

The Governance Structures of Community Foundations - Country Report GERMANY

Introduction

The German foundation sector can trace its history as far back as to the 10th century. Since the middle ages there have been charitable foundations which shared some characteristics of community foundations: Instigated by a number of citizens, they were designed to pool resources in order to meet particular local problems. However, since its beginnings in the late nineties, the German community foundation movement was based on the American model.

As the community foundation model was adapted to better reflect the German context, German community foundations differ in various ways from their Anglo-Saxon counterparts. First of all, they are not purely grant-making organizations. They do not confine their activities to providing financial support for charitable projects but also develop, conceptualize and implement pioneering programs themselves. More over, German community foundations feel very strong about being an active part of civil society. They do not only seek to generate financial resources but also try to activate civic engagement, for instance by involving volunteers in their operative activities. In addition, this conception leads to a very participatory working philosophy which is clearly reflected by the governance structures of German community foundations.

In legal terms, community foundations fall under the category of civil law foundations which are defined as specific incorporated legal persons, characterized by assets, destined to serve a specific statutory purpose in perpetuity as declared by the founder(s), and granted legal personality without members or owners by an act of government. The statutory objectives as well as the organizational structure of the 'incorporated legal person' are laid down in the statutes of a foundation which regulate the number and powers of the governing bodies.

Like all German charitable foundations, community foundations are non-profit entities and are exempt from income, inheritance and gift tax. Under the new law governing endowments which was passed in summer 2000, donations to a (community) foundation enjoy a special expense allowance of 40,000 DM (€ 20,000) per year in addition to the already applicable 5 resp. 10 % of taxable income allowance and an additional deductibility of 600,000 DM (€ 300,000) over a period of ten years for initial donations to a foundation.

The Governing Bodies of German community foundations

The minimum legal requirement concerning the governance structure of a (community) foundation in Germany is an executive board which represents the foundation in all judicial and non-judicial matters. However, all community foundations do have several governing bodies for the reason that a system of checks and balances guarantees a high degree of control and transparency. More over, a variety of different bodies allows to involve citizens in various functions and to manage the foundation in an open and participatory way.

The governance model of German foundations basically reflects the structure of German corporate boards, which divides responsibilities between an Executive (or Managing) and a Supervisory Board. In essence, the Executive Board's prime responsibility is actually running the corporation/foundation, whereas the Supervisory Board develops the general guidelines and controls the actions of the Executive Board. For this reason, members of the Supervisory Board may not sit on the Executive Board.

EXECUTIVE BOARD

The Executive Board is the legal representative of the foundation in all judicial and non-judicial affairs. Although the Executive Board is supposed to reflect all features of good governance, its rationale is to ensure that the foundation acts knowledgeable, provides stewardship and is committed to the accomplishment of its goals.

Executive Board is primarily responsible for:

re: Board Composition

- Induction and Training for new members

re: Policy Development

- The Executive Board develops and guides the policies concerning all aspects of the foundation (governance, administration, grant-making and operating projects, asset development, donor relations, communications/marketing)

re: Implementation

- Implementing the policies and operating the foundation is the core function of the Executive Board. Thus, it
 - carries out the resolutions of the supervisory board
 - ensures adequate financial and human resources
 - guarantees compliance with legal regulations
 - maintains fiscal responsibility, investments
 - allocates money in accordance with donor intents and community needs
 - approves legal, investment and accounting practices
 - selects and evaluates CEO/ staff
 - maintains transparency and provides for public relations
 - produces a business plan (budget), presents an annual financial statement
 - appoints the auditor and produces the business report

SUPERVISORY BOARD

The principles of integrity, transparency and credibility are paramount to German community foundations. To guarantee that these principles are met, is the Supervisory Board's 'raison d'être'. From a functionalist point of view, the Supervisory Board is supposed to ascertain that the foundation acts independent of external pressure or influence, is reflective of the community, and is accountable in terms of integrity and transparency

Unless there is a Donor Assembly which elects the members of the Supervisory Board, the Board co-opts new members at its discretion (but no members of the Executive Board).

re: Mission, Vision

- Periodically review of performance
- Approve and maintain the mission and vision
- Develop and guide a strategic plan

re: Board Composition

- Planning for the diversity of the board, i.e. the Supervisory Board
 - appoints, supervises and discharges the executive board members and may dismiss them
 - discharges the annual accounts
 - selects the auditor

DONORS ASSEMBLY

Several German community foundations have established a very particular body: the Donor Assembly. The creation of this committee highlights the notion of being rooted in civil society which leads to a democratic 'bottom-up' model of governance. However, it is important to stress the fact that not all German community foundations do have this institution.

In the Donor Assembly, every donor (of a minimum amount) has got a seat and a vote. This includes all those who contributed money, as well as under certain circumstances those who contributed volunteer time.

The Donor Assembly is an instrument to guarantee a high degree of transparency. Consequently, it

- has the right to claim information from the other bodies
- can demand accounts to be rendered
- can scrutinize accounts, proceedings, documentations and reports
- may make proposals to the other bodies.

The powers of this committee vary from foundation to foundation, but in most cases, the assembly is responsible for the

re: Board Composition

- elects and discharges the members of the Supervisory Board and may dismiss them

STEERING GROUP

Most of the German community foundations were initiated by a larger group of citizens (usually between 10 and 50, up to 150) who pooled their social, intellectual and financial resources to bring a foundation into being. Although these groups do not have any formal responsibility and cease operation after the foundation is established, they do play a crucial role because they

- settle the legal and tax formalities (drafting of the instrument of incorporation and the statutes, securing state approval and negotiating charitable status)
- donate and/or raise the minimum capital requirement of €50,000.-
- oversee the inception of the foundation
- identify the first boards' members