

## EDITORIAL

Dear Readers



Up until recent years, it was the three sector model – comprising the market, the state and the third sector – that served as the leading concept for scientific research of nonprofit organizations.

In the meantime, however, research focus lies on the blurring boundaries between these sectors. New terms such as hybrid organizations, social enterprises, and social investors have surfaced that cannot be clearly allocated to one or the other sector. The new travelers between the sector-worlds face a variety of problems. Adequate legal regulation is missing. Thus, social entrepreneurs are often forced to rethink their structures. In addition, many of the new social businesses are equally dependent on private donors and state subsidies as existing nonprofit organizations.

The classic nonprofits consistently undergo different kinds of transformations. These can be simple adaptations of the organization's logo or far-reaching decisions such as the change from an association to a foundation.

As always, "Philanthropy Aktuell" offers you information on the topic viewed from different perspectives. Enjoy reading our newsletter!

Sincerely

Georg von Schnurbein

## Transformations of NPOs

**The general meaning of transformation is a marked change in appearance, form or structure. Looking at these three levels, change processes can also be increasingly observed in the NPO sector.**

A common saying states that change is the only constant. Nonprofit Organizations modify their public appearance, change their legal forms or adapt their structures to new circumstances. Thus, transformational processes are common and constantly occur in the NPO world.

### Transformation of public appearance

The external communication of an organization influences its public appearance to a large extent. A good example in this respect is the change of design of the logo of the GGG (Gesellschaft für das Gute und Gemeinnützige - Society for the Good and the Public Good) in Basel. The GGG is an association that combines over 90 sub-organizations. Among other activities, the GGG finances and administers city libraries, offers a variety of counselling services for people in need and supports cultural and social institutions. Over the years, many sub-organizations had developed their own logos and identities. The GGG did not have a unified public appearance and it was hard for outsiders to understand which activities were really supported by it. To counter this, the GGG introduced a standard logo in 2010. The sub-organizations can still add its identity in a subheader but generally has to comply with the logo rules of the main office.

### Transformation of form

Until recently, the association, the cooperative and the foundation were the only legal forms available for public beneficial causes that allowed for tax ex-

emption. Today, additional legal forms can be applied. But finding the appropriate legal form to reach the public beneficial goal often turns into a challenge. A lot of thought and consideration needs to go into it. Some decisions are final and cannot be taken back after the organizational change is finalized. Should an association e.g. transform itself into a foundation, the decision is final and cannot be revoked. Alternatively, NPO create new forms of organizations that allow them to pursue activities that they could not implement before.

### Transformation of the structure

The transformation of the structure can be seen as a more mechanical procedure, for example when changes in the organizational chart or on the department level take place. But structures within NPO also change when working methods in general are altered. In this context, tendencies of professionalization within the NPO sector can be observed. These can result from the aim to work more efficiently. The use of methods taken from the business sector is also caused by increasingly demanding requirements NPO have to comply with, e.g. in terms of financial accounting and revision.

Transformations can be triggered by internal developments, changes in the environment or fields of activity. Generally speaking, transformational processes should help to increase the effectiveness in realizing of the organization's objectives.

Steffen Bethmann

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## Transformation from association to foundation

**The transformation of an association to a foundation can have advantages. However, former members of the association lose much of their influence. Many aspects need to be considered.**

Associations more and more frequently transform into foundations. To name some examples of new foundations created in such a way: the foundation Tierrettungsdienst – Leben hat Vortritt (2006), the foundation Kinderhaus Montessori Lägern (2009), the foundation SBS Schweizerische Bibliothek für Blinde, Seh- und Lesebehinderte (2009) as well as the Publisana Krankenversicherung Stiftung (2010). Such transformations raise the question of the advantages of this new legal form as well as the implementation of the transformation.

### Advantages of the new legal form

Associations as well as foundations – both legal persons of the civil code – are equally established for the realization of philanthropic ends. In spite of this similarity, they exhibit substantial differences, which can cause transformation. An association is a corporation, a foundation is an institution. The former has members; the latter is a personified special purpose fund. A foundation of public utility is under governmental supervision, whereas in an association the members perform the control function. In comparison to the association, a foundation does not dispose of a will formation body. Changes in the constitution of a foundation are only feasible under strict conditions (see Art. 86a ZGB, for example), whereas the general assembly of an association can rather easily decide on changes in the constitution. Contrary to the association, the foundation is not entitled to self-liquidate and the reassignment of funds is not applicable according to civic law.

By transforming into a foundation, the association tries to benefit from the advantages of the new legal form. The mission of the foundation guarantees, for example, a certain constancy and is not subjected to the changing will of members. The reasons for a transformation can be of different kinds, for example due to governance (Brot für alle, Freunde SOS Kinderdörfer, Helsana), independence (ZEWÖ), financial assurance (Hilfsgesellschaft Winterthur) as well as access to different donor groups (Verein Kinderschutz Schweiz).

### Implementation of the transformation

Transformations from one legal form

into another are regulated by the federal law on fusion, partition, transformation and capital transfer (Fusionsgesetz; SR 221.301). But the transformation of an association into a foundation is not captured by this law. For the association, the possibility of capital transfer to a newly created foundation is an optional alternative. The assignment contract is normally concluded by the board (siehe Art. 70 Abs. 1 FusG i.V.m. Art. 69 ZGB). The capital transfer does not necessarily lead to the liquidation of the association. The latter can be maintained as patronizing organization. If the whole capital of the association gets transferred, a factual liquidation of the association takes place, which has to be approved by the general assembly.

### FACTBOX

In Switzerland, corporations can also be founded for nonprofit ends. (Art. 620 Abs. 3 OR) The legal form AG can – even though this is an exception – be applied to ideal goals as well and pursue social objectives after a corresponding arrangement of the by-laws. Since the new law of the limited liability company (GmbH) entered into force on the 1st of January 2008, nonprofit GmbHs are also accredited and can therefore work towards nonprofit ends. The decision on tax exemption lies in the hands of the cantonal tax offices. All legal forms are on par with the prohibition of payout of dividends to the owner. Possible surplus have to be reinvested in social purposes.

During the transformation of an association into a foundation, just the capital can be assigned, however, not the membership rights of the members of the association. The reason being that the foundation does not dispose of any members by definition. The founder – i.e. the association or the former members of the association – can admit certain rights to the former members of the association in the by-laws such as the participation in the board of the foundation. Thereby it should be taken into account that the foundation board as supreme steering institution cannot be ajar for a multiplicity

of former members, since it should consist of less than ten people. Moreover, the board of a foundation – in contrast to the one of an association – is not allowed to change the by-laws arbitrarily. In its activities the board is bound to the mission laid down in the by-laws, while it is also entitled to certain discretionary powers.

### Concluding remarks

The advantages of the new legal form can constitute a temptation for a transformation. Nevertheless, such a step should be carefully considered - if need be supported by a legal consultancy - , since the capital of the foundation cannot be reassigned to the association, should it happen that the former members are no longer satisfied with the solution chosen.

Dr. Daniela Schönenberg

Further reading:  
Von Schnurbein G./Schönenberg D., Legal Forms of Civil Society Organizations as a Governance Problem: The Case of Switzerland, in: The International Journal of Not-for-Profit-Law, Volume 12, Issue 3, May 2010.

## CEPS INSIGHT

### Presentation of research results at ERNOP conference in Vienna

The Centre for Philanthropy Studies will present two recent research results at the first conference of the European Research Network on Philanthropy in Vienna on June 7th. Rafael Wyser will present a paper with the title «Trilateral evaluation situations – a theory based model». Steffen Bethmann will introduce the results of a governance study with twelve grant-making foundation from Switzerland and Germany. Prior to the ERNOP conference Georg von Schnurbein will give a speech at the NPO-Day at the Vienna University of Economics and Business titled: «When are NPO successful?»

### Participation in panel discussion

Georg von Schnurbein participated in a panel discussion at the 18th German Fundraising Congress. The topic of the panel was «Donations are finite - Fundraising as jump start to financial independence».

### Intensive Seminar Foundation Management successfully carried out

With 27 participants this year's edition of the annual intensive seminar was booked out. The next course is scheduled to start on March 12th 2012.

## Organizational change during growth

studienaktie.org is a public beneficial association that works enabling education. It links people that want to realise a concrete educational project with private lenders, thereby forming personal partnerships between the two. Lenders receive a return on their educational investment that currently lies at around 5%. The Studienaktie is a social enterprise. The CEPS talks to Lars Stein, founder of the studienaktie, about its creation and development

**CEPS:** What inspired you to the idea of creating the association studienaktie?

**Lars Stein:** The basic idea emerged from a concrete need. Even before having started my studies at the University of St. Gallen, I was almost forced to quit due to my financial situation. In my hopelessness, I remembered an article about an art student who had sold her pictures to a gallery, before she had even started painting them. After I tried to think of what I as a business student could possibly sell from my future, I could only come up with my salary. This was the birth of the "Lars Stein private stock" that many years later led to the creation of the association studienaktie.org



**Lars Stein**

Lars Stein partly financed his studies at the University St. Gallen through the emission of „Lars Stein Private Stocks“.

He is the founder and president of studienaktie.org. He also just finished his Phd.

**CEPS:** Did you initially consider other legal forms?

**Lars Stein:** When we founded the association in 2006 with some urgency, it was the result of a specific incident. The free newspaper "20Minuten" (20 Minutes) had interviewed me on the financing of my education. Following the article that appeared soon after, I was answering phone calls and mails non-stop for about three weeks. People with all sorts of interests contacted me. Some were looking for a possibility to finance their studies, others offered to lend money. At the time, the banking commission also started to investigate. Under these circumstances, we chose to create an association as an unbureaucratic platform that allowed investors to give out loans to educational aspirants in a legally safe environment. We only considered legal forms that would enable us to be organized as public beneficial. Back then, the only other options were the cooperative or the foundation. To keep costs and complexity low we decided to create an association

**CEPS:** How has the Studienaktie developed since its creation?

**Lars Stein:** The Studienaktie was not a carefully planned project but emerged out of the immense public response to the article, thus, the initial years until 2009 were very turbulent. We all worked on a voluntary basis in part time next to our main jobs. In 2010, we as the founders, decided to work full time in managing the association. Since then, we are constantly improving the procedures and enhancing the model. By now, we count 170 members and we finance more than 45 educational aspirants. Through the professionalization of our management (we are now 6 people with a pensum of 3,75 FTE), the governance of our organization has changed. We are working at a speed that could hardly be performed by voluntary members. This is also why we are thinking about organizational changes that could also include changing the legal form.

**CEPS:** Which legal forms are you considering?

**Lars Stein:** Based on the structure of our business, where people get to know and support each other in their educational projects, a legal form where many people can participate and get actively involved in a structured framework seems the most appropriate. As we also position ourselves as a social enterprise, meaning that a positive social impact for society is our main goal, only public beneficial forms are suitable for us. In more concrete terms: We are currently evaluating the two options «cooperative» and «public company with public beneficial goals».

**CEPS:** What are the challenges you are facing?

**Lars Stein:** A very important field for us are the financial market regulations. We do not have a banking license and will most probably not be able to get one in the near future. This is why our structure needs to be fulfill the requirements of the financial market regulatory body (FINMA). We also have quite a diverse range of potential customers and co-owners. We need to be able to accommodate all their different in-

terests. For some, the cooperative is unattractive solution, for others the public company is basically a no-go. We are therefore looking for an optimal solution. In general, the regulations that could be applied to our activities are so diverse and complex that the evaluation of the most appropriate legal form poses a considerable challenge.

Further information: [www.studienaktie.org](http://www.studienaktie.org)

## NEWS

### **BASEL Binding Foundation award for sustainable forest management given to the monastery Einsiedeln.**

The forest award of the Sophie an Karl Binding Foundation celebrates its 25th anniversary. This years winner is the monastery Einsiedeln. The official motto of the award was «Forest Ownership as Responsibility»

[www.binding-waldpreis.ch](http://www.binding-waldpreis.ch)

### **LAUSANNE Fondation Leenaards awards Prix Scientifique**

On April 7th the Fondation Leenaards awarded three groups of young researchers the Prix Scientifique for the advancement of bio-medical research. This year research in the area of cancer immunology therapy and bacterial infections has been supported. Each award is endowed with 750.000 CHF over the period of three years. [www.leenaards.ch](http://www.leenaards.ch)

### **ZUG Second and extended version of «Foundations - the practical guide for grant seekers» published.**

The new edition of Elisa Bortoluzzi Dubach's practical guide has been published in the Huber Verlag. The book entails many practical tips and detailed knowledge for grant-seeking organizations.

[www.elisabortoluzzi.com](http://www.elisabortoluzzi.com)

### **ZÜRICH Foundation Report 2011**

The Swiss Foundation Report will be published on May 3rd. From now on the report will be published annually by the Centre for Philanthropy Studies, the Centre for Foundation Law of the university Zürich and SwissFoundations.

available in German and French: [www.stiftungsreport.ch](http://www.stiftungsreport.ch)

## Are all organizations hybrid?

**Corporate Social Responsibility (CSR), Sustainability, Social Business, Social Entrepreneurship etc. – Diverse definitions circulate naming a similar organizational trend. But how can the mixture ratio of social and economic be determined?**

Hardly a week passes without an article appearing in the press on an extraordinarily interesting entrepreneur with a social mission. It is particularly social entrepreneurs who were awarded by fellowship-organizations like Ashoka or Schwab that end up in the limelight. However, the start-up of organizations that tackle social challenges with economic means, is only one output of the present debate. Well-established organizations are also facing changes. Two transformations have been increasingly discussed during recent years. On the one hand, there is a trend towards professionalism, economization and also commercialization of nonprofit organizations (NPO). On the other hand, we witness that profit orientated organizations are heading in a new direction: They integrate social-ecological aspects more and more into their daily business. It is particularly noticeable in the increasing efforts in Corporate Social Responsibility activities and initiatives for sustainability. These phenomena all have the combination of social and economic aspects in common. It is in these areas that organizations appear to become hybrids.

### When is an organization a hybrid?

The trend of hybridization entails the springing up of new magazines with a focus on Social Business or sustainable companies like «enorm» or the planned offset of the Wirtschaftswoche «green

economy». But how does one identify social corporations or social entrepreneurs respectively? While in Germany there is no legal form for social enterprises, in the U.K. approximately 60'000 organizations are registered as «community interest company (CIC)», a legal form enacted in 2005. Yet the legal form as sole indicator is not a guarantee for all possible and relevant forms of hybridization. Thus, we need an instrument that is able to determine the mixture ratio of the social, ecological and economic components.

It has to be said that phenomena like social business are not that exceptional. Within the living memory of organizations they have had to do business by following the principles of resource efficiency as well as meet the social criteria demanded by the stakeholders. The research project on hybrid organizational forms at the Centrum for Social Investment at the University of Heidelberg first had to solve the problem of how to classify and distinguish the different forms of organizations. We did the classification by defining all organizations as hybrid and tried to analyse the degree of hybridization in a second step. By doing so, the classification into different sectors became doubtful. By means of a heuristic analysis model, we are now trying to differentiate the structures of hybridization of organizations which will then allow us to recognise different ty-

pes and forms of hybridization. In the process, special attention is paid to the identification of organizations that are practicing so-called green- or whitewashing activities.

### Is hybridization deceiving?

Very often appearance and reality diverge, e.g. where sustainability activities take up a third of an annual report, while the budget for CSR activities represents only a marginal amount of the total revenues of the company. In the annual reports of NPO, the Vienna University of Economics and Business found out that water-proof economic terms like efficiency or innovation dominate. Further studies have to be conducted to analyze to what extent the NPO just comply with a certain pressure for legitimization coming from their stakeholders. Still, signs point towards a new thinking that consciously links the social and the economic in a sustainable way.

Björn Schmitz, Project Director CSI Heidelberg

### QuartalZahl:

**12'531**

Is the number of with public beneficial foundations in Switzerland at the end of 2010. With 44 foundations per 10.000 inhabitants the density of foundations is about 20 times higher in Switzerland than in Germany.

Quelle: CEPS

## CALENDER

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[www.ceps.unibas.ch/weiterbildung](http://www.ceps.unibas.ch/weiterbildung)

### German Association of Foundations

#### German Foundation Day 2011

«Foundations: creative, entrepreneurial, social»  
May 11th to 13th 2011, Stuttgart

### ZEWO/ICFO

#### ZEWO Summit 2011 in collaboration with the International Committee on Fundraising Organizations

«Global Charity Trends – Challenges for National Monitoring Organizations»  
June 6th 2011, Vienna

### ERNOP

#### First research conference

«Philanthropy and Civil Society: European and Transnational Perspectives»  
June 7th 2011, Vienna

## LEGAL NOTICE



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