

## Governance and accountability – Foundations respond to a new environment

**Governance and accountability are hot topics in the foundation sector. Why is this so? How is this affecting foundations? What are some of the key issues involved? And what are foundations doing about it?**

Foundation leaders and practitioners from Europe and the US came together on these issues during two sessions at the June 2007 EFC annual conference held in Madrid, Spain. These meetings followed the release in spring 2007 of the Principles of Accountability for International Philanthropy, published by the EFC and the US Council on Foundations (COF), and the publication in late 2006 of the updated EFC Principles of Good Practice.

The growing concern with governance and accountability in the foundation sector was in evidence during the two conference sessions in June. Both Rien van Gendt of the Van Leer Group Foundation and Maureen Smyth of the Charles Stewart Mott Foundation highlighted the spillover effect from the corporate world. As scandals embroiled major corporations, such as Enron and WorldCom, new regulatory mechanisms were adopted in response, among them the 2002 Sarbanes-Oxley Act in the US and the 2003 Tabaksblat Code in the Netherlands.

According to van Gendt, "Following the corporate world, it did not take long before foundations and public charities came under a similar kind of scrutiny". Smyth echoed this: "New regulations in the US resulted in major operational changes for the corporate sector and it's no secret that these requirements and expectations are spilling over to the non-profit sector".

But it is more than just a spillover effect. Within the foundation world itself, scandals involving excessive pay packages, use of grants for personal purposes, and self-dealing, as well

as payouts deemed too small, have contributed to growing public distrust of foundations and philanthropy. So, the spotlight is now on institutional governance generally, regardless of the type of organisation.

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-Rayna Gavrilova, the Trust for Civil Society in Central and Eastern Europe

Increased scrutiny of foundations is also a result of the tremendous growth of the sector, especially in the US, but elsewhere, too. Alongside this growth, the sector has been calling for more favourable legislation, particularly in the fiscal area, to encourage and sustain philanthropic activity, but lawmakers have demanded a quid pro quo, i.e. greater regulation and accountability. Rayna Gavrilova of the Trust for Civil Society in Central and Eastern Europe pointed out that "the third sector, foundations and civil society organisations are more and more engaged in public-private partnerships, spending public money, and so issues of accountability, transparency and responsiveness are becoming stronger and stronger."

### **The 9/11 factor**

And then, of course, there is another external factor that has led to more stringent accountability rules and

guidelines – September 11th. "Because of the shifts that have happened post-9/11, there's a scrutiny on philanthropy that is unique and is increasing," observed Astrid Bonfield of The Diana, Princess of Wales Memorial Fund.

The more stringent legal requirements in the wake of 9/11, plus the rapid globalisation of company operations and a resultant increase in international corporate giving, have led many US corporations to turn to intermediaries. These intermediaries can be either expert operating NGOs with broad or focused international activities, such as the Red Cross or CARE, or donor-advised funds, such as the King Baudouin Foundation-US and United Way International.

In van Gendt's opinion, regulations adopted post-9/11 or post-scandal were often drafted quickly, as a form of crisis management, and without a good understanding of the foundation sector, which sometimes meant a "one size fits all" approach. Compliance with these regulations has sometimes become more important than performance, leading to risk aversion and a reluctance to engage in international work. On the other hand, regulations can also force foundations to be more professional and increase their efficiency and effectiveness, while generally creating a level playing field for the sector.

Piero Gastaldo of the Compagnia di San Paolo called foundations "very strange animals". Unlike corporations, they have no shareholders, consumers, or markets. And unlike democratic governments, they have no voters or elections. "Foundations simply do not match the

standards of...accountability embodied in...democracy...and markets," he said. But Western societies have sources of legitimacy other than these two, and so Gastaldo placed foundations in a "third sphere of life". What foundations do have are stakeholders. These include governments, boards, grantees, beneficiaries, and the general public.

### Voluntary accountability

But accountability is not simply of the enforceable variety, i.e. compliance with laws, executive orders, and fiduciary regulations. There is also the unenforceable, voluntary kind as embodied in codes of good practice that set out guidelines for effective governance and responsible behaviour. While EFC members are expected to adhere to the Centre's Principles of Good Practice, they cannot be enforced for all foundations, although some of the Principles do refer to the need for legal compliance. The EFC-COF Principles of Accountability for International Philanthropy, however, are consciously focused on unenforceable accountability, with their drafters viewing legal and fiduciary compliance as "givens". In the wake of 9/11 and various scandals, public authorities



**Cornelia Higginson, formerly of the American Express Foundation, member of the joint EFC-COF Working Group on the Principles of Accountability for International Philanthropy**

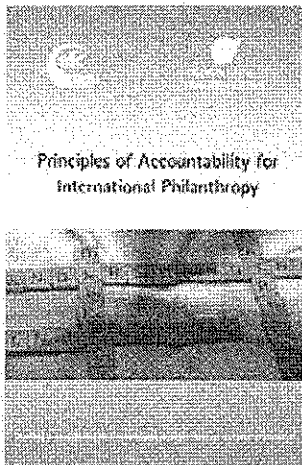
have issued new regulations, but also voluntary guidelines, such as the US Treasury Department guidelines and the EU recommendations on NGO transparency. The fact is that both regulation and self-regulation are necessary, with a proper balance between them.

The Principles of Accountability "are not about the regulations surrounding our grantmaking...[but] about our grantmaking itself and how we do it", said Cornelia Higginson, formerly of American Express, who spoke at the conference and who was a member of the Working Group that drafted

the document. "They are about the ethical and the moral dimensions... they are about the good manners of grantmaking and in fact, they are about how we need to act in order for our grantmaking to be effective." And they apply not only to international but to domestic programmes as well. Referring to the growing importance of intermediaries, who will often do the due diligence work themselves, Higginson said that "the Principles...must guide not only our direct grantmaking...but also must be passed down through the chain of the intermediaries who assist us..."

Higginson believed that "using these Principles will vastly humanise our grantmaking." She stressed, for example, that grantees should not be treated as supplicants. In a similar vein, Smyth urged foundations to make their relationships with their grantees "as equitable as possible" and argued that "today's environment demands a deep-seated sense of accountability to both the public and grantees."

*Nyegosh Dube, EFC*



**EFC-COF Principles of Accountability for International Philanthropy, published in 2007**

## Principles of Accountability for International Philanthropy

The EFC and the US Council on Foundations (COF) Principles of Accountability for International Philanthropy are voluntary and aspirational, and aim to guide and support funders in making better decisions in pursuing their international missions and objectives, and to provide a framework that will encourage and assist more foundations to get involved internationally.

The Principles are the result of a two-year collaborative effort of a 14-member EFC-COF working group, comprising foundations and corporate donors of varying philanthropic styles, experience, traditions, asset and expenditure bases, programmatic interests and geographic areas of activity.

The document encompasses seven concise Principles based on an identified set of core values that foundations should aspire to embrace. They address integrity; understanding; respect; responsiveness; fairness; cooperation and collaboration; and effectiveness.

**For more information and to download a copy, go to: [www.efc.be/accountability](http://www.efc.be/accountability)**