Foundations and Cross-Border Giving

Foundations and their donors face different legal and fiscal barriers at their respective national levels when acting across borders:

- Most countries allow the creation of a foundation that is active abroad as well as cross-border activities, but the foundation might not qualify for tax privileges.
- Tax privileges are usually denied to foreign foundations established in other countries.
- Almost all EU countries refuse tax deductibility for donations made to foreign foundations.

Possible solutions:

- **Possible national-level measures**: EU Member States should review their national laws and establish the same tax incentives for donors when donating to a foreign foundation; and ensure equal treatment for both foreign and national foundations. Some national tax laws are seen to be in conflict with the EC Treaty and are currently reviewed either by the European Commission or the European Court of Justice.

- **National developments could be supported by bilateral agreements**: So far, the effects of bilateral agreements have been disappointing. Very few treaties address the issue of cross-border giving.

- **Possible EU-level measures**: Developing a European-level framework for foundations, a European foundation statute, which could be an additional and optional European instrument for foundations to carry out their work in several EU countries. The European Commission stated in its Action Plan for Company Law and Corporate Governance of May 2003 that it intends to review the feasibility of a European statute for foundations by no later than 2006.

- **Private agreements**: By private agreements, it is possible to identify qualifying partners in other countries to work with in order to facilitate cross-border giving. One good example is the Transnational Giving Europe Agreement between the Charities Aid Foundation (UK), the Fondation de France (France), Oranje Fonds (The Netherlands), and the King Baudouin Foundation in Belgium (KBF) and Maecenata International (Germany). The agreement has identified qualifying partners in other countries with whom to work to facilitate cross-border giving and to channel funds in a tax effective way. For more information, please check the website of KBF [http://www.kbs-frb.be/code/page.cfm?id_page=125&id=584](http://www.kbs-frb.be/code/page.cfm?id_page=125&id=584)

**Action of the European Foundation Centre and its members:**

The European Foundation Centre (EFC) membership driven European Union Committee and its Legal and Tax Task Forces have since 2001 worked on enhancing the operating legal and fiscal environment for foundations in Europe through the following actions:
Legal and fiscal country profiles
The work of the Legal Task Force and the Tax Task Force began with a review of foundations’ operating frameworks across the EU, and with the publication of country profiles of the legal and fiscal environments in which foundations operate in the different Member States. Comparative charts of the legal frameworks for foundations and their donors in 15 EU Member States were developed, which provide a useful and user-friendly overview of the main differences and commonalities in legislation. The country profiles are available at http://www.efc.be/projects/eu/legal/country_profiles.asp

From EFC Fundamental Legal & fiscal principles to the EFC Model Law
The information provided by the country profiles and comparative charts helped to identify good legal rules and practices for public benefit foundations and was the basis for the EFC’s so-called Fundamental Legal and Fiscal Principles. In 2003, these Fundamental Legal and Fiscal Principles were translated into a Model Law for public benefit foundations. The EFC Model Law aims to positively influence the development of new foundation laws as well as the revision of existing foundation laws at national level. The EFC urges national legislators to treat domestic and foreign organisations equally with regard to gift and inheritance tax as well as income tax. Donors should receive tax incentives when giving to a national and a foreign organisation. - The Model Law is available at http://www.efc.be/projects/eu/legal/model_statute.asp

EFC proposal for a European Statute for Foundation
The need for a European legal instrument designed for foundations is increasing in an enlarged Europe. The number of foundations and funders that want to develop transnational cooperation or have engaged in cross-border activity has grown over the last decade. An increasing number of individuals and other private funders have activities and assets in several EU Member States. A European Foundation Statute will offer them an appropriate legal tool to perform and increase their work and operations across Europe.

EFC recommendations on a European Statute for foundations, which were developed as of 2003 and finalised in the beginning of 2005 aim to provide a new optional European legal tool for the increasing number of foundations that want to develop transnational cooperation, as well as individuals and other private funders with activities and assets in various EU Member States, see http://www.efc.be/projects/eu/legal/european_statute.asp.

Cross-border Giving Database by the King Baudouin Foundation (KBF)
The Cross-Border Giving Online Database of the King Baudouin Foundation, which was launched in Autumn 2004 aims to provide information about the national legal and fiscal treatment of cross-border gifts, donations and legacies, and serve as an information tool for donors, intermediaries and beneficiaries about the best options and solutions for cross-border giving. The database is accessible at: www.givingineurope.org
The database understands itself as an initial resource in the cross-border giving process. It provides guidance on the considerations that should be taken into account when structuring cross-border philanthropy in an optimal way for both the donor and beneficiary.