

MAECENATA

OBSERVATORIUM

ANALYSES, POSITIONS AND DISCOURSES ON CIVIL SOCIETY, CIVIC ENGAGEMENT AND PHILANTHROPY

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Transnational Giving*by Rupert Strachwitz*

I. Going Global

On June 15, 2015, the Washington, D.C., based Center for Global Prosperity, a research affiliate of the conservative policy think tank Hudson Institute, released an „Index of Philanthropic Freedom¹, drawn up to provide „a detailed analysis of the legal barriers and incentives to philanthropy in both developed and developing countries². Local experts from 64 countries contributed to the study, which includes country-specific reports, trends, and policy recommendations. One of the categories used to establish the relative position of the countries included in the survey, was a cross-border score, based on two out of seven questions asked. These questions were:

- (6) To what extent is the legal regulatory environment favorable to receiving cross-border donations?
- (7) To what extent is the legal regulatory environment favorable to sending cross-border donations?

Asked to score the situation between one and five, with one representing an environment that impedes philanthropic activities, and five representing an environment that supports them, the experts produced a very diverse picture. While the Netherlands got a 5.0 score, ranking first, Saudi-Arabia, ranking last, only reached 1.5. Interestingly, while European and North American countries tended to score better than others, the survey also showed that there

was no direct relationship between scores and per capita GDP. E.g., Poland (approx. 15,000 US\$ p.a.) scores higher on sending donations across borders than does the United Kingdom (40,000 US\$).

Beyond these numbers, what the survey tells us is that international, cross-border philanthropy has become part of the overall philanthropic scene, which in turn has gained in importance. This is hardly surprising. In an age where any news item, including of course major natural and man-made disasters, protest movements and the violation of human rights, spreads around the globe in almost real time, when more and more citizens have first-hand experience of travelling and even living outside their own country, empathy and compassion, followed by the urge to do something, can obviously no longer remain restricted to the local community. And even if they were, what is their community, considering more and more people build a life for themselves far away from where they were born and join self-chosen communities rather than remain attached to the ones they grew up in? Besides, voluntary action has become a common feature and indeed a decisive force in shaping social change, policy, and governance to an extent unheard of even a generation ago. A citizen's reputation today depends quite largely on the scope and goals of his and her civic engagement, be that in time, ideas, or funds. It may well be that the events in Central and Eastern Europe as much as in other parts of the world from the 1980s created more awareness for what may be achieved when citizens unite and take action. Equally, more insight into practices that emphasize every human being's obligation to put aside part of one's



wealth for charitable purposes (as is common in the Muslim tradition), may well have induced others to revisit the notion of the welfare state that purported to care for all the citizen's needs while in fact being less and less able to live up to its obligations. Finally, disenchantment with the performance of the state has certainly done more to empower civil society than any government programme. In short, philanthropy and giving, and civil society have gained momentum and gone global, and it seems high time to live up to this simple fact. More and more donors are ready to do so.

II. Remaining National

In practice, matters are not so easy. As the Hudson Institute survey shows us, enormous differences exist when it comes to whether donations across national borders are legal, technically possible, and tax deductible. A growing number of governments, Russia being a case in point, are successfully trying to clamp down on any foreign donations coming into the country. The reason given for doing so commonly has to do with foreign agents, suspected of supporting local initiatives set on causing trouble to the government. Frankly, this is exactly what civil society on occasion actually does and should do; an open society however should not just bear this out, but actively encourage citizens' involvement in shaping policy and bringing about social change, recognizing the fact, that in the 21st century, society as such has become global, as has the economy, and as have the issues and challenges we are urgently called upon to deal with, while any new governance model put forward will draw heavily on civil society and voluntary action.

National governments however, seem to live in a different age. They still see themselves in the driver's seat and believe they are able to suppress what they don't approve of and act as they see fit, more often than not to preserve their own power structure rather than pursue the happiness of the people. They have not realized their life-span is approaching its end and continue to harrass the citizens with a plethora of petty regulations and obstacles. Even within the European Union whose members for better or worse agreed many years ago to encourage a

free flow of capital as much as of goods and services, there are in fact only few countries that grant philanthropists full „philanthropic freedom“. Affirmative European court rulings have had virtually no effect, as national revenue services have always managed to invent some new administrative hurdle to circumvent them. Based on the dated notion that charitable giving which carries a tax benefit to the donor and a loss of tax income to the state should benefit his or her national compatriots exclusively, they look askance at any donation to a charity abroad.

In recent years it has evolved that some of these hurdles may have to do with an obscure supranational body called FATF, short for Financial Action Task Force, set up to fight money laundering and terrorism, that has been busy making recommendations to the effect that non-governmental organisations are prime suspects on both counts and needed to be closely watched. As a result, reporting requirements have been stepped up. To give one example, German law requires any donation or grant to a beneficiary abroad that exceeds 10,000 Euro to be reported to the Central Bank (*Bundesbank*). Also, for any out-of-country activity of a charity to be approved, it should concur with the interests of the Federal Republic. What these interests are, is left to the local tax authority to decide. Whether, for example, they might not like a charity advocating the cause of Tibet for fear of harming the government's good relations with China, remains an open question and will only come up for scrutiny when the charity files its tri-annual report.

28 comprehensive country profiles, commissioned by the Transnational Giving Europe network (TGE)³, give a vivid impression of the differences between individual national rules while showing universal suspicion of non-governmental organisations in general and foreign ones in particular. They provide an update on the legal and fiscal developments and deal with the legal and fiscal aspects involved in each transaction (gift or inheritance taxes to be paid, possible relief or exemptions, bilateral tax treaties, alternative solutions, etc.). They also help one understand the complexity of the issue. Re-

alized in partnership with the European Foundation Centre, the profiles provide input to the advocacy initiatives supporting a more favourable environment.

III. Overcoming the Impasse

Quite clearly, and as usual, even against this backdrop, civil society remains ahead of the curve. Since the 1950s, when donating money to charities abroad first became popular, some large organisations that wished to fundraise abroad, have set up subsidiaries in each country they considered worth while. More often than not they prove to be a mixed blessing to the original charity. Cumbersome legal procedures, battling administrative regulations in different legal environments – and indeed different languages, looking after members and attracting new ones, safeguarding the endowment and streamlining governance and administrative expenses to make the whole effort worth while, has in many cases been a considerable burden. Others, Church affiliated charities in particular, have made use of existing partners to channel funds from one country to the next. But with reporting standards rising at least as quickly as the level of donations, these partners have begun to shy away from accepting an intermediary role. Some charities, when fundraising abroad, simply tell donors they would not be able to deduct their donation and get away with it. Others have simply subjected their donors to a trial and error process; occasionally, this has actually worked in their favour. In a very few countries, notably The Netherlands, foreign receipts from EU member countries are universally accepted as deductible; and in a few others, Finland for one, donations are never tax deductible anyway so it does not matter whether the beneficiary is domestic or foreign.

Obviously, none of this is very satisfactory. Civil society has lobbied for a pan-European regulation, but to no avail. Even the minimal remainder of the proposed European Foundation Statute was turned down by the European Council in November of 2014. For years to come, European citizens will have to live with the fact that direct giving to charities outside their home country is difficult, and with few exceptions, cannot be handled in a direct way.

When four major European foundations set up the TGE network⁴ in 1999, they hoped this would only have to last for a period of transition. But to date, the number of members has grown to 18, with one exception one per country, and several more are waiting to be admitted. The Brussels based and very well connected King Baudouin Foundation continues to act as permanent coordinator. The network's prime aim is service provision. Donors may make an earmarked donation to the partner at home who will furnish them with all that is necessary to ensure tax deductability. Before this happens, however, the ultimate beneficiary undergoes a due diligence process to make sure it complies with international standards of a charity. These will include a formal deed or statute, non-distribution requirements, a track record of compliance, transparency in regard to major stakeholders and a finality clause. The partners' services thus far exceed the actual transaction. Following the transmittal of the donation, the TGE member in the beneficiary's country will also need to help procure the necessary reporting documents.

While at the beginning, many donors, corporate donors in particular, remained (unnecessarily) sceptical as to the legality of this mechanism, a sharp rise in total transactions in recent years clearly shows that confidence has grown. Besides, the individual partners have been checked out by their respective tax authorities and given the green light to carry on. What in fact they technically do is to receive a donation, and support a charity abroad by way of a grant, thus making use of the fact that – somewhat strangely – making transnational grants is not looked at with so much suspicion as are transnational philanthropic gifts. All of them being established and trustworthy foundations at home (like the Charities Aid Foundation in the UK, the Fondation de France, the Oranje Fonds in the Netherlands, and even the considerably smaller Maecenata Foundation in Germany) makes it easier for the partners to persuade their governments that they may well be uncomfortable advocates of causes in society, but neither money launderers nor terrorists.

While the network was originally set up to help within the European Union, it now has

members in other countries, notably Switzerland, which accounted for the largest share in sending funds out of the country in 2014. Furthermore, donations to countries with no network partner are becoming increasingly important. This means that not only will the period originally envisaged for the network to perform be much longer than anticipated; the know-how and experience accumulated over 15 years now serves a world-wide community of donors and beneficiaries, notwithstanding the fact that donations outside the network are still more cumbersome to handle. To obtain adequate reporting that will satisfy the local tax official, in a language he can understand, without the help of a partner on the spot, can be quite a task. But with very few exceptions, this has never deterred either the donors or the intermediaries from doing what they feel is their contribution towards changing society.

Interestingly, the United Kingdom is particularly strong in receiving philanthropic gifts from abroad. The reason for this is the large number of foreigners attending UK schools and universities and the very advanced methods of fundraising used on them once they have become alumni. Besides, many US universities have registered subsidiaries in the UK through which they channel all their donations from Europe. On the other hand, both the UK and the Belgian TGE partners have subsidiaries in the US, registered as tax-exempt (501 (c) (3)) organisations, and may transfer US donations to all the network partners and ultimately their beneficiaries. Important beneficiaries include various UN organisations, notably the World Food Programme, to which even quite small donations may be channelled through TGE. Major corporate donors use the network for their international giving programmes, while wealthy individuals may support a very particular cause in a country they have spent time in or have other ties to. The largest ever single donation from an individual made with the help of two network partners amounted to over 8.4 million Euro.

Strangely, governments are taking an interest in the network as potential beneficiaries, too. And recently, even foundations not affected by the tax issue at all have sought assistance from TGE partners to help them with their international grants. Since the 28 profiles and an overview of transnational giving in Europe were published in 2014⁵, the network partners are increasingly in demand for sharing their know-how with philanthropists, consultants, philanthropic intermediaries, and potential beneficiaries, as well as EU and national government agencies, corporations and members of the press.

IV. The Way Ahead

Together with others, the foundations involved in TGE have been actively advocating improvements for many years. Today, they not only provide a service tailor-made for philanthropists to overcome the many restrictions and doubts that arise when wishing to act globally in their philanthropy as they are accustomed to do in their private and business lives. With the European Foundation Centre they will continue lobbying for the broader view they feel law makers and public administrators should take. As before, they will argue that philanthropy is a major asset for development, social change, improving people's lives, and good governance, and not a liability to be fought under pretences of money-laundering or suspected terrorism. In the meantime, donors should make use of all legal ways to extend their philanthropy to causes outside their immediate neighbourhood. Yes, we all know that charity begins at home. But what is home in the age of web 4.0?

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¹<https://s3.amazonaws.com/media.hudson.org/files/publications/2015.06.15IndexofPhilanthropicFreedom2015.pdf>

²<http://www.hudson.org/research/11368-hudson-institute-releases-index-of-philanthropic-freedom>

³<http://www.transnationalgiving.eu/tge/details.aspx?id=219942&LangType=1033>

⁴ see <http://www.transnationalgiving.eu> for details

⁵ For the profiles: see above; for the overview (published in print and electronically), see: http://efc.is-suelab.org/resource/taxation_of_cross_border_philanthropy