their tax income because public-benefit foundations benefit the whole community."⁷⁶

*'It' demonstrates an "enlightened self-interest"*⁷⁷

"Many foundations believe that there is an internally driven, ethical obligation to undergo such regulation, stemming from their mission as public-benefit foundations. Transparency and accountability are therefore considered essential parts of sound management practice."⁷⁸

'It' strengthens a foundation's profile

This, in turn, can strengthen a foundation's profile and thereby impact on a donor's decision to donate in the future or even a volunteer's decision to volunteer in the future. Ultimately, this open communication with beneficiaries, donors or other stakeholders can have lasting effects on the foundation's operation well into the future. Professor Paul Palmer, in *Impact Reporting in the UK Charity Sector*, says that: "funders, whether they be Charitable Foundations, Companies or Philanthropists, have a keen interest in how effectively their 'investment' has been spent. Charities that are able to competently document and communicate their stewardship will be far more effective in retaining and raising funds than those who do not."⁷⁹

'It' benefits the sector as a whole

It only takes one foundation to demonstrate poor transparency and the reputation of all foundations can be seriously endangered. It is therefore in each foundation's interest to

⁷⁴ Bundesverband Deutscher Stiftungen (2006), pg.3

⁷⁵ Compare: *Aktive Bürgerschaft* (2012), pg.4

⁷⁶ European Foundation Centre (2011), pg.10

⁷⁷ European Foundation Centre (2011), pg.10

⁷⁸ European Foundation Centre (2011), pg.10

⁷⁹ Breckell/Harrison/Robert (2011), pg.2

have an obligation towards all other foundations in prompting them to be transparent. Only then can the sector hope to eradicate isolated examples of misconduct. Interestingly however, according to Strachwitz, reasons for pushing for more transparency are not, first and foremost, related to a general suspicion of corruption and therefore the avoidance of it, but related far more to ethical principles of a good civil society, as well as democratically-based theoretical arguments.⁸⁰

In making a case for public reporting with the reasons stated above, it should also be stated however that truly effective public reporting must find the perfect balance between an authentic and yet protected presentation of information. A report must be representative of exactly what has happened and how it has happened (in terms of financial flow), but at the same time needs to adequately protect the foundation from undue or unwarranted insights into its workings, as well as the privacy of its donors.⁸¹

Finally, our non-profit sector needs to look beyond seeing annual reports as mere regulatory documents to be submitted and later filed away. Annual reports need to be seen as documents readily available to the public. They should be documents which can be enhanced by a range of other documents, including annual reviews and impact reports. Only then, will best practice in reporting shift from clarity about finances to clarity about impact.

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⁸⁰ Compare: Graf Strachwitz, Rupert (2010), pg.4

⁸¹ Compare: Graf Strachwitz, Rupert (2010), pg.6; and Social Reporting Standard (2011), pg.5

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