

ABSTRACT

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A proposal of a legal or voluntary status of the donors and collaborators of the foundations

An element of good governance usually forgotten

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Abstract:

A foundation is an asset-based and purpose-driven entity. Although a foundation has founders and they receive a special treatment, normally it is necessary or convenient for foundations to have subsequent donors and collaborators in order to achieve their purposes. So at least in theory, there is a lack of control in the governance of the foundations in comparison with other types of entities which have members. Therefore, it is important to analyze the treatment of the donors and collaborators of the foundations. We may distinguish between three main types of foundations: corporate foundations, independent foundations and community foundations. In the latter two cases, it is especially convenient to take into account this aspect of the foundations, because the independent and the community foundations could generally have greater difficulties to finance and to do their activities than corporate foundations. Although in corporate foundations, the problem of financing and realizing their activities and purposes is minor than in other types of foundations, it could be important for corporate foundations to get specially collaborators in order to achieve their purposes and in order to gain good reputation. In general, there is a little legal regulation about the donors. Donors usually have only contractual rights. Their contribution can be classified as a gift contract and the gift must be used for the purpose wanted by the donor. But it is convenient to overcome this contractual conception of the position of the donors and grant statutory rights to donors and collaborators. For example, according to the Proposal for European Foundation, the founder and any subsequent donor of a

significant contribution have the right to intervene with the State supervisory authority if the Board of Directors and/or the Supervisory Board fail to comply with their responsibilities. Consequently only if a donor contributes significantly to the foundation, he has a special right to intervene. It is not determined what is significant. And there are no further rights to reinforce this right of intervention. Other donors only have the right to notify the State Supervisory Authority of the facts, that is, regarding the failure of the Boards to comply with their responsibilities. This provision is clearly insufficient to protect the interests of the donors and the interest of the foundation itself. In the case of the collaborators, the situation is worse because there is in general

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