

**ANNEX** to open letter to Presidents of the EU institutions

## **POLICY RECOMMENDATIONS**

**to enable philanthropy to respond effectively to COVID-19 crisis**

**Brussels, 8 April 2020**

DAFNE and the EFC, representing more than 10.000 donors and foundations, recognise that the COVID-19 outbreak is an exceptional crisis that will have an unprecedented impact on our society, which requires joint efforts of many actors, including philanthropy. At times like these, philanthropic organisations are a crucial partner in responding to the needs of the most vulnerable segments of our society, both within and across borders.

We are worried that national policymakers are closing borders in Europe at a time when we need actors and solutions that bridge our societies in a spirit of solidarity and the promotion of the European idea. Philanthropic organisations want to give and run their operations in the most effective ways, whether that is domestically or across borders, and they want to collaborate with the partners that will bring the most impact.

**Therefore, we call on you as policymakers to overcome current impediments and provide for an enabling environment for our sector to operate freely, including across borders, at this crucial moment, considering the following:**

### **1. Cross-border philanthropy must be enabled and not discriminated against**

We welcome the President of the European Commission's call for more solidarity across borders around the COVID 19 crisis. Philanthropy is ready to act more across borders, but the fiscal and administrative environment for cross-border philanthropy even within the European Union, is still far from satisfactory. While the European Court of Justice (ECJ) recognised the application of the free movement of capital to philanthropic funds along with ensuring that the principle of non-discrimination applies to donors and public benefit organisations in the EU, we are not seeing this in practice yet.

**Policy solution:** EU and national policymakers should remove tax obstacles to cross-border philanthropy. Tax-effective giving and investments should be easy to carry out.

A series of ECJ cases examined the tax treatment of public-benefit entities and their donors including:

- Stauffer: C-386/04 Centro di Musicologia Walter Stauffer/Finanzamt München für Körperschaften [2006] ECR I-8203
- Hein-Persche: C-318/07 Hein Persche/Finanzamt Lüdenscheid [2009] ECR I-359
- Missionswerk: C-25/10 Missionswerk Werner Heukelbach eV/Belgien [2011] 2 C.M.L.R. 35.<sup>1</sup>

<sup>1</sup> The impact of the ECJ cases on national level regulation and practices was analysed in the 2014 EFC/TGE commissioned report on taxation of cross-border philanthropy in Europe: <http://efc.issuelab.org/resource/taxation-of-cross-border-philanthropy-in-europe-after-persche-and-stauffer-from-landlock-to-free-movement.html>

Member States are hence under an obligation to treat comparable foreign EU-based philanthropic organisations and their donors in the same way as domestic organisations and their donors, and a series of EU infringement procedures have helped “encourage” Member States’ alignment with the Treaty of the Functioning of the EU in this regard.

However, Member States often provide for very complex rules and procedures to determine under which circumstances Member States consider a foreign EU-based organisation comparable to a resident one.<sup>2</sup> **For cross-border philanthropy and investments the single market freedom of capital does not yet work in practice.**

**Policy solution:** EU and governments must facilitate processes to pool philanthropic funds and to grant/act across borders. To achieve this, own EU legislation/policy could be considered to define in a straightforward way when a foreign-based public-benefit organisation is considered comparable to a local one. The EU could consider developing guidance for the national level via a code of conduct with regard to the tax comparability test. The EU could call on governments to introduce easy and simple processes for the comparability test.

## **2. More private donors could be motivated to give to COVID-19 crisis causes via additional tax incentives**

More donors could be stimulated to create foundations or donate to existing organisations addressing the COVID-19 crisis.

**Policy Solution:** Governments should introduce tax incentives for donors/philanthropy to give/donate to COVID-19 crises actions with the aim of stimulating more private resources for addressing the current challenge. As an example, Italy has envisioned in the Decree “*Cura Italia*” 17<sup>th</sup> March 2020, tax incentives for donations ([link](#)).

**Policy solution:** Alleviating VAT burdens for the sector.

The Spanish philanthropy sector has already called on its government to alleviate VAT burdens since in kind donations are currently taxed at 21% VAT.

## **3. Flexibility on authorities’ side when interpreting the rules: Philanthropic organisations have stated that some of their programmes will be harder to implement and they need to make adjustments to own operations, existing programmes; and enhance collaboration with various stakeholders**

**Policy solution:** Call on tax authorities to be flexible when it comes to submitting tax returns and how money is spent (our members stated that they need to adapt the way they normally operate).

**Policy solution:** Call on foundation supervisory authorities to be flexible when it comes to spending processes in the current year (foundations will need flexible approaches/quick responses/adapt project funding to new needs also general operating support for grantees as needed) and reporting, see for example the UK Charity Commission ([link](#)).

---

<sup>2</sup> European Foundation Centre (EFC) and Transnational Giving Europe (TGE), Taxation of Cross-Border Philanthropy in Europe After Pershce and Stauffer. From landlock to free movement? 2014, <http://efc.issuelab.org/resources/18545/18545.pdf>

**4. Philanthropic organisations have stated that they need to make adjustments to own operations and governance renewals/board elections**

**Policy solution:** Call on governments to introduce measures to enable the non-profit and philanthropy sector to continue its operations and enable effective governance also in the current crisis. Board members should be able to extend their mandate for an interim period as needed. General Assemblies in membership organisations could take place virtually. Some decisions may be taken without a general assembly (this already happened in Germany). In Spain deadlines for submitting accounts to supervising authorities have been extended and it is allowed to have virtual meetings of boards/shareholders/general assemblies.

**5. Philanthropic organizations / non-profits could help distribute public COVID-19 crisis support**

**Policy Solution:** Governments could approach existing philanthropic and non-profit organisations to help administer and distribute support funds (this already happened in UK, see National Emergencies Trust and community foundations ([link](#))).

**6. Philanthropic actors are keen to go for public private partnerships**

**Policy solution:** EU and national policy makers to support the set-up of matching funds at national and European level to leverage pooled funding of foundations across Europe to respond to the emergency situation.

**Example: WHO, UN Foundation & Swiss Philanthropy Foundation:** COVID-19 Solidarity Response Fund ([link](#)) [with support from TGE]; WHO COVID-19 Partners Platform [for people interested in supporting countries directly (as opposed to through the Fund)] ([link](#)).

**7. We welcome all measures taken by the EU and national level that aim to provide assistance to the economy and to lower the pressure on the financial markets across Europe, but we call on the EU and Member States to not only focus on the business sector but to also consider supporting the non-profit sector because the non-profit sector is a key actor in the response to the crisis:**

- Non-profits are significant employers

**Policy Solution:** Any employment-focused relief or stimulus legislation must expressly apply also to employment at tax-exempt organisations.

- Many non-profits are small social businesses – only relatively few non-profits have an endowment

**Policy Solution:** Non-profits must be expressly included in tax, financial and other relief targeted to small businesses.

- Non-profits are on the frontlines of Coronavirus Response: hospitals, community health centres, and senior living communities and other non-profits are responding to the outbreak, such as local Meals on Wheels which are serving their normal community of elderly people and a growing number of individuals under quarantine. The list goes on to include non-profit food banks, shelters, domestic violence services, houses of worship, early care and education

centres, after-school facilities, and more that are being called on to feed, house, and care for people whose lives have been disrupted by closures, job loss, and sickness.

**Policy Solution:** Funds are needed to pay for the increased costs and demand for services arising because our economy and safety net were not built for a pandemic of this magnitude.

- Many non-profits are experiencing declining economic activities such as community engagement and related services. This has resulted in closed productions at concert halls and theatres large and small, educational programming, cancelled fundraising events where many non-profits earn significant income, and diminished attendance at cultural, religious, and community events.

**Policy Solution:** Any economic stimulus proposals aimed at helping adversely affected industries and geographic areas must recognise the impact of the coronavirus crisis on the non-profit sector.

Furthermore, the EU and national support packages should also consider support to non-profit organisations that are encountering financial difficulties because of the crisis (not only SMEs and for-profits).

We also call on the EU and national policy makers to invest in solidarity to overcome the public health, economic and social crisis which includes a strong and ambitious Multiannual Financial Framework MFF and a strong InvestEU programme, which recognises the key role of philanthropy.

8. **We also welcome your call to protect European core values such as democracy, rule of law and fundamental rights** throughout the COVID-19 emergency and its recovery phase. We strongly support your call on EU Member States to not introduce systemic changes that undermine the democratic principles of the EU.

**Policy Solution:** EU and national policymakers should enact a **strong but appropriate government/EU response** to the pandemic. Overcoming the COVID-19 pandemic threat is core to all of us while also protecting our freedoms of association, assembly, expression and participation to the furthest extent possible. We are concerned that some governments are using the COVID-19 crisis to close down democracy, rule of law and fundamental rights (including privacy rights) for the longer term. When declaring COVID-19 emergency measures, states should hence clearly articulate the specific threats – both in scope and nature – that the emergency is intended to address. Restrictions should be tailored and limitations on rights and freedoms must be necessary and proportionate. All people in the society should be informed about the measures and understand the reasons for their adoption and be able to comply or challenge them. States should, when possible, adopt short-term, renewable measures. They should always respect principles of legality and the rule of law. The ICNL/ECNL checklist on what governments could do to cross-check their own actions is available here: <http://ecnl.org/keeping-civic-space-healthy-saving-lives-and-human-rights/>.

We trust that you will consider supporting the efforts of philanthropy and the wider non-profit sector so that we can continue our vital work of addressing the current COVID-19 challenge.