

Philanthropy Advocacy 2021

Case study at June 21nd 2021 event organised by the Polish
Donor Forum – presented by **Hanna Surmatz**

Relevance: challenges to the space of philanthropy

- You want to be active in another country but you have to register a branch before you do it
- You want to move from Poland to Germany, you wind up
- You want to get a tax incentive as a German donor giving to a Dutch entity?
- You need to report on every donation beyond 100 Euros
- You have to register as a foreign funded organisation when you receive a donation from abroad and state that in all communications
- You are engaging around climate change and you loose your tax exempt status because your purpose is considered too political
- You cannot open a bank account - you cannot transefer a grant to Syria

Philanthropy Advocacy joint Dafne and EFC initiative

- speaks on behalf of more than 10.000 public benefit foundations across Europe
- is governed by the **Advocacy Working Group**, mandated by the Dafne and EFC Boards
- is guided by the technical **Legal Affairs Committee (LAC)**
- **Its main objective:** promote an enabling operating environment for **philanthropy** at the national, European and international level by implementing the roadmap for a **Single Market for Public Good**.

PA Legal Affairs Committee (LAC)



Ludwig Forrest
King Baudouin Foundation
**Co-Chair Legal Affairs
Committee**



Isabel Peñalosa
Spanish Association of
Foundations (AEF)
**Co-Chair Legal Affairs
Committee**

32
LAC members

25
countries

23
NArepresentatives

9
Foundation
representatives

1. Monitoring, analysis, expertise and outputs

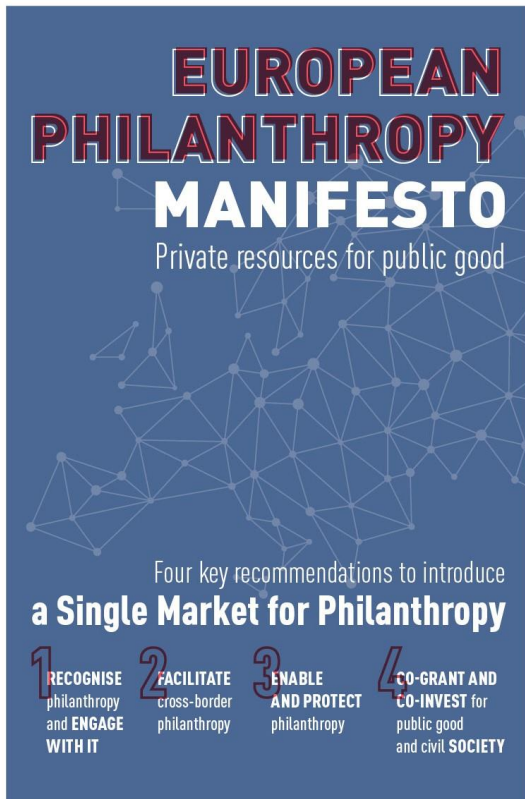
A. European weekly monitoring

B. National mapping and monitoring

- Individual **country profiles and updates** drafted by national experts
- **Comparative highlights** based on the country profiles
- **Analysis and links with academics/events/articles**

C. Bi-monthly newsletter on EU and national legal issues

D. Philanthropy4good communications campaign



Implement the Manifesto with 4 Key recommendations:

Recognise and engage with philanthropy

Facilitate cross-border philanthropy

Enable and protect philanthropy

Co-grant and co-invest for public good and civil society

“How to ease tax effective cross-border philanthropy within the European Union?”

Case study

1. Show relevance of the sector!

2 cases for cross-border philanthropy action:

Cross-border philanthropy growing (TGE data/giving)

- Citizens increasingly mobile
- Issues do not have borders

Institutional Philanthropy invests across borders (data)

Diversified portfolio managements includes cross-border asset allocation? Foreign withholding tax!

2. Analyse the problem

Involve experts to analyse the problem and illustrate it:

EU law requires application of the fundamental treaty freedom of the free flow of capital and non-discrimination in taxation of cross-border philanthropy of comparable scenarios:

Laws are not yet in line and even where they are discrimination remains!

Non-discrimination rule in ECJ cases

STAUFFER CASE (ECJ C-386/04)

TAX EXEMPTIONS FOR FOREIGN ORGANISATIONS



THE CENTRO DI MUSICOLOGIA WALTER STAUFFER IS A FOUNDATION BASED IN ITALY

THAT GIVES SCHOLARSHIPS TO SWISS MUSIC STUDENTS.



THE FOUNDATION HAD RENTAL INCOME FROM GERMAN REAL ESTATE THAT IT OWNED.

NORMALLY SUCH INCOME IS TAX-EXEMPT IN GERMANY, BUT IN THIS CASE, THE TAX REDUCTION WAS REJECTED.



TAX AUTHORITY: GERMAN TAX EXEMPTION IS ONLY GRANTED IF INCOME IS GENERATED BY A GERMAN RESIDENT ORGANISATION.

ECJ RULED: GERMAN CORPORATE INCOME TAX LAW DISCRIMINATES AND IS IN CONFLICT WITH EU LAW.

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PERSCHE CASE (ECJ C-318/07)

TAX INCENTIVES FOR DONORS



A GERMAN DONOR, MR. PERSCHE GAVE AN IN-KIND DONATION TO A PORTUGUESE CARE HOME.



→ BEDCLOTHES
→ OTHER EQUIPMENT



IN GERMANY, SUCH DONATIONS BY INDIVIDUAL DONORS ARE TAX DEDUCTIBLE.



HOWEVER, MR. PERSCHE'S TAX DEDUCTION GOT REJECTED.

TAX AUTHORITY: ONLY DONATIONS MADE TO GERMAN RESIDENT ORGANISATIONS ARE DEDUCTIBLE FOR GERMAN TAXPAYERS.

ECJ RULED: GERMAN INCOME TAX LAW DISCRIMINATES AND IS IN CONFLICT WITH EU LAW.

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MISSIONSWERK CASE (ECJ C-25/10)

GIFT AND INHERITANCE TAX



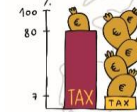
WILL I give all my money to Missionswerk.

BEFORE BELGIAN RESIDENT MADAME RENARDIE DIED, SHE NOMINATED MISSIONSWERK AS HER RESIDUARY LEGATEE.



THE BELGIAN TAX AUTHORITY IMPOSED AN 80% TAX RATE ON THE LEGACY, BECAUSE MADAME RENARDIE HAD NEVER LIVED OR WORKED IN GERMANY.

PUBLIC BENEFIT ORGANISATION REGISTERED IN GERMANY WITH NO CENTRE OF ACTIVITIES IN BELGIUM.



THE TAX RATE WOULD OTHERWISE HAVE BEEN 7%.

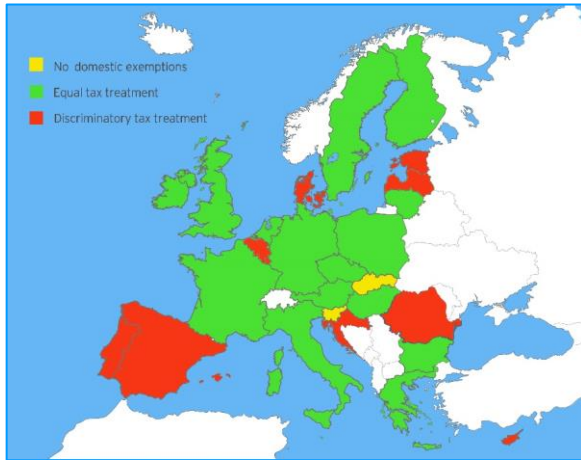
TAX AUTHORITY: UNDER BELGIAN LAW, ONLY LEGACIES TO ORGANISATIONS WHICH HAVE THEIR CENTRE OF ACTIVITIES IN BELGIUM OR IN A MEMBER STATE WHERE THE TESTATOR HAD LIVED OR WORKED BENEFIT FROM A LOWER TAX RATE.

ECJ RULED: BELGIAN GIFT AND INHERITANCE TAX LAW DISCRIMINATES AND IS IN CONFLICT WITH EU LAW.

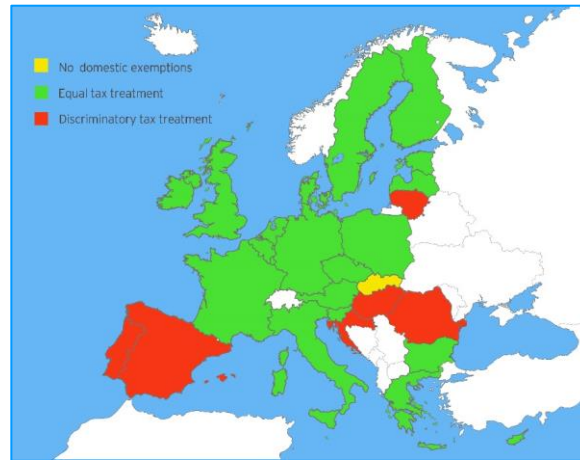
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Key findings 2015 – a mixed picture

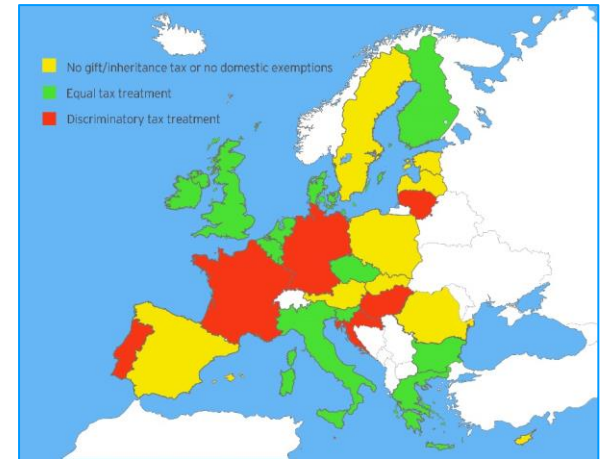
Stauffer: non-compliance 9 countries



Persche: non-compliance 6 countries



Missionswerk: non-compliance 6 countries

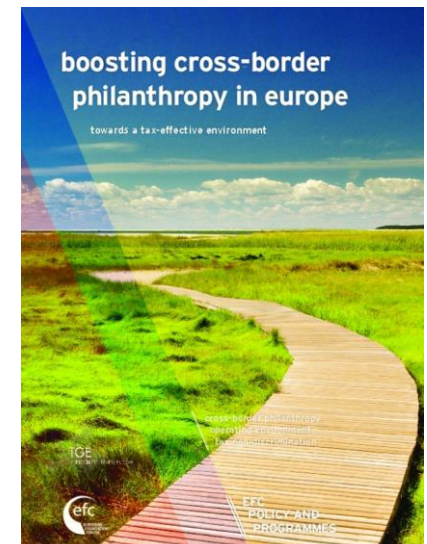


Key findings 2020 (updated mapping with 27 national experts)

- Still not all EU Member States comply with EU law (Denmark/Spain/Germany? Infringement procedures and court cases)
- Divergent approaches to comparability test and no legal security / discrimination in practice
 - Different type of evidence/documents required
 - Different authorities responsible (national level, local level)
 - Wide discretion by authorities
 - Recognition may be awarded on case by case basis
 - Administrative costs and barriers (translation, notarization etc.)

3. Develop a solution

- Multilateral treaty? Bilateral treaties? Change OECD Model Tax treaties?
- EU level action – Directive/non-binding code of conduct?
- Recommendations to EU Member States:
 - Automatic comparability?
 - Simple/transparent procedures?
 - A functional approach for comparability test?
- Soft law approaches/model statutes?
- Improve information sharing tools



4. Develop an advocacy strategy

AT EU LEVEL

- Idea presented towards DG Tax 2019/2020
- Idea discussed with MEPs – champions 2020/2021
- Idea presented in Social Economy Action Plan 2021
- EC Expert group on Social Economy - expertise

- Communications Plan – be clear and simple&illustrate
- Engagement Strategy with policy makers & key partners
- EU level / national level

AT NATIONAL LEVEL (ongoing)

5. Assist national level CSOs

Case of Hungarian foreign funding restrictions: USE OF EU LAW

Assist members and CSOs on how to use EU law to defend civil society/philanthropy space:

- ECNL/PA (Dafne&EFC) Handbook (2020):
<https://ecnl.org/sites/default/files/files/EU-Law-Handbook.pdf>
- Joint ECNL/PA (Dafne&EFC) webinar to train the sector

Thank you for your attention!
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