

CEPS Forschung und Praxis – Volume 15

SWISS FOUNDATION REPORT 2016

Beate Eckhardt

SwissFoundations, association of Swiss grant-making foundations

Prof. Dr. Dominique Jakob

Center for Foundation Law, University of Zurich

Prof. Dr. Georg von Schnurbein

Center for Philanthropy Studies (CEPS), University of Basel

FOREWORD

Since the first edition, the aim of the Swiss Foundation Report has been to provide newly collected figures and findings on the Swiss foundation sector. Our efforts are therefore constantly directed towards improving the recording of data within the sector and refining our database. This year, besides the newest figures on the development of the foundation sector, we are presenting detailed financial figures of foundations based in Eastern Switzerland and the Ticino. An analysis of foundation assets, distributions and administrative costs has led to valuable insights that allow for a further categorization of foundations beyond the sole criterion of purpose orientation. Our regional focus on Eastern Switzerland demonstrates that foundations are not only relevant to urban centres, they are actually supporting communities in rural areas in many different ways. However, crucial differences between the cantons became apparent, which we were able to illustrate in the newly developed foundation radar.

In general, foundations are becoming increasingly aware that they need to look after and actively work on their scarce resources. Confronted with the absence of income that was once guaranteed through popular forms of investment such as fixed-income securities, the foundation boards are more and more frequently looking into the possibilities of purpose-oriented investment. Why not fulfil the foundation purpose right at the point of investing the foundation assets? The resources of a foundation are not their only assets; they also include time as a factor. All foundations need foundation board members who work voluntarily or take on the responsibility of managing a foundation for low financial compensation. More than 76,000 foundation board members in total are faced with increasingly stringent demands with regard to asset investment, reporting systems and expectations of the public. More interesting insights are provided in the analysis of the administrative boards of supervisory authorities and their competence regarding charitable foundations. The multiple perspectives of the time factor and its role in foundation work is the topic of discussion at this year's Swiss Foundation Symposium in Biel.

Further contributions in this edition of the Swiss Foundation Report examine the limits of the foundation sector. The first social impact bond in Bern could be the beginning of a new form of public-private-partnership allowing public and private investors to support charitable projects together, in accordance with their respective risk capacity. Also, the legal boundaries are changing. On the one hand, the parliamentary initiative of Councillor of State Werner Luginbühl proposes changes in the Swiss Foundation Law intended to simplify processes and increase transparency – in particular by creating a register of charitable organizations. On the other hand, pressure demanding more control over charitable organizations is rising internationally. Finding the right balance between the founders' freedom and the governmental need for information will become crucial in the coming years. The direction in which the "Foundation Universe" is heading is also the topic of the 4th Zürich Foundation Law Day.

And not least, in 2015, the third edition of the Swiss Foundation Code was published and received with great interest by the sector. As always, all further publications as well as announcements of selected events are listed at the end of this report.

We wish you an enjoyable read.

Beate Eckhardt, lic. phil. I, EMScom
Prof. Dr. Dominique Jakob
Prof. Dr. Georg von Schnurbein

CONTENT

I. FACTS AND FIGURES	2
– An overview of the Swiss foundation sector: growth, regional distribution, liquidations	2
– Assets and expenditures of charitable foundations Author contribution by Prof. Dr. Georg von Schnurbein	6
– An analysis of the boards of supervisory authorities	11
II. FOUNDATIONS AND LAW	14
– Legal developments	14
· Current projects in the legislation process	14
· Newly applicable statutory provisions	16
· Current jurisprudence	16
· Money laundering and financing of terrorism: FATF country review of Switzerland	18
– Legal changes for family foundations and religious foundations in Switzerland – a paradigm shift and its consequences Author contribution by Prof. Dr. Dominique Jakob and Simon Gubler	20
III. FOUNDATIONS IN EUROPE	22
– A strong network for Europe	22
Interview with Rosa Gallego, Chair, Donors and Foundations Networks in Europe (DAFNE)	
– Community foundations in Europe	24
Guest contribution by Matthias Uhl	
– The EUFORI study provides insights: How foundations in Europe support education, research and innovation	26
– Good Governance Codes in Europe – a comparison	28
IV. REGIONAL FOCUS	31
– The foundation sector in Eastern Switzerland	32
Author contribution by Prof. Dr. Georg von Schnurbein and Irene Reynolds Schier	
– Young and vital foundation landscape	40
Interview with Thomas Dietschweiler, President of the Ria & Arthur Dietschweiler Foundation, Rolf Wilhelm, Managing Director of the Lienhard Foundation, and Stefan Bodmer, Vice President of the Otto und Veronika Kägi Foundation	
V. TOPICS AND TRENDS	44
– 5:5 – Reasons for and against mergers of foundations	44
Author contribution by Prof. Dr. Georg von Schnurbein	
– Sustainable investments: A tool to enhance foundation effectiveness	47
Guest contribution by Sabine Döbeli	
– The first social impact bond in Switzerland	49
Guest contribution by Marc Baumann	
VI. NEW PUBLICATIONS IN 2015	55
VII. EVENTS IN 2015 / SAVE THE DATE IN 2016	57
VIII. EDITORS	61

CEPS Forschung und Praxis – Volume 15

SWISS FOUNDATION REPORT 2016

Beate Eckhardt

SwissFoundations, association of Swiss grant-making foundations

Prof. Dr. Dominique Jakob

Center for Foundation Law, University of Zurich

Prof. Dr. Georg von Schnurbein

Center for Philanthropy Studies (CEPS), University of Basel

I. FACTS AND FIGURES

AN OVERVIEW OF THE SWISS FOUNDATION SECTOR:

GROWTH, REGIONAL DISTRIBUTION, LIQUIDATIONS

Foundations generate much interest, be it for the recipients, the public or the founding persons themselves. Within the past year, 335 new foundations were established, further increasing the absolute numbers within the Swiss foundation sector. More important than the evident growth were the steps taken towards a better and more transparent database. Illustrated by the example of the cantons in the east of Switzerland, the foundation sector is presented in a new light. The facts and figures were complemented with information on governance and purpose.

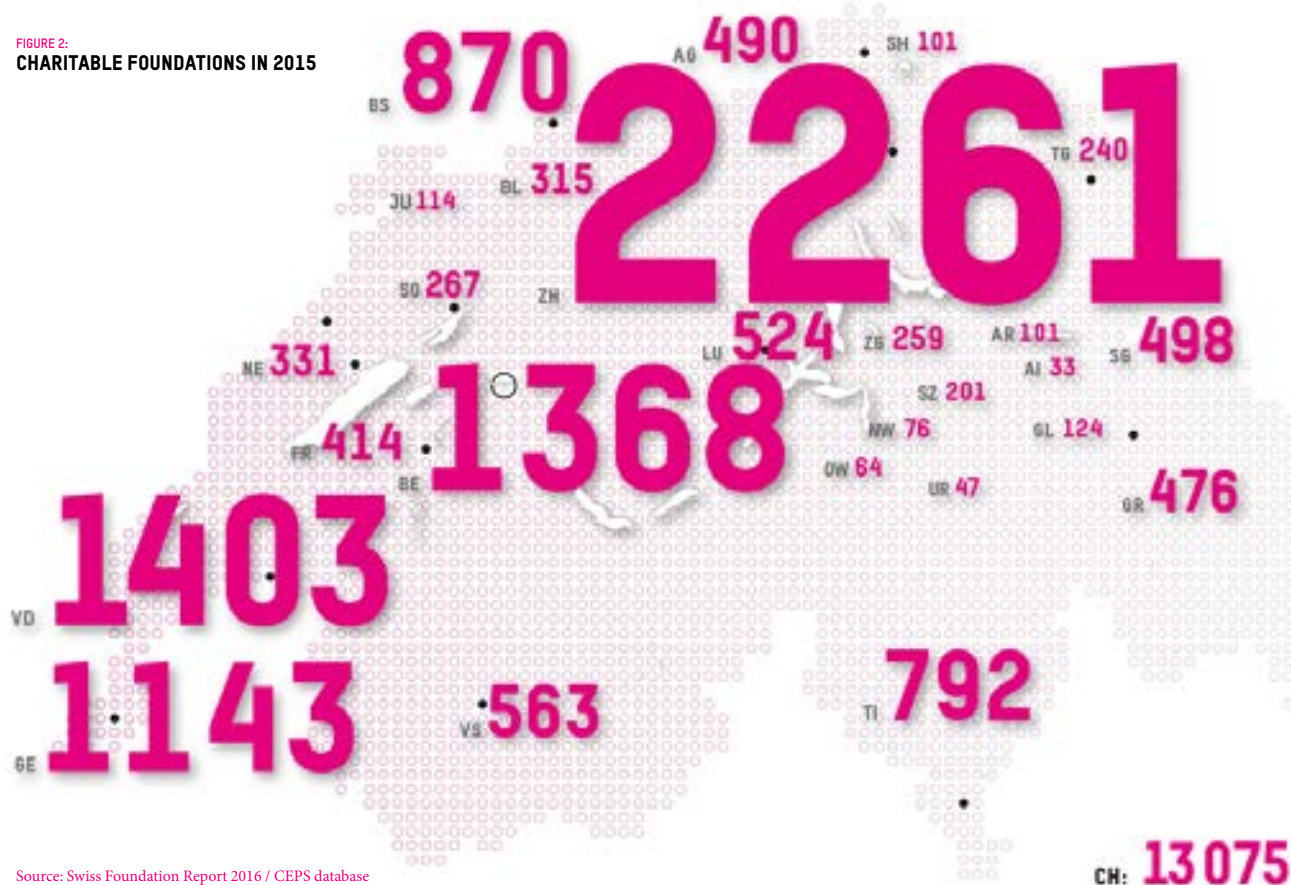
FIGURE 1:
DEVELOPMENT OF THE FOUNDATION SECTOR AND
NUMBER OF NEW FOUNDATIONS IN 2015

CANTON	TOTAL NUMBER OF FOUNDATIONS	NEW FOUNDATIONS IN 2015	LIQUIDATIONS	GROWTH	DENSITY OF FOUNDATIONS
AG	490	+6	-3	0.6 %	7.6
AI	33	+1	-1	0.0 %	20.8
AR	101	+3	-1	2.0 %	18.7
BE	1368	+23	-14	0.7 %	13.6
BL	315	+5	-5	0.0 %	11.2
BS	870	+16	-13	0.3 %	45.7
FR	414	+10	-9	0.2 %	13.6
GE	1143	+50	-12	3.3 %	23.9
GL	124	0	-2	-1.6 %	31.2
GR	476	+12	-5	1.5 %	24.3
JU	114	+3	0	2.6 %	15.7
LU	524	+13	-2	2.1 %	13.3
NE	331	+7	-4	0.9 %	18.7
NW	76	+2	-2	0.0 %	18.1
OW	64	+2	0	3.1 %	17.4
SG	498	+11	-6	1.0 %	10.0
SH	101	+1	-2	-1.0 %	12.7
SO	267	+3	-5	-0.7 %	10.1
SZ	201	+7	-2	2.5 %	13.2
TG	240	+2	-2	0.0 %	9.1
TI	792	+31	-14	2.1 %	22.6
UR	47	+1	-0	2.1 %	13.1
VD	1403	+34	-16	1.3 %	18.4
VS	563	+18	-9	1.6 %	17.0
ZG	259	+13	-4	3.5 %	21.6
ZH	2261	+61	-27	1.5 %	15.6
CH	13075	+335	-160	1.3 %	15.9

Source: Swiss Foundation Report 2016 / CEPS database

In recent years, the image of foundations has changed towards more flexibility and creativity. Foundations are still established and endowed upon death. But equally, these days, foundations are being used as a basis for social enterprises, citizen initiatives or art festivals. It is thus understandable that not every newly created foundation can be a golden goose and that the organization is often dissolved after just a few years. This should not harm the reputation of foundations as long as the foundation sector as a whole becomes more professional and transparent. The continued high number of liquidations reflects this development. In 2015, while 335 foundations were established, 160 were liquidated (see Fig. 1), of which 11 foundations merged with others. Compared to the previous year, liquidations as well as the mergers (226 and 30, respectively) were clearly on the decline, which may be explained by the recovering financial markets. Many foundations have changed their investment strategy in the past few years and were able to improve their financial income. The majority of mergers are consolidations, meaning that foundations were combined with other institutions in the same field. A special legal structure was found for the Berner Kunstmuseum and the Zentrum Paul Klee. On the one hand, the “Foundation Paul Klee” was dissolved to become, together with the “Maurice E. and Martha Müller Foundation,” the “Zentrum Paul Klee – Maurice E. and Martha Müller Foundation”. This foundation is a new structure, a sub-foundation to the “Umbrella Foundation Kunstmuseum Bern – Zentrum Paul Klee”. It is responsible for both

FIGURE 2:
CHARITABLE FOUNDATIONS IN 2015



Source: Swiss Foundation Report 2016 / CEPS database

museums, which are to be managed separately from now on.

REGIONAL DEVELOPMENT

The largest number of foundations is still to be found in the Canton of Zurich (2,261), followed by Vaud (1,403), Bern (1,368) and Geneva (1,143). Regarding the new foundations, Zurich (61) again clearly leads the field this year, ahead of Geneva (50), although the number of liquidations in Zurich is more than twice as high as in Geneva (27 vs. 12). This results in a higher net growth in Geneva of 38 foundations versus 34 in Zurich. The largest part of newly established foundations is shifting to cities and regional centers. The development in the three cantons Glarus (-2), Solothurn (-2) and Schaffhausen (-1) is negative, while four other cantons remain stable. Somewhat surprising is that Basel, as a foundation city, shows a comparatively low number of new foundations (16) compared with the other large foundation cantons. After deduction of the liquidated foundations, a net growth of three foundations has been recorded.

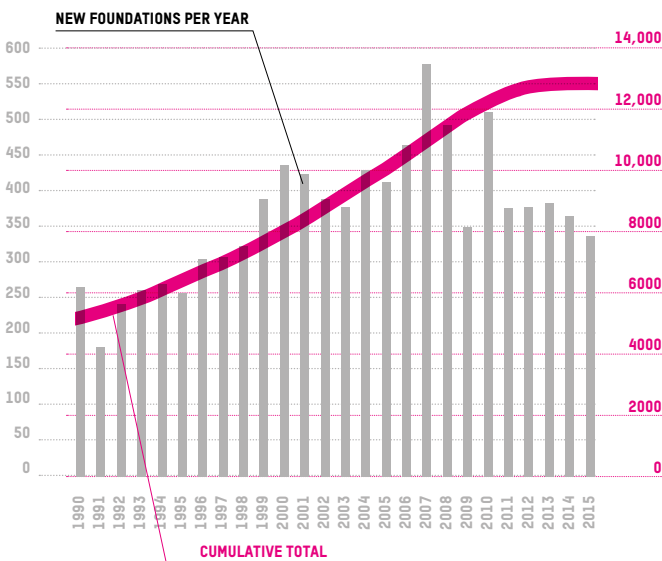
However, this has no effect on the fact that the Canton of Basel-Stadt with its 45.7 foundations per 10,000 inhabitants has the greatest density of foundations, followed by Glarus (31.2) and Geneva (23.9). The average across Switzerland is 15.9 foundations per 10,000 inhabitants. Within this positive greater picture, several developments come together which currently characterize the foundation sector. First, donating still appeals and many founders appreciate the combination of founder's freedom and purpose-related allocations. At the same time, the amount of administrative work is increasing, causing especially small foundations to look for alternative solutions, which often lead to liquidations and mergers. The driving forces in most of these cases are the foundation boards. Furthermore, the foundation is being considered as an alternative and suitable legal structure for many new areas, particularly in relation to economic and international initiatives. And finally, the state is taking on the role of a founder to an increasing extent, be it in the transformation from special-purpose associations to foundations, when outsourcing administrative tasks or in the case of public-private-partnerships in cooperation with economic actors. Particularly for the state, the purpose-related function of a foundation is a guarantee that

FIGURE 3: DISTRIBUTION OF FOUNDATIONS BY SUPERVISORY AUTHORITY

	SWISS FEDERAL SUPERVISORY AUTHORITY	CANTON & REGIONAL SUPERVISORY AUTHORITIES	MUNICIPAL SUPERVISORY AUTHORITIES	OTHER AUTHORITIES	NO AUTHORITY CITED
ZG	63.8		28.9		4.9 0.8 1.6
GE	56.0		41.9		2.1
ZH	51.3		29.0	18.4	0.3 1.0
NW	42.5		39.7		15.1 2.7
SZ	39.3		38.8	17.9	1.0 3.1
BE	35.2		54.3		9.5 0.1 0.8
FR	34.9		63.6		1.5
OW	29.0		41.9	22.6	3.2 3.2
TI	24.5		73.2		0.1 0.5 1.7
LU	24.4		35.4	39.0	0.6 0.6
AG	23.8		74.2		0.2 1.9
VD	21.3		76.3		0.1 0.7 1.7
BS	20.6		77.8		1.2 0.4
UR	19.6		78.3		2.2
SO	19.1		79.0		0.7 1.1
GR	18.6		80.3		0.2 0.9
VS	17.4		43.4	35.8	0.4 3.0
NE	16.9		81.4		1.7
SG	16.2		83.0		0.2 0.6
BL	15.5		70.6		12.9 1.0
TG	15.0		69.2		10.7 2.1 3.0
AR	14.4		71.1		14.4
SH	13.1		55.6	31.3	
JU	9.8		86.6		0.9 2.7
GL	4.9		86.2		4.9 2.4 1.6
AI	3.0		90.9		3.0 3.0
TOTAL	31.7		57.7		8.9 0.4 1.4

Source: own figure, as of end 2014.

FIGURE 4: DEVELOPMENT OF THE FOUNDATION SECTOR AND NUMBER OF NEW FOUNDATIONS PER YEAR SINCE 1990. VALUES FOR 2013 AND LATER CANNOT BE COMPARED TO PREVIOUS YEARS

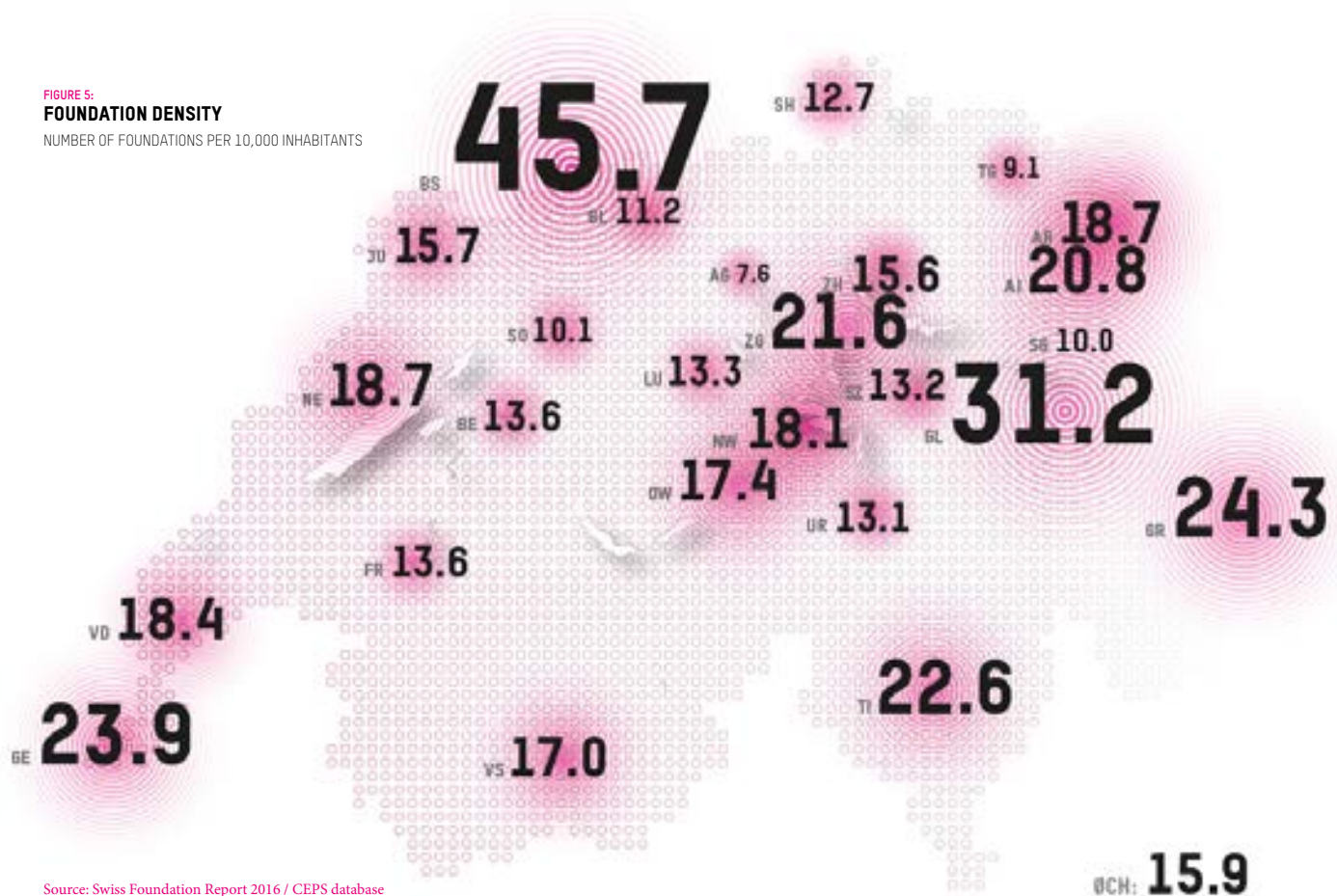


Source: CEPS database; total of 13,075 foundations, 1,046 foundations closed since 2009.

will not completely lose its influence in an outsourcing situation or if granted a greater degree of autonomy.

As demonstrated in the curve progression in Figure 4, the growth of the foundation sector and the number of new foundations have been continuously slowing down since their peak in the year 2007. It will become evident in the contributions on the foundation sector in the Eastern cantons of Switzerland that the number of foundations is only one out of many considerations. The foundation assets and the distributions, for example, have continued to rise (see article on page 8). Additionally, the number of foundations that were liquidated used to be much higher in the past. Since 2009 alone, more than 1,000 charitable foundations have been deleted from the commercial register. The Swiss supervisory authority removed the entries of 470 foundations during this period – almost as many as in the 15 previous years. Figure 4 shows the foundations liquidated since 2009, first entered in the year of founding and then eliminated in the year of their deletion to get a realistic picture in terms of development in time.

FIGURE 5:
FOUNDATION DENSITY
NUMBER OF FOUNDATIONS PER 10,000 INHABITANTS



Source: Swiss Foundation Report 2016 / CEPS database

DISTRIBUTION OF FOUNDATIONS UNDER SUPERVISORY AUTHORITIES

Last year's Foundation Report already pointed out that besides the Swiss federal supervisory authority and the authorities at canton level, a large number of supervisory authorities at municipal level exists, some of them overseeing only 1 to 2 foundations. Figure 3 shows that the representation of municipal supervisory authorities varies to a considerable degree between the different cantons. For instance, municipal supervisory authorities are largely non-existent in the western cantons of Switzerland and in the Ticino, with the exception of the Canton of Wallis, which ranges at the top with 35.8 %, together with Luzern (39 %) and Schaffhausen (31.3 %). The difference between the two Appenzell cantons is interesting. The canton Appenzell Innerrhoden has no municipal supervisory authority, while Appenzell Ausserrhoden, with a rate of 14.4 %, is significantly above the Swiss average of 8.9 %. Equally interesting is the distribution of the foundations under the Swiss federal supervisory authority. The rates of the seven cantons Zug, Geneva, Zurich, Nidwalden, Schwyz, Bern and Fribourg range above the Swiss average of 31.7 %, thus

representing the majority of foundations that work nationally and internationally. Other cantons with large numbers of foundations such as Basel, Vaud and Ticino show a considerably higher rate of regional foundations. Of special interest is Appenzell Innerrhoden where almost all foundations are supervised at canton level.

Note on the data survey

In Switzerland, there is no specific register for charitable organizations. Consequently, the commercial register does not reveal which foundation is recognized as being charitable and which one is not. For the Swiss Foundation Report, all registered foundations are annually recorded and evaluated on the basis of their nominal purpose, which is listed in the commercial register. In collecting the relevant data, the CEPS cooperates with Trigonella AG in Basel. At the end of 2015, 17,170 foundations were listed according to the Swiss Commercial Registry (Eidg. Handelsregisteramt). The CEPS database covers 99,3 % of these. The difference in numbers mainly concerns foundations in liquidation and pension funds, which are registered in other ways. Because of the imprecisions occurring in the listings, a complete chronological survey is not possible and the evaluations of the foundations are generally subjective assessments.

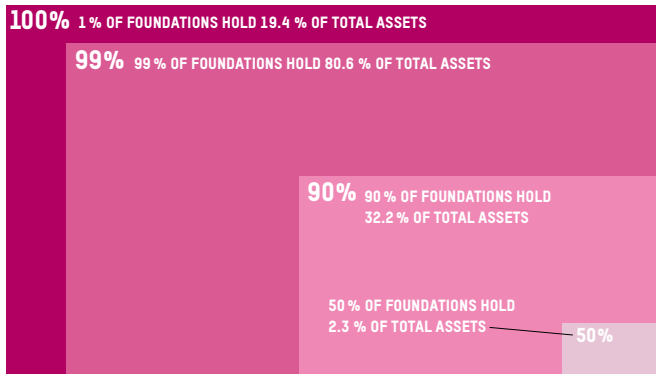
Author contribution by Prof. Dr. Georg von Schnurbein

ASSETS AND EXPENDITURES OF CHARITABLE FOUNDATIONS

The endowments of a foundation form the basis of their existence. But these assets are distributed very unevenly among foundations. In a study of 1,205 foundations in four cantons it was found that 97.7% of assets were in the possession of 50% of the foundations. A total of CHF 3.2 billion in foundation assets generates distributions of CHF 432.3 million. The largest proportion goes to social and health projects, for example to elderly care, medicine and people with disabilities.

FIGURE 6:
DISTRIBUTION OF CUMULATED FOUNDATION ASSETS IN THE CANTONS AR, SG, TG AND TI

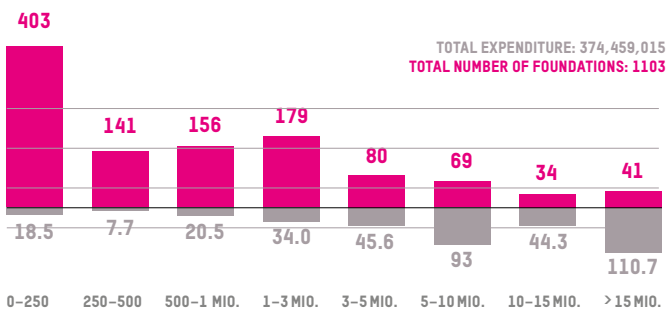
CUMULATED FOUNDATION ASSETS
NUMBER OF FOUNDATIONS IN %



Source: Own figures; data sources: supervisory authorities of Eastern Switzerland and canton Appenzell Ausserrhoden, 2013

FIGURE 7:
NUMBER AND EXPENDITURE OF FOUNDATIONS BY SIZE CATEGORIES

TOTAL EXPENDITURE IN CHF MILLION | NUMBER OF FOUNDATIONS



Source: Own illustration – data source: supervisory authority of Eastern Switzerland (not incl. AR), 2013

Charitable foundations are natural savers since they have to live off their existing endowment. They are also unable to generate income through their services as they mostly do not receive payment. For this reason, foundations lacking sufficient assets of their own to fulfil their purpose are reliant on private donations and state contributions. In economically weak times, all sources of income are under pressure. As a result, peak periods of philanthropy always occur during good economic periods, as we have witnessed in the past.¹ A new era started with the outbreak of the financial and economic crisis in 2008. Since then, asset managers working with return on investments have been apprehensive when dealing with the current financial markets and national bank decisions on interest rates. Instead of working with long-term fixed income securities, foundation boards currently have to manage their foundation assets on a shorter-term basis, and are taking on higher financial risks in order to generate the proceeds needed to fulfil the foundation purpose. Due to a lack of information, there are so far no comparative figures that would allow for an easier assessment of the situation. That is why very little is known about the wealth of foundations in Switzerland and how this is being used. The only study in this field so far was done in 2003 on the foundations under federal supervision.²

Thanks to the support of the pension fund and foundation supervisory authorities of Eastern Switzerland and the supervisory authority of the Canton of Appenzell Ausserrhoden, it was for the first time possible to evaluate foundation assets in detail and relate them to different purpose areas. The survey included a total of 1,278 foundations in the cantons Appenzell Ausserrhoden, St. Gal-

len, Tessin and Thurgau, examining their finance data from the years 2010 until 2013. Foundations registered in these cantons but under federal or municipal supervision were not considered. This results in different numbers when compared with the general facts at the beginning of this foundation report (see page 2). For the most part, as they are complete, the figures of 2013 were used. After deduction of the deleted foundations and those established later, the number of foundations amounted to 1,205. The details on the foundation assets correspond to the balance sheet totals given. It shows that in particular material assets such as real estate or artwork can be recorded and evaluated in very different ways.³

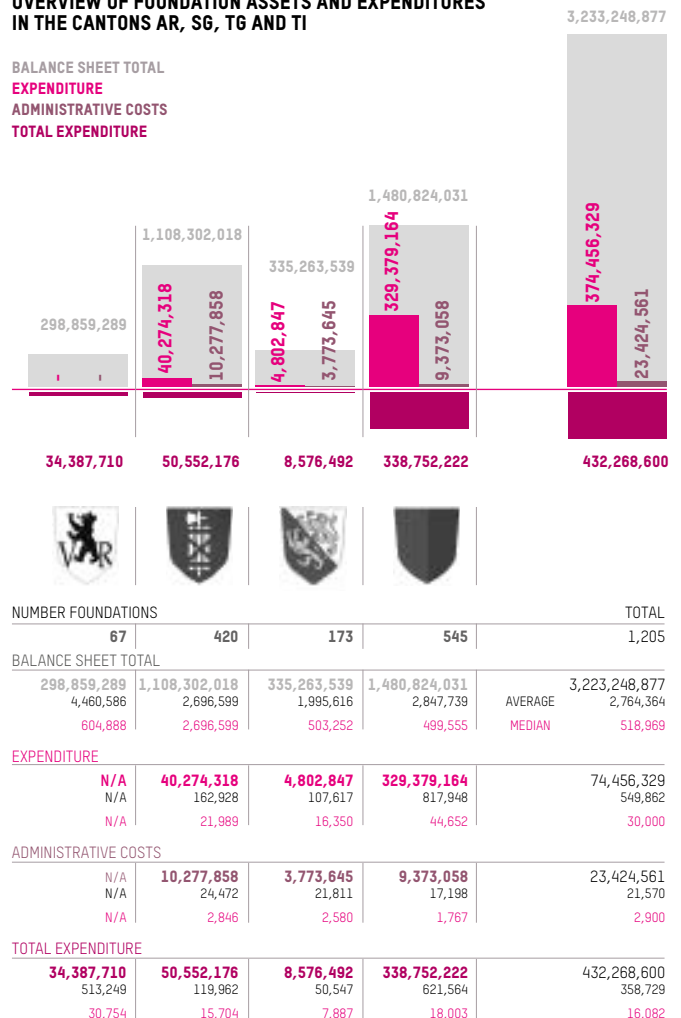
FOUNDATION ENDOWMENT AND DISTRIBUTIONS

At the end of 2013, the foundations supervised at canton level in the four cantons under review were in possession of CHF 3.2 billion in foundation assets. Across the cantons there was a similar distribution. There are many small foundations and only a few large ones, which is why the median in all cantons is significantly lower than the average (see Fig. 8). Figure 6 shows this extreme distribution. 50 % of the foundations share 2.3 % of the total foundation capital between them, while 90 % of the foundations hold 32.2 % of the foundation capital and 1 % owns 19.4 % of the assets. This very unequal distribution corresponds with the results of the study on foundations by the Swiss supervisory authority, giving reason to assume that it may apply to the entire foundation sector. It also confirms the general principle that 80 % of the foundations own assets of just under CHF 3 million.⁴ Furthermore, the largest foundation possesses assets amounting to CHF 101 million.

INACTIVE FOUNDATIONS

The question around inactive foundations has already been the topic of a parliamentary motion, when an estimated 2,000 to 3,000 foundations in the whole of Switzerland were mentioned.⁵ The current study categorizes foundations as inactive when the balance sheet shows a total amount for a specific year while no expenditure within that same year was incurred (no distributions nor administrative costs). For 2012, the number of inactive foundations was 67 (5.5 %) and in 2013 it was 58 foundations (5.0 %). Projected to the whole of Switzerland, the number of inactive foundations would be a mid-range three-digit number. However, the reasons for inactivity vary considerably on a case by case basis, an

FIGURE 8: OVERVIEW OF FOUNDATION ASSETS AND EXPENDITURES IN THE CANTONS AR, SG, TG AND TI



Source: Own figure; data sources: supervisory authorities of Eastern Switzerland and canton Appenzell Auserroden, 2013

aspect that could not be examined on the basis of the available data. In certain cases, for instance, inactivity only occurred in one year, with distributions picking up again in the next year.

In the following, distributions and administrative costs of foundations in the cantons of St. Gallen, Thurgau and Tessin will be examined more closely. Since there is no differentiation between distributions of grant-making and operational foundations, the proportion of (mandate-related funds)/traditionally made distributions by grant-making foundations cannot be identified.⁶ The high figure in the Tessin can most certainly be attributed to operational foundations (for example nursing homes, museums), which often have high expenditures covered by state contributions or private donations. In

total, 50 % of the foundations (median) per year are able to use less than CHF 30,000 for the fulfilment of the foundation purpose. In the canton of Thurgau, they use about half of this amount. However, the high averages do indicate that there are also foundations with large distributions. Regarding the proportion of administrative costs, the cantons show large differences. While in Tessin administrative costs are only 2.8 % on average, they amount to 20 % in St. Gallen and to as much as 44 % in Thurgau. One reason may be the absence of a consistent formula to measure administrative costs.⁷ But administrative costs also depend on the size of a foundation, as demonstrated in the next section.

The dominance of small foundations becomes evident once the foundations are categorized by size. The two lowest categories with foundation assets amounting from CHF 0 to CHF 250,000 and CHF 250,001 to CHF 500,000 comprise just about half of all the foundations, while only spending CHF 26.2 million, which is 7.2 % of the total distributions. The category with foundation assets of CHF 10 to 15 million ranges slightly lower than the categories above and below it. On average, the 34 foundations with a cumulated balance sheet total of CHF 676.2 million show distributions of CHF 44.3 million, which results in a distribution rate of 6.6 %. All other categories are considerably higher at rates above 10 %. For this reason, one can assume that the second-highest category is dominated by grant-making foundations, while the others contain a lot of operational foundations as part of the examination. The next section on the topic of administrative costs will give further details on this size category.

ADMINISTRATIVE COSTS

The public as well as many foundation representatives expect foundations to work at minimal cost. In order to use most of the available funds for the fulfilment of the purpose, internal costs for personnel, infrastructure or communication are kept at a minimum. Particularly the media frequently picks up on the question of cost efficiency, which leads organizations to put every effort into fulfilling these expectations. There is a tendency to show that low-cost foundations, which are often managed on a volunteer basis, are especially cost-efficient, while foundations with paid staff are described as expensive. The ascending line in Figure 10 confirms this view. Small foundations with a capital of under CHF 1 million spend considerably less on administration and financial investments than large foundations. Thus, foundations with

assets of less than CHF 250,000 spend just CHF 2,557 on average, whereas foundations of the highest category spend CHF 134,152 on average. The situation changes completely when the administrative costs are compared with the foundation assets. It suddenly turns out that the smallest foundations are the least cost-efficient, as they are spending an average of 2.6 % of their assets on administrative tasks. In this respect, the largest foundations' rate is at just 0.3 %. Due to the high degree of volunteering, this relation cannot serve as the sole indicator to measure the performance of small foundations. An interesting revelation of the study was that two budget categories do not follow the trend. In comparison with the next-lower budget category, the foundations with assets of CHF 1 to 3 million and CHF 10 to 15 million indicate an ascending absolute as well as relative value of administrative costs. These actual inefficiencies can be explained with sharp rises in cost. This indicates that the foundations with a capital of under CHF 1 million are mostly managed on a volunteer basis, but there is often a paid staff member who takes on the administrative tasks. This leads to a surge in administrative costs and ultimately less is left over for the mandate. In the case of foundations with a capital of CHF 10 to 15 million, there are similar cost disadvantages. On the one hand, the personnel costs are often considerably higher than in the case of smaller foundations. On the other hand, regarding asset management, these foundations are often too small to benefit from the better tariffs of institutional investors. Foundations in these asset categories should therefore rethink their strategy and consider whether a merger would create a critical mass that could lead to more efficiency; or whether other possibilities for growth exist. Another consideration worth looking into is a conscious reduction of the foundation assets through spending down, provided that the foundation charter allows for it, to then reduce costs accordingly.

DISTRIBUTION OF FOUNDATION PURPOSES

This final part describes the distribution of the financial resources by different areas of activity. In previous studies the distribution with regard to purpose have exclusively been based on the numbers of foundations.⁸ But, as shown above, this can lead to erroneous evaluations. The supervisory authority of Eastern Switzerland developed and uses a categorization system with 30 different purpose areas. Also the supervisory authority of the canton of Appenzell Ausserrhoden uses this system to categorize its foundations. Foundations can have more than one purpose. Therefore, multiple answers are possible.

In these cases, the figures on finances were divided by the number of purpose areas.

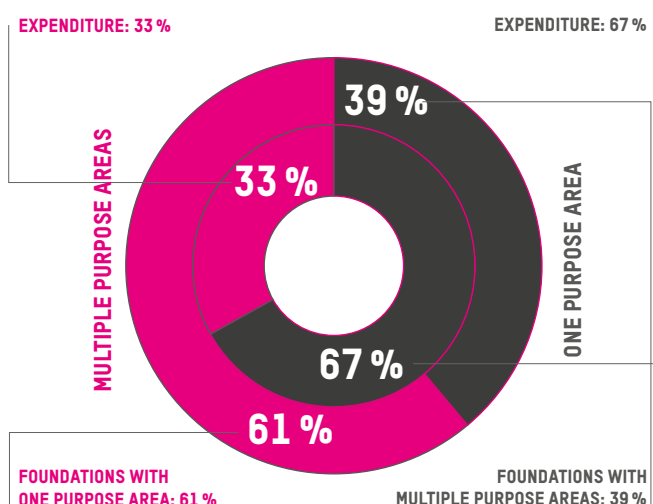
Overall, 39 % of the foundations are only active in one purpose area, of which the most frequent are care, age and arts (see Fig. 9). These foundations – among them nursing homes, elderly care homes and museums – represent 67 % of the distributions (CHF 272 million). In contrast, 61 % of the foundations name multiple purpose areas in their charter, thereby distributing only 33 %, or CHF 137 million.

Basically, differentiation by purpose area and by respective financial figures, shows a correlation between expenditure and the number of foundations. Among them are arts and culture, the social and healthcare sector, as well as education and research (see Fig. 11). Looking more closely, there are differences between the proportion of the foundations on the one hand, and the balance sheet totals on the other hand. In the health and social sectors like elderly, people with disabilities or medicine, the individual foundations are of above-average size, while arts and culture foundations own a comparatively small proportion of assets. In purpose areas such as support and education, there is an equilibrium between the number of foundations and assets. The average rate of distributions reveals the activity areas of predominantly operational foundations and those of grant-making foundations. Following the assumption that grant-making foundations largely base their existence on the proceeds of their invested assets, a rate of distributions of more than 5 % is unlikely. Accordingly, in purpose areas typical for grant-making foundations such as support, welfare or scholarships, the rate of distributions turns out to be low. Earlier studies have shown that grant-making foundations distribute between 2 and 4 % of the foundation assets annually.⁹ Higher rates of distributions therefore generally imply that more operational foundations are active in a specific purpose area (for example elderly, people with disabilities, and culture). In the purpose areas with very high rates of distributions like music or medicine, it is difficult to draw any conclusions on the basis of the assets since other sources of income can play a more important role than the foundation assets.

OUTLOOK

The predominant public perception of a foundation is that of a grant-making foundation with a large endowment, supporting charitable purposes from its proceeds. Accordingly, the newly created foundation registers are

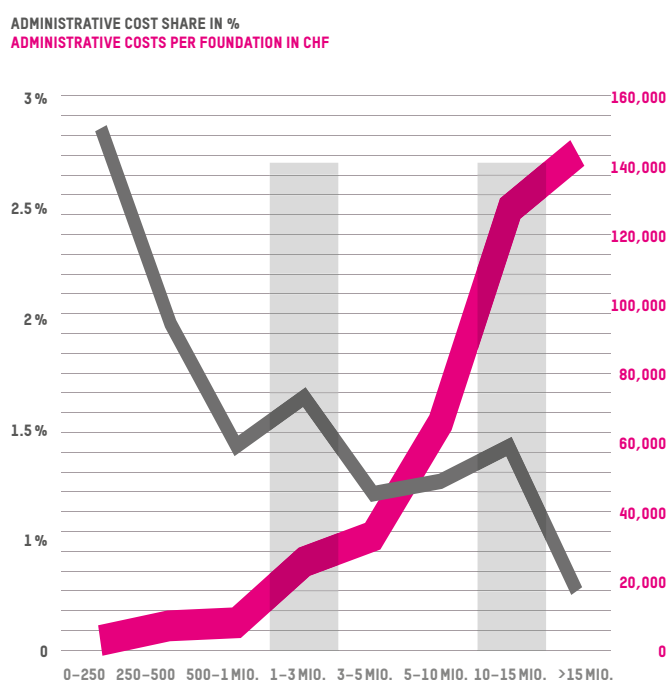
FIGURE 9: DISTRIBUTION BY PURPOSE AREAS AND EXPENDITURE



NUMBER OF FOUNDATIONS (WITH ONE OR MULTIPLE PURPOSE AREAS) AND EXPENDITURE IN CHF			TOTAL
EXPENDITURE	136,685,867.9 (33%)	272,160,857.4 (67%)	408,846,725.3
NUMBER	736 (61%)	465 (39%)	1201

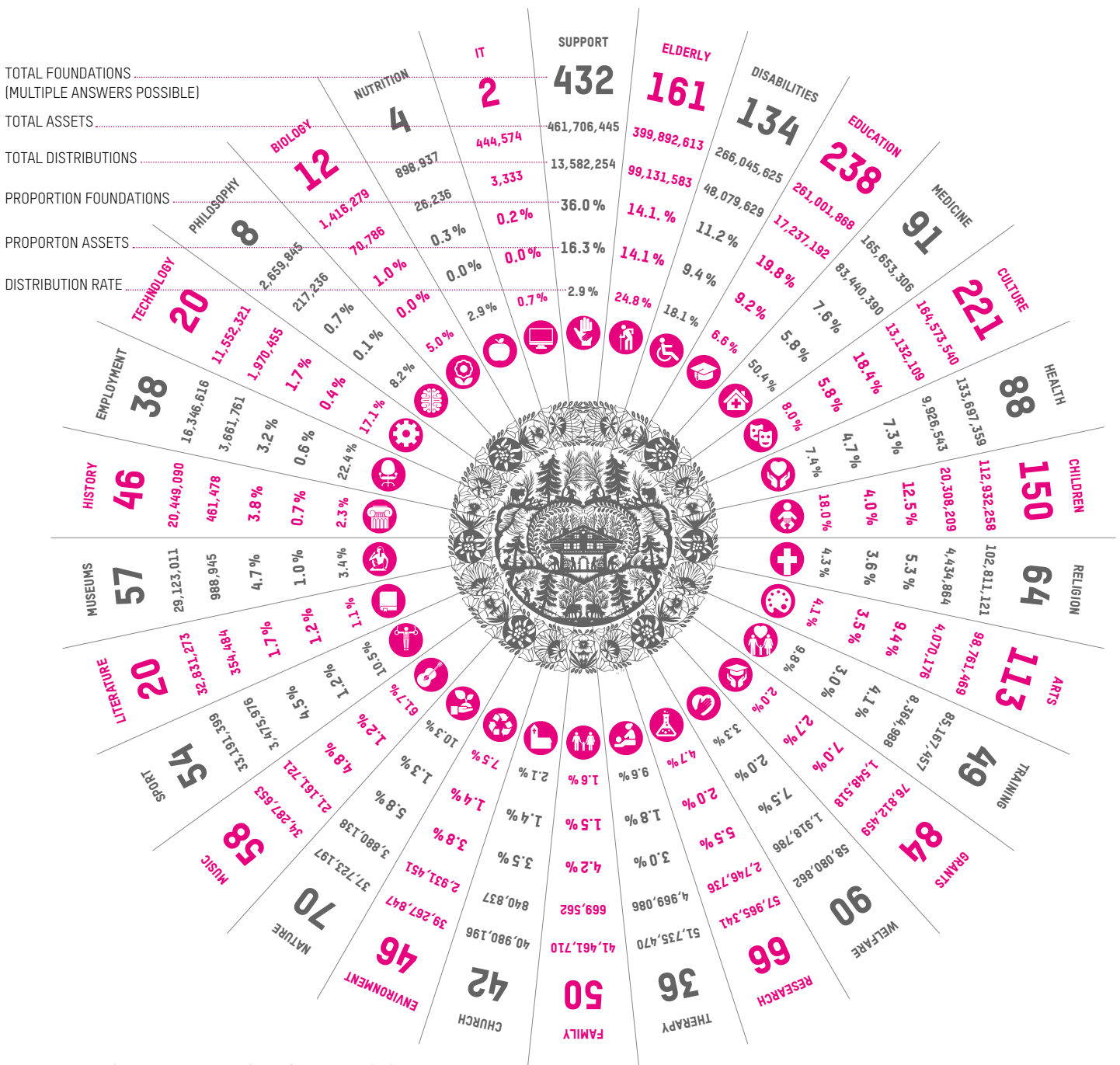
Source: Own illustration; data source: supervisory authority of Eastern Switzerland (not incl. AR), 2013

FIGURE 10: PROPORTION OF ADMINISTRATIVE COSTS TO NUMBER OF FOUNDATIONS AND FOUNDATION ASSETS



Source: Own illustration; data source: supervisory authority of Eastern Switzerland (not incl. AR), 2013

FIGURE 11:
DISTRIBUTION BY PURPOSE AREAS



Source: Own Figure; data source: supervisory authority of Eastern Switzerland, 2013

primarily intended as guidelines for fundraisers who are looking for a suitable donor for their organization or project. A foundation in Switzerland is, first and foremost, a legal entity that serves to realize a large number of different activities and purposes. The financial figures confirm this breadth and variation of foundations. Apart from the typical grant-making foundations, a large number of operational foundations exist that live from hand to mouth only owning very few assets. Or there are operational foundations with large assets – though mostly fixed in infrastructure – that are showing high distributions also through incoming service fees (especially in

the nursing and elderly area). As a result, the information presented via a register may be of less use to fundraisers than expected. Instead, the information aims to increase transparency in the foundation sector in general and it serves to lead foundation managers towards a better understanding of their own foundation on the one hand, and, on the other, to create a deeper understanding among political decision makers of how efficient foundations actually are: the sector is vibrant and committed, able to offer society a diverse range of services by means of relatively limited resources.

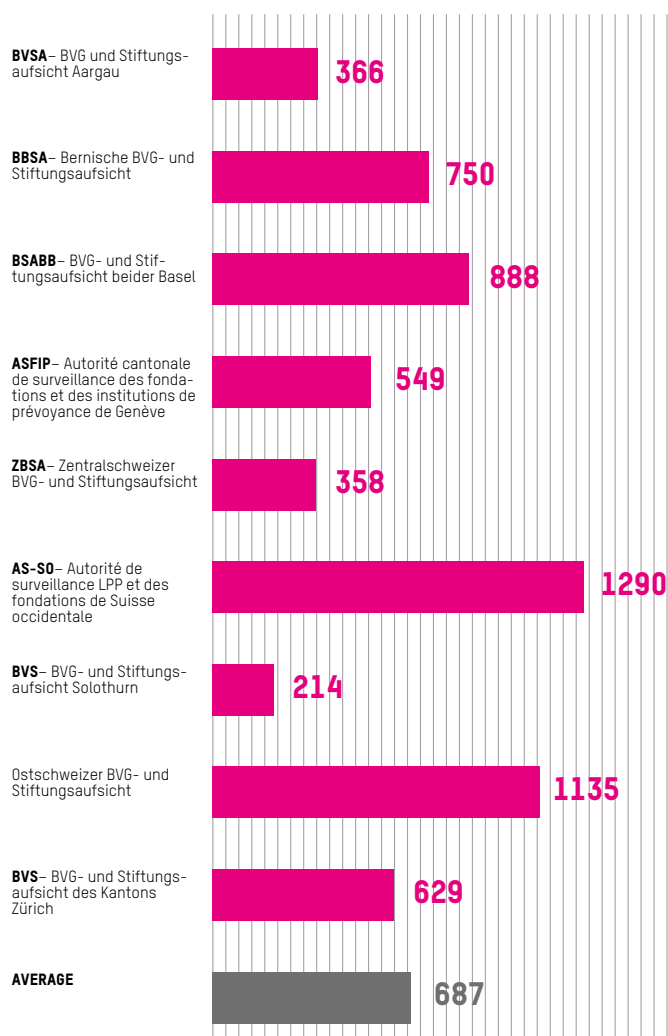
AN ANALYSIS OF THE ADMINISTRATIVE BOARDS OF SUPERVISORY AUTHORITIES

In January 2012, the structural reform of the OPA (Occupational Old Age, Survivors' and Invalidity Pension Provision Act) moved all pension funds and most of the charitable foundations (about two thirds) out of the responsibility of the cantonal administrations. This created a veritable potpourri in the landscape of the Swiss foundation supervisory authorities.

In the course of the OPA reform, 16 cantons moved the supervision of charitable foundations and foundations linked to pension funds to spin-offs in the form of public-law entities. Generally, this spin-off process took place in agreement with the neighbouring cantons. The ten remaining cantons continued to be responsible for the supervision of charitable foundations within their own administration. Müller-Jentsch emphasized the importance of the continuation of this structural reform in his study for the think tank Avenir Suisse¹⁰ in order to achieve a strict separation of the supervisory authorities for pension foundations and for charitable foundations.

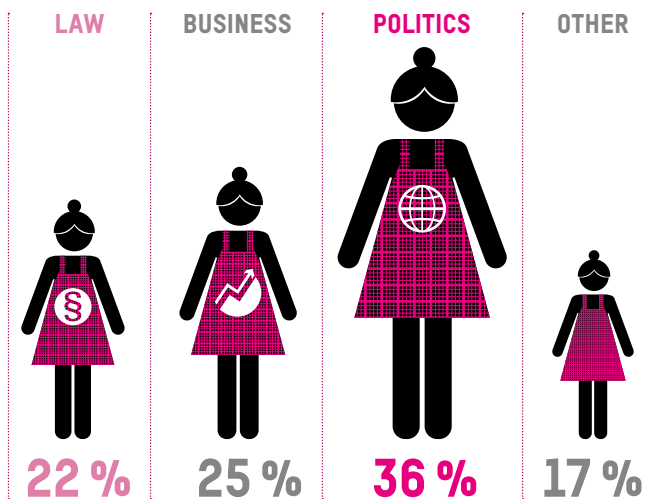
Facts and figures on the work of the supervisory authorities were already published in the Swiss Foundation Report 2012, its fundamental strive towards harmonization and consolidation having been highlighted as positive. At the same time, the report warned of a loss of consistency and clarity of the cantonal supervisory practice, seeing both at risk after the institutional split that the structural reform had brought.¹¹ The Swiss Foundation Report 2014¹² then published the results of a first survey on the satisfaction of charitable foundations with the supervisory authorities. Overall, the supervisory authorities received very good marks. However, half of the foundations taking part in the survey were under the responsibility of the national supervisory authority. Criticism was expressed regarding the fees of cantonal supervisory authorities, causing their evaluation results to be considerably lower than those of the national supervisory authority. Most probably, there is a connection between the spin-offs of most cantonal supervisory authorities into independent units, which in the majority of cases led to an increase in fees. Meanwhile, independent of the survey, there are critical voices touching on the

FIGURE 12:
NUMBER OF SUPERVISED FOUNDATIONS AS OF 31.12.2015



Source: Own illustration; data source: CEPS database

FIGURE 13:
PROFESSIONAL COMPOSITION OF THE ADMINISTRATIVE BOARDS



Source: Own illustration

remuneration of the administrative boards of supervisory authorities.

LACK OF KNOW-HOW IN RELATION TO TO GRANT-MAKING FOUNDATIONS

According to the survey, the foundation supervisory authorities are fulfilling their core business to the satisfaction of the majority of the foundations interviewed. A question that remains open is whether there is a functional specialization of the supervisory authorities for charitable foundations – even more so when in combination with the supervision of pension foundations. The 16 cantonal supervisory authorities were turned into nine spin-offs, public-law entities now employing a total of 42 administrative boards. An evaluation of the composition of personnel within these boards shows that the majority of the 42 administrative boards have a professional background in law (frequently with a focus on OPA and pension funds) as well as business and politics, but only a small number has comprehensive expertise in the area of charitable foundations. Half of the administrative boards, however, are familiar with the work of charitable foundations through foundation board mandates, but only three (only two up to the end of 2015) of these people had any professional experience with philanthropy and the non-profit foundation sector. These three are located in the OPA and foundation supervisory authorities of the

cantons Geneva, Basel-Land and Basel-Stadt. There are no full-time experts for charitable foundations in the administrative boards of the other seven cantonal and inter-cantonal supervisory authorities.

HIGH PROPORTION OF POLITICIANS

Furthermore, considerable differences could be observed in the course of the evaluation regarding the composition of professional expertise in the administrative boards of the supervisory authorities. While the three administrative boards of the OPA and foundation supervisory authorities of the Eastern, Western and Central Switzerland are exclusively staffed by politicians, the administrative boards of the Solothurn supervisory authority and that of the OPA and foundation supervisory authority of the canton of Zurich feature experts in law, business and management consultants who are exclusively specialising in pension foundations. With two out of five, the supervisory authority of the canton of Geneva holds the highest proportion of experts on charitable foundations; it contains a mix of professional know-how, although, as the only one of the nine spin-offs, it has no woman represented in the board. Also relatively diverse on an expert level were the OPA and foundation supervisory authorities of Aargau, Bern and Basel. Since the beginning of 2016, the supervisory authority of both cantons of Basel has Dr. Antonia Jann, President of Swiss-Foundations, on board, a practitioner and expert in charitable foundations.

On average, there are four to five people on the administrative board of an OPA and foundation supervisory authority in combination with a public-law institution. The smallest administrative boards with just three people each are the cantonal supervisory authorities of Solothurn and Aargau. The largest administrative boards with regard to the number of seats, namely six, are the supervisory authorities of the central cantons (Luzern, Nidwalden, Schwyz and Zug) and that of the eastern cantons (St. Gallen, Tessin, and Thurgau). In terms of numbers, the OPA and foundation supervisory authority of Western Switzerland (Neuenburg and Vaud) is the biggest with 1,290 supervised charitable foundations. The OPA and foundation supervisory authority of the canton of Solothurn supervises the smallest number of charitable foundations with 214. On average, the spin-offs are responsible for the supervision of approximately 690 charitable foundations.¹³



**Universität
Zürich**^{UZH}

Zentrum für Stiftungsrecht

17. Juni 2016 Aula der Universität Zürich

4. Zürcher Stiftungsrechtstag

Universum Stiftung

THEMENBLÖCKE

- Hochschul- und Wissenschaftsförderung der Zukunft
 - Die gemischte Stiftung
 - The New World of Foundations
-

UNTER MITWIRKUNG VON

- Dr. Christoph Degen
- Sally Edwards
- Prof. Dr. Ernst Fehr
- Dr. Harold Grüninger
- Prof. Dr. Michael Hengartner
- Prof. Dr. Rainer Hüttemann
- Prof. Dr. Dominique Jakob
- Prof. Dr. Ben Moore
- Filippo Nosedà
- Paolo Panico
- Dr. Peter Picht
- Dr. Claudia Suter
- Dr. Pascale Vonmont
- Prof. Dr. Georg von Schnurbein

TAGUNGSLEITUNG

- Prof. Dr. Dominique Jakob
Zentrum für Stiftungsrecht an der Universität Zürich
-

Anmeldung und weitere Informationen unter:

www.zentrum-stiftungsrecht.uzh.ch

In Kooperation mit dem Europainstitut an der Universität Zürich und mit freundlicher Unterstützung von Hauptsponsor Credit Suisse und SwissFoundations.

II. FOUNDATIONS AND LAW

LEGAL DEVELOPMENTS

The year 2015 kept the foundation sector in motion from a legal perspective. The parliamentary initiative to further strengthen the country's appeal to foundations ("Schweizer Stiftungsstandort. Stärkung") cleared the first hurdle by getting approval from the Committee for Legal Affairs of the Council of States in November. The "small" revision of the Federal Act on Value Added Tax (VAT Act) also took a step ahead: at the end of September, the National Council approved the bill of the Federal Council on a revision of the value-added tax law in a plenary vote. Among the laws already passed are the new and compulsory accounting regulations principles and reporting standards as well as the FATF law ("FATF-Gesetzgebung"), which have been in force since the beginning of 2015; and the obligation to register in the commercial register that was extended to religious and family foundations, which has been in force since the beginning of 2016. In jurisprudence, there were also a number of interesting decisions. For example, the term "entrepreneurial activity" ("unternehmerische Tätigkeit") was newly defined for non-profit organisations, meaning that they are also subject to value-added tax. Finally, the sector is currently dealing with a draft bill on the reorganisation of the Federal Foundation Supervisory Authority.

In the following section, the most important legal developments for the foundation sector will be presented. Details on the current legislation, jurisprudence, and literature are available in the annual publication by Jakob et al., Verein – Stiftung – Trust, njus.ch.¹⁴

CURRENT PROJECTS IN THE LEGISLATION PROCESS

DRAFT BILL ON THE REORGANISATION OF THE FEDERAL FOUNDATION SUPERVISORY AUTHORITY (FFSA)

The bill dated 2.3.2016¹⁵ proposes to spin off the Federal Foundation Supervisory Authority (FFSA) from the Federal Department of Home Affairs (FDHA) and turn it into a public-law entity with a legal personality of its own. This will allow the FFSA to independently practice its supervision of foundations in terms of expertise, organisation, finance and human resources. In order to work, full-scale self-financing through fees and an annual supervision contribution for foundations is required. According to the explanatory report, the costs to be covered by the foundations would amount to CHF 1 to 1.2 million annually; the average additional burden per foundation would be CHF 230 to CHF 280, whereby the gross assets of a foundation are taken into account in the calculation.

The regulations of the Swiss Civil Code (SCC) on the content and scope of the supervisory authority remain unchanged at a material level. However, the bill does contain numerous provisions that are not found in the

SCC; it is argued that this is due to the legal substantiation of tasks and monitoring tools of the FFSA as a spin-off. Notable, for instance, is that the obligation of foundations to report annually should be laid down in the new law instead of – as practiced up to now – imposed by decree. Furthermore, the FFSA should be able to exchange information with other federal and cantonal authorities in cases where it helps to perform the legal tasks of the respective authority or it is required to fulfill the legal tasks of the FFSA. This will also apply to exchanges of sensitive personal data. However, the explanatory report of the FDHA¹⁶ points out that in cases of a suspected breach of law, it is the foundation bodies that are to be contacted first.

PARLIAMENTARY INITIATIVE FOR THE STRENGTHENING OF SWITZERLAND AS A LOCATION FOR FOUNDATIONS

The parliamentary initiative "Further strengthening the Swiss location for foundations" ("Schweizer Stiftungsstandort. Stärkung") (14.470) submitted on 9.12.2014 by Councillor of States Werner Luginbühl aims at an improvement of the data situation in foundation law; at selected reforms in foundation law, and at optimizing

tax legislation for the non-profit sector. The bill suggests that the Federal Statistical Office should regularly publish information on the organisations that are tax-exempted on the basis of their charitable status. Regarding the foundation law, a more succinct regulation and, in particular, more clearly defined requirements for a foundation supervisory authority complaint are requested. The reservation of the right to amend the purpose of the founder should also be extended to changes in the organisation at large and less relevant changes of the foundation charter should be enabled under easier terms and without legal certification. Regarding the foundation bodies, the bill proposes exclusion of liability for foundation council members working on a voluntary basis in cases of minor negligence. In addition, an adequate remuneration of the foundation management should not result in the loss of charitable status. Further tax law-related requests (tax privileges for contributions from the estate, donations carried forward to other assessment periods) round off the package.¹⁷ At least the first barrier on the long implementation path of the initiative has now been overcome. The Committee for Legal Affairs of the Council of States approved the parliamentary initiative on 3.11.2015.¹⁸ Within the next two years it will develop draft legislation, provided that the Committee for Legal Affairs of the National Council also approves the initiative.¹⁹

PARTIAL REVISION OF THE VALUE-ADDED TAX LAW

The partial revision of the Federal Act on Value Added Tax (VAT Act) is in progress. The National Council has unanimously voted for the bill of the Federal Council in an overall vote that took place at the end of September 2015. Although the National Council did make amendments to a few points in the draft of the Federal Council, there was agreement with regard to foreign companies no longer being privileged in comparison to the local companies. From now on, the threshold of CHF 100,000 is no longer applicable to the national turnover, but instead to the worldwide turnover as a basis for VAT obligation; this change will end the competitive advantage that has benefited international companies. Furthermore, the National Council has agreed to a refinement of the definition of tax-exempted donations and contributions by sponsors, which, at the time, were introduced especially for the Swiss rescue agency (“Schweizerische Rettungsflugwacht”, REGA). Thus, donations and contributions by sponsors remain tax-exempted, while in future, charitable organisations are obliged to inform their donors or sponsors that there is no entitle-

ment to any service in return. In this context, the National Council rejected another motion – equally submitted with reference to REGA – from the economic commission; its aim was to link the status of tax-exemption of charitable legal entities to the level of the remunerations of the foundation board and steering committee members, so that they are kept in an appropriate range. The bill for the partial revision of the VAT Act will now be submitted to the Council of States.²⁰

MODERNISATION OF THE COMMERCIAL REGISTER

Since 1937, the regulations of the Swiss Code of Obligations (SCO) on the commercial register have not been comprehensively revised. The time for change has come. At least the Federal Council is seeing it that way, expressing the view that the commercial register needs to be modernized in order to be able to secure safe and efficient legal communication. It submitted bills to the National Council, in April 2015, for changes in the part of the Swiss Code of Obligations that refers to the commercial register (art. 927 et seqq. SCO).²¹ Thus, the introduction of a central commercial register database is proposed, which would serve to unambiguously identify all natural persons in the whole of Switzerland on the basis of their Old-Age and Survivor’s Insurance number. A number of additional measures are proposed under the title of “Strengthening the Regularity, Legal Equality and Clarity” (“Stärkung der Gesetzmässigkeit, Rechtsgleichheit und Übersichtlichkeit”), which also apply to foundations. For example in art. 936 para. 2 of the draft SCO, it is envisaged that entries, statutes and foundation charters are made available on the internet free of charge.²² Moreover, the tasks for the commercial registry office are to be defined more precisely when it comes to organisational deficiencies of registered legal entities – like foundations. If there is an organisational deficiency (for example there is no functioning foundation board), then the commercial registry office would request the foundation to eliminate the deficiency, and where it is not resolved, it needs to submit the case to the supervisory authority or – if a foundation is not under supervision (new in the cases of all family and religious foundations!) – it needs to be brought to court (art. 939 para. 2 draft SCO). This also clarifies that the commercial registry offices do not perform the role of a party in any subsequent legal proceedings. They are not able to submit requests regarding the outcome of legal proceedings, nor are they entitled to appeal against the order of the court representing the supervisory authority. It is also not possible to charge them litigation costs.²³

NEW APPLICABLE LEGISLATION

FINANCIAL REPORTING

Since 1.1.2015, the application of the new financial reporting law is mandatory. For the annual accounts as of 31.12.2015 the minimum requirements were prescribed by art. 957 et seqq. SCO on commercial accounting and financial reporting. Foundations are basically obliged to use a double-entry accounting system; foundations that do not need to be registered in the commercial register or that were exempted from the obligation to appoint an audit authority will only need to report on income and expenditure (art. 957 SCO). Following these new rules, the expert recommendations on the financial reporting of charitable non-profit organisations (Swiss GAAP FER 21) were revised and came into effect on 1.1.2016 as planned.²⁴ It is a point of controversy whether the foundations and associations that close their accounts following the recommendations of Swiss GAAP FER 21 will have fulfilled the accounting requirements of the SCO or whether they will need to additionally close following art. 957 et seqq. SCO. To name a difference between the two accounting norms: The Swiss GAAP FER 21 is based on three capitals (equity capital, fund capital, outside capital), whereas the SCO only differentiates between outside and equity capital on the passive side. The question at that point is whether earmarked funds are to be included under the outside or the equity capital. In many cases it should be possible to perform just one closing that will conform to both GAAP FER 21 and the SCO.²⁵

OBLIGATION OF FAMILY AND RELIGIOUS FOUNDATIONS TO BE REGISTERED IN THE COMMERCIAL REGISTER

Since 1.1.2016, family and religious foundations are obliged to be registered in the commercial register. Art. 52 para. 2 SCC was amended accordingly; foundations that are established after 1.1.2016, only become legal entities after they are registered. Family and religious foundations already in existence at that date but not yet registered must catch up on the registration within the period of five years (so until the end of 2020). The consequences of this fundamental paradigm change are described in the following author contribution “Legal Changes for Family Foundations and Religious Foundations in Switzerland” (see page 20).

CURRENT JURISPRUDENCE

AMENDMENT OF STATUTES OF THE “FOUNDATION FOR ART, CULTURE, AND HISTORY”

In the summer of 2014, a dispute escalated in relation to the “Foundation for Art, Culture, and History” (“Stiftung für Kunst, Kultur und Geschichte”) established by the real-estate owner and art collector Bruno Stefanini; among other things, it was about the choice and composition of the foundation board. At the end of 2014, the then foundation board appealed to the FFSA for permission to change a provision in the foundation charter. The provision stipulates that the founder appoints the members of the foundation board and that this power is passed to his successors once the founder is no longer in the position to do so.²⁶ In its order as per 23.1.2015, the FFSA refused the requested change reasoning that it “qualified as a substantial organisational change of statutes”.²⁷ According to art. 85 SCC, such a substantial change of the foundation’s organisation was only possible “if the preservation of the assets or the safeguarding of the foundation purpose required it”. It appears that the FFSA did not see these conditions as being fulfilled. Consequently, the statutes dating from 1980, including the above-mentioned provision will remain in effect. In reaction to the order of the FFSA, the current foundation board has filed a complaint with the Federal Administrative Court, requesting the examination of its legal compliance. In the meantime, an administrator was appointed by FFSA to continue the orderly management of the foundation’s activities for as long as it remains unclear who is legally entitled to be part of the foundation board.²⁸ The decision of the Federal Administrative Court, to be announced in spring 2016, is being eagerly awaited.²⁹

PROPORTIONALITY OF AN ORDER OF THE FEDERAL FOUNDATION SUPERVISORY AUTHORITY (FFSA)

The FFSA nominated an administrator with individual signatory authority for a foundation on 1.9.2014, it also suspended the foundation’s boards besides taking other measures. The reasons put forward for these measures were that the foundation board was too inactive and that it was thus endangering imminent restructuring measures. Especially opposed to their suspension, the foundation board members filed a complaint with the Federal Administrative Court. This resulted in the FFSA revoking the suspension of the foundation board on 31.1.2015, but ordering that the foundation board was to get per-

mission from the administrator for all of their actions. Against this decision another complaint was filed with the Federal Administrative Court. The court decided on 19.5.2015, B-5309/2014, that on the one hand, the measure with the task being taken on by an administrator was suitable to achieve the objective, but that on the other hand, the measure was not necessary and therefore out of proportion – especially since the foundation board had not evaded the orders of the authority but, rather, had respected these and had cooperated with the administrator. However, should the foundation board members oppose the orders of the administrator in future, the supervisory authority could take suitable measures, which could be of a greater consequence and could include the suspension of the foundation board members.³⁰ This decision demonstrates how the supervisory authority is to follow the principle of proportionality, allowing a suspension of foundation board members only under qualified conditions.

CHARITABLE FOUNDATIONS AND VAT OBLIGATION

In the decision A-5017/2013 dated 15.7.2014, the Federal Administrative Court was to decide whether a foundation was subject to VAT and thus entitled to VAT deductibility. The lower court, the Federal Tax Administration (FTA), had decided negatively on VAT obligation applying instead its own rule of 25 % (“25 %-Regel”). Following this rule of 25 %, there is no entrepreneurial activity in the sense of the VAT Act, if the foundation’s expenditures are not covered by the income of its services by at least 25 %, but are rather financed through non-remunerations such as donations at a rate of more than 75%. The Federal Administrative Court stated that this practice was against the law and referred the case back to the FTA.³¹ Subsequently, the FTA filed a complaint with the Federal Court, which confirmed the decision of the FTA (regarding the point that the activities could not be classified as entrepreneurial, if they were almost exclusively financed through non-remunerations such as donations etc. or if any additional income was of a more symbolic or trivial nature).³² Though, despite this, a charitable institution could be subject to VAT. It stated that the VAT term of entrepreneurial activity was not identical with that of the tax on income and profits law. In the case in question, the foundation was generating income of 4.4% and 9.9% of its total expenditure. These revenues may be considered as secondary, but they cannot merely be classified as symbolic, in particular, if looking at the absolute amount, which is significantly higher than the threshold of the obligatory tax for

charitable institutions (CHF 150,000 from taxable payments; art. 10 para. 2 lit. c VAT Act). This ruling by the Federal Court defines the “entrepreneurial activity” of non-profit organisations in a new way. According to this definition, it is not fulfilled if the activities are exclusively financed through non-remunerations or if the income is merely of a symbolic or trivial nature. The VAT obligation of the foundation was therefore affirmed, contrary to the rule of 25% of the FTA; the decision of the Federal Administrative Courts was confirmed and the foundation was retrospectively reentered into the VAT register.³³

LEGITIMACY OF THE CANTONAL TAX ADMINISTRATIONS TO APPEAL TO THE FEDERAL COURT

In 2007, on the basis of charitable purposes, Foundation X was provisionally exempted from tax by the cantonal tax administration of Appenzell Innerrhoden. Since the foundation subsequently did not take up activities according to the charitable-purpose law, the cantonal tax authority first revoked the provisional tax exemption before initiating proceedings for supplementary inheritance tax; it decided on 1.10.2014 that the foundation should pay the amount of CHF 431,138 in supplementary tax. Foundation X filed a complaint to the cantonal Court of Appenzell Innerrhoden, which affirmed the complaint on 2.7.2015 and repealed the decision of the cantonal tax administration. On 18.9.2015, the cantonal tax administration appealed to the Federal Court against this ruling, on matters of public law. As is the case with any appeal, the Federal Court examined whether the complainant (the cantonal tax administration) actually had the legal standing to appeal. According to art. 89 para. 2 lit. d Swiss Federal Court Act (Bundesgerichtsgesetz, BGG), administrations are only eligible to appeal if another federal law entitles them to it. In its decision dated 25.9.2015, 2C-847/2015, the Federal Court states that such a legal entitlement for cantonal tax administrations only exists in the area of the harmonised tax law, and not in the purely cantonal inheritance law.³⁴ Legal standing could therefore only be gained on the basis of the general art. 89 para. 1 BGG. This rule refers to a “special affectedness” caused by the decision appealed against and is predominantly tailored to private individuals; it is only applicable to the community if it were affected by the decision similarly to a private person or affected in a way that makes it worthy of protection because of it being hindered in exercising public-authority powers, namely, if the decision had a prejudicial effect on the fulfillment of public tasks. Financial and

fiscal interests alone were not sufficient to legitimise the complaint.³⁵ The right of the cantonal administration to appeal was therefore refused and the cantonal administration's complaint remained unanswered. As a result, it can be noted that, by and large, the cantonal tax administrations are not permitted to appeal outside of the harmonized tax legislation.

MONEY LAUNDERING AND FINANCING OF TERRORISM: FATF COUNTRY REVIEW OF SWITZERLAND

Since the 70s, the national and international payment transactions of banks and their clients have been subject to restricting rules regarding control and monitoring obligations. The aim of this was and continues to be the identification of money with criminal origins and the prevention of its laundering. The charitable foundations in Switzerland are part of these endeavors. Thus, recommendation 23 of the Swiss Foundation Code 2015 states that the foundation board must reject assets and contributions "... that violate the national legislation or international treaties. This especially concerns assets in connection with terrorism, money laundering, corruption and other criminal offences".³⁶

In the context of the active international fight against money laundering, the Paris-based OECD-related Financial Action Task Force (FATF) has become well known. It was employed in 1989 at the G-7 summit and it issues recommendations on combating money laundering and the financing of terrorism,³⁷ which should then be implemented by the national legislators of the member states. Although these recommendations are not legally binding, at international level they are recognized as, in principle, binding. Worldwide more than 180 countries have committed to implement the FATF's recommendations in legislation and politics. In order to monitor the implementation of their recommendations in the different countries, the FATF performs so-called 'country reviews' and publishes the country reports on its website.

FOCUSING ON THE NPO SECTOR

As a reaction to the terrorist attacks of 11.9.2001, the FATF published nine "Special Recommendations" in autumn 2001 addressing a variety of individual topics that help fight terrorism in addition to the original fight against money laundering. In this context, the NPO sector and with it non-profit organisations like foundations



Universität
Basel

Center for
Philanthropy Studies



Kommunikation und Wirkungsmessung

22. August bis 20. Oktober 2016

Intensiv-Lehrgang Finanzmanagement

7. bis 11. November 2016

Informationen auf www.ceps.unibas.ch/weiterbildung

Das Center for Philanthropy Studies (CEPS) der Universität Basel ist ein interdisziplinäres Forschungs- und Weiterbildungsinstitut für Philanthropie und Stiftungswesen.
Initiiert von SwissFoundations

have become increasingly targeted. Recommendation 8 of the FATF views charitable organisations as particularly vulnerable and calls the countries to take suitable measures; to protect NPOs from abuse through money laundering or the financing of terrorism. The 40 recommendations on combating money laundering and the financing of terrorism were revised and consolidated to be published in 2012. It is noteworthy that Recommendation 8 continues to be listed in the category of terrorist financing (and not primarily to prevent money laundering). The recommendation is discussed in a number of analyses and accompanying reports. The FATF Typologies Report “Risk of Terrorist Abuse in Non-Profit Organisations” published in 2014 examines 102 cases of abuse in different countries and lists a number of weak points and areas of activity where prevention against abuse is possible.³⁸ With the publication “Best Practice Paper on Combating the Abuse of Non-Profit Organisations (Recommendation 8)”,³⁹ revised and published in June 2015, the FATF pursues the same aim. The “Interpretive Note”, accompanying every single recommendation, is intended to help countries with the implementation of Recommendation 8. Following the large number of statements made on the topic since autumn 2001, the FATF announced in November 2015 that Recommendation 8 would be subject to a “Public Consultation”.⁴⁰

REACTIONS FROM WITHIN THE SECTOR

A broad coalition of important actors within the NPO sector, among them the European Foundation Centre (EFC) in Brussels and the voice of national foundations associations, The Donors and Foundations Networks in Europe (DAFNE), has been arguing against the general assessment that the NPO sector was “... particularly vulnerable ...”⁴¹ regarding money laundering and terrorist financing issues. Recommendation 8 and especially the accompanying analyses and reports are heavily criticized because they could cause national legislators to overregulate and misinterpret the NPO sector, its role and function. The coalition argues that the measures proposed by the FATF could be misunderstood by individual countries as giving them a “clean bill of health” to reinforce controls over civil society initiatives. Another risk seen by the coalition is the fact that banks and governments, due to the increased pressure, become more risk averse and will pull out of sensitive regions, withdrawing their support. In January 2016, the coalition addressed an open letter signed by more than 100 NPO organisations and associations to Je-Yoon Shin, president

of the FATF, and to David Lewis, General Secretary of the organisation, requesting them to fundamentally rework Recommendation 8. What the response to this request will actually look like remains to be seen.

FATF DELEGATION VISITS SWITZERLAND

The third country review of Switzerland took place in 2005. The status of implementation of the 40 recommendations in authorities, banks, other finance intermediaries and in the NPO sector were monitored. The resulting country report (partially revised in 2009) at-tested the country a principally well-functioning network of preventative measures against money laundering and terrorist financing. Regarding Recommendation 8, the report finds fault with the lack of transparency in the Swiss association sector, while charitable foundations were considered as sufficiently known and supervised.⁴²

Towards the end of 2014, the fourth cycle of the FATF country reviews started with the assessment of Australia, Belgium, Spain and Norway. The country review of Switzerland takes place from 25.2.2016. The NPO sector will be represented by SwissFoundations, proFonds and the Zewo at the approximately one-hour hearing with the FATF delegation.⁴³ The country review is expected to be released in the course of September 2016.

Author contribution by Prof. Dr. Dominique Jakob and Simon Gubler

A CHANGE OF PARADIGM AND ITS CONSEQUENCES

LEGAL CHANGES FOR FAMILY FOUNDATIONS AND RELIGIOUS FOUNDATIONS IN SWITZERLAND

Since 1.1.2016, all foundations must be registered in the commercial register. From now on, family and religious foundations are equally obliged to register. As stated in the new art. 52 para. 2 Swiss Civil Code (SCC), only public-law corporations and entities as well as associations without an economic purpose are exempted from the obligation to register with the commercial register. In the following, it will be discussed why the obligation to register was extended, what the consequences are and the particular requirements for religious foundations (only) in their registration process.

BACKGROUND OF THE UPCOMING CHANGES

The Financial Action Task Force (FATF), as part of the Organisation for Economic Cooperation and Development (OECD, Switzerland is also a member), is a committee created for the mission of analysing the methods of money laundering and terrorist financing in order to provide tools for the uncovering of assets with criminal origins. The FATF publishes recommendations based on global developments that intend to set international standards for the combat against money laundering and the financing of terrorism. The recommendations were last revised and newly published in 2012 as a reaction to the financial crisis, the increased tax competition and, associated therewith, the growing pressure on the bank client confidentiality. In face of this, it does not come as a surprise that the latest recommendations also set new standards for the transparency of legal entities. In particular, information on legal entities and their beneficial owners must be made publicly available. With the Federal Law on the implementation of the adapted recommendations of the FATF, these standards were legally implemented in Switzerland with the aim of creating more transparency.⁴⁴ As a result, the requirement for entry in the commercial register has been extended to all foundations.

COMMERCIAL REGISTRATION REQUIREMENT

According to art. 52 para. 1 SCC, entities (including foundations) become legal entities through their entry in the commercial register. Foundations therefore basically only come into existence at the time they are registered in the commercial register. Up to now, family and religious foundations were an exception; according to the previous version of art. 52 para. 2 SCC, they did not require registration. The latter rule was changed, coming into effect on 1.1.2016: The new art. 52 para. 2 SCC no longer offers the privilege of the free, unregistered corporation constitution to family and religious foundations.

The commercial registration is therefore constitutive for newly established foundations (art. 52 para. 1 SCC). Family and religious foundations that already existed before the 1.1.2016 are permitted a five-year transitional period to constitute as a legal entity, according to the new art. 6b para. 2bis of the Final Title of the SCC (until the end of 2020). What will happen with those foundations that will not have registered within this transitional period? According to a practice note by the Swiss Commercial Registry Office (“Eidgenössisches Amt für das Handelsregister”, EHRA), the existing religious and family foundations that are not registered should

still be recognized after the five-year period and are not to lose their legal personality automatically after 2020.⁴⁵

However, the disregard for the obligation to register can entail other legal repercussions. There could be sanctions on the basis of the Commercial Register Ordinance (CRO). Since the commercial registry office is not authorized to investigate in its own right to provide the necessary proof such as statutes, an ex-officio registration of the foundation in accordance with art. 152 para. 1 CRO is not an option.⁴⁶ Provided that the commercial registry office is aware of the existence of the legal entity, following art. 152 para. 2 CRO, it will request the organisation to register within a period of 30 days. In many cases though, due to a lack of transparency, the commercial registry office will not be aware of the foundations that are not registered. These foundations are recommended to register even if there is no request to do so. Should the non-inclusion be revealed, the commercial registry office could impose a fine according to art. 943 para. 1 SCO. Furthermore, in the case of deliberate action, the provisions of the Swiss Criminal Code could be applied for the following offenses: contempt of official orders (art. 292 Criminal Code, only applies if there was a request to register), a false statement about commercial business (art. 152 Criminal Code), false statements to the commercial register authorities (art. 153 Criminal Code), forgery of a document (art. 251 Criminal Code), and obtaining a false certificate by fraud (art. 253 Criminal Code). Furthermore according to art. 942 SCO, anyone who is obliged to register with the commercial register and fails to do so either deliberately or out of negligence is liable for any damage caused by the failure.

Once the foundation is entered in the commercial register, there is an impact on the level of transparency; due to the public accessibility of the commercial register,⁴⁷ the existence of the foundation is published as well as further important information (e.g. details regarding the address, purpose, board members, and auditors of the foundation) and these details are accessible to the authorities as well as to private individuals.⁴⁸ Furthermore, if there are organisational deficiencies, the foundation needs to comply with the request of the commercial registry authority to eliminate these, and if it fails to do so, it has to accept that the case may be brought to court (art. 154 CRO/art. 939 draft SCO). According to a practice note from the Swiss Commercial Registry Office,⁴⁹ the registration requirement also has implications for the accounting procedures. Basic accounting, previously merely recording income, expenditures and details on

the assets, will no longer suffice. Instead, a comprehensive financial report in accordance with art. 957 et seqq. SCO is required.⁵⁰ Additionally, the obligation to register impacts the execution procedures: from now on, the debt collection involving a religious foundation will require bankruptcy proceedings.⁵¹

PARTICULARITIES IN THE COMMERCIAL REGISTRATION PROCESS OF RELIGIOUS FOUNDATIONS

In the third sentence of the new art. 6b para. 2bis of the Final Title of the SCC, the Federal Council has considered the particular situation of religious foundations in the requirements for their registration. The provision enables the registration of very old religious foundations, where relevant documents required by the commercial register are missing and can no longer be found.⁵² The Commercial Register Ordinance is to be adapted in this area.⁵³ In this respect, the new regulation gives religious foundations a privilege over family foundations.

SUMMARY

From 1.1.2016 all foundations are to be registered in the commercial register to acquire a legal personality (new art. 52 para. 2 SCC); this includes family foundations and religious foundations. Foundations that are not registered in the commercial register by 1.1.2016, remain recognized as legal entities but must register with the commercial register before the end of 2020. Those failing to do so risk incurring legal sanctions. The entry in the commercial register creates transparency by publishing relevant information on the foundations. The requirement to register also includes the obligation to provide comprehensive bookkeeping. Facilitated conditions for registration are envisaged for religious foundations which are not in a position to provide all the necessary proof documents for registration with the commercial register.

III. FOUNDATIONS IN EUROPE II. FOUNDATIONS AND LAW

A STRONG NETWORK FOR EUROPE

Interview with Rosa Gallego, Chair Donors and Foundations Networks in Europe (DAFNE).
 Questions by Beate Eckhardt.



In most European countries, associations of foundations have evolved in the last ten years. What were the reasons?

The concept of association and networking is important at national level for a variety of reasons. Firstly, it creates a ‘safe space’ for foundations to convene and to discuss matters that are relevant to their operations and their interests. The foundation world is dynamic and it is important for foundation members to keep up to date with the legal and fiscal issues that determine the environment within which they operate. Secondly, associations provide a forum where possibilities for collaboration can be explored and where connections can be made within and beyond the foundation world. Thirdly, associations provide the means for articulating the voice of the foundation sector to policy makers and to the general public – raising awareness about what they do but also through informing and influencing policy – in particular that relating to the enabling environment.

Taking into account that foundations can be up to one percent of the GDP of a particular country – as we know by the research carried out by DAFNE – they are a significant group with common issues, interest and aims.

In 2009, the Donors and Foundations Networks in Europe (DAFNE) has made the development from a loose network to an institutionalized organization. How did DAFNE evolve and what has DAFNE achieved?

DAFNE was started and remains as an informal network, although in 2009 it did agree statutes and established a more formal process of governance. Last year there was a major step-change in our development with the employment of a Coordinating Director, thanks to financial support from the C.S. Mott Foundation, which has a particular interest in building philanthropy infrastructure.

Now we have a person who drives the activity of the network through a structured work programme, which focusses on facilitating exchange of learning across Europe, building the collective knowledge base of our 23 members, and ensuring that national associations are appropriately informed and that their individual and collective voice is heard. This has contributed to further empowering our membership where the strength lies in the coalition of national organizations.

Our collective voice has contributed to defending and representing the interest of the foundation sector at European and international level, the coordination and exchange of knowledge that is currently available to deal with issues such as those of shrinking space for civil society, would not be there should DAFNE not exist. In this sense, we have made it possible that the 23 national associations speak with one voice on issues affecting the sector, such as the work of the European Commission for the European Foundation Statute, or the request to revise the guidance that derives from the Financial Action Task Force in relation to non-profit organisations.

Does DAFNE represent the whole European foundation sector and what are you planning in order to fill potential gaps?

No national organisation represents the whole of the foundation sector in their respective country. They do, however, tend to represent the most significant proportion in terms of financial capacity and influence. I am pleased to say that all countries in Europe that have national associations are members or are in the process of joining DAFNE. Currently, our 23 members have a membership of around 7,500 foundations and donors. The foundation world is extremely diverse embracing many types and scales of foundations and interests that range from hyper-local to global. Similarly, national associations vary in their scale of operation, their purpose and operations. The important thing for us is to ensure that we engage with countries where national associations are emerging and involve them in DAFNE to ensure that they can learn from others who have experience and that we can make their journey of development a little easier and that they can bring fresh thinking to our network.

What would you see as the most crucial challenges public-benefit foundations as part of the civil society will face within the next few years?

It is recognised that foundations and donors operate in a dynamic and challenging environment. Increasing com-

plexity is arising from new forms of social investment, more public and political scrutiny, reducing public expenditure – all set in a context of persistent societal needs as well as the emergence of new socio-economic, environmental and political issues. Foundations, while being relatively small players in the bigger picture, are significant in what they do and how they go about it. As a result, foundations have to become increasingly professional in their work, achieve impact with relatively small resources, and ensure that trust is maintained in what they do.

How can infrastructure organizations such as DAFNE support foundations to master these challenges?

Foundations are becoming more diverse in their approach, and becoming increasingly sophisticated as social investors – for example combining grant-making with operational support, and getting involved in alternative forms of social finance. Foundations are concerned about knowing what difference they make and there is increasing demand from the public for transparency. This will require further evolution of both the operating environment and the practice of philanthropy. Collaboration (including across borders) will become increasingly important where bigger and wider impact is required. All of this suggests increasing professionalization of the foundation sector and the need for knowledge and experience to be shared to improve practice and to help inform policy. National associations and donors forums are critical components in the support infrastructure for philanthropy. Their development and effectiveness can be enhanced through sharing knowledge among peers across Europe and exploiting synergies – thus adding value to individual and collective national capacity.

DAFNE is an informal network gathering donors and foundations associations in Europe with the aim of providing a platform to share knowledge and learn from best practices. DAFNE creates an effective mechanism for Europe-wide collaboration, exchange or know-how and the creation of a pool of knowledge at the level of DAFNE network among philanthropy support organisations. With 23 member associations with a collective membership of more than 7,500 foundations and grant makers, DAFNE underpins individual activities of its members by encouraging dialogue and collaboration between the national associations. Each DAFNE member individually serves public-benefit foundations and other donors at national level: their role and services vary from country to country. Switzerland is represented by SwissFoundations, which belongs to the founding members of DAFNE. Since mid-2015, SwissFoundations has also held one of the four positions in the DAFNE Steering Committee.

www.dafne-online.eu

Guest contribution by Matthias Uhl

COMMUNITY FOUNDATIONS IN EUROPE

Victor Hugo is said to have had the following insight while meditating on his “History of a crime”, namely that nothing was more powerful than an idea that occurs at the right moment in time.⁵⁴ Looking at the facts and figures, it seems that the community foundation is one of these powerful ideas of our modern time. After a rapid spread of the concept, in Germany alone 387 community foundations are currently in possession of a foundation capital totaling more than EUR 300 million and offering approximately 30,000 community founders a platform for their civil society engagement.⁵⁵

Matthias Uhl studied law in Regensburg, Munich and Zurich and was an assistant at the Center for Foundation Law of the University of Zurich. He has authored numerous publications on national and international foundation and charity law. Since 2015, Matthias Uhl works as a lawyer for Schick and Schaudt Rechtsanwälte in Stuttgart, a law firm specializing in legal and tax advisory services for non-profit organizations and social enterprises

www.schick-schaudt.eu

Those participating donate money and time, bundle the potential for philanthropy at their doorsteps, thus adding yet another flower to the civil society.⁵⁶ On a psychological level, citizens understand the opportunity to perform tasks for the common good as an honour and personal fulfilment. Their actions are motivated by an attitude of generosity and giving.⁵⁷ Rather than choosing a society, citizens choose the foundation as a legal form to benefit from its good reputation. A factor speaking against the legal form of a society or association is that its success depends upon the contributions of its members, while only the foundation is able to establish a permanent purpose-assets-link. Moreover, very few founders are willing to endow their millions to an entity with a purpose that can be changed relatively easily.⁵⁸ Thus, we can see that the behaviour of community founders is based on a variety of motives.

WHAT ARE COMMUNITY FOUNDATIONS?

Community foundations are charitable foundations with a legal capacity under private law that support social, cultural or ecological concerns in a specific geographically

limited area of activity and impact, thereby being politically independent.⁵⁹ Generally, they are established by a number of individuals with the aim of supporting a wide array of charitable purposes from the outset, pursuing the objective of engaging as many cofounders, donors and volunteers as possible. These stakeholders often make up the founders’ assembly, adding another component from association law to the community foundation.⁶⁰ In the framework of a so-called dynamic asset generation, the foundation assets are to be accumulated bit by bit. Furthermore, community foundations often mentor several dependent foundations or “foundation funds” as well as acting as trustees for the founding assets donated by citizens and entrepreneurs. In these cases, community foundations resemble umbrella foundations.⁶¹

THE COMMUNITY FOUNDATION: A PRODUCT EXPORTED FROM THE USA ...

The community foundation movement, which is spanning many continents today, has its roots in the US. Frederick Goff, a banker and lawyer from Ohio, is said to have established the first community foundation in 1914. From then on, philanthropic resources were to be made fertile by a “foundation by citizens for citizens”, no longer seeing them locked away under the testamentary dispositions of deceased patrons. Today, the concept of the Goffian community foundation can be called an export product.⁶² Among the first community foundations in Europe are the German community foundations Gütersloh⁶³ and Hannover. In comparable ways, Great Britain⁶⁴ and Italy⁶⁵ also took up the model, extending the concept from a mere grant-making vehicle with operational activities.⁶⁶ While foundations in Austria so far⁶⁷ largely operating under private law do not seem to find fertile ground for the idea of the community foundation, the

foundation-friendly legislation of Switzerland offers a suitable environment for them.⁶⁸ In spite of this, the model has so far not been able to get established. The general opinion in the field is that to date, the community foundation is a barely known type in the foundation landscape of Switzerland. The informants point to the fact that the well-anchored elements of direct democracy offer traditional citizen communities and societies or cooperatives “analog functions at a local level”.⁶⁹ At the same time, the wide-spread claim that there are no community foundations in Switzerland is awaiting rectification.⁷⁰ For instance, the Aargau citizens’ foundations (Ortsbürgerstiftungen) in Villmergen, Mühlau and Oberlunkhofen demonstrate significant traits of community foundations⁷¹ – and it has been said that their model is going to “set an example” and that “half of Switzerland” is interested in it.⁷² The spreading of the model was prevented by resistance at legal and political levels – working toward the funds of local citizens remaining tied up in the communities rather than in privatized citizens’ foundations. That this development does not necessarily mean the end for community foundations in Switzerland is supported by several private initiatives in recent times that also manifest traits of a community foundation.⁷³ The movement around community foundations could therefore be able to become established in Switzerland. Should this happen, hopes are that the actors respect the limitations of the term “foundation”.

... WITH CERTAIN DOGMATIC RISKS AND SIDE EFFECTS

Looking at many German community foundations, the state of affairs gives rise to the above concern. From a legal point of view, a community foundation of Anglo-American origins cannot simply be transformed into a foundation of continental European standard at its nominal value. The US, strictly speaking, even lacks an independent legal form for a foundation under private law; foundations there are first and foremost tax phenomena; foundation objectives are realized in trusts or in charitable corporations.⁷⁴ In contrast, continental European foundation forms do not include collective, corporate or democratic-participatory elements, which would allow stakeholders to participate in the political will. It seems that the formation of some trust assemblies aims to change this by assigning competences to the assembly that enable external parties to participate in the corporate political will; after all, it is difficult to unite a number of different founders in one unified founder’s intent.⁷⁵

Moreover, there is increased discussion about the number of different foundation purposes typically listed as binding objectives in the foundation charters of a community foundation. Parts of the research literature⁷⁶ and also the German finance administration⁷⁷ see a problem in these so-called stocked purposes, if and when the simultaneous implementation of all foundation purposes – be it on the grounds of low financial support opportunities – is not covered for.⁷⁸ The discussion reached a point where it was questioned whether the stocked purposes were legal and, thus, whether this could mean the end of the community foundation.⁷⁹

In this context, it is not surprising that actors of several community foundations are faced with the allegation of perverting the foundation idea.⁸⁰ The degree of the above outlined problems varies from country to country. In Italy, for example, a partially corporate *fondazione di partecipazione* exists, which helps the Italian legislation accommodate the participatory possibilities of a community foundation better than the legislation of Switzerland or Germany – countries that dogmatically hold up the differentiation between foundation and corporation to the present day.⁸¹

OUTLOOK

Even though for a number of legal reasons community foundations don’t pin their colours to one mast, the foundation supervisory authorities tolerate and sometimes even politically protect them. This indicates a fundamentally reasonable usage and practice of the foundation form; a form which is ultimately able to have a meaningful philanthropic impact and can strengthen the development of civil society. It is assumed that community foundations will continue to be one of the largest growth areas within the third sector.

INSIGHTS OF THE EUFORI STUDY

HOW FOUNDATIONS IN EUROPE SUPPORT EDUCATION, RESEARCH AND INNOVATION

Since 2012, the “European Foundations on Research and Innovation (EUFORI) Study” has been working on analyzing the financial support by foundations for research and innovation at a European level. Its mission is to create a better understanding for the potential, objectives and methods of foundations that support research. Further goals are, first, to allow for a comparison between the EU member states, and second, to identify trends in the foundation sector and to point out synergies between the foundations and organizations supporting research, enterprise and research institutions.

Under the direction of researchers of the Free University of Amsterdam, national foundation sector experts have drawn up a study for each of the 27 EU member states, including Norway and Switzerland, and summarized their results in a final synthesis report. The results of the EUFORI study show that the importance of foundations as supporters of research and innovation has seen a considerable increase over the past 25 years. Not only do foundations play an important role in the stimulation of specific research areas, they also contribute to the diversification of financing.

PIONEERING EUROPE-WIDE STUDY

The total number of research & innovation (R&I) foundations in Europe cannot be determined precisely due to incomplete documentation. Nevertheless, the study was able to take a wide sample of 12,941 potential R&I foundations. The final number of the foundations analyzed in the study amounts to 1,591, while financial figures such as income, assets and expenditures were recorded for about 1,000 foundations.

Of the foundations analyzed, 47 % classify themselves as grant-making-only foundations, and 41 % only carry out operating activities. The remaining 12 % are involved in both grant-making and operating activities. Operational foundations were predominantly found in Mediterranean countries (approx. 80 % of all foundations),

while a large number of grant-making foundations (85 %) are a feature of Scandinavian countries.

RESEARCH AS A DOMINANT FUNDING OBJECTIVE

Foundations contributing to research and innovation are mostly interested in supporting research. The majority (61 %) of the 1,591 foundations exclusively supports research, only 6 % of foundations claim to be focusing on innovation and 33 % support both areas. For the majority of foundations (64 %), R&I is not an exclusive purpose, as they support other purposes too. Looking at the original founding body, it is apparent that more than half of the foundations (54 %) were established by private individuals or families. The founders of the other half are made up of corporations (18 %), non-profit organizations (18 %) and the public sector (17 %). Comparing the situation of founding institutions with the situation in Switzerland, a similar picture is witnessed, with one exception. Private individuals or families make up more than 70 % of the financial founders of foundations, in contrast to the whole of Europe. In Europe, about 63 % of R&I foundations can be classified as “standard grant-making foundation” since they generate their income from their own foundation capital; they are followed by a third of foundations (36 %) that receive state funding. Almost equally relevant as the donations of private individuals (31 %) are the contributions from corporations (29 %).

MORE THAN EUR 10 BILLION PER YEAR

The total expenditure of the 1,117 foundations that provided information on their situation adds up to a little more than EUR 10 billion. The majority of this sum is directed towards research (61 %), only 7 % to innovation and a third of the expenditure is for other foundation purposes.

A total of 991 foundations gave details on their R&I expenditure. In total, they distributed EUR 5.01 billion, the largest part being directed towards research (90 %) and only a small part being allocated to the area of innovation (10 %). A comparison of the amounts directed towards fundamental research and applied research shows that 83 % of R&I foundations focus on applied research, and 61 % support fundamental research. The expenditure is more or less evenly distributed across the two types of research – both receive approximately 50 % of the known total expenditure for research. At this point, the biggest difference in the results of the Swiss country study is observed. While the distribution is about the same regarding the focus (80 % support to applied research and less than 50 % to fundamental research), there is an imbalance in the expenditure in comparison to the European average: 46 % of expenditure is assigned to applied research and just 21 % to fundamental research.

Private individuals (55 %) make up the majority of beneficiaries, followed by public universities with a 48 % proportion of the expenditure. Research institutes (32 %) are also among the most important recipients of foundation grants.

Looking closely at the research areas supported by foundations, it becomes evident that medicine is the most important research area with regard to expenditure (63 %) as well as in terms of the number of foundations (44 %). Other popular research areas in terms of the number of foundations are social and behavioural studies, and natural sciences. In terms of expenditure, engineering and technology are also among top three.

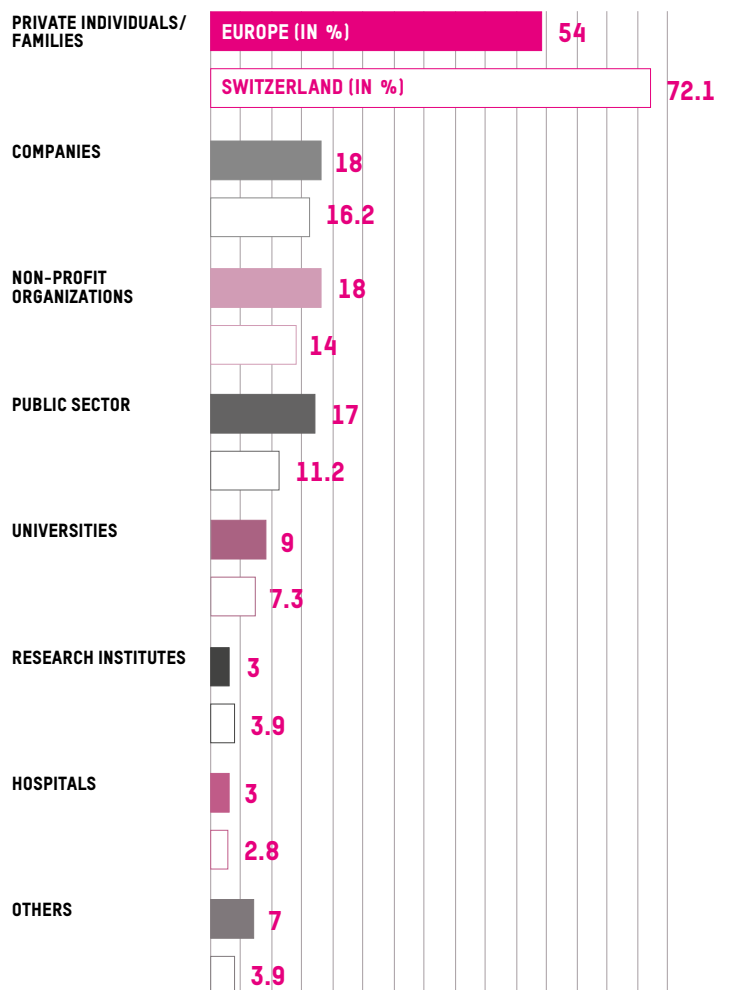
The expenditure of R&I foundations is mainly distributed directly to research. Only a small percentage (14 %) of the total research expenditure is earmarked for research-related activities. These activities include the dissemination of research, by far the most popular, and behind that by a long way, ‘mobility and career development of researchers’ and ‘science communication’.

RESEARCH AS A NATIONAL AFFAIR

From a geographical point of view, most foundations work at national level. Only a small proportion (10 %) of the total support is distributed at a European or international level.

After two and a half years of intensive research, the authors of the EURFORI study have provided comprehensive and detailed insights into an almost completely unknown area of the foundation sector. They have laid the foundations for a better understanding of how foundations in Europe support research and innovation, and have made a groundbreaking contribution for other research projects to follow suit.

FIGURE 14: DISTRIBUTION OF FOUNDATIONS BY FOUNDERS IN EUROPE AND IN SWITZERLAND (MULTIPLE ANSWERS POSSIBLE) ⁸²



Source: Own illustration

GOOD GOVERNANCE CODES IN EUROPE – A COMPARISON

The concept of the foundation as such is a fantastic and simple idea: assets are assigned to an unchangeably fixed purpose and are given far-reaching independence to allow for the best possible implementation of the original founder’s intent. In practice, it is this simplicity that repeatedly causes an increasing amount of insecurity and, consequently, leads to inefficiencies or even wrongdoing. Many European countries have therefore developed recommendations on foundation governance over the past few years to help those managing foundations.

FIGURE 15:
PRINCIPLES FEATURED IN EUROPEAN GOVERNANCE CODES FOR FOUNDATIONS

	EFFECTIVENESS / IMPACT ASSESSMENT	CHECKS AND BALANCES	TRANSPARENCY	CONFLICTS OF INTEREST	ASSET MANAGEMENT & USAGE	SUPPORT REGULATIONS	COOPERATION	BEHAVIOUR OF THE INSTITUTIONAL BODIES
BELGIUM	+	+	+	-	-	+	-	-
BULGARIA	+	-	+	+	-	+	-	+
GERMANY	+	+	+	+	+	+	+	+
FINLAND	+	-	-	+	+	+	+	-
GREAT BRITAIN	+	-	+	-	-	-	-	-
NETHERLANDS	+	+	+	-	-	+	-	+
AUSTRIA	+	-	+	-	+	+	-	-
POLAND	+	+	+	-	-	+	-	-
RUSSIA	+	+	+	+	+	+	-	+
SWITZERLAND	+	+	+	+	+	+	-	+
SLOVAKIA	+	+	+	+	+	+	+	+
CZECH REPUBLIC	+	+	+	+	+	+	-	+
EUROPEAN FOUNDATION CENTRE	+	-	+	-	+	-	-	+

Source: Own illustration

Last year, reports of events concerning the Stiftung for Kunst, Kultur und Geschichte (SKKG) hit the news in Switzerland.⁸³ At the centre of attention was the dispute over the staffing of the foundation board, overshadowing the charitable foundation purpose. The founder, Bruno Stefanini, had secured seats in the foundation board for his children as part of the foundation charter. When the exiting foundation board wanted to delete this passage in the foundation charter, the successors filed a complaint and thus initiated a months-long trial and legal dispute; a preliminary end to the dispute was found through the nomination of a trustee by the Swiss foundation supervisory authority.

THE FOUNDATION GOVERNANCE CHALLENGE

The case is symptomatic of the challenges underlying the organization of a foundation and it highlights the importance of foundation governance: because the contents of a foundation charter can only be changed in exceptional cases and with sufficient justification at a later stage, all eventualities must be considered even before establishing the foundation. In the case of associations or other legal entities, the statutes can be adapted to new circumstances at any time following respective member decisions. The room for interpretation in cases of foundation purposes that are broadly termed will need to be managed by those responsible for the organization of the foundation.

COMPLEMENT TO THE FOUNDATION LAW

Foundation governance, if understood as the global steering of a foundation, is a tool to efficiently organize

the management and structure of a foundation. In most European countries, the codified foundation law is not very comprehensive, leaving room for interpretation that can also lead to insecurities. For this reason, complementary guidelines to be taken as recommendations are of great use for practical implementation. The terms “code” or “best practice” are of minor importance, as in most cases the enforcement power of such “soft law” provisions is very limited. The first European governance codes for foundations soon developed after the coming into effect of codes for enterprises, among them were the Swiss Foundation Code (2005) and the Swiss NPO-Code (2006). Like in Switzerland, a large number of NPO codes came into existence in other countries and there was rarely any homogenization. This could be due to the heterogeneity of the NPO sector or the lack of external pressure towards unity.⁸⁴ In the meantime, specifically for foundations and philanthropic actors, codes exist in more than 15 European countries. In addition, there are the EFC Principles of Good Practice, which were first published in 2006 and were revised in 2014. The Swiss Foundation Code has already undergone two revisions and shows the most continuous development; at the same time, it is one of the few codes that is supplemented with an explanatory comments section.

FORMAL SIMILARITIES AND DIFFERENCES IN CONTENT

Governance codes for foundations were generally produced by industry associations with self-regulation in mind. Most European codes have a similar structure. First, some basic principles are introduced that, with references to terms like effectiveness, transparency, responsibility, power balance or independence, define the framework for the organizational actions of a foundation. Figure 15 offers an overview of the principles and guidelines in 13 governance codes that were predominantly developed for foundations. A general basic consensus is recognizable, though the following justification of content and discussion points out many differences.

The principles and guidelines are mostly followed by recommendations that discuss individual aspects and topics in more detail. The extent of detail depends on different aspects such as the foundation law in force, the size of the foundation sector and the membership structure of industry associations. In countries with high legal regulation (for example Belgium), the focus of the governance codes is mostly on the elaboration of the support activity and the cooperation with the stakeholders.

Supplementary comments and further explanations are offered by just a few codes like the Swiss Foundation Code or the “Grundsätze Guter Stiftungspraxis des Bundesverbands”. In countries with a large foundation sector (for example the Netherlands and Switzerland), the codes are mostly larger in terms of recommendations and comments to better reflect the heterogeneity of the foundation landscape. Governance codes in countries (for example the Czech Republic and Poland) with small and still young foundation sectors tend to include information on foundations as such. Ultimately, the membership structure of the industry associations also has an effect on the design of the code. In Germany for instance, the “Grundsätze Guter Stiftungspraxis” were only written in a very general way so that it would win support from a majority of members of the federal association. It was only afterwards that the specific explanations for individual foundation forms like company foundations, trust foundations or church foundations were added. The Swiss Foundation Code has a special status in that sense, as it was initiated and supported by the association SwissFoundations, but was compiled by an independent team of authors rather than by members of the association.

USAGE AND DISSEMINATION OF THE CODES

There are still only very few studies that examine the implementation and usage of governance codes. Normally, the codes are also not binding for individual association members, which is why there is no systematic checking. A study on the usage of the Swiss Foundation Code via the websites of the members of SwissFoundations showed that already 39 % of the foundations mentioned the Swiss Foundation Code on their website. At the same time, the codes are also mentioned in scientific discussions in the legal field and they are acknowledged by the governmental supervisory authorities.⁸⁵ In Switzerland, the publication of the Swiss Foundation Code 2015 increased interest. Besides presentations by SwissFoundations, banks, financial service providers and other interest groups dedicated specific events to the newest edition. In spring 2016, the Christoph Merian Stiftung presented a new mission statement that builds upon the principles of the Swiss Foundation Code. Other foundations are also in the process of evaluating their activities on the basis of the Swiss Foundation Code.

CONCLUSION

Even though the principles of the codes compared with each other show certain overlaps, the evident differences on the content level make it clear that there is no uniform understanding of what good governance actually is. The individual countries' traditions, development of the foundation sector and the importance of the industry associations vary too much to allow for a common baseline. However, it is very pleasing to see that throughout Europe, foundation governance is perceived as an important creative mission within foundations. It is through this form of self-regulation that the sector is able to work against the tightening of laws, since the heightened expectations of foundations in the areas of transparency, responsibility and effectiveness are all too obvious (see contribution on page 14).





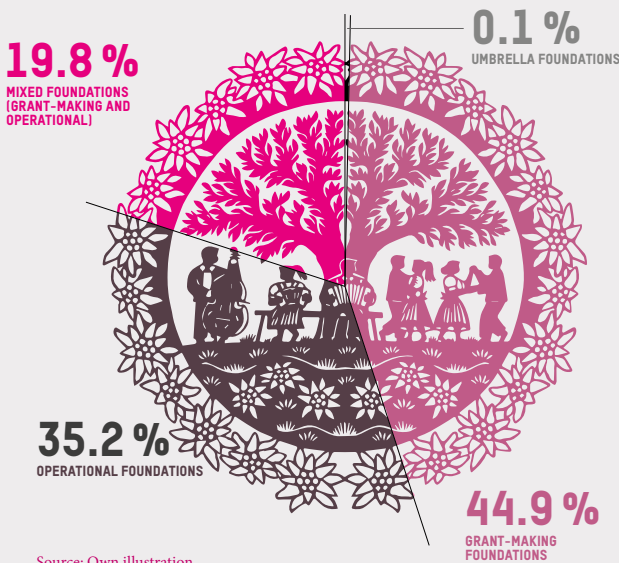
IV. REGIONAL FOCUS

Author contribution by Prof. Dr. Georg von Schnurbein and Irene Reynolds Schier

THE FOUNDATION SECTOR IN EASTERN SWITZERLAND

Whenever there was talk about foundations in the past few years, Zurich, Basel and the French-speaking part of Switzerland were frequently mentioned. But the Swiss foundation sector is not limited to these hotspots, rather, it stretches across the whole country. Eastern Switzerland as a church centre, having undergone an early industrialization and being internationally well known, possesses many important preconditions for a significant foundation sector.

FIGURE 16:
MODE OF OPERATION OF FOUNDATIONS IN EASTERN SWITZERLAND IN %



Source: Own illustration

In Eastern Switzerland, as in other regions, public opinion on foundations is formed on the basis of only a few of the local foundations, e.g. the Max Schmidheiny Stiftung, the Heinrich Gebert Kulturstiftung Appenzell or the Ria and Arthur Dietschweiler Stiftung. However, the foundation sector owes its role as an important factor in society to its diversity and breadth. Foundations are in no way able to replace state services but they are able to complement them in a meaningful way, they also preserve art and traditions. In addition, they are able to give impetus for new orientations and innovations that can be taken on and developed further by others.⁸⁶

The following “psychogram” of the foundation sector in Eastern Switzerland is the result of interdisciplinary research at the University of Basel. On the one hand, the data base of the Center for Philanthropy Studies (CEPS) was continuously improved and extended by including publicly accessible information; on the other hand, a topography of the Swiss foundation sector was produced in the framework of a doctoral project at the Institute for Human Geography. This year, additionally, financial figures on the foundations in Eastern Switzerland provided by the respective supervisory authorities were taken into account. By means of this comprehensive and unique data collection we are able to get new insights into the development and composition of the Swiss foundation sector.

DEMOGRAPHY

At the end of 2015, a total of 1,472 charitable foundations were registered in the six cantons of Appenzell Innerrhoden, Appenzell Ausererrhoden, Glarus, Graubünden, St. Gallen and Thurgau.⁸⁷ Within these, 66.2% are located in the two cantons of St. Gallen and Graubünden. As mentioned in the general information on page 2, the increase of new foundations has also slowed down in Eastern Switzerland, the Canton of Glarus even recording an – albeit minimal – decline. In comparison to other regions, the foundation sector of Eastern Switzerland is still relatively young. The oldest registered foundation is the foundation “Hochgebirgsklinik Davos” established in 1898. In Appenzell Innerrhoden, the oldest currently registered foundation only dates from the year 1946. What is apparent is that the oldest foundations in these cantons are predominantly operational

foundations. They are sponsorship foundations for colleges, recreation homes, kindergardens, hospitals and museums. The University of St. Gallen, too, was established in 1898 as a foundation under private law before it was transformed into a public-law entity in 1938. An exception is the “Eichmannstiftung” from Gommiswald, having been established as a grant-making foundation in 1928.

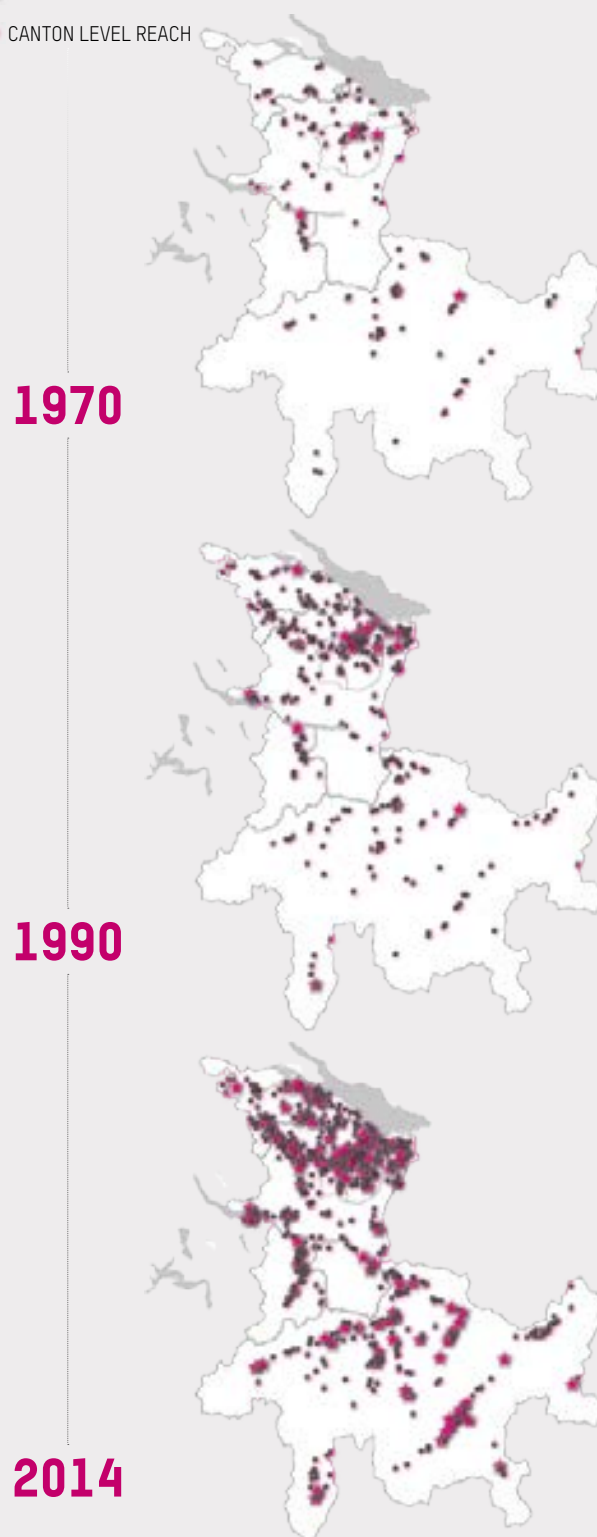
Due to some missing data, it is not possible to form a full picture of the foundation sector over the time span of more than 100 years. On the three maps the growth of the foundation sector can be illustrated. It becomes evident that the foundations in Eastern Switzerland were never limited to the main locations. In the period up to 1950 foundations were created in the traditional areas of activity, such as art (19 %), education (22 %) or social welfare (32 %). They are generally under the responsibility of the cantonal supervisory authority. Between 1951 and 1990, growth of the foundation sector was moderate. Areas of activity with a large increase, apart from the three traditional areas, were “housing & accommodation” (e.g. – social housing), “sport & leisure” (e.g. – holiday homes and sports grounds) and “Religion” (e.g. – to strengthen the Catholic Church in specific areas). After 1990, the foundation sector grew at an explosive rate. Many more than half of today’s foundations were established between 1990 and 2014, with a significantly higher density in the region of St. Gallen / Lake Constance. The number of foundations under the responsibility of the national supervisory authority peaked, which points towards greater activity radiuses on a national or international level. During those decades, new purpose areas emerged in addition to the traditional foundation activities, namely in the fields of environment and animal protection, in the health sector (incl. medical research), in the field of international development cooperation as well as in the promotion of the regional economy.

Meanwhile, especially in the past few years, the number of liquidations has also significantly increased. Since 2009, in six cantons, 111 foundations were liquidated. Out of these, ten were merged into another foundation. On average, the foundations which folded were 28 years old.

It is all the more relevant to examine existing foundations. In the following section, the foundation assets, financial distributions, the size of the foundation boards, the purpose orientations as well as the supervisory authorities are described in more detail.

FIGURE 17:
INCREASE OF CHARITABLE FOUNDATIONS IN EASTERN SWITZERLAND

- ★ NATIONAL LEVEL REACH
- CANTON LEVEL REACH



Source: Own illustration

FIGURE 18: DISTRIBUTION OF PURPOSE AREAS OF FOUNDATIONS IN EASTERN SWITZERLAND

	AI	AR	GL	GR	SG	TG	TOTAL
CULTURE & LEISURE	17	52	38	194	164	79	544
Number:							
Within canton %:	51.5%	53.6%	30.6%	42.0%	33.7%	33.6%	37.8%
% of total value:	1.2%	3.6%	2.6%	13.5%	11.4%	5.5%	
SOCIAL SERVICES	10	36	27	94	151	69	387
Number:							
Within canton %:	30.3%	37.1%	21.8%	20.3%	31.0%	29.4%	26.9%
% of total value:	0.7%	2.5%	1.9%	6.5%	10.5%	4.8%	
EDUCATION & RESEARCH	5	26	33	93	103	45	305
Number:							
Within canton %:	15.2%	26.8%	26.6%	20.1%	21.1%	19.1%	21.2%
% of total value:	0.3%	1.8%	2.3%	6.5%	7.2%	3.1%	
HEALTH SECTOR	4	18	13	67	52	27	181
Number:							
Within canton %:	12.1%	18.6%	10.5%	14.5%	10.7%	11.5%	12.6%
% of total value:	0.3%	1.3%	0.9%	4.7%	3.6%	1.9%	
DEVELOPMENT & HOUSING	2	11	13	45	43	19	133
Number:							
Within canton %:	6.1%	11.3%	10.5%	9.7%	8.8%	8.1%	9.2%
% of total value:	0.1%	0.8%	0.9%	3.1%	3.0%	1.3%	
ENVIRONMENTAL PROTECTION	1	5	11	30	33	22	102
Number:							
Within canton %:	3.0%	5.2%	8.9%	6.5%	6.8%	9.4%	7.1%
% of total value:	0.1%	0.3%	0.8%	2.1%	2.3%	1.5%	
RELIGION	1	5	9	24	20	9	68
Number:							
Within canton %:	3.0%	5.2%	7.3%	5.2%	4.1%	3.8%	4.7%
% of total value:	0.1%	0.3%	0.6%	1.7%	1.4%	0.6%	
INTERNATIONAL ORGANIZATIONS	0	5	6	17	28	10	66
Number:							
Within canton %:	0.0%	5.2%	4.8%	3.7%	5.7%	4.3%	4.6%
% of total value:	0.0%	0.3%	0.4%	1.2%	1.9%	0.7%	
ECONOMIC & PROF. ORGANIZATIONS	0	1	1	5	5	9	21
Number:							
Within canton %:	0.0%	1.0%	0.8%	1.1%	1.0%	3.8%	1.5%
% of total value:	0.0%	0.1%	0.1%	0.3%	0.3%	0.6%	
LAW & POLITICS	0	1	1	4	10	1	17
Number:							
Within canton %:	0.0%	1.0%	0.8%	0.9%	2.1%	0.4%	1.2%
% of total value:	0.0%	0.1%	0.1%	0.3%	0.7%	0.1%	
OTHERS	0	0	1	3	6	3	13
Number:							
Within canton %:	0.0%	0.0%	0.8%	0.6%	1.2%	1.3%	1.1%
% of total value:	0.0%	0.0%	0.1%	0.2%	0.4%	0.2%	
PHILANTHROPIC INTERMEDIARIES	0	0	0	2	2	0	4
Number:							
Within canton %:	0.0%	0.0%	0.0%	0.4%	0.4%	0.0%	0.3%
% of total value:	0.0%	0.0%	0.0%	0.1%	0.1%	0.0%	
NUMBER	33	97	124	462	487	235	1438
% of total value:	2.3%	6.7%	8.6%	32.1%	33.9%	16.3%	100.0%

Source: Own illustration; data sources: supervisory authorities of Eastern Switzerland and the cantons AI, AR, GL and GR

PURPOSES

Every foundation is committed to a specific purpose that is anchored in its foundation charter. The reservation of the right to amend the purpose, which is possible since 2006, is rarely mentioned in the foundation charters in the cantons of Eastern Switzerland. While in the whole of Switzerland 29.4 % of the foundations established since 2006 have included the reservation of the right to amend the purpose in their charter, the rate is just 13.2 % in the Eastern cantons.

By far the most important area of activity of the foundations in the eastern part of the country is culture and leisure (37.8 %), followed by social services (26.9 %), then education & research (21.2 %) (see Fig. 18). However, there are several differences between the cantons. In the two cantons of Appenzell, more than 50 % are active in the area of culture & leisure, compared to just 30.6 % in Glarus. Following the cultural domain, the social services form the most important purpose category: in this group Appenzell Ausserrhoden leads in Eastern Switzerland with a rate of 37 %, while in Glarus and Graubünden rates in the social welfare area are around 20 %. In Glarus and Appenzell Ausserrhoden every fourth foundation is engaged in education & research – in St. Gallen, Graubünden and Thurgau it is every fifth. With the exception of Appenzell Ausserrhoden, where about 19 % of foundations are active in the health sector, 10 to 14 % of foundations in all the other cantons are active in this area.

In practice, the differentiation between grant-making foundations and operational foundations has been established. Grant-making foundations ideally have assets on the basis of which – be it the proceeds or the assets themselves – they support projects and organizations. In this way, the fulfilment of purpose is indirectly achieved through other organizations. Operational foundations, in contrast, are immediately involved in the fulfilment of purpose, be it on the basis of own activities or in sponsorship of a charitable institution. The diversity of foundations is hardly reflected in this dichotomy, and, as the differentiation is not legally based, it is only recognizable by evaluation of the purposes stated in the commercial register. In the cantons of Eastern Switzerland, 44.9 % were classified as grant-making foundations and 35.2 % as operational foundations (see Fig. 16). 19.8 % could not be clearly identified as belonging to one category; and there are two umbrella foundations, the “Stiftung Succursus” in St. Gallen and the “Regulus – gemeinnützige Dachstiftung Königstein” in Chur.

FINANCIAL FIGURES

The illustration of the financial figures reflects those foundations that are under the supervision of a cantonal authority. In 2013, a total of 83.5 % of all registered charitable foundations were in the four cantons (1,252). Figures 20 and 21 show the cumulated foundation assets and expenditure by cantons. The total of available foundation assets amounts to CHF 4.7 billion. The spending ranges at an average of 3 %. Included in these are all expenditures, external costs (for example grants) and internal costs (for example salaries). Due to the mix of operational foundations, which range from an aid organization to an elderly care home, and grant-making foundations, a further differentiation of the expenditure was not possible.

However, significant differences could be observed between the cantons. In the cantons Glarus or Thurgau, a higher expenditure rate implies a higher rate of operational foundations, while in Graubünden and St. Gallen there seem to be more grant-making foundations.

An interesting aspect in this context is the development through time. From 2010 to 2013, the total assets have grown by 21.5 %, while expenditure increased by 38.5 %. At the same time, the number of foundations only rose by 5.7 %. Per year, the foundation assets (5.4 %) and expenditure (9.6 %) increased significantly more than the number of foundations (1.4 %). This points to the fact that the operational foundations, when it comes to evaluating financial figures, have a much greater influence than the grant-making foundations. Thus, the large increases in the expenditures seen in St. Gallen can largely be ascribed to transformations of foundations. In 2011, for instance, three museums in St. Gallen (Naturmuseum, Kunst Halle, Historisches Museum and Völkerkundemuseum) and two nursing homes were transformed into foundations. This led to an increase in expenditure of CHF 19 million from one year to the next, while the cumulated assets only increased by CHF 62.7 million. Meanwhile, developments such as can be observed in the Canton of Thurgau indicate that other financing sources like state contributions, fundraising or own revenue do not allow for correlations between the amount of assets and the amount of expenditure. Although the foundation assets in the Canton of Thurgau have increased, the expenditure has decreased considerably.

* The expenditures of the canton of Graubünden are distributions, no other expenditure of the foundations was considered.

FIGURE 19:
NUMBER OF FOUNDATIONS

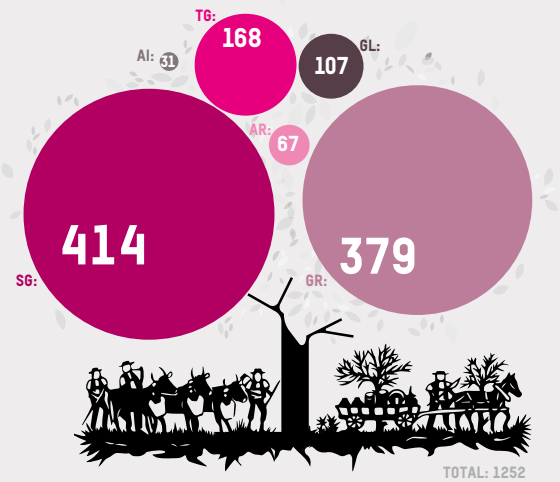


FIGURE 20:
FOUNDATION ASSETS

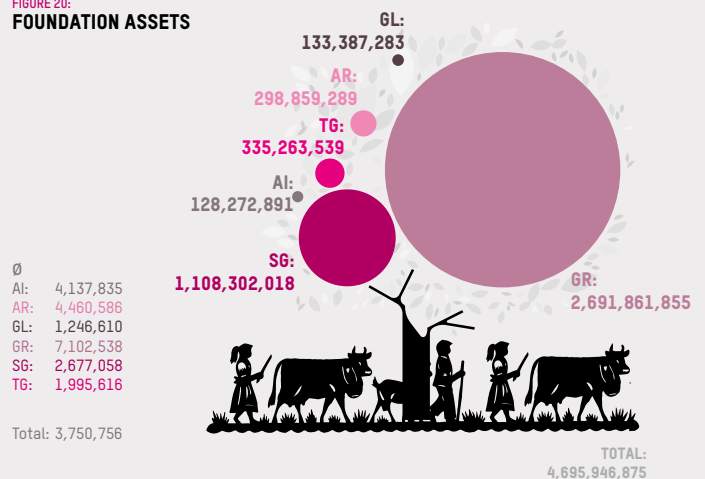
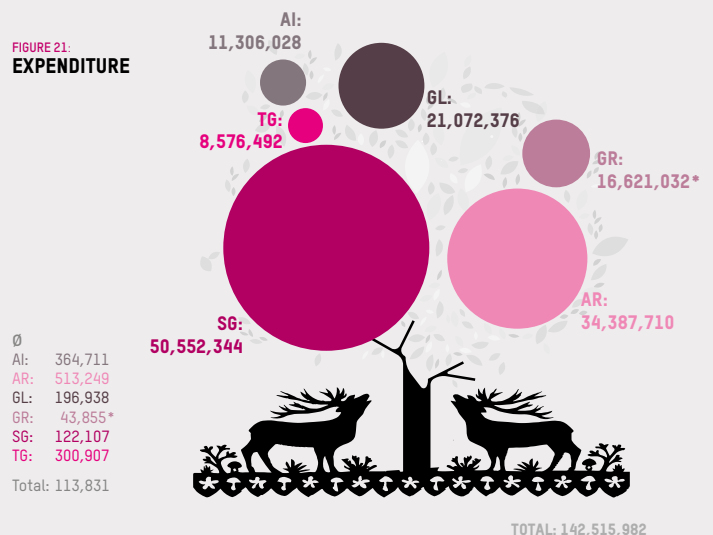
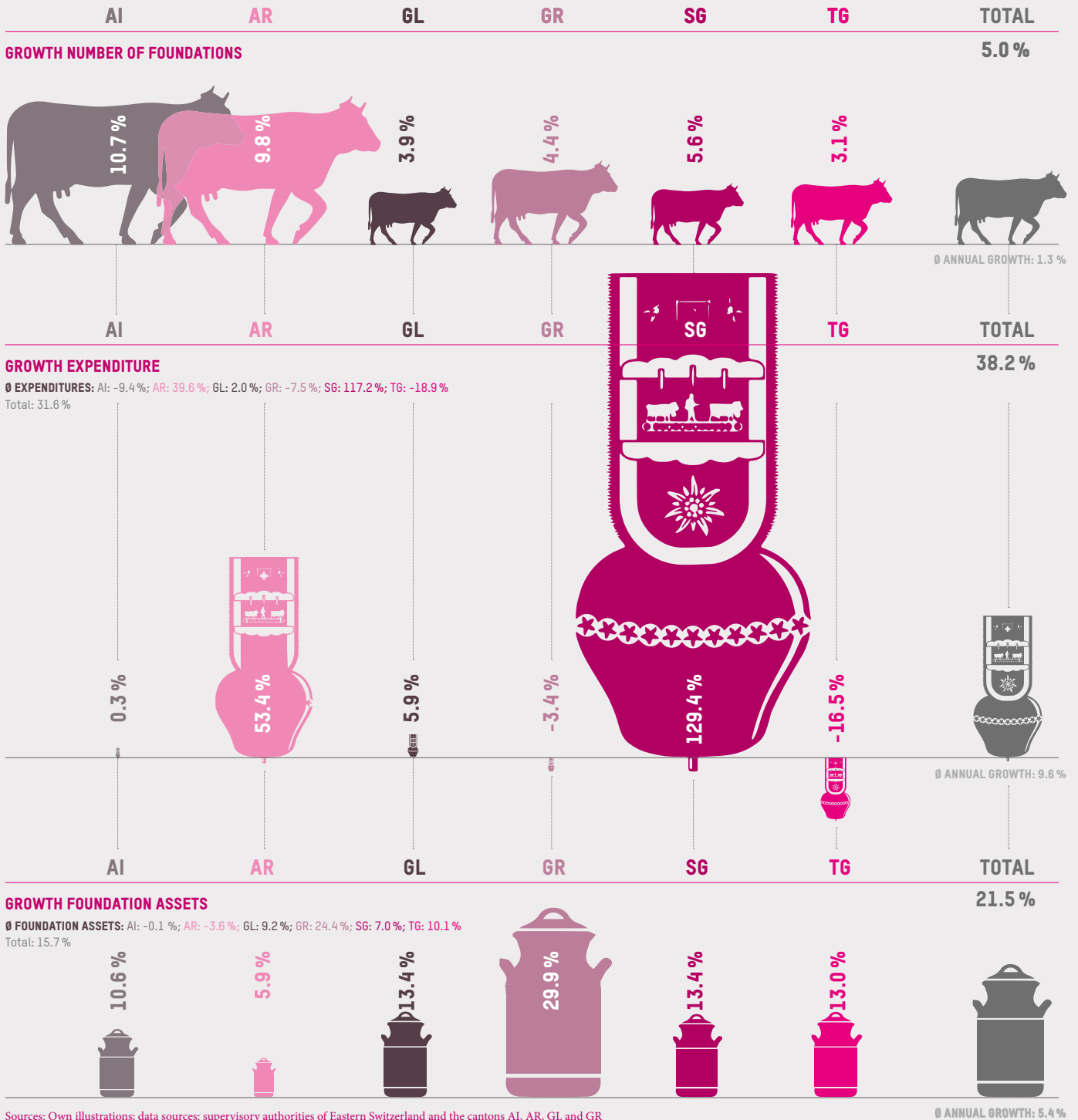


FIGURE 21:
EXPENDITURE



Source: Own illustration; data sources: supervisory authorities of Eastern Switzerland and the cantons AI, AR, GL and GR

FIGURE 22: DEVELOPMENT OF THE FOUNDATION ASSETS AND EXPENDITURE IN EASTERN SWITZERLAND BETWEEN 2010 AND 2013



Sources: Own illustrations; data sources: supervisory authorities of Eastern Switzerland and the cantons AI, AR, GL and GR

The financial situation of the foundations in Eastern Switzerland can generally be seen as stable. In line with the trend, the foundation sector has grown in the past years, with regard to both the number of foundations and

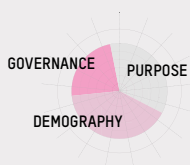
the total foundation assets. The study is also able to show that the operational foundations in particular are dependent on external funds.

FOUNDATION BOARDS

One of the challenges foundations find themselves repeatedly faced with, besides financial resources, is staffing the foundation board with suitable and competent people. The tax authorities continue to hold on to the principle of a voluntary status of charitable foundation boards.⁸⁸ The large number of new establishments in the past few years has led to a sharp increase in demand for foundation board members. In Eastern Switzerland, at the end of 2015, a total of 9,115 foundation boards were entered in the commercial register. On average, the foundation boards consist of about six members, although the picture is clearer when viewed from the median angle. Appenzell Innerrhoden shows more foundations with fewer people, while Glarus has more foundations with more than six foundation board members.

In total, 432 people represent 1,000 mandates. This value is relatively low considering that the highest accumulation of foundation board positions stands at six mandates; meanwhile, the highest in the whole of Switzerland is around 20 mandates. Overall, the successful succession planning will become one of the biggest challenges of foundations. If only 5 % of the foundation boards will need replacing per year, it will still be more than one foundation board per day that will be sought in Eastern Switzerland.

FOUNDATION RADAR

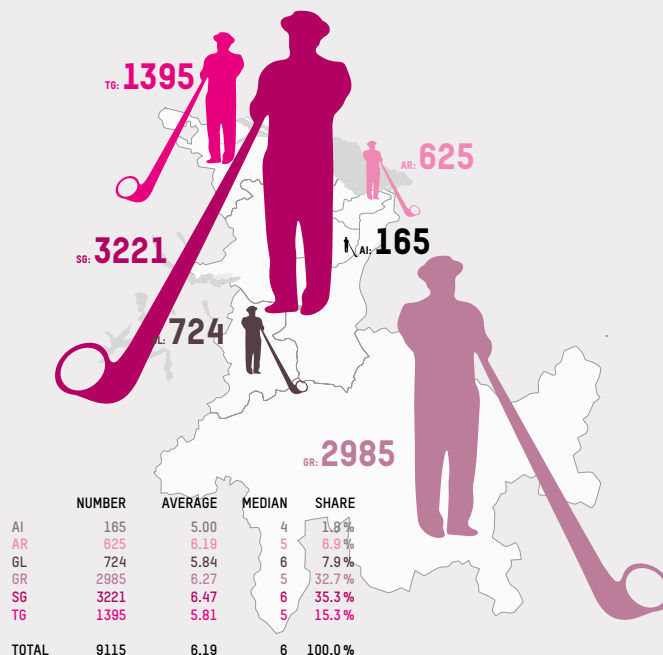


The data and facts presented so far are summarized in the Figures on page 39. The results of the cantons by individual category were put in relation to each other and numbered (1 to 6 cantons). Thus, a unique “psychogram” emerges for the foundation sector of each canton, highlighting its particularities, strengths and opportunities. The information was grouped into three different areas:

PURPOSES

The purpose part illustrates the meaning of the most important interest areas of culture, education/research, social services, health system and environment. In addition, it shows the concentrated orientation of the foundations. An evaluation on whether a foundation is active in just one of several thematic areas was also undertaken.

FIGURE 23: BREAKDOWN OF FOUNDATION BOARD MEMBERS BY CANTON



Source: Own illustration; data source: CEPS database

CALCULATED VALUES

	AI	AR	GL	GR	SG	TG
CULTURE	39.4%	45.4%	29%	38.1%	27.1%	31.5%
EDUCATION/RESEARCH	9.1%	18.4%	14.5%	12.6%	15%	13.2%
SOCIAL SERVICES	39.4%	43.9%	27.4%	23.6%	32%	31.9%
HEALTH	3%	6.1%	1.6%	5.8%	3.7%	3.8%
ENVIRONMENT	0%	4.1%	5.6%	3.5%	4.5%	4.3%
ONLY ONE PURPOSE	87.9%	57.7%	83.9%	78.4%	79.5%	81.3%
NEW FOUNDATIONS	1	3	0	12	11	2
LIQUIDATIONS	1	1	2	5	6	2
Ø AGE	16	23.4	25.3	23.2	22	21.5
Ø F. ASSETS	4,137,835	4,460,586	1,246,610	7,102,538	267,058	1,995,616
Ø EXPENDITURE	364,711	513,249	196,938	43,855	122,107	30,097
FOUNDATION DENSITY	20.8	18.7	31.2	24.3	10	9.1
NUMBER	33	101	124	476	498	240
CHANGE OF PURPOSE	0.0%	3.0%	3.2%	5.9%	5.8%	1.3%
Ø F. BOARD MEMBERS	5	6.19	5.84	6.27	6.47	5.81
NATIONAL SUPERVISION	3.0%	13.9%	4.8%	18.7%	15.5%	15.0%
LOCAL SUPERVISION	0.0%	14.9%	13.7%	0.0%	0.0%	15.4%

RANKING SEQUENCE FOR FOUNDATION RADAR

	AI	AR	GL	GR	SG	TG
CULTURE	5	6	2	4	1	3
EDUCATION/RESEARCH	1	6	4	2	5	3
SOCIAL SERVICES	5	6	2	1	4	3
HEALTH	2	6	1	5	3	4
ENVIRONMENT	1	3	6	2	5	4
ONLY ONE PURPOSE	6	1	5	2	3	4
NEW FOUNDATIONS	2	4	1	6	5	3
LIQUIDATIONS	1	1	3	5	6	3
Ø AGE	1	5	6	4	3	2
Ø F. ASSETS	4	5	1	6	3	2
Ø EXPENDITURE	5	6	3	1	2	4
FOUNDATION DENSITY	4	3	6	5	2	1
NUMBER	1	2	3	5	6	4
CHANGE OF PURPOSE	1	3	4	6	5	2
Ø F. BOARD MEMBERS	1	4	3	5	6	2
NATIONAL SUPERVISION	1	3	2	6	5	4
LOCAL SUPERVISION	1	5	4	1	1	6

DEMOGRAPHY

The demographic development of the foundation sector is assessed by surveying the number of liquidations and new establishments, the average age, foundation assets and expenditure as well as the number and density of foundations in a canton.

GOVERNANCE

Governance covers the information on the management system and on the reservation of the right to amend the purpose.⁸⁹ Besides the stated reservation of the right to amend the purpose in the foundation charter, the average size of foundation boards and the proportion of foundations under national and local supervision are presented.

Depending on the data sources, the information refers to the years 2013 to 2015. It was taken from the CEPS database, the survey of the doctoral project of Irene Reynolds Schier as well as the anonymized data of the cantonal foundation supervisory authorities.

The comparison shows that every canton possesses a specific and unique foundation sector that has developed through traditions, values and geographic structures or special events. Appenzell Innerrhoden has a very young foundation sector with many foundations focused on a single purpose, while demonstrating a comparatively high amount of annual expenditures. Focus areas are culture and social services. Due to their smaller sizes, new establishments and liquidations are rather rare. Appenzell Ausserrhoden boasts a foundation sector with a diverse range of contents and many foundations work in several areas. A large number of foundations are locally supervised and there are high annual expenditures.

Glarus is the only mountain canton of Eastern Switzerland where the environment is an important foundation purpose. The foundation density is very high, though the large number of foundations own only a low average amount of assets, which explains the relatively high rate of liquidations. Another contributor to this could be the high average age. In Graubünden, one finds many foundations established by international founders, which explains the high number of foundations under national supervision and the large total number of foundations. Equally, the high proportion of foundations with the reservation of the right to amend the purpose implies that there are many private founders who prefer to keep the possibility of change open for the future. The foundations possess the largest total number of assets and show the highest average age. Thematically, the focus areas are health and culture.

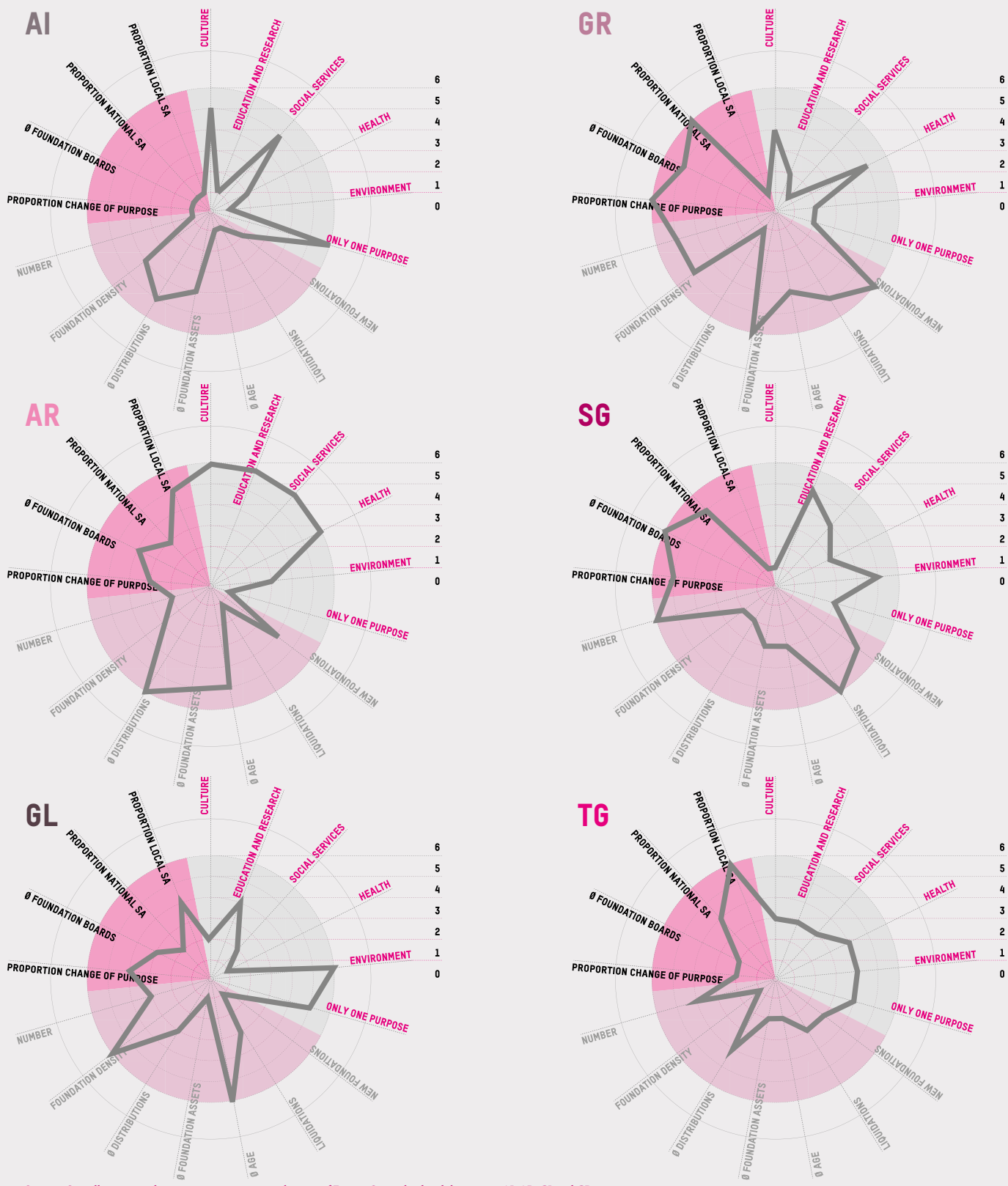
Even though St. Gallen has the largest number of foundations in Eastern Switzerland, its foundation density is low. Focus areas are education/research, environment and social welfare. A high net growth is the result of many new establishments and few liquidations. Its large number of foundations under federal supervision (implying activity in several cantons) and few foundations under local supervision make St. Gallen a regional hub.

Finally, in Thurgau a large number of foundations is found under local supervision; the substantial number of foundations with just one purpose suggests that there is a greater number of operational foundations that work on a local level. On average, the foundations are rather small with activities distributed across many different subject areas.

OUTLOOK

By combining data from different sources, it was possible to shed a new light onto the foundation sector of Eastern Switzerland. Differences within the sector turned out to be as diverse as the landscapes between Lake Constance and the Italian border. In general, it became obvious that there are only a few large foundations and many operational foundations, especially sponsoring foundations. It can be said that the average but also the maximum value of the wealth and the distributions is significantly higher than for the whole of Switzerland. Concerning the resources, the sector will have to overcome numerous challenges in the coming years. Operational foundations depend on external contributions while grant-making foundations are preoccupied with the investment of their own capital, a hot topic that will remain on the agendas of foundation board meetings. In addition, there is the considerable number of foundation board members that continuously need to be replaced and for whom successors need to be found. Despite common core areas found in the cantons, the statement made at the outset can ultimately be confirmed: the foundation sector's societal benefit is due to its diversity and breadth. It is in this way that foundations strengthen pluralism in society and enable freedom of action. Another observation was that the foundation sector is in no way static and fossilized, rather, it is constantly transforming. Existing institutions are turned into foundations, old foundations are liquidated and occasionally mergers are consolidating forces.

FIGURE 24: FOUNDATION RADAR



Sources: Own illustrations; data sources: supervisory authorities of Eastern Switzerland and the cantons AI, AR, GL and GR

YOUNG AND VITAL FOUNDATION LANDSCAPE

Interview with Thomas Dietschweiler (TD), President of the Ria & Arthur Dietschweiler Stiftung, Rolf Wilhelm (RW), Managing Director of the Lienhard-Stiftung, and Stefan Bodmer (SB), Vice President of the Otto und Veronika Kägi Stiftung. Questions by Beate Eckhardt, Managing Director of SwissFoundations

The regional special of the Foundation Report 2016 features Eastern Switzerland. All of you are working in foundations located in this region. How would you characterize the foundation sector of Eastern Switzerland?

TD: The foundation world of Eastern Switzerland resembles an island landscape. There are exchanges between the individual foundations, but just as frequently, there is absolute silence – for whatever reason.

RW: That is indeed the case. From our point of view, being a relatively young foundation with a new president and managing director since mid-2015, there is great need for cooperation with other foundations, particularly because the applications are often the same. We would be very interested in increased exchange, to get more insight into the decision-making processes and learn more about the concrete reasons for a positive or negative response to a certain project. As a newbie it is by no means easy to get into contact with other foundation representatives.

Why is the networking so difficult? Is it a matter of the external communication of foundations not being transparent? The latter turns out to be a phenomenon prevalent in the whole of Switzerland.

SB: Confidentiality is definitely a large topic. I would like to relativize the impression of insularity with regard to an exemplary cooperation that exists in the region of Appenzell Ausserrhoden. In the process of establishing the Otto und Veronika Kägi Stiftung, we were professionally supported by other foundations in Appenzell. The personal networking between foundation boards allows us to build bridges in this island landscape. In my view, the canton of St. Gallen, in particular, is still in its infancy when it comes to coordination between foundations.

Is there a need for a stakeholder to take on the coordination?

SB: Definitely. In the case of the Appenzeller Land, there is such an entity in the form of a coordination group shaped by the initiative of one individual. It would also be possible to have a national association, such as SwissFoundations, take up a role in this context.

Why is it that the foundation sector in parts of Eastern Switzerland is so surprisingly young? The first foundations in certain parts of the region were only established in the 1940s and 50s. How do you explain this phenomenon?

TD: I am also astonished by this fact, considering that up to WWI there was a lot of money earned in the textile industry in Eastern Switzerland and that it is known that there was an active patronage in parts of these circles. So one would expect the establishment of foundations. It is actually an interesting social-historical question.

RW: Maybe the patronage rather took on the form of welfare. Many church communities were in possession of welfare funds. These were often assets that had survived their purpose and their donors. In the church community in which I acted as a cashier for many years, there were five different funds: among them a support fund and a fund for the sick and a nursing home. There were funds for areas that have meanwhile been taken over by state institutions. We have dissolved all of the funds over the past few years and contributed the money to an institution that is currently responsible for the same intended purpose.

The Foundation Report 2016 presents a very detailed evaluation of facts on the foundation landscape of

Eastern Switzerland. It is noticeable that many foundations are limiting their support to their region. What are the reasons?

SB: The support focus of a foundation is closely linked to the founder's intent. The region of St. Gallen may have, on the basis of its flourishing textile industry, developed a very strong feeling of identity.

RW: In the early years of their prospering business, the two donors of the Lienhard-Stiftung – Regula and Fredy Lienhard – too, were focusing their entrepreneurial activity on the regions of Thurgau and St. Gallen. It seems that it was the wish of the founders that they make a charitable impact in the region at the heart of their entrepreneurial focus, which was also the place where they lived.

SB: The regional focus also offers the great privilege to be able to get involved as a foundation in projects that are geographically close by.

TD: Indeed. If we as a foundation want to contribute to the quality of our supported projects, we have to be able to be close to the recipients. An example would be the UNESCO World Heritage site Stiftsbezirk, which is in the process of extending its museum and buildings, something that has long been awaited and sought after. Due to us being on site as a foundation and working in cooperation with other project sponsors we are able to help develop the undertaking in a direction which we see as meaningful from a tourism and economic perspective. If the project were in Bern, cooperation in this shape and form would not be possible.

In the Foundation Report 2016 we examine the proportionality of administrative expenditure of small and large foundations as well as the correlation with the respective assets. The analysis shows that foundations with assets between CHF 1 and 3 million yield particularly bad results. Does this surprise you?

RW: We have regulations that give specific percentages on the proportion of total expenditure that is admissible as overhead costs, based on an annual or a multi-annual average. The Lienhard-Stiftung is partially funded by company earnings, meaning that there are contributions from operational units on top of the revenues from the assets. The goal is to ensure sustainability, not to eat into the substance but to distribute only the proceeds.

SB: The Otto und Veronika Kägi Stiftung is limited to distribution of proceeds only. This will be a great challenge

in the coming years as the current capital market returns are not expected to change much in the immediate future. Firstly, we need to take on more risks to generate dividends. Secondly, our distribution capacity remains very limited despite the considerable resources we have, should the markets develop negatively. This will compromise our reputation as a partner for long-term, larger projects.

TD: We are in the lucky situation to be able to dispose of the entire assets of the Ria & Arthur Dietschweiler Stiftung if it becomes necessary. We also have no ambitions to exist in perpetuity. What counts for us as a foundation board is what we are able to support today. Of course we try to distribute the current income in the first place. But we no longer produce a budget as the number of applications varies. We try to ensure distribution capacity over a 2- to 3-year period on the basis of our income.

RW: We pursue exactly the same approach. We define an annual distribution amount, which can vary within a range of about 20 %. This means that if a good project is submitted, the foundation has the flexibility to fund it, even if the income is already exhausted. We also try to secure our distributions for a period of three years in advance. Concerning the long-term commitment, it is crucial and a responsibility of the foundation to communicate clearly that its support will come to an end. From former experience in the area of funding, I know of the difficulties that an exit from a project can cause. Withdrawal is the most difficult stage of all.

At the Swiss Foundation Symposium on 11 May 2016, SwissFoundations will offer a workshop on the topic “Ende gut, alles gut? Förderpartnerschaften erfolgreich beenden (All's well that ends well? Ending support partnerships successfully)”. The moral pressure on foundations, even if the end of a partnership was agreed, is of concern to many.

SB: We try to emphasize the one-off nature of our contributions to the applicants right from the beginning. Our special situation, which limits the distributions to the current income and possible capital gains, does not allow for multi-annual engagements. We may be in the position to discuss a larger amount, but it would have a massive impact on our capacity to make allocations to other projects if we were to commit ourselves to financial support on an ongoing annual basis.

RW: We do support perennial projects – especially in the field of education. Once we are convinced of the

quality of a project, we can agree to a commitment of 2 to 3 years. In very few individual cases it can happen that we commit for up to 10 years.

TD: For us it is fairly similar with cultural projects. We appraise after one year whether we will support a promising project for another 3 to 4 years. However, longer engagements than that are not possible.

Do your foundations exclusively fund projects or do you also support organizations in funding their overhead costs?

SB: The foundation purpose in our case states that besides the housing quality in the area of Toggenburg, we are to support two institutions: the music school of Toggenburg and the Spitex Toggenburg. At the moment, we are noticing that the Spitex only needs very minimal contributions from us. In the case of the music school we are currently discussing to what extent there are actually beneficiaries in need or whether those allocations to the school should be made accessible to a wider range of recipients.

RW: Infrastructure, overheads and deficit guarantees are costs we prefer not to support, especially because it cannot be aligned with our foundation purpose. However, we do think that temporary support in this respect is essential. Cooperation projects, in our view, should be motivated by the idea of becoming self-sustaining.

We are approaching the area of trade-off between state and private tasks. Is it part of the reality of your work that you receive applications for projects for which the financing in your view is the responsibility of the state?

TD: This addresses a never-ending discussion. The public domain, in my view, is risk-averse and conservative – very different to foundations that have the opportunity to be innovative, pioneering and adventurous. In this respect, I see an important difference between the mentality of the state and foundations. One example is the International Baccalaureate, which we have introduced at a grammar school in St. Gallen to offer the pupils a diverse, useful and internationally acknowledged qualification. The initiative cost us a quarter of a million Swiss francs over the period of 4 to 5 years. Meanwhile, everyone is delighted – the school, the education director, the education council. The public domain itself would have never come up with this idea and had left the scheme to the private grammar schools, naturally limiting the privilege to children coming from affluent families.

A good example for a private initiative that was later passed on to the public domain.

TD: Precisely. We try to kick off an innovation and have indicated that within the space of 5 years, it then needs to be funded by the canton of St. Gallen.

RW: The public domain is also looking for partners to start something up, since we ourselves regularly receive applications from public institutions. If the projects are good, we are willing to support them with initial financing on the condition that we can withdraw after the initial phase.

SB: Because we have not been around for that long, we have only limited experience in relation to that question. So far, we have had a project for which the state itself was commissioned to raise considerable funds through donations and foundations. Due to it being an ideal fit with our foundation purpose, we joined in. In line with our foundation purpose we also invest in infrastructure, and support, for example, the preservation of existing buildings in Toggenburg. In principle, we try to make our allocations dependent on whether the state or church community also take on responsibility in a project.

That sounds like a successful public-private-partnership. Is this recognized as such?

TD: I cannot affirm that. Ultimately, the projects are submitted to us in full detail and we only decide whether and how much we are prepared to contribute to it.

Due to the young age of many foundations in Eastern Switzerland – more than half of them were established during the last 25 years – there is a generational change taking place in many of them. According to the Foundation Report, more than 9,000 foundation boards are engaged in Eastern Switzerland. If one assumes a renewal rate of 5%, one new foundation board member a day needs to be found. Is it difficult to find good foundation board members?

SB: Our foundation board members are all aged 50 to 55 years. The succession planning has been briefly addressed but the topic is not something at the top of our agenda.

RW: The Lienhard-Stiftung was established in 2008. The foundation board has since consisted of long-term companions of the Lienhard family, they are aged 65 to 70 years. The renewal question will therefore become a

topic in the next 3 to 5 years. We have set ourselves the task to carefully put in place a succession management process this year. This is a specific task for the foundation board. I cannot say how difficult it is to find new board members.

TD: We have a shortlist of potential foundation board candidates. We are of the opinion that one needs such a list up one's sleeve. For me personally, it is important that the foundation board is composed of a good mixture age-wise and that there is at least one digital native among the members. To ensure that the foundation board members are knowledgeable in our support areas, we look for expertise in particular fields. I have someone from the area of social entrepreneurship in mind, another person comes from the education sector. In contrast to many other foundations, we are not looking for legal experts as foundation board members. Ultimately, legal knowledge can be bought. Besides board members with specific expertise, we are looking for competence in finance.

SB: I can only underline the importance of relevant expertise. You need people who have access to and relationships with thematic networks; in our case explicitly with projects in the field of housing quality in Toggenburg.

TD: When working together with our stakeholders and projects, for instance in the area of dementia, a very strong current focus of the Dietschweiler Stiftung, I often meet people who seem suitable and whom I keep in the back of my mind.

Before we end, let us take a look at your current foundation activities. Where do you see the greatest challenges for your foundation in the next three to five years?

RW: Apart from securing income and return on investment, which determine our distributions, the topics after 8 years of our existence will be revolving around thematic focus, appraisal of foundation purpose and strategy, as well as the already mentioned renewal of the foundation board. In our current areas of interest, education and culture, I see less need for action than, for example, in generating funding.

SB: For us there will also be the act of establishment – the first review of the foundation act and its regulations. In the initial phase, as I have already mentioned, we were supported by an experienced personality from the foundation sector of Appenzell Auser Rhoden. Furthermore,

we will be looking into the question of an efficient realization of our foundation purpose. Luckily, in the area of our main purpose – the housing quality in Toggenburg – we were able to link up quickly with good projects. Our second priority concerns the clarification of our target audience at the music school of Toggenburg and lastly, we are looking for opportunities to get involved in the Spitex at project level. Our greatest challenge, however, will definitely be finding solutions in the difficult financial environment, which is troubling us as a foundation that is largely limited to distributing current income from assets only.

TD: I don't see any pressing tasks in the coming years. We have implemented all the organizational steps. The revision of our mission statement may be on the table next. Our foundation purpose was consciously stated as an flexible clause. We are basically entitled to support anything that serves the common public interest. In the realm of the mission statement the foundation board is able to substantiate and to periodically adapt it as needed. Scouting out projects is another task that we do on an ongoing basis. Although we have been successful in encountering good projects for a while now, we are always on the lookout for exciting initiatives. At the moment we are interested in a financial literacy project for secondary school levels I and II that aims at teaching young people how to handle money. It is a scheme which is very popular in the Anglo-Saxon region. In addition, the planning of human resources is among our ongoing tasks.



V. TOPICS AND TRENDS

Author contribution by Prof. Dr. Georg von Schnurbein

5:5 – REASONS FOR AND AGAINST MERGERS OF FOUNDATIONS

When looking at the composition of the foundation sector with its many small and micro-sized foundations, it does not require a lot of economic experience to recognize the benefit of mergers. In the light of increasing costs for administration, auditing and supervision, mergers help to provide more financial resources for charitable purposes, the use actually intended by the founders. The idea of an amalgamation also seems to be easy to implement as there are no proprietors with individual interests, so the evaluation only needs to take the written purpose of the foundations into account. And finally, on the basis of their size, consolidated foundations can better direct their activities strategically so they can gain more influence in society.

⊕ REASONS FOR A MERGER

1+

ANOTHER SUITABLE FOUNDATION

The most important reason for a foundation to merge in the first place is another foundation. Ultimately, foundations, according to foundation law, can only merge with foundations, not with other legal entities (for example associations, public limited companies etc.). Therefore, the search for a suitable partner needs to be limited to foundations only. Amalgamations with other legal entities are only possible if the existing foundation is dissolved and the supervisory authority approves of the transfer of assets or the merging partner decides to transfer the assets to the existing foundation.

of the two foundation purposes will not cause issues regarding the distribution between several beneficiaries and at the level of foundation boards, where there often already are overlaps.

3+

CONSOLIDATION OF TASKS

The same applies to several foundations which are basically performing the same tasks in fulfilling their purpose. For example, several grant-making foundations could merge. Even if the groups of beneficiaries vary (for example musicians, students and lecturers), the different purposes can be implemented in the same way, a merger thus creates synergies in the processing and administration of grants.

2+

THE SAME BENEFICIARIES

Another obvious reason for a merger is when the beneficiaries are the same. Especially in the context of larger institutions, such as a museum, one often finds several foundations that are committed to one and the same beneficiary, while having been established at different times. In these cases, an assessment of a merger should take place, since there is no question about whether combining would be to the disadvantage of the beneficiary. Similarly, the merging

4+

ENABLE COST SAVINGS

Big is beautiful! This principle today is more valid than ever in wealth management of foundations. The cost of asset management significantly decreases proportionally to an increasing amount of assets (see contribution on page 6 et seq.). For example, if a merger leads to an amount of foundation assets that allows it to change from the status of a private client to an institutional client with a bank, the administrative fees can be reduced considerably. In other

situations, mergers can lead to savings in administration and communication costs, provided that the merger is effectively executed and the two organizations don't operate in parallel to each other but jointly.

5+ BUILD BRIDGES ON CONTENT LEVELS / SAFEGUARD MATERIAL ASSETS

The last reason for an amalgamation requires comprehensive preliminary reviews and an in-depth analysis of the possible merging partner because a merger can also be an opportunity to develop new potential that exceeds the mere benefit of cost and labour. In Switzerland, there are many foundations with the purpose of preserving physical assets, for example, an art collection or a real property. Unfortunately, these foundations reveal two grave disadvantages: on the one hand, the foundations are required to preserve the endowed physical assets – mostly in their entirety – on the other hand, these foundations often lack the complementary liquid financial means to adequately maintain and look after these material assets. As a consequence, foundations hardly have any freedom to design their activities and – in the case of an art collection – are often even unable to manage exhibitions or the lending of works. For such foundations, a merger could be the right solution if it resulted in new freedom of action. Creative solutions are what matter in the process, but these often only come about in individual cases when those involved have the necessary tolerance for bearing risk.

⊖ REASONS AGAINST A MERGER

In the economic world, mergers are common practice and yet, about half of them do not attain the intended objectives. The problems can mostly be put down to pride and incomplete information. While companies can separate again after a failed attempt at merging, the amalgamation of foundations is definitive. It therefore does not come as a surprise that foundation boards tend to prefer the path of liquidation rather than first exploring the possibilities of a fusion. Of the 1,046 foundations that have been removed from the commercial register since 2009, only 91 were part of a merger. This already implies that there are good reasons to not consider combining forces:

1- MINUS AND MINUS DOES NOT ALWAYS RESULT IN A PLUS

There is a tendency to put high hopes into a merger as a means to improve things throughout. But a recovery is rarely achieved by the joining forces of two patients. Unless a merger does not entail substantial improvements in terms of assets, for example, or in the administration or in access to the beneficiaries, it will not make sense; in a worst-case scenario it may even lead to an escalation of the problems. In the merging of foundations, the focus is on the expected size of assets, regardless of the other aspects that play an important role. Besides the merger partners and those affected, the crucial question is also whether there is a common value base. Even if the foundation purpose is identical to a large extent, the ways in which this purpose is fulfilled and what objectives are connected with it can be very different. For this reason, it is advisable to test cooperation in a common project before committing to a definitive merger.

2- GEOGRAPHICAL DISTANCES

The search for a suitable partner is often not successful on one's own doorstep, but rather after extending the search radius. Therefore the number of problems also increases. In Switzerland, this problem is further exacerbated through the different language regions. Two foundations with an identical purpose in the German and in the French part of the country are far from making an ideal couple. Rather than decreasing the administrative efforts, the different languages will eventually escalate them. In addition, in achieving the equal distribution of foundation board or meeting places, costs can also increase. Another downside is the lack of overlap in the geographic radius regarding the fulfilment of purpose. A merger between a foundation based in and targeting St. Gallen and a foundation in Bern will bring few benefits if both need to limit themselves to their city.

3- STRONG PERSONALITIES

Most mergers fail because of the people involved – in company contexts as well as in the case of foundations. In foundations, it is especially down to the founder. Ultimately, it is the founders who wanted to create something of their own in the shape of the foundation – deliberately on a permanent basis. Even if the foundation has a legal personality of its own, its independence was and is also part of the original founder's intent, as otherwise, alternative solutions such as a donation or a subfoundation could have been

considered. As a result, a close psychological tie still exists between the foundation and its founder, despite the legal separation, and is often passed down to future generations. The objective appraisal of whether a merger is of economic advantage can consequently be displaced by the subjective feeling of loss. In practice, this leads to delays due to premature exchanges of opinions, continuously renewed demands or a feeling of distrust towards those that support the merger. In cases where the merger still takes place and the same people end upon the foundation board, the regret of having surrendered independence may surface at the first disagreement which will then paralyze the development of the new organization.

4-

COMPETING BENEFICIARIES

Before a merger takes place, the responsible supervisory authority needs to assess whether the fusion will go against the needs of the beneficiaries. It is not permissible for the beneficiary to lose the right to receive donations after the merger. Even if the advantages of the amalgamation are obvious, competition between the potential beneficiaries can overshadow the situation. Foundations in the university context can be cited as an example, where, often established in the space of several decades (or centuries), they are committed to a specific faculty, an individual institute or department or even just intended for a professorship. Every one of these foundations running on very low funding incurs administrative costs while earnings decline. But still, the beneficiaries will be against a merger because of the fear that they will subsequently need to compete for funds or may even receive a lesser amount.

5-

ACTING UNDER TIME PRESSURE

Proceedings in particularly small foundations are often very slow due to not much happening in the small number of foundation board meetings. This means that decision-making processes drag on over a long period of time, particularly, if they concern decisions with such far-reaching implications as in the case of a merger. At some point, however, the pressure and suffering becomes so great that suddenly things need to be hurried along. If a merger needs to be pulled through as a matter of surviving at any rate, then it can hardly be assumed to be a success. Mergers need a sufficient amount of preparation time so that everyone involved, from foundation boards to supervisory authority, have enough time to assess and question the possible solutions.

CONCLUSION

There is no doubt that a large number of foundations in Switzerland may not be able to survive and operate on the basis of the proceeds of their own assets in the long run. A merger can be a solution in these cases, helping them get a second life, so to speak. In face of such a merger of foundations and its consequences being irreversible, the foundation board has a special duty to thoroughly examine it in advance.

Guest contribution by Sabine Döbeli

SUSTAINABLE INVESTMENTS:

A TOOL TO ENHANCE FOUNDATION EFFECTIVENESS

Most foundations focus their investments exclusively on maintaining the foundation assets and on regularly generating profits to ensure they support activities in the long run. This is a central function of an investment activity, and a careful investment strategy is at the heart of their fiduciary duty. Since the publication of the new Swiss Foundation Code in autumn 2015, the discussions on the investments of foundations have gained a new dimension. For the first time, the Code emphasizes the consistency between support activities and investment activities: How does the foundation actually earn the money it spends? In order not to reduce the impact of its charitable activity, the Swiss Foundation Code suggests taking a closer examination at this relationship.

Sabine Döbeli is the Managing Director of Swiss Sustainable Finance (SSF). The association aims to strengthen the position of Switzerland in the international market of sustainable finance by providing information, training and growth support. Established in 2014, the association has branches in Zurich, Geneva and Lugano. SSF counts 86 members and network partners; among them are financial service providers, investors, universities and business schools, the public domain as well as other interested organizations.

www.sustainablefinance.ch

Stimulated by various media reports – as in the case of the Swiss National Bank in January, being criticized for investing in producers of nuclear weaponry – representatives of foundations are regularly asking themselves how their investments are performing and whether they are in conflict with their foundation purpose. It would be pointless if a foundation that supports victims of war was to invest in companies that manufacture outlawed weapons like cluster bombs or landmines. But how can this kind of discrepancy be prevented?

There are different ways to consider environmental, social and governance aspects (ESG) in the management of foundation assets. If ESG aspects are included in the investment process in a structured way, they are generally termed sustainable investments. Foundations currently hold a comparatively small proportion of sustainable investments which are managed in Switzerland. According to a Swiss market study in 2015 by the Forum for Sus-

tainable Investments (Forum Nachhaltige Geldanlagen), of the CHF 71 billion in total, only CHF 4 billion, i.e. not even 6 % were held by foundations. However, the trend shows a steady increase, with CHF 3 billion in the previous year. In addition to mere financial criteria, a rising number of foundations include sustainability issues in their investments strategy. Different approaches allow the pursuit of different goals.

EXCLUSION CRITERIA AS A SIMPLE INSTRUMENT

The simplest of all forms will be not to invest in companies which violate internationally valid standards – so to apply a so-called norm-based screening. On the basis of the analysis of specialized research agencies, the entire portfolio of a foundation is assessed regularly (mostly annually) and compared with an exclusion list. The list contains companies that contravene international norms such as the Global Compact, a guideline of the UN for doing business responsibly, or the principles of the International Labor Organization (ILO), or conventions on controversial weapons. Should such a company be found in the portfolio, it will be sold immediately. Ideally, all external asset managers are bound to the exclusion list in managing assets so that shares in such companies are not bought in the first place. There is a certain leeway in the perception when international norms are breached. Usually, around 30 to 50 companies are excluded globally, which hardly means any limitations to the overall investment universe.

Another possibility is to agree on value-based exclusion criteria. For instance, in the case of a foundation that supports research in the area of lung cancer, it would make sense not to invest in tobacco companies. Or a foundation that is working in the cleanup of damages by nuclear accidents should not invest in companies operating nuclear power plants. Such value-based exclusion criteria often require extensive discussions in the foundation board and in many cases there are fairly diverging opinions on how far one should be taking this approach. Especially for foundations that have a very clearly defined purpose within a certain industry, which in turn causes problems, such value-based criteria are able to add to a clear and consistent profile.

ACTIVE INVOLVEMENT

Until now, only the rather passive avoidance of problematic areas was touched upon. It becomes even more interesting once a foundation can make improvements towards environmental and social standards by proactively selecting their investments, which also may be aligned with the foundation's purpose.

A widely known form is the so-called best-in-class approach, which stipulates investments in companies that demonstrate an outstanding sustainability performance within their sector. Through research analysis that support this approach, companies are compared with their competitors and are encouraged to continuously improve their sustainability performance. In an integrational approach, sustainability aspects represent an integral part of the financial analysis, but they only have an influence on the investment decision if they are financially relevant. Both forms require that the assets are managed via an active investment strategy. However, if the aim is to invest passively and reduce costs, a so-called engagement approach is an alternative to be considered. It requires a broad investing in an index, while at the same time there is an active dialogue with the companies directed towards the improvement of their standards in different environmental, social and government aspects. This dialogue is mostly delegated to a specialized engagement service provider that will bundle the interests of the different investors and will therefore also have more power to interfere. Incidentally, none of the mentioned more active approaches are at loggerheads with the fiduciary duty. Extensive meta-studies are able to show that risks can even be reduced without lowering the returns.

IMPACT INVESTING STILL QUESTIONABLE?

A further step towards contributing to the foundation purpose is the choice of thematic investments that claim to be able to make a direct impact. American foundations are pioneers in the so-called "Impact Investing" that manages to dissolve the boundaries between philanthropy and investment in some parts. Foundations such as the Rockefeller Foundation or the Bill and Melinda Gates Foundation are increasingly moving towards giving loans instead of donations to organizations that achieve a tangible social benefit. It originates from the idea that entrepreneurial approaches often have a longer-term impact than projects that are always dependent on donations. It needs to be mentioned here, though, that investments that accept to take a loss for a higher social benefit are difficult to reconcile with the Swiss Foundation Law.

Nevertheless, in this country, too, thematic investments can play an important role. So-called development investments endeavor to yield a fair market income while, at the same time, improving the economic development in developing countries. Switzerland is a pioneer in offering this type of investment that, for instance, financially supports sustainable agriculture, renewable energy provision or sanitation systems. In spring 2016, Swiss Sustainable Finance, the association for sustainable finance in Switzerland, will publish the first study on development investments including the presentation of actual case studies. Especially in the current low-interest environment, such products can be very interesting portfolio additions. Not only do they improve the income-risk profile, they also contribute positively to poverty reduction and development. If foundations see it as increasingly relevant to adapt their investment activities to their foundation purpose in the best possible way, then these approaches will no doubt become more and more important.

Guest contribution by Marc Baumann

THE FIRST SOCIAL IMPACT BOND IN SWITZERLAND

The first social impact bond in Switzerland (SIB) was launched in autumn 2015. It was structured in cooperation with the Canton of Bern aiming for the integration of recognized refugees and temporarily admitted persons in the job market. The concept of social impact bonds originally comes from the Anglo-Saxon region, where it has become known under the term “Pay-for-Success Bond”.

Marc Baumann is a lawyer and partner with Investhos AG, Bern. The company provides services in the area of asset management, social impact investments as well as legal and tax advice. On the particular topic of social impact investments, Investhos manages its own Social Impact Fund, an Impact Real Estate Company and together with the Canton Bern and Fokus Bern has launched the first Social Impact Bond for the integration of refugees in Europe.

www.investhos.ch

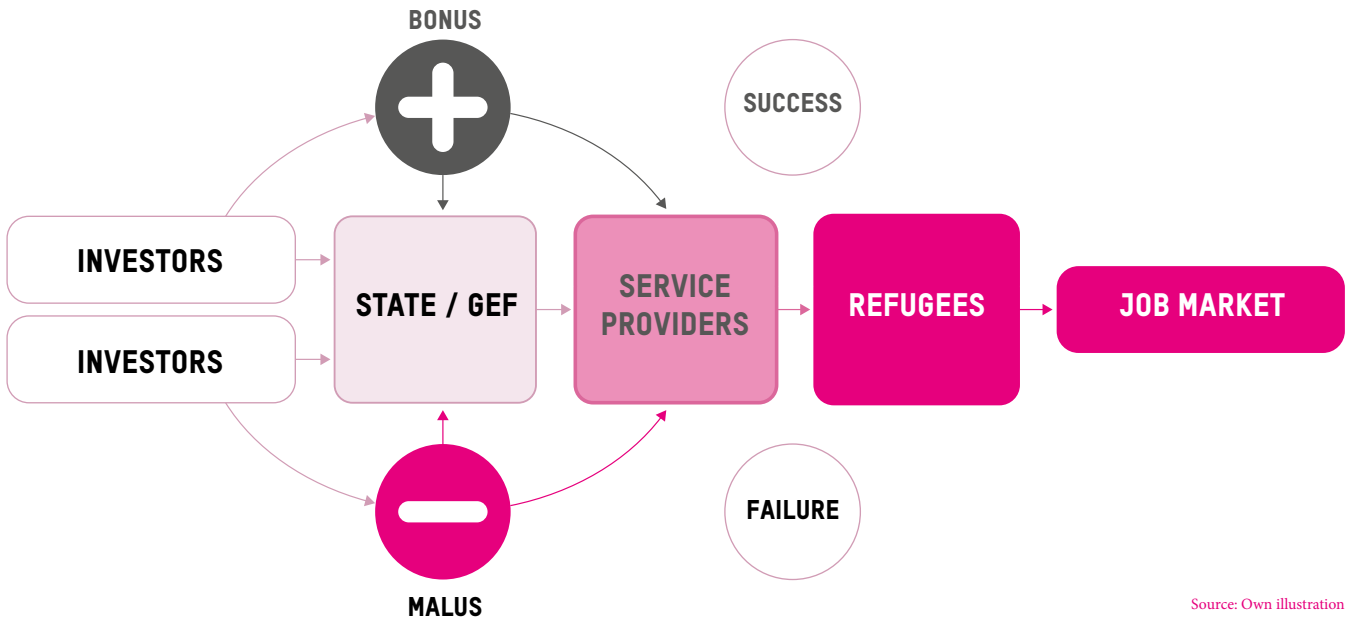
There are many different characteristics of social impact bonds (SIB). The feature they all have in common is that private or charitable foundations contribute money to a social project while the return of this money depends on how well the targeted problem was solved in the end. This requires the definition of performance targets and the measurement of these targets against a benchmark or a comparison group. An important difference between the Swiss SIB and other social impact bonds is that it is designed as an investment with opportunities for profits while it does not include donation components. In summary, the SIB is subject to the following underlying basic thoughts and ideas:

BONUS AND MALUS FOR INVESTORS AND SERVICE PROVIDERS

The SIB of the canton of Bern is an obligation where the refund and the interest payment depends on the success rate of integrating and training recognized refugees and temporarily admitted persons in the job market. If the

previously defined targets for the integration and education are reached or even surpassed, the investors and the service provider receive a financial bonus. If the integration targets are not met, the investors lose part of their capital as will the service provider, who will need to return some of the received funds. The malus components are financed by the investors and the service provider, while, in the case of failure, the state needs to return less money than it received. The success components are financed through the state, since, in the case of success, it saves a lot of money. Every refugee who is successfully integrated in the job market means a reduction of social costs. Every successfully completed traineeship will reduce the probability of an ongoing dependency on state support. The state passes on some of these cost savings to the investor and the service provider in the form of a bonus. The fact that the service provider also participates in the bonus and malus components is something that is not found in many of the existing social impact bonds. However, this participation is important for a number of different reasons. On the one hand side, it is the financial contribution of the service provider making a public statement for the successful achievement of integration, a goal-oriented working approach and a responsible use of public funds, on the other hand, the service provider is to be compensated for the fact that he “loses” his clients to the job market. Many social service offers are compensated by the state on the basis of number of days that the clients would spend in a state institution. That way, there is no financial incentive to keep clients for longer. The bonus component works exactly the opposite way. It pays the service provider once the integration into the job market has been successful, so ultimately, the bonus is paid when the client leaves the institution of the service provider.

FIGURE 25:
BONUS AND MALUS FOR INVESTORS AND SERVICE PROVIDERS



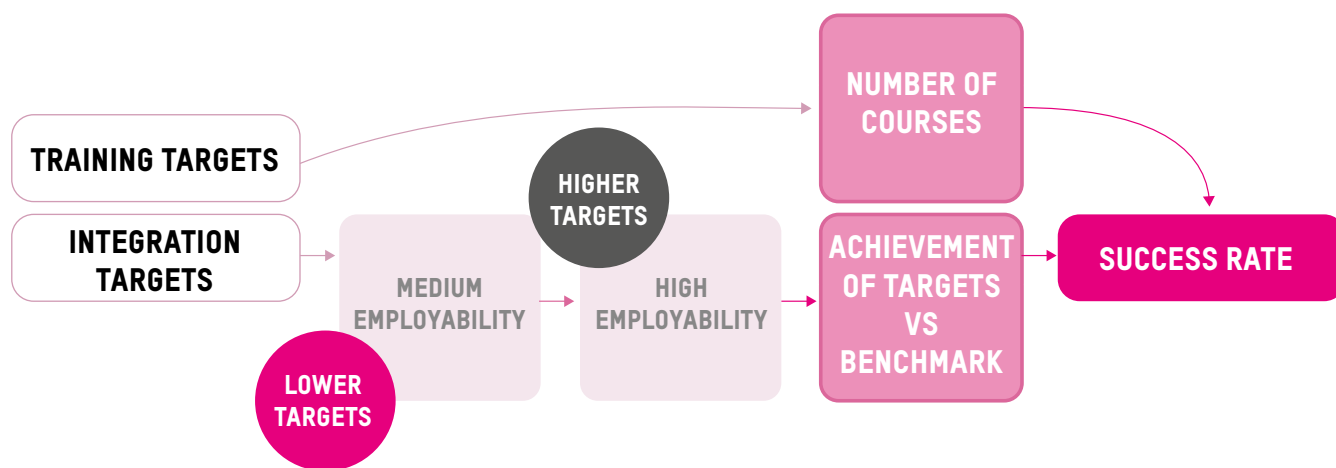
Source: Own illustration

PERFORMANCE MEASUREMENT TO BE EMPHASIZED IN THE SOCIAL SECTOR

The SIB emphasizes the importance of the performance measurement in the social sector. The aim of such a performance measurement is that service providers and different methods of integration can be compared. The state, in times of tight budgets, should be interested in knowing which institutions work better than others and which methods yield the best results. Success measurement leads to competition between social institutions and promotes the competitiveness between different methods of integration. In this way, innovation in the social sector is encouraged. New methods are to be given a chance to be able to test them. In this context, the above mentioned malus component is important. Should it turn out that a particular new integration approach works less well than expected, the state needs to pay back less than it originally received through the scheme of the social impact bonds. This risk distribution supports the inclination to experiment with innovative concepts, since there are more shoulders to share the burden of costs. For the integration of refugees in the job market, a variety of different approaches exists. One approach to prepare refugees for the job start is to offer them a large number of preparatory courses and training opportunities. The time needed before starting to earn a living is relatively

long. There is also the opposite approach, whereby the people take up a job very quickly and are then trained on the job. Integration in the latter case is faster and the approach has been termed “supported employment”. The social impact bond of the canton of Bern is introducing a change of method for the whole of the canton of Bern, where “supported employment” is now the method stipulated for all integration programmes. An important requirement for performance measurement and the comparison of institutions and methods is, however, a reliable database covering a period of as many years as possible. Such a source is still piecemeal in many areas, often being aggregated between different authorities and levels of municipalities. So far, reliable figures over time are lacking which makes it difficult to create a benchmark. The SIB is therefore a subject of academic research and evaluation. The insights gained can help in improving and extending the database.

FIGURE 26:
DESIGN OF THE SOCIAL IMPACT BOND IN THE CANTON OF BERN



Source: Own illustration

DESIGN OF THE SOCIAL IMPACT BOND IN THE CANTON OF BERN

For this particular social impact bond, Caritas is the provider responsible for integration into the job market. The aid organization has to reach predefined targets for fixed employment and vocational training. In the case of the employment opportunities, the targets depend on the qualifications of the participants. The target for the participants with better qualifications (for example work experience) is to get a fixed employment of at least 50 % working hours for 50 % of the participants and the salary needs to be regular. For participants with lower qualifications the rate is 30 %. The benchmark was based on the former rate of integration, which was at an estimated 15 % across all the groups. In order for the training to be considered successful, there needs to be a recognized upper secondary-level qualification (Sekundarabschluss II). Other criteria considered are job or training terminations (negative criteria) and the proportion of people who are given employment with the help of induction allowances. From this, the success rate significant for the distribution of the social impact bonds is calculated. If the set targets are reached, the annual return is 0.25 % per year. If the targets are surpassed, the interest rate increases in a linear way to a maximum of 5 % over the entire term. In order to reach the 5 %, the

targets need to be surpassed by 40 %. If the targets are not met, the investor loses part of the capital and there is no return. However, the targets can be lowered, adjusted in favour of the investors and the service providers during the term of the SIB. This can occur in a case when general economic factors, (such as when certain limits of unemployment levels are exceeded) render the integration of the refugees in the job market more difficult. However, an adjustment of the targets to the disadvantage of the investors and service providers is not possible.

The design of an SIB resembles a public-private-partnership project. Therein lies another strength, as the challenge of integrating refugees in the job market is tackled by taking into account the private sector right from the beginning. This increases acceptance and includes those who are supposed to offer positions to the refugees. In this sense, the SIB also is a statement acknowledging that certain challenges can only be solved together by getting everyone to contribute towards a common goal.

FOOTNOTES

- 1 See von Schnurbein Georg, Der Stifter als Unternehmer: Parallelen und Unterschiede der Philanthropie im 19. und 21. Jahrhundert, in: von Reden Sitta (Editor): Stiftungen zwischen Politik und Wirtschaft: Geschichte und Gegenwart im Dialog, Beiheft Nr. 66 der Historischen Zeitschrift, 2015, 238.
- 2 See Rüegg-Stürm Jürg/ Schnieper Peppi/ Lang Niklas, Stiftungen im 21. Jahrhundert: Change Management, in: Egger Philipp (Editor): Stiftungsparadies Schweiz, Foundation Governance Vol. 1, Basel 2004, 83 et seq.
- 3 See Zöbeli Daniel/ Koss Claus/ Stock Dietmar, Bewertung und Darstellung von Kunst im Jahresabschluss von Stiftungen, in: Egger Philipp/ von Schnurbein Georg/ Zöbeli Daniel/ Koss Claus (Editor), Rechnungslegung und Revision von Förderstiftungen, Foundation Governance Vol. 8, Basel 2011, 134 et seqq.
- 4 The exact value in the study was CHF 2.9 million owned by 80 % of the foundations.
- 5 See Luginbühl Werner, 09.3344 – Motion: Steigerung der Attraktivität des Stiftungsstandortes Schweiz, 2009.
- 6 For canton Appenzell Ausserrhoden only cumulated figures on the usage of funds were available, these are shown in the lines on expenditures.
- 7 Swiss GAAP FER 21 is mainly used by fundraising aid organisations. For foundations in the areas of arts, nursing homes or education there were other or no accounting standards available.
- 8 See von Schnurbein Georg, Der Schweizer Stiftungssektor im Überblick, Basel 2009, 36.
- 9 See Hertig Daniel/von Schnurbein Georg, Die Vermögensverwaltung gemeinnütziger Stiftungen: State of the Art, Basel 2013, 17.
- 10 See Discussion paper “Schweizer Stiftungswesen im Aufbruch – Impulse für ein zeitgemässes Mäzenatentum”, published online <http://www.avenir-suisse.ch/40027/schweizer-stiftungswesen-im-aufbruch>.
- 11 See Eckhardt Beate/Jakob Dominique/von Schnurbein Georg (Editors), Der Schweizer Stiftungsreport 2012, CEPS Forschung und Praxis, Band 6, Basel 2012, 10–11 and 14–15.
- 12 See Eckhardt Beate/Jakob Dominique/von Schnurbein Georg (Editors), Der Schweizer Stiftungsreport 2014, CEPS Forschung und Praxis, volume 12, Basel 2014, 6 et seqq.
- 13 The number of supervised foundations per supervisory authority is taken from the CEPS database (as per 31.12.2015 from the Swiss commercial registry office (Eidg. Amt für das Handelsregister)).
- 14 Jakob Dominique et al., Verein – Stiftung – Trust. Entwicklungen 2015, njus.ch, Bern 2016 (expected publication in June 2016) and Jakob Dominique/Dardel Daniela/Humbel Claude/Uhl Matthias, Verein – Stiftung – Trust. Entwicklungen 2014, njus.ch, Bern 2015.
- 15 See www.admin.ch.
- 16 See the explanatory report of the FDHA on tasks, organisation and financing of the Federal Foundation Supervisory Authority (FFSA) dated 2.3.2016, available on www.admin.ch.
- 17 Regarding the content of this initiative see Eckhardt Beate/Jakob Dominique/von Schnurbein Georg (editors), Der Schweizer Stiftungsreport 2015, 15.
- 18 See legislative procedure http://www.parlament.ch/d/suche/seiten/legislaturrueckblick.aspx?rb_id=20140470.
- 19 Art. 109 para. 3 and art. 111 para. 1 Federal Act on the Federal Assembly (Parliament Act, ParlA).
- 20 Summary of the procedures in the partial revision of the VAT Act of the Committee for Economic Affairs and Taxation published online http://www.parlament.ch/d/suche/seiten/legislaturrueckblick.aspx?rb_id=20150025.
- 21 Dispatch on the amendment of the Swiss Code of Obligations (Commercial Register Ordinance) from 15.4.2015, Federal Law Gazette 2015 3617.
- 22 Draft on the amendment of the Swiss Code of Obligations (Commercial Register Ordinance) from 27.5.2015, Federal Law Gazette 2015 3661, 3665.
- 23 Federal Law Gazette 2015 3617, 3649.
- 24 Expert recommendations published online <http://www.fer.ch/inhalt/fachempfehlungen/allgemeines/abgeschlossene-projekte.html>.
- 25 See Teitler-Feinberg Evelyn/Zöbeli Daniel, Droht den Nonprofit-Organisationen ein dualer Abschluss?, Der Schweizer Treuhänder (ST) 2014, 18 et seq.
- 26 See Jakob Dominique, Rechtliche Entwicklungen, in: Eckhardt Beate/Jakob Dominique/von Schnurbein Georg (editors), Der Schweizer Stiftungsreport 2015, 16 et seq.
- 27 Press release of the FDHA dated 23.1.2015 published online <https://www.news.admin.ch/message/index.html?lang=de&msg-id=55991> and <https://www.news.admin.ch/message/index.html?lang=de&msg-id=56103>.
- 28 Press release of the FDHA dated 2.2.2015 published online <https://www.news.admin.ch/message/index.html?lang=de&msg-id=56103>.
- 29 See <http://www.nzz.ch/zuerich/beistand-fuer-stefanini-eingesetzt-1.18640134>.
- 30 Decision of the Federal Administrative Court, BVGer, B-5309/2014, at 4.3.4.
- 31 Cf. the decision of the Federal Administrative Court Jakob Dominique, Rechtliche Entwicklungen, in: Eckhardt Beate/Jakob Dominique/von Schnurbein Georg (editors), Der Schweizer Stiftungsreport 2015, 17 et seq.
- 32 Decision of the Swiss Federal Court, BGE 141 II 199, at 5.6 et seqq.
- 33 Decision of the Swiss Federal Court, BGE 141 II 199, at 5.6.
- 34 The right to appeal of the responsible administration under cantonal law is described in art. 73 para. 2 of the Federal Law on the harmonization of the direct taxes in the cantons and municipalities (Bundesgesetz über die Harmonisierung der direkten Steuern der Kantone und Gemeinden, StHG).
- 35 Decision of the Swiss Federal Court, BGE 2C_847/2015, at 2.2.
- 36 Sprecher Thomas/Egger Philipp/Von Schnurbein Georg, Swiss Foundation Code 2015. Grundsätze und Empfehlungen zur Gründung und Führung von Förderstiftungen, Basel 2015.
- 37 The FATF Recommendations. International Standards on Combating Money Laundering and The Financing of Terrorism & Proliferation, 2012, updated 2013 and 2015, www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf.
- 38 See www.fatf-gafi.org/media/fatf/documents/reports/Risk-of-terrorist-abuse-in-non-profit-organizations.pdf.
- 39 See www.fatf-gafi.org/publications/fatfrecommendations/documents/bpp-combating-abuse-npo.html.
- 40 See <http://www.fatf-gafi.org/publications/fatfrecommendations/documents/public-consultation-npo-inr8.html>.
- 41 The FATF Recommendations, 2012, at 13.
- 42 See <http://www.fatf-gafi.org/media/fatf/documents/reports/mer/MER%20Switzerland%20Rapport%20complet.pdf>, 2005, at 209 et seqq.
- 43 The composition of the delegation was unknown at the time of writing of this article.
- 44 Dispatch on the implementation of the 2012 revised recommendations of the Groupe d’action financière of 13.12.2013, Federal Law Gazette 2014, 605.
- 45 See Official Gazette 2014 N 2266, statements Vogler, Widmer-Schlumpf and Barazzone, according to which no implications follow in case of no registration. While the dispatch on the implementation of the recommendations revised in 2012 by the Groupe d’action financière dated 13.12.2013, at 657, stated that the foundations concerned would no longer be recognized as legal personalities, the practice note of the Swiss Commercial Registry Office EHRA 1/15, 24.6.2015, N 6 qualifies that statement, as the parliament had changed the regulation considerably, and points at the above-mentioned statements. Consequently, a family foundation or a religious foundation not registered in the commercial register would not lose its legal personality at the end of the 5-year period.
- 46 Adrian Tagmann, in: Rino Siffert/Nicholas Turin (editors), Handkommentar HRegV, art. 152 N 3.
- 47 Art. 930 SCO: “The commercial register, including all applications for entry and supporting documents, is public”.
- 48 Especially on www.zefix.ch.
- 49 Practice note of the Swiss Commercial Registry Office EHRA 1/15, 24.6.2015, N 6.
- 50 As demonstrated in art. 957 para. 1 no. 1 and para. 2 no. 2 SCO; even foundations obliged to register are entitled to do basic accounting only if they are waived from the appointment of an auditor (art. 957 para. 2 no. 3 SCO in conjunction with art. 83b para. 2 SCC).

- 51 Art. 39 para. 1 no. 12 Swiss Federal Law on Debt Collection and Bankruptcy (Bundesgesetz über Schuldbetreibung und Konkurs, SchKG).
- 52 See Official Gazette 2014, 1177 et seq.
- 53 Practice note of the Swiss Commercial Registry Office EHRA 1/15, 24.6.2015, N 6.
- 54 The origin of the quote could not be traced with certainty until now but it can be seen as coming from the following sentence in “Histoire d’un crime” (1877/1878; Conclusion X): “On résiste à l’invasion des armées; on ne résiste pas à l’invasion des idées.” In English: It is possible to resist the invasion of armies, but it is impossible to resist an invasion of ideas (own translation).
- 55 More details on these and further Facts and Figures, see Stiftung Aktive Bürgerschaft (Editors), Report Bürgerstiftungen – Fakten und Trends 2015, Berlin 2015.
- 56 See Ramge Thomas, Selbstzweck, in: Brandeins 9/2006, Schwerpunkt-Heft Ortsbestimmung, 113 et seqq.; fundamental to idea-historical and social-historical developments in the civil society cf. Vogt Ludgera, Das Kapital der Bürger – Theorie und Praxis zivilgesellschaftlichen Engagements, Frankfurt a.M. 2005, passim (incl. A case study on the Kohlener Bürgerstiftung, 163 et seqq.); cf. Also Graf Strachwitz Rupert /Schober Christian/Lichtsteiner Hans, Bürgerstiftungen als Teil der Zivilgesellschaft, Verbands-Management, 2/2013, 16 et seqq.
- 57 See Sloterdijk Peter, Die nehmende Hand und die gebende Seite, Berlin 2010, passim. Zu den Möglichkeiten einer neuen Ethik des Gebens aus moralphilosophischer Sicht ders., in: Schweizer Monat, Sonderthema 7, November 2012.
- 58 Also see Weitemeyer Birgit, Die Community foundation – Rechtsform und Reformbedarf?, in: Andreas Hoyer et al. (Editors), Gedächtnisschrift für Jörn Eckert, Baden-Baden 2008, 967, 972 et seq.
- 59 See Jakob Dominique, Schutz der Stiftung, Tübingen 2006, 76; Theoretically foundations without legal capacity can be taken considered too, cf. Kaper Aaltje, Bürgerstiftungen, Baden-Baden 2006, 161 et seqq.
- 60 See Jakob Dominique, in: Richter Andreas et al. (Editors), Stiftungsrechts-Handbuch, 4. Aufl. 2014, § 44 Rn. 90; Schlüter Andreas/Stolte Stefan, Stiftungsrecht, 3. Aufl. 2016, Kapitel 1 Rn. 67, as well as for a definition of boundary between Community foundation and cooperative foundation cf. Rn. 68 with foot note 106.
- 61 On the boundary of an umbrella foundation, fundamentals, see Studen Goran, Die Dachstiftung, Basel 2011, 23 et seqq.; ders., Dachstiftungsmodelle – Dogmatik, Möglichkeiten und Grenzen, in: Jakob Dominique (Editors), Perspektiven des Stiftungsrechts in der Schweiz und in Europa, Basel 2010, 37 et seqq.
- 62 Hellmann Bernadette, Bürgerstiftungen in internationaler Perspektive – von Cleveland bis Kairo, in: Aktive Bürgerschaft e.V. (Editors), Diskurs Bürgerstiftungen, Berlin 2013, 36 et seqq., reports on more than 1,680 Community foundations in 51 countries; the figures are presumably based on WINGS (Editors), Community Foundation – Global Status Report, 2010.
- 63 Originally named “Stadt Stiftung Gütersloh”.
- 64 See Hellmann Bernadette, Bürgerstiftungen in internationaler Perspektive – von Cleveland bis Kairo, in: Aktive Bürgerschaft e.V. (Editors), Diskurs Bürgerstiftungen, Berlin 2013, 36, 39.
- 65 More details in Hoelscher Philipp/Casadei Bernadino (Editors), Le fondazioni comunitarie in Italia e Germania, Berlin 2006, passim.
- 66 In contrast, the idea of the Community foundation has not yet spread in the Asian region, cf. for China: Hippel Thomas /Pißler Knut B., in: Richter Andreas/Wachter Thomas (Editors), Handbuch des internationalen Stiftungsrechts, Angelbachtal 2007, 699 et seqq.; for Japan: Schuh Sandra, Gemeinnützige Rechtsträger in Japan und Deutschland, Tübingen 2014, passim.
- 67 On the current efforts of the Austrian legislator to establish a non-profit location Austria, see the legislation in effect since 1.1.2016, “Gemeinnützigkeitgesetz 2015 (GG 2015)”, österreichisches BGBl I Nr. 160/2015; also see Bund gemeinnütziger Stiftungen et al. (Editors), Gemeinnützige Stiftungen – Wie wir Österreich zum Blühen bringen, 2015, passim.
- 68 See the cultural-sociological dissertation already produced in 2002 by Kamber Pia und Zeugin Bettina: Eine “Bürgerstiftung” für den Kanton Baselland?, Univ. Basel, 2002.
- 69 Cf. Müller-Jentsch Daniel, Schweizer Stiftungswesen im Aufbruch – Impulse für ein zeitgemäßes Mäzenatentum, discussion paper, edited by Avenir Suisse, Zürich, September 2014, 9 et seq. (Textbox 1); similarly Lichtsteiner Hans, in: Bürgerstiftungen als Teil der Zivilgesellschaft, Verbands-Management, 2/2013, 16, 17 et seq., 20.
- 70 Fundamental for the micro-empirical visualization of the phenomenon Community foundation in Switzerland, Uhl Matthias, Kooperationen im Stiftungsrecht, Diss. Univ. Zürich, erscheint 2016.
- 71 On the foundation charter and further information on the citizens’ foundation Ortsbürgerstiftung Villmergen, see <http://www.ortsbuergerstiftung.ch>.
- 72 So Ferraro Leo im Wohler Anzeiger vom 17.12.2004.
- 73 As an example of a foundation established by several founders oriented towards a number of tax-privileged purposes of regional relevance besides being a politically neutral cooperative foundation, see Stiftung “pro Fricktal” with domicile in Frick: <http://profricktal.ch>.
- 74 See Jakob Dominique, in: Richter Andreas et al. (Editors), Stiftungsrechts-Handbuch, 4. Aufl., München 2014, § 44 Rn. 62.
- 75 This is where the accusation of Community foundations being “associations in an inappropriate legal dress” comes from, see Studen Goran, Die Dachstiftung, Basel 2011, 24; Jakob Dominique, SJZ 2008, 533, 537.
- 76 See Reuter Dieter, Münchener Kommentar zum BGB, 6. Aufl., München 2012, §§ 80, 81 Rn. 125 et seq.
- 77 According to the report by Schiffer K. Jan, in: Schiffer K. Jan (Editors), Die Stiftung in der Beraterpraxis, 4. Aufl., Bonn 2015, § 9 Rn. 20, 22, 30.
- 78 More details on the issue in Uhl Matthias, Kooperationen im Stiftungsrecht, Diss. Univ. Zürich, erscheint 2016. On the question of a “fight of the tax authorities” in the context of stocked purposes more details by Schiffer K. Jan, in: Schiffer K. Jan (Editors), Die Stiftung in der Beraterpraxis, 4. Aufl., Bonn 2015, § 9 Rn. 20 et seqq.
- 79 See articles in the Stiftungsbrief of the IWW Institute, Ausgabe 12/2015, 230 et seqq., as well as issue 1/2016, 8 et seqq.
- 80 Details from an empirical-sociological perspective by Barth Annette, Bürgerstiftungsschelte – Anspruch und Wirklichkeit von Bürgerstiftungen, Berlin 2012, passim. For a detailed critique of Community foundations on legal-dogmatic grounds, see Uhl Matthias, Kooperation im Stiftungsrecht, Diss. Univ. Zürich, due in 2016.
- 81 The fact that the *fondazione di partecipazione* under Italian law is seen as “dogmatically impure” is a different kettle of fish, see Schurr Francesco A., Die Stiftung und das System des Gemeinnützigkeitsrechts in Italien, in: Non Profit Law Yearbook 2012/2013, Hamburg 2013, 269, 280 et seq., 285; näher di Bellezza Enrico /Floriano Francesco, Le fondazioni di partecipazione, Piacenza 2006, passim.
- 82 Gouwenberg Barbara/Karamat Ali Danique/Hoolwerf Barry/Bekkers Rene/Schuyt Theo, Synthesis Report EUFORI Study, Brussels: EU Commission, 2015, 41 and 1197.
- 83 See also the contribution in this Foundation Report under II. Legal Developments, Current jurisdiction.
- 84 See von Schnurbein Georg/Stöckli Sabrina, Die Gestaltung von Non-profit Governance Kodizes in Deutschland und der Schweiz – eine komparative Inhaltsanalyse, Die Betriebswirtschaft, Vol. 70, Journal 6, 2010, 493–509.
- 85 See Jakob Dominique/Uhl Matthias, Der Swiss Foundation Code und seine bisherige Rezeption im Stiftungswesen, Aktuelle juristische Praxis (AJP), 2015, 279 et seqq.
- 86 See Purtschert Robert/ von Schnurbein Georg/ Beccarelli Claudio, Switzerland, in: Anheier Helmut K./ Daly Siobhan (Editors), The Politics of Foundations – A Comparative Analysis, London 2007, 311 et seqq.
- 87 Canton Schaffhausen was not taken into consideration in this study as charitable foundations are supervised by the Canton Zurich.
- 88 The Swiss Foundation Code holds a differentiated view stipulating that the volunteer status is the general principle but that remunerations should be paid in cases where professional management is not possible otherwise. See Sprecher Thomas/Egger Philipp/von Schnurbein Georg, Swiss Foundation Code 2015, Foundation Governance Vol. 11, Basel 2015, 51 et seq.
- 89 The reservation of the right to amend the purpose of the foundation can be stated in the charter by the founder at the point of establishment giving her/him the right to change the foundation purpose after a minimum of ten years (under certain conditions). For more details, see Jakob Dominique, Das Stiftungsrecht der Schweiz im Europa des dritten Jahrtausends, Schweizerische Juristen-Zeitung (SJZ), 22/2008, 534 et seq.

SWISS FOUNDATION CODE 2015

In German, French and English
 Third edition



Sprecher/Egger/von Schnurbein
 Swiss Foundation Code 2015
 Foundation Governance Vol. 13
 221 pages, paperback
 CHF 48.– / EUR 46.–
 ISBN 978-3-7190-3584-6
 2015 Helbing Lichtenhahn Verlag

All titles of the series
 "Foundation Governance" are listed on
www.swissfoundations.ch

The Gold Standard for foundations

By means of its three concise principles and 29 extensively commented recommendations, the Swiss Foundation Code is setting international standards:

- It is both a comprehensive reference framework and a practical tool
- Best Practice is its benchmark
- It has a proven track record in practice since 2005

Reference framework for Good Governance

The Swiss Foundation Code was created by the foundation sector and adopted by SwissFoundations, the association of Swiss grant-making foundations. It is an application-oriented tool for self-regulation and an orientational framework for good foundation governance. First appearing in the year 2005 and supplemented by a commentary in 2009, it is now published in this third edition in completely revised format. Its 3 broadly formulated principles and 29 recommendations are applicable to all types and sizes of foundation.

Contents

- 3 principles
- 29 recommendations with comments and marginal notes
- Phenomenology of the Swiss foundation landscape with sections 'Fundamental questions' and 'Foundation matrix'
- Foundation glossary
- Keyword index
- Bibliography

Indispensable

To foundation boards, managing directors and employees of charitable foundations, lawyers, notaries and trustees.

Please send by fax to +41 61 228 91 50
 or as a scan by email to
order@helbing.ch

Helbing Lichtenhahn Verlag
 Elisabethenstrasse 8
 CH-4051 Basel
order@helbing.ch
www.helbing.ch

Order form (postage-free delivery within Switzerland)

Amount	Author/Title	ISBN	Price CHF / EUR
	Sprecher Egger von Schnurbein, Swiss Foundation Code 2015	978-3-7190-3584-6	48.– / 46.–

Name/Company

Postcode Location

Street/Nr

Date Signature

V. NEW PUBLICATIONS

NEW PUBLICATIONS IN 2015

- Baumann Lorant Roman, **Bekanntmachungsleistungen von oder an gemeinnützige Organisationen**, rechnungswesen & controlling 2015, 34 et seq.
- Degen Christoph, **Zwischen Konstanz und Risiko – Verantwortungsvolle Vermögensverwaltung durch Stiftungen**, Fundraiser Magazin 2015, 72 et seq.
- Degen Christoph/Baumann Lorant Roman, **Der Startschuss ist gefallen. Aktuelle Entwicklungen im Stiftungs- und Gemeinnützigkeitsrecht**, Die Stiftung, Special, 2015, 14 et seq.
- Various authors, **Kommentierung der Art. 78–87 Fusionsgesetz** (Fusion und Vermögensübertragung von Stiftungen), in: Watter Rolf/Vogt Nedim Peter/Tschäni Rudolf/Daeniker Daniel (Editors): Basler Kommentar, Fusionsgesetz, 2nd edition, Basel 2015.
- Eckhardt Beate/Jakob Dominique/von Schnurbein Georg (Editors), **Der Schweizer Stiftungsreport 2015**, CEPS Forschung und Praxis, Vol. 14, Basel 2015.
- Egger Philipp, **Der Swiss Foundation Code 2015 – Entwicklungsgeschichte einer Selbstregulation**, Stiftung & Sponsoring 2015.
- Fritz Tizian M./von Schnurbein, Georg, **Nonprofit Organizations as Ideal Type of Socially Responsible and Impact Investors**, Journal of Finance and Risk Perspectives, 4(4), 2015, 129 et seqq.
- Gierhake Anja/Wenz Martin, **Das Doppelbesteuerungsabkommen zwischen Liechtenstein und der Schweiz**, Steuer Revue 2015, 740 et seqq.
- Gierhake Olaf/Peter Natalie, **Einsatzszenarien von liechtensteinischen Stiftungen und stiftungsähnlichen Zweckvermögen unter dem neuen DBA Switzerland – Liechtenstein**, Steuer Revue 2015, 628 et seqq.
- Grüninger Harold, **Aktuelles aus dem Stiftungs- und Gemeinnützigkeitsbereich**, successio 2015, 220 et seqq.
- Jakob Dominique, **Entwicklungen im Vereins- und Stiftungsrecht/Le point sur le droit des associations et fondations**, Schweizerische Juristen-Zeitung (SJZ) 2015, 528 et seqq.
- Jakob Dominique, **Stiftung und Familie**, in: Jakob Dominique/Hilbig-Lugani Katharina/Mäsch Gerald/Reuss Philipp/Schmid Christoph (Editors), Zwischenbilanz – Festschrift für Dagmar Coester-Waltjen zum 70. Geburtstag, Bielefeld 2015, 123 et seqq.
- Jakob Dominique (Editor), **Stiftung und Familie**, Tagungsband zum 3. Zürcher Stiftungsrechtstag, Basel 2015.
- Jakob Dominique, **Foundation Governance – ein vergleichender Überblick über den deutschsprachigen Raum**, Audit Committee Quarterly, 1/2016, 13 et seqq.
- Jakob Dominique, **Modernes Stiftungsrecht für Deutschland in Europa – was sollte geregelt werden?**, Zeitschrift für das Recht der Non Profit Organisationen (npoR) 2016, 7 et seqq.
- Jakob Dominique/Brugger Lukas/Gubler Simon/Humbel Claude/von Götz Caroline, **Verein – Stiftung – Trust. Entwicklungen 2015**, njus.ch, Bern 2016.
- Jakob Dominique/Dardel Daniela/Humbel Claude/Uhl Matthias, **Verein – Stiftung – Trust. Entwicklungen 2014**, njus.ch, Bern 2015.
- Jakob Dominique/Gubler Simon, **Kirchliche Stiftungen – Bevorstehende bundesrechtliche Änderungen**, Schweizerische Kirchen-Zeitung 2015, 552 et seq.
- Jakob Dominique/Studen Goran, **Privatautonomie und Governance – Das liechtensteinische Stiftungsrecht als gelungenes Modell einer freiheitlichen Foundation Governance?**, Stiftung & Sponsoring, Sonderausgabe 2015, 34.
- Jakob Dominique/Tschutscher Klaus, **Innovative Ansätze – Stiftungen – Welche Aufsicht einer modernen**

Stiftungsrechtsordnung gut ansteht, Handelszeitung, 3/2016, 24.

Jakob Dominique/von Schnurbein Georg/Studen Goran, **Gemeinnützige Stiftungen in der Schweiz errichten und führen – Ein praktischer Leitfaden**, Zurich 2016.

Jakob Dominique/Uhl Matthias, **Der Swiss Foundation Code und seine bisherige Rezeption im Stiftungswesen**, Aktuelle Juristische Praxis 2015, 279 et seqq.

Jankovic Milena/von Schnurbein Georg, **Negativselektion als Investorenkompass zweckkonformer Anlagestrategien**, Expert Focus, Nr. 10/2015, 794 et seqq.

Kleibold Thorsten / Schacher Patrick, **Schweizer Standard zur eingeschränkten Revision 2015**, Expert Focus 2015, 670 et seqq.

Kraus-Werner Ulrike, **Zur 2. Säule – Deuxième pilier, Besprechung diverser Bundesgerichtsentscheide**, Schweizerische Zeitschrift für Sozialversicherung und berufliche Vorsorge (SZS) 2015, 352 et seqq.

Oberndorfer Klaus/Marschner Ernst, **Jubiläumsausgabe der Zeitschrift für Stiftungswesen**, Zehn Jahre ZFS – Beiträge aus Zivil- und Steuerrecht 2015.

Petritz Michael, **Österreichische (Höchst-)Gerichte entscheiden zu liechtensteinischen Stiftungen aus steuerlicher Sicht**, Die Privatstiftung (PSR) 2015, 71.

Piotet Denis, **L'évolution du droit fiscal étranger vers la "transparence" peut-elle justifier la dissolution et la liquidation d'une fondation de famille conforme au droit suisse?**, Not@lex – Revue de droit privé et fiscal du patrimoine, Zurich 2015, 85 et seqq.

Prevas AG (Editor): **Wegweiser for Stiftungsräte – Eine Überlebenshilfe im Alltag der beruflichen Vorsorge**, Bern 2015.

ProFonds (Editor), **Stiftungsland Schweiz 2015 – Zahlen, Entwicklungen, Trends**, Basel 2015.

Schurr Francesco A. (Editor), **Zivil- und gesellschaftsrechtliche Fragen zur Führung und Abwicklung von Stiftungen**, Tagungsband des 6. Liechtensteinischen Stiftungsrechtstags 2013, Zurich, Basel, Geneva 2015.

Sprecher Thomas, **Verantwortliche Vermögensbewirtschaftung durch Stiftungen**, Schweizerische Juristenzeitung (SJZ) 2015, 221 et seqq.

Sprecher Thomas, **Zweckbezogene und nachhaltige Vermögensbewirtschaftung durch Stiftungen**, Schweizerische Juristenzeitung (SJZ) 2015, 249 et seqq.

Sprecher Thomas/Egger Philipp/von Schnurbein Georg, **Swiss Foundation Code 2015 – Grundsätze und Empfehlungen zur Gründung und Führung von Förderstiftungen**, Basel 2015.

Verbandsmanagement Institut (Editor), **Die Schweizerische Stiftungslandschaft: Eine Vollerhebung der klassischen Stiftungszwecke**, 1st edition, Fribourg 2015.

Von Schnurbein Georg, **Der Stifter als Unternehmer: Parallelen und Unterschiede der philanthropy im 19. und 21. Jahrhundert**, in: von Reden Sitta (Editors): **Stiftungen zwischen Politik und Wirtschaft: Geschichte und Gegenwart im Dialog**, Beiheft Nr. 66 der Historischen Zeitschrift, 2015, 237 et seqq.

Von Schnurbein Georg/Bethmann Steffen, **Giving in Switzerland: High Engagement and International Outreach**, in: Wiepking Pamala/Handy Femida (Editors), **The Palgrave Handbook of Global Philanthropy**, London 2015, 267 et seqq.

Von Schnurbein Georg/Fritz Tizian, **Eufori Study – Country Report Switzerland**, Luxembourg, Brussels 2015.

Von Schnurbein Georg/Fritz Tizian/Mani Steve, **Social impact bonds**, Basel 2015.

Von Schnurbein Georg/Fritz Tizian, **Mission Investing in Europe – A Meta-analysis**, in: CEPS Working Paper Series, N° 5, Basel 2015.

Von Schnurbein Georg/Stühlinger Sara, **Revisiting the Relationship of CSR and Corporate Philanthropy by Using Alignment Theory**, CEPS Working Paper Series No. 6, Basel 2015.

Von Schnurbein Georg/Timmer Karsten, **Die Förderstiftung**, 2nd edition, Basel 2015.

VII. EVENTS

EVENTS IN 2015

Cycle philanthropie

29 January / 13 March / 28 May 2015, Geneva

Three colloquials dedicated to different areas of expertise examined different aspects of philanthropy in Western Switzerland. Topics ranged from “Philanthropy and Art Law” to “Philanthropy and Intellectual Property” to “Philanthropy and Corporate Social Responsibility”. The colloquials were organized and sponsored by the University of Geneva, the Fondation Lombard Odier, SwissFoundations and the Swiss daily Le Temps.

Gute Gesuche stellen: Kultur/Soziales

3 and 10 February 2015, Basel

In two full-day seminars organized by the Center for Philanthropy Studies (CEPS) and the study center for cultural management of the University of Basel, tips and tricks from the experience of grant-making foundations as well as instructions on how to write good applications were given. The next series of these popular seminars is planned for spring 2017.

www.ceps.unibas.ch

Recht aktuell: Stiftungsrecht “Vermögensanlage und Stiftungsrecht”

13 March 2015, Basel

For the fourth time, around 50 people invited to the auditorium of the Law Faculty of the University of Basel discussed current developments in foundation law. Besides presentations on asset investment of charitable foundations and examples from the practice of grant-making and umbrella foundations, the asset management of OPA foundations was also examined. The event was rounded off with a talk with Dr. Philipp Baumann of Bank La Roche.

Forum des Fondations

17 March 2015, Lausanne

This year’s Forum des Fondations “La place philanthropique en Suisse romande – Quels enjeux?” was dedicated to the framework conditions of charitable foundations in Switzerland, with a special focus on the French-speaking part of Switzerland. On the basis of the study on the Swiss foundation sector by Avenir Suisse, introduced in autumn 2014 and translated into French, questions asked by Claudia Genier, Vice Managing Director of SwissFoundations, were discussed by the plenary including Tibère Adler, Directeur Romand, Avenir Suisse, Pascal Broulis, Councillor of State of the canton of Vaud, Thierry Lombard, Chairman of the Fondation Lombard Odier, Pierre-Luc Maillefer, Chairman of the Fondation Leenaards and Anja Wyden Guelpa, Chancellor of State, Geneva.

www.forum-des-fondations.ch

Colloque philanthropie et patrimoine bâti

24 March 2015, Geneva

On the occasion of the European Heritage Days, SwissFoundations, in cooperation with the canton Geneva and the Fondation Lombard Odier, organized a round of discussions on the philanthropic engagement of patrons in Geneva who have left numerous buildings and public spaces to the general public. The event was in preparation for the European Heritage Day that takes place in September and which among other things, offers access to selected buildings and memorials.

www.ge.ch/chancellerie/philanthropie.asp

Deutscher Stiftungstag

6 to 8 May 2015, Karlsruhe

The German foundation scene met up in Karlsruhe in 2015 under the title of “On the way to Europe – foundations in Germany (Auf dem Weg nach Europa – Stiftungen in Deutschland)”. SwissFoundations took part in the opening panel, together with foundation associations from Spain and Finland, to present the Swiss perspective on foundations.

www.stiftungen.org

Annual conference European Foundation Centre

20 to 22 May 2015, Milan

The large annual conference of the European foundation scene “Visions and Energy for Change” took place for the 26th time, and united more than 800 representatives of the European non-profit sector in Milan. The three-day conference featured panel discussions and a large number of workshops with in-depth discussions. The conference moves between different countries and is organized by a local host committee.

www.efc.be

14. Schweizer Stiftungssymposium

3 June 2015, Rorschlikon

“No impact without effect: How foundations reach their goals (Ohne Wirken keine Wirkung: Wie Stiftungen ihre Ziele erreichen)”. This was the title of the discussions led by more than 300 participants in the sold-out GDI in Rorschlikon – renowned experts and practitioners in the foundation sector dealt with the question of how impact is reached and how foundations can reinforce it. The foundation symposium is one of the most important networking events of the Swiss foundation sector.

www.stiftungssymposium.ch

5. Basler Stiftungstag

25 August 2015, Basel

The 5th Basel Foundation Day saw, once again, a large number of charitable foundations assemble from the region of Basel. This year, the association “Verein Stiftungsstadt Basel” invited everyone to the Basel Zoo, where many current topics from the daily life of foundations were discussed.

www.stiftungsstadt-basel.ch

Beste Stiftungsratspraxis

8 September 2015, Zurich

The third edition of the training seminar was entitled “Foundation Governance up to date: The new Swiss Foundation Code”. The annual seminar is offered to foundation boards by the Europe Institute of the University of Zurich, SwissFoundations and the Center for Philanthropy Studies (CEPS) of the University of Basel. Convention leader in 2015 was Thomas Sprecher. The seminar was followed by a celebratory preview of the new Swiss Foundation Code.

www.europainstitut.ch

European Day of Foundations and Donors

1 October 2015, the whole of Switzerland

More than 20 foundations and organizations participated in the third European Day of Foundations and Donors in Switzerland, presenting themselves to the public with their own events. This initiative of the Donors and Foundations Networks in Europe (DAFNE) is conducted in Switzerland by SwissFoundations and proFonds. Non-profit organizations can present themselves live or online with information and events on the day.

www.tag-der-stiftungen.ch

SwissFoundations Stiftungsgespräch

1 October 2015, Zurich

“Engaged Switzerland – civil society engagement undergoing change (Die engagierte Schweiz – Zivilgesellschaftliches Engagement im Wandel)”. On the occasion of the Zurich foundation talk 2015, a thematic dossier on Swiss civil society published by SwissFoundations, Migros Kulturprozent and the Schweizerische Gemeinnützige Gesellschaft was presented and discussed. Experts addressed the questions of why people engage in the first place and what the current state of the societal contract in our country is, how societal participation is changing and what would be the right incentives to provide positive support. Experts on the panel were: Prof. Dr. Helmut Anheier, Dean Hertie School of Governance, Berlin; Danielle Bürgin, President of Viva con Agua Switzerland; Cornelia Hürzeler, Project Manager Work and Society of Migros-Kulturprozent; Dr. Antonia Jann, President of SwissFoundations.

www.stiftungsgespräch.ch

Liechtensteiner Stiftungsrechtstag

20 October 2015, Vaduz

In the focus of the 8th Liechtenstein Foundation Law Days were exciting and cutting-edge topics such as protected cell companies, new developments in the area of recognition and current jurisdiction in foundation law, estate planning through foundations in Liechtenstein as well as obligations and liability of foundation boards in wealth management.

www.uni.li/stiftungsrechtstag

Schweizer Stiftungstag

5 November 2015, Zurich

With the headline “Think differently, act differently; trends and developments of foundations and NPO (Anders denken, anders handeln: Trends und Entwicklungen bei Stiftungen und NPO)“, the 27th proFonds convention provided new impulses to the daily foundation practice and reported on news from the Swiss foundation and non-profit sector.

www.profonds.org

EuroPhilantopics

10 November 2015, Brussels

The annually held EuroPhilantopics are organized in cooperation with different European foundation associations with the aim of creating an institutionalized exchange between philanthropic actors and the EU institutions. The event is open to the public. In 2015, it was entitled “Trust Matters – A lever to deliver better social justice outcomes”.

www.efc.be/newsevents/europhilantopics/

Swiss Foundation Code 2015 – Quelles nouveautés ?

12 November 2015, Geneva

The French version of the third edition of the Swiss Foundation Code was presented in Geneva on 12 November 2015 in an event with more than 80 participants. Following an introduction by Georg von Schnurbein, co-author and co-editor of the code, Parisima Vez, responsible for the foundation supervisory authority Fribourg and member of the legal council of SwissFoundations, presented a number of recommendations. The main recommendations in the area of financial management were further elaborated on by Gian Heim, foundation board of the Fondation Teamco as well as by Peter Spinnler, founder and president of the Stiftung Animato.

www.swissfoundations.ch/fr/bonne-gouvernance

SAVE THE DATE

15. Schweizer Stiftungssymposium
Zeit als Kapital für Förderstiftungen

11 May 2016, Biel

Organizer:
SwissFoundations, www.stiftungssymposium.ch

Deutscher Stiftungstag
**Älter – bunter – anders:
Demografischer Wandel und Stiftungen**

11 to 13 May 2016, Leipzig

Organizer:
Bundesverband Deutscher Stiftungen, www.stiftungen.org

EFC Annual Conference
Imagining and Investing in our Future

26 to 28 May 2016, Amsterdam

Organizer:
European Foundation Centre, www.efc.be

Forum des Fondations 2016

7 June 2016, Lausanne

Organizer:
SwissFoundations, www.swissfoundations.ch
in cooperation with:
AGFA (Association de Genève des Fondations Académiques), www.agfa-ge.ch
ACAD (Académie des Administrateurs), www.acad.ch
IMD, www.imd.org
proFonds, www.profonds.org

Kompaktseminar für Nicht-Finanzleute
**Anlagewissen für Stiftungsräte
gemeinnütziger Stiftungen**

13 to 14 June 2016, Zurich

Organizer:
SwissFoundations, www.swissfoundations.ch
Fachschule für Bankwirtschaft, www.fsbz.ch

4. Zürcher Stiftungsrechtstag
Universum Stiftung

17 June 2016, University of Zurich

Organizer:
Zentrum für Stiftungsrecht an der Universität Zürich
www.zentrum-stiftungsrecht.uzh.ch
Europa Institut an der Universität Zürich, www.eiz.uzh.ch

Beste Stiftungsratspraxis 2016
**Was gemeinnützige Stiftungsräte
wissen müssen**

6 September 2016, Kongresshaus Zurich

Organizer:
Europa Institut an der Universität Zürich, www.eiz.uzh.ch
SwissFoundations, www.swissfoundations.ch
Center for Philanthropy Studies (CEPS) der Universität Basel,
www.ceps.unibas.ch

SwissFoundations Stiftungsgespräch

30 September 2016, Zurich

Organizer:
SwissFoundations, www.swissfoundations.ch

European Day of Foundations and Donors

1 October 2016, whole of Switzerland

Organizer:
SwissFoundations, www.swissfoundations.ch
proFonds, www.profonds.org
www.tagderstiftungen.ch

Schweizer Stiftungstag

3 November 2016, Lucerne

Organizer:
proFonds, www.profonds.org

VIII. EDITORS

EDITORS

Beate Eckhardt, lic. phil. I, EMScom

Beate Eckhardt manages SwissFoundations, the association of the Swiss grant-making foundations, since 2005. The network supports an exchange of knowledge and experience, good governance, professionalism and an effective use of foundation grants in the foundation sector. Before Beate Eckhardt took on the Managing Director position of SwissFoundations, she was a freelance communications and project leader with a focus on education, culture as well as architecture and urban development. Beate Eckhardt studied German Language and Literature and Social and Economic History at the University of Zurich. In 2004, she was awarded a Master of Science in Communications Management EMScom from the University of Lugano and the University of California Los Angeles. Beate Eckhardt's voluntary engagements include the roles of board member of the Schweizerische Gemeinnützige Gesellschaft (Swiss society of non-profits), member of the administrative council of the Theater am Neumarkt and member of the Zurich Philanthropy Roundtable.

Prof. Dr. Dominique Jakob, M.I.L. (Lund)

Prof. Dr. iur. Dominique Jakob studied law in Augsburg, Munich and Lund (Sweden). With his postdoctoral thesis entitled "Protection of the foundation – the foundation and its legal terms amidst conflicting interests (Schutz der Stiftung – Die Stiftung und ihre Rechtsverhältnisse im Widerstreit der Interessen)", he qualified as a university professor and is authorized to teach the subjects civil law, international private law, comparative law, civil procedure law, trade and business law as well as tax law. Since 2007, Dominique Jakob has held a chair of private law at the University of Zurich, where he also established the "Center for Foundation Law" (www.zentrum-stiftungsrecht.uzh.ch) in 2008, and the "Zurich Foundation Law Day" (Zürcher Stiftungsrechtstag) in 2010. His research focuses are (international) estate planning and private asset structuring (this includes trusts) as well as national, comparative, European and international foundation law (with a focus on relations between Switzerland, Liechtenstein and Germany). Dominique Jakob is the author of numerous publications on a national and international level; he also works as an advisor to governments, finance institutes, enterprises, foundations, families and private individuals.

Prof. Dr. Georg von Schnurbein

Prof. Dr. Georg von Schnurbein is Associate Professor for Foundation Management at the University of Basel and the Director of the Center for Philanthropy Studies (CEPS), which was initiated by SwissFoundations, the association for Swiss grant-making foundations. Previously, from 2001 to 2007, Georg von Schnurbein was a research associate at the Verbandsmanagement Institut (VMI) of the University of Fribourg, Switzerland. He was the project coordinator of the Swiss country studies for "Visions and Roles of Foundations in Europe" and the "John Hopkins Comparative Nonprofit Sector Project". Georg von Schnurbein studied Business Administration and minored in political studies at the Universities of Bamberg, Fribourg and Bern. He is a board member of the European Research Network on Philanthropy (ERNOP) and co-editor of the serial publication "Foundation Governance". His research focuses are non-profit governance, impact assessment and foundation management.

The editors express their thanks to their staff members and to Julia Jakob, ass. iur., for their valuable contribution-writing and editing.

CEPS Forschung und Praxis – Volume 15

SWISS FOUNDATION REPORT 2016

The Swiss Foundation Report is published annually by Beate Eckhardt, Managing Director of SwissFoundations, Prof. Dr. Dominique Jakob, Director of the Center for Foundation Law Zurich, and Prof. Dr. Georg von Schnurbein, Director of the Center for Philanthropy Studies (CEPS) of the University of Basel. The report presents current figures, facts and details on trends in Switzerland and abroad, its aim is to create a better knowledge base for the foundation sector. The report is published in German, French, English and Italian; downloads are available on www.stiftungsreport.ch.

CENTER FOR PHILANTHROPY STUDIES (CEPS)

The research and training institute for philanthropy and the foundation sector was founded in 2008, at the University of Basel, following an initiative by SwissFoundations. The CEPS aims to improve the basic and transferred knowledge of philanthropy through interdisciplinary activities. Its training and consulting offer is of direct benefit to foundations and other non-profit organizations.

www.ceps.unibas.ch

SWISSFOUNDATIONS



SwissFoundations unites the charitable grant-making foundations of Switzerland and gives them a strong and independent voice. Being an active network committed to innovation, SwissFoundations promotes the exchange of experiences, transparency and professionalism in the Swiss foundation sector. The association is open to large and small, regional and international foundations with a legal domicile in Switzerland or Liechtenstein. SwissFoundations represents around 20% of the total annual distributions of charitable foundations in Switzerland.

www.swissfoundations.ch

CENTER FOR FOUNDATION LAW

The Center for Foundation Law was founded in 2008 by Prof. Dr. Dominique Jakob as a research institute at the University of Zürich. It promotes education and research in relevant thematic areas besides being a communication platform for science, foundation practitioners, businesses and politics. On the level of content, it looks at foreign legal forms and international developments in addition to examining Swiss charitable and private foundation types.

www.zentrum-stiftungsrecht.uzh.ch



Center for Philanthropy Studies (CEPS)

University of Basel

Totengässlein 3, CH-4051 Basel

T: +41 61 267 23 92

E-Mail: ceps@unibas.ch

www.ceps.unibas.ch



**Universität
Zürich^{uzh}**

Zentrum für Stiftungsrecht

Center for Foundation Law

University of Zurich

Treichlerstrasse 10/15, CH-8032 Zurich

T: +41 44 634 15 76

E-Mail: stiftungsrecht@rwi.uzh.ch

www.zentrum-stiftungsrecht.uzh.ch

SwissFoundations

SwissFoundations

Association of Swiss grant-making foundations

Haus der Stiftungen, Kirchgasse 42, CH-8001 Zurich

T: +41 44 440 00 10

E-Mail: info@swissfoundations.ch

www.swissfoundations.ch

978-3-9524241-6-2