

Foundations in motion

*Trends and evolutions in the foundation sector in Belgium
between the years 2000 and 2005*

Caroline Gijssels and Patrick Develtere

A study under commission of the King Baudouin Foundation
in cooperation with the Belgian Network of Foundations

Colophon

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Authors

Caroline Gijssels and Patrick Develtere, Higher Institute for Labour Studies
KU Leuven

Coordination for the King Baudouin Foundation

Dominique Allard, Director
Frieda Lampaert, Programme adviser
Vera Billen, Programme officer

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1 INTRODUCTION

The foundation sector in Belgium is in full motion. The sector is not only still in full expansion, it is gradually also becoming an increasingly heterogeneous collection of organisations. In recent years a number of initiatives have been undertaken to recognize both the heterogeneity and the common identity of the foundations. The heterogeneity of the sector was recognized and protected by means of the law of 2 May 2002 (published in the Belgian official journal [Moniteur/Staatsblad] of 11 December 2002) which amended key aspects of the law of 27 June 1921 and which is referred to as the ‘law concerning non-profit associations, international non-profit associations and foundations’. This law also stipulates the rules and regulations for the different types of foundations. The establishment of the Belgian Network of Foundations was a first step towards the creation of a common identity. This common identity manifests itself first in the common purpose (serving the public interest), but also in the common orientation towards the principles of corporate governance (transparency, openness and responsibility). *In other words: well managed and soundly administered service to society.*

It is interesting now to examine the impact of these changes in the legal and institutional context for the Belgian foundation sector. What is the influence of the new legislation on the establishment, dissolution and operation of foundations? Are more or fewer public interest and private foundations being established since the new legislation has come into force? What is the impact of the new legislation on the supervision by the Ministry of Justice? What is the influence of the Belgian Network of Foundations on the internal supervision within foundations, on their profile as ‘foundation’, on their mutual cooperation?

Unfortunately, this study does not enable us to provide exhaustive answers to the questions above. However, we can point out a number of trends and evolutions observed within the Ministry of Justice, the Belgian Network of Foundations and in the

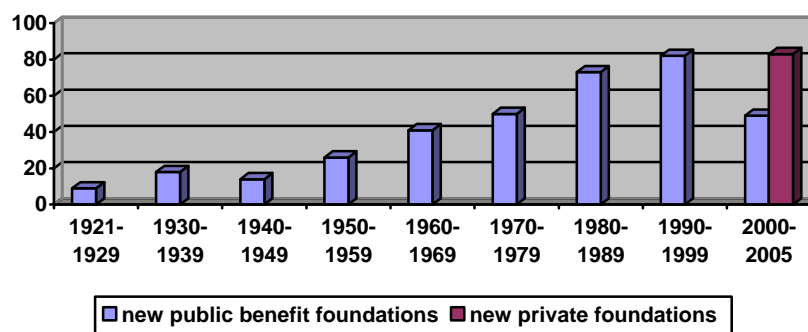
top 15 of foundations in Belgium as regards expenditure, which were described in an earlier paper (Develtere et al., 2004).

To this end, we interviewed the coordinator of the Belgian Network of Foundations and two staff members of the Federal Public Service for Justice (FOD Justitie/SPF Justice). We also analysed the annual reports for the years 2000 and 2004, and other means of communication (such as web sites and flyers) from the 15 largest 'public interest foundations'. These are the largest foundations as found in 2001 on the basis of expenditure. We also performed a document analysis of the Belgian Network of Foundations website (2006). Based on this analysis we could get an idea of the effects of the new legislation.

2 EXPANSION OF THE FOUNDATION SECTOR IN BELGIUM

The Belgian foundation sector is in full expansion and its impact is growing. Looking at the evolution between 1921 and 2005, we note that over half of all foundations active at present were established after 1980.

Figure 1: Number of new foundations in Belgium, 1921-2005

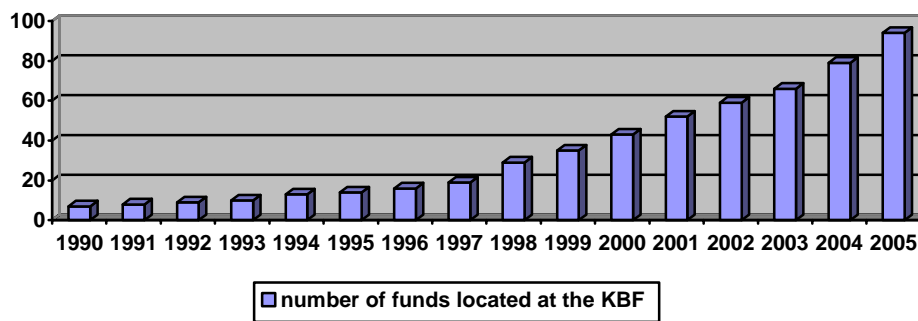


In the graph depicting the evolution of the number of new foundations in Belgium since 1921, we immediately note a peculiarity in the figures for the last five-year period. Since the coming into force of the new law concerning associations, international associations and foundations of 2 May 2002 – which significantly amended the old law of 1921 on the non-profit sector – it has become possible in Belgium to establish private foundations in addition to public interest foundations. We will examine this more closely in the next section. The increase of the number of

foundations in the first five years of the new millennium can be ascribed mainly to these newly established private foundations.

To complete the picture of the foundation sector in Belgium, we must also take into account the funds managed by the King Baudouin Foundation. These funds have no legal personality of their own. Therefore they are not subject to the obligations imposed by law on foundations. However, they do act as foundations, with the management of their operations entrusted to the King Baudouin Foundation. In all, there were 89 such funds in 2005. Their number as well has increased sharply over the past few years: there were 8 in 1990, in 1999 there were 40 already and over the last five years this number has more than doubled to 89 in 2005.

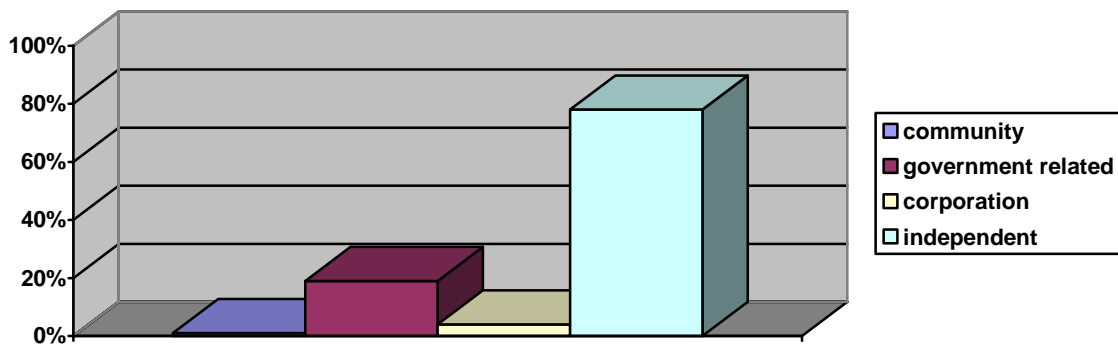
Figure 2: Evolution of the number of Funds located at the King Baudouin Foundation (1990-2005)



In 2004, Develtere et al. were the first to map the Belgian sector of public interest foundations within the framework of the large survey of foundations in Europe set up under commission of the Task Force of the European Foundation Centre. The information gathered was for the year 2001. In all 119 of the then 323 public interest foundations completed and returned the questionnaire.

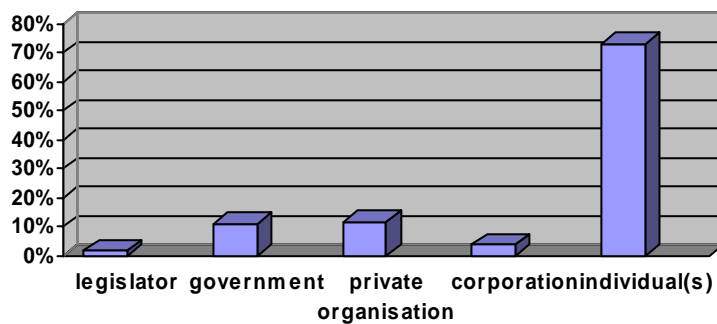
A large majority (78%) of the Belgian public interest foundations that took part in the survey is of the independent type. These independent foundations provide their own financial resources and have autonomous power of decision. 19% of Belgian foundations are connected to the public authorities. They have been established by public authorities with a view to achieving collective objectives e.g. in education, the arts sector, and the power industry.

Figure 3: Origin of Belgian foundations (Dec. 2001)



Most of the foundations (73%) in the survey were established by (a group of) individual persons. Private organisations (12%) and the government or the public sector (11%) are less frequent initiators. Only a small number of foundations were established by companies or by legislative authorities.

Figure 4: Origin of Belgian foundations (Dec. 2001)



One quarter of the Belgian public interest foundations in the survey is engaged in fund-raising. The others make use only of their own resources to finance the grants, awards, projects or other initiatives they set up or support. With some foundations, a substantial part of the capital comes from donations or government subsidies. In 2001, the total revenue of the foundations in the survey was approximately 298,000,000 euros.

At the end of 2001, the 119 foundations in the survey had a total of approximately 550,000,000 euros in assets (book value). The top 15 foundations in terms of assets account for the major part of this. Combined, these 15 public interest foundations own 85% of the total assets held by the foundations under review.

Figure 5: Top-15 of Belgian foundations in terms of assets

Name	Assets (in Euros)
King Baudouin Foundation	206.366.803
Stichting Marguerite Marie Delacroix - Fondation Marguerite Marie Delacroix	56.082.013
Fondation Bernheim Fonds	51.200.253
Fondation Franqui Fonds	41.278.102
Fondation Médicale Reine Elisabeth - Geneeskundige Stichting Koningin Elisabeth	21.680.144
Instituut voor Tropische Geneeskunde Prins Leopold - Institut Médecine Tropicale - Prince Léopold	20.252.901
Chimay Wartoise	18.800.361
Centre Neurologique William Lennox	14.535.722
College d'Europe - Europa College	11.000.000
Fondation Simon et Lina Heim	7.246.446
Centre d'Economie Rurale	7.199.339
Fondation Prince Laurent - Stichting Prins Laurent	6.197.338
Fondation Fernand Lazard Stichting	5.723.355
Belgisch Werk tegen Kanker - Œuvre Belge du Cancer	4.644.950
Fondation Claude Beckers	4.343.527

The foundations in the survey spent approximately 150,000,000 euros in the course of the year 2001. Once more we note that the top 15 foundations account for the major part (92%) of the expenditure. By comparing the top 15 in terms of revenue with the top 15 in terms of expenditure, we can deduce that the foundations with the biggest income are not necessarily also the biggest spenders.

Figure 6: Top-15 of Belgian foundations in terms of expenditure

Name	Expenditure (in Euros)
KingBaudouin Foundation	35.364.541
Instituut voor Tropische Geneeskunde Prins Leopold - Institut de Médecine Tropicale Prince Léopold	29.152.278
Centre Neurologique William Lennox	14.613.044
Stichting Marguerite Marie Delacroix - Fondation Marguerite Marie Delacroix	13.446.563
Centre d'Economie Rurale	7.984.905
Het Toneelhuis	7.895.504
Het Paleis-KJT	6.074.159
FWO (Fonds voor Wetenschappelijk Onderzoek)-Vlaanderen	3.393.872
Stichting Wereld Dorpen voor Kinderen - Opération Terre des Enfants	2.696.274
Stichting Vlaamse Schoolsport	2.560.412
Europees Centrum voor Vermiste en Seksueel Uitgebuite Kinderen - Child Focus - Centre Européen pour enfants disparus et sexuellement exploités	2.461.244
Intermixt	2.313.342
Chimay-Wartoise	1.733.291
Fondation Tanguy Moreau de Melen - Responsible Young Drivers	1.335.554
Antigifcentrum - Centre Antipoisons	1.334.162

42% of the expenditure of Belgian public interest foundations goes to projects under their own management. For example, foundations can offer health care, set up cancer prevention projects, operate in impoverished neighbourhoods, or organise theatre shows. An equally large portion (41%) is spent on grants and/or awards to third parties. 17% was spent on miscellaneous expenses, such as administrative overhead, asset acquisition, etc.

The support mainly goes to individuals (51%), but also to non-profit organisations (36%) and initiatives for general public benefit or innovative initiatives (13% combined). The target groups for the Belgian public interest foundations mostly are children and young people, disabled persons and other vulnerable groups in society.

Figure 7: Target populations of foundation support in Belgium (Dec. 2001)

Target populations	% of total support
Children and youth	17
Disabled	12
Less privileged/low income families	12
Immigrants and refugees	8
Youth only	3
Families	2
Ethnic minorities	2
Others (*)	44
Total	100

(*) 63% of this category is accounted for by the Institute of Tropical Medicine. The target group here are mostly people from the South and travellers

Reviewing the fields of activity as defined by the European Foundation Centre, we note that the support mainly goes to arts and culture (13%), but social sciences, sciences and the domain of education and initial training each also receive 10% of the total support.

Figure 8: Fields of foundation support in Belgium (Dec. 2001)

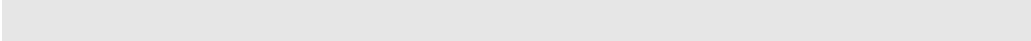
Fields of support (grants + programmes)	% of total support
Arts and culture	13
Social sciences	12
Education and initial training	11
Sciences	10
Health	9
International development and relations	8
Social services	6
Philanthropy/voluntarism and non-profit infrastructure	6
Civil society, law and civil rights	5
Neighbourhoods and housing	3
Sports and leisure	3
Other	13
Total	100

In terms of employment, we find many small foundations with only one or no staff member at all. On the other hand, there are a number of large foundations with over one hundred staff members. Often, quite a number of volunteers work in the foundations. Without any material or financial reward they sit on boards, selection committees or programme steering committees or they take an active part in fundraising. In relation to employment as well as with respect to voluntarism there is a multiplier effect. In their programmes and through the funding they provide to many non-profit organisations, Belgian public interest foundations stimulate both employment and volunteer work for many people.

Examining the evolution of foundations between the years 2000 and 2005 in greater detail, we find that in the course of this period 132 new foundations were established, 49 of which were public interest foundations and 83 were private foundations. Some seven public interest foundations were established every year, with a peak annual total of 17 in 2005. This peak is attributable to the relaxation of legislation concerning foundations whereby the procedures for establishing a new public interest foundation have become much simpler and shorter.¹ As a result, a number of foundations which would under the old legislation have had to wait until 2006 to be recognized could now – under the new relaxed legislation – start operations in the course of the year 2005 (Federal Public Service for Justice). One of the stipulations in the law of 2 May 2002 was that old public interest *institutions* had to convert into public interest *foundations* and that their articles of association should comprise more information about the foundation, its founders and its operational procedures. Since this law entered into force, 40 foundations have amended their articles of association, 33 of these did so in 2005. Once again the peak value in 2005 is a result of the law, which stipulates that the articles of association have to be amended before 31 December 2005. Every year about three public interest foundations are dissolved. On 31 December 2005 there are 348 active public interest foundations in Belgium (Federal Public Service for Justice, January 2006).

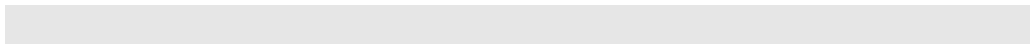
The data we have on private foundations are less comprehensive. The reason for this is that the information about these foundations is kept at the court registries and no centralization whatsoever of this information exists. Since 2002, when the

¹ The so-called "programme law" of 27 December 2004, which entered into force on 20 June 2005.



possibility to set up private foundations was created, some eighty such private foundations have been established. These include quite a number that in fact serve a public interest, but which have taken the status of a private foundation probably because of the easier establishment procedure and simpler administrative rules and regulations. The Federal Public Service for Justice reports at least one case of a foundation which was originally set up as a private foundation and which – after the simplification of the rules and regulations concerning public interest foundations – was converted into a public interest foundation in the course of the year 2005.

In view of these specific evolutions in Belgium, it is interesting to look in detail at the pivotal moments that contributed to these evolutions.



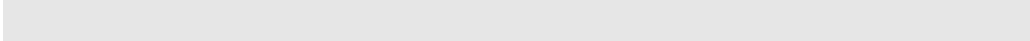
3 PIVOTAL MOMENTS IN THE BELGIAN FOUNDATION SECTOR: THE AMENDMENT OF THE LAW AND THE ESTABLISHMENT OF THE BELGIAN NETWORK OF FOUNDATIONS

Introduction

In the last three years two key pivotal moments have occurred in the Belgian foundation sector. The first of these pivotal events was the voting of the new law concerning foundations on 2 May 2002. The second key pivotal event was the establishment of the Belgian Network of Foundations on 17 February 2004. Both of these are crucial for the further evolution of the sector with respect to recognition and protection, on the one hand, and transparency, on the other hand.

1 Evolution of the legal framework

The first law governing the non-profit sector in Belgium dates from 27 June 1921. This law granted legal personality to public interest institutions and to non-profit associations. Foundations as such were not granted legal personality by this law. In actual practice many were established, but these foundations were not protected nor supervised by any legal statute whatsoever. On 2 May 2002, this situation changed. A new law was voted which significantly amended the law of 27 June 1921. The new law on the non-profit sector is now called the 'law concerning non-profit associations, international non-profit associations and foundations'.



Thanks to this law, foundations are now recognized as legal persons and as formal players in the non-profit field of Belgian society. Foundations are described as legal persons pursuing a specific altruistic purpose. Since this altruistic purpose can have a more 'public' character in one case, and a more 'private' character in another case, the new law explicitly created the possibility to establish 'private foundations'. Private foundations are also allowed as legal form for trust offices for certifying shares. However, these 'foundations/trust offices' do not meet the criteria of the European Foundation Centre's internationally accepted definition of foundations. In fact, they serve economic purposes. Indeed, they have not been established in order to support associations, charities, educational establishments or individuals, neither do they set up projects themselves with a view to achieving specific social objectives.

The establishment of 'private foundations' where a specific amount is reserved for a specific altruistic purpose was made simpler than the establishment of a 'public interest foundation'. There is a real danger that establishers of new foundations, even if these are actually intended to serve the public interest, would still opt for the establishment of a private foundation. In one case a private foundation was initially established, which afterwards applied for the status of 'public interest foundation'. In this way it could already start operations. A number of other private foundations also serve the public interest, but stay private foundations. The consecutive simplifications of the law² are intended to break down the barriers to the establishment of public interest foundations.

With respect to 'public interest foundations', the purpose of the law of 2 May 2002 is to achieve greater transparency. The former 'public interest institutions' were also requested to amend their articles of association in order to comply with the new legislation. Firstly, the law stipulates the conversion of the former 'public interest institutions' into 'public interest foundations'. Where before there was no such thing as

² The rules and regulations pertaining to public interest foundations were laid down fairly strictly in the law of 2 May 2002. These strict regulations were relaxed by the following Royal Decrees and so-called "programme laws". Thus the "programme law" of 27 December 2004 provides for a simplification of the procedure for amending the articles of association of public interest foundations. Whereas before the entry into force of this programme law all amendments to the articles of association had to be approved by the King or the Minister of Justice, as appropriate, since 20 June 2005 only changes of the legal personality (e.g. from public interest institution to public interest foundation) and changes in the foundation's objective and/or activities need to be approved by Royal Decree. Changes in this respect – or new articles of association – have to be published in the annexes to the Belgian Official Journal.

a 'public interest foundation', since 2002 legally 'public interest institutions' no longer exist.

Secondly, the law demands more information about the foundation to be included in the articles of association: information about the founder, the activities that will be carried out to achieve the altruistic purpose, the procedure for settling conflicts of interest, the procedures for amending the articles of association, the organisation of representation and the designation of board members.³ Before the year 2002, the inclusion of this information was not required.

All public interest foundations that had been granted legal personality before 1 January 2004 had to amend their articles of association in compliance with the law before 31 December 2005.⁴ They may chose to either only change those provisions that are not in compliance with the new law, or to replace their existing articles of association in entirety by new articles that are in full compliance with the new law.

New public interest foundations can only be established by Royal Decree.⁵ For private foundations, the procedures for the establishment of the foundation and for amending the articles of association are a lot simpler. The articles of association with which a new private foundation is established, or the amendments to the articles of association of an existing private foundation, need only be approved by the Board of the foundation in question and have to be recorded in an authentic deed drawn up by a notary public.⁶

³ Article 28 of the law of 2 May 2002.

⁴ Royal Decree of 8 December 2004, amending the Royal Decree of 2 April 2003.

⁵ Anyone intending to establish a new public interest foundation, has to submit an application to the Ministry of Justice requesting the awarding of legal personality. This application must be accompanied by a sealed and authenticated copy of the notarial deed of formation of the foundation and the appendices thereto, as well as a list of the members of the Board if these names are not given in the authenticated deed. As soon as the Administration has received all the required documents, the Decree is presented to the King for signature. When the Royal Decree has been signed, the Administration presents a copy to the notary public and three copies to the public interest foundation. One of these three copies is to be presented to the Chamber of Commerce registry.

⁶ In other words, unlike with public interest foundations, the articles of association or the amendments to them need never be presented to the Minsitry of Justicee for approval. What is required though, is the presentation of a copy of the authentic deed of formation to the Chamber of Commerce registry.

As far as administrative obligations are concerned, matters have been significantly simplified by the new legislation, both for private foundations and for public interest foundations. Whereas formerly public interest institutions had to publish their annual accounts in the Belgian Official Journal and had to report them to the Federal Public Service for Justice, this is no longer the case now.

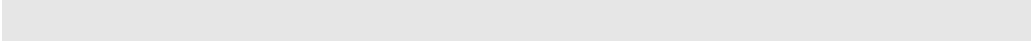
Both private foundations and public interest foundations must file their annual accounts with the registry of the commercial law court where their dossier is kept. Since 2003 certain foundations are also permitted to keep simplified accounts.⁷ The 'large' foundations (according to the accounting stipulations) still are required to file their accounts with the National Bank of Belgium. In addition, only the 'large' foundations are compelled by law to appoint an auditor to monitor their financial situation and their annual accounts.⁸

Also it is made easier for foundations to accept donations. However, some form of supervision is striven for. The regulations with respect to donations were first made stricter, and afterwards relaxed again.⁹ As a rule, donations are non-taxable for

⁷ Royal Decree of 26 June 2003. This concerns foundations with an annual average employment of at most 5 (full-time equivalent), with revenues totalling no more than 250,000 euros (exclusive of VAT and extraordinary revenues) and with a balance sheet total of at most 1,000,000 euros. These amounts can be indexed to the consumer price index and adjusted by Royal Decree.

⁸ More specifically this concerns foundations with an annual average employment of over 100 (full-time equivalent) or which meet at least two of the following criteria: an annual average employment of 50 (full-time equivalent), total revenue of 6,250,000 euros exclusive of VAT and extraordinary revenues, a balance sheet total of 3,125,000 euros. These amounts as well can be indexed to the consumer price index and adjusted by Royal Decree.

⁹ Until 30 June 2003 no donation, however large, has to be authorised by the King or the Minister of Justice. As of that date, donations exceeding 100,000 euros must be authorised by the King. The programme law of 27 December 2004 again simplified the procedure. Since this law came into force on 20 June 2005, donations inter vivos or in a will that exceed 100,000 euros need no longer be authorised by the King; authorisation by the Minister of Justice suffices. An donation is considered to be authorised if no notice of objection is sent by the Minister of Justice within a period of three months. Donations of less than 100,000 euros never need the Minister of Justice's authorisation.

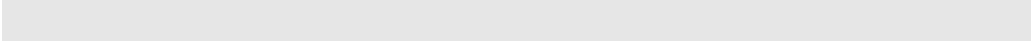


foundations.¹⁰ Neither are government grants. Donations to foundations are encouraged by their being tax-deductible.¹¹ Foundations can also develop economic activities. In principle these activities are subject to VAT. One major exception is made for certain activities which are exactly the kind of activities performed by a large number of foundations. These concern services to hospitals, institutions for care of the elderly, services for home help, establishments for physical education or sports activities, education, libraries, multimedia centres and museums, to organisers of cultural events etc.

The decentralization to the court registries of the information about foundations as well as the administrative simplification have the advantage of making things easier both for the foundations themselves and for the Federal Public Service for Justice. According to the Belgian Network of Foundations the drawback of this is that in this way there is less central information about the sector and that less supervision is possible. On the other hand, foundations as civil society organisations attach great value to their autonomy. Their starting point is the voluntary internalization of values and standards relating to accountability and transparency. The Belgian Network of Foundations means to stimulate this in its members and thus contribute to the self-regulation of the sector.

¹⁰ An important exception to this rule is the case of the donation or contribution for no consideration. Such endowment for no consideration is an agreement to the effect that one party, the donor, enriches the other party at the expense of his own property. In other words the effect of the endowment must be that the donor becomes poorer and the donee is enriched, without the donee being required to do anything in consideration. If the donee does not reject the endowment, an endowment is considered to have taken place. Such donation or contribution for no consideration is taxable. The different regions have different assessment rates for this: from 6.6% in the Walloon and Brussels Regions to 8.8% in the Flemish Region for donations or contributions for no consideration to public interest foundations and of 35 to 90% of the sum in the Walloon region and 7% in the Brussels and Flemish Regions for donations to private foundations. On every donation from non-profit associations, international non-profit associations, public interest foundations and private foundations to other foundations in the Brussels and the Flemish Region 100 euros must be paid, and 25 euros in the Walloon Region.

¹¹ Donors can receive a tax certificate if their donation is 30 euros or more and if the foundation has applied to the Minister of Justice for permission to issue tax certificates for donations. Natural persons may not deduct more than 10% of their net taxable income or 310,930 euros for the fiscal year 2006 (this amount is indexed annually). For companies the equivalent amounts are 5% of the net taxable income or 500,000 euros (this amount is not indexed). The foundation must deliver an acquittance to the donors, and either a copy of the tax certificates issued or a summary list or certificate to the competent documentation centre of the Administration of Corporate and Income Tax.



2 Establishment of the Belgian Network of Foundations

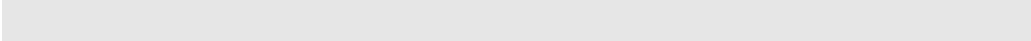
The Belgian Network of Foundations was established in 2004 by ten founding members: the King Baudouin Foundation, the Fondation Belge de la Vocation, the Cera Holding, the Fondation Charcot, the European Centre for Missing and Sexually Exploited Children – Child Focus, the Evens Foundation, the Fortis Foundation Belgium, the Francqui Foundation, the Bernheim Foundation, and the Foundation for Future Generations. Today the network has 67 members. All but three of these members are public interest foundations.

The founding members established the Network with the objective of consolidating the common identity of the foundations and increase the visibility of the sector.

With respect to foundations, the Network intends to be a meeting place where Foundations can exchange information about good practices. The Network also wants to be an institute capable of promoting the common interests of the members and of advising and counselling on the establishment and development of a foundation. The Network stimulates its members to have transparent and accountable management. Indeed, this is considered an important condition for the capability of the sector to present itself as a legitimate and important player in the social profit sector.

In regard to society, the Network intends to show that foundations have an important place in civil society. The Network wants to draw attention to their efforts in the public interest. It intends to make clear that foundations work in a wide range of social domains, often operating in innovative ways and taking significant risks, and performing numerous tasks that would not be performed without them, or not to the same extent.

In January 2005 the Network set up three workgroups. These workgroups are active in the domains of ‘law/tax law/accounting’, ‘communications’ and ‘corporate governance’. The ‘law/tax law/accounting’ workgroup monitors all legislation that is relevant to foundations in general, and promotes the interests of foundations with the various levels of government. It is the most active workgroup of the three. This is not really surprising, as it is the workgroup most directly connected to the needs and requirements of the members. The objective of the ‘communications’ workgroup is to promote the social relevance of the foundations and to inform the public at large about their existence and operations. This is also the purpose of the Network's web site (www.netwerkstichtingen.be) where foundations and individuals who intend to establish a foundation can find all sorts of useful information. The ‘corporate governance’ workgroup aims to encourage the members to strive for greater transparency and accountability.



In its articles of association the Network stipulates that the members:

- strive for the common good in their objectives and to this end provide financial support to projects set up by other organisations, or set up their own projects
- recognize the democratic values and principles of law of Belgian and European society
- recognize and acknowledge human diversity in all its forms and in their operation take account of the large variety of perspectives, opinions and experiences existing within society
- endeavour to build up a sufficient financial basis to enable them to realize their objectives in an independent and durable manner;
- ensure transparent, clear and responsible operation within their own foundation. With respect to the decision-making process and the decisions taken eventually, they must communicate in a clear, correct and open manner with the Belgian Network of Foundations and with third parties. Regarding transparency this means that in addition to contents, accounts and balance sheet, the annual report should also include and make public the composition of the various bodies and decision-making organs
- apply “internal supervision” methods to the foundation's operation, to enable the observance of this basic declaration to be monitored.¹²

Even though the Network does recognize the diversity of foundations in Belgium, it still finds a common identity of its member foundations in their objective of serving the public interest and in their striving to do this in accordance with the principles of corporate governance (transparency, openness and responsibility). The Network hopes an increasing number of foundations will be able to agree to this. In this way the Network wants to be an instrument for the self-regulation of the sector by strengthening its legitimacy and relevance vis-à-vis society in its entirety.

Thus, the Network would be able to play a similar role as other organisations having the same objectives with respect to for instance cooperatives and non-profit associations. Similar to the foundation sector, the sectors of cooperatives and non-profit associations are characterized by the great diversity and large autonomy of the organisations concerned. Specific associations were created to unite these organisations, defend their interests and make them better known. The self-regulation

¹² <http://www.netwerkstichtingen.be/nl/decla-b.htm>



they impose on themselves is an important instrument in the obtaining of legitimate social impact.

Precisely because there were many cooperative societies that had this legal form, but which did not operate in accordance with the cooperative principles, in 1955 the National Council for Cooperatives was set up. The Council recognizes the cooperatives that meet specific criteria. The government support this by only giving certain tax advantages to recognized cooperatives. The National Council for Cooperatives functions as a mouthpiece for the cooperatives towards the authorities, and also represents Belgian cooperatives abroad. For the sector of non-profit associations the “Vereniging voor Ethiek in de Fondsenwerving / Association pour une Ethique dans la Récolte des Fonds” (Association for Ethics in Fund-raising) was established in 1996. This association has drawn up a deontological code and set up a supervising body to check whether members abide by this code.

The code contains a number of aspects of public generosity not covered in legislation. NGOs also set up similar self-regulating and sector-representing organisations: there is Coprogram in Flanders, and Acodev in Wallonia. Social economy initiatives are represented by VOSEC in Flanders and SAW in Wallonia. In Flanders the “Verenigde Verenigingen” (“associated associations”) which acts as the representative of all of the Flemish “civil society organizations”.

Just like not all cooperatives have been recognized and are members of the National Council for Cooperatives, just like not all non-profit associations are members of the Association for Ethics in Fund-raising or of Associated Associations, just like not all NGOs are members of Coprogram/Acodev, and not all social economy initiatives are members of VOSEC/SAW, not all foundations are members of the Belgian Network of Foundations either. However, all these organisations do hope to see their membership increase in order to become stronger and have more social impact. Not just for themselves as ‘umbrella’, but also for their members individually.

4 DYNAMICS IN THE SECTOR. TENTATIVE ANALYSIS

Introduction

Which trends and evolutions can be noted within the foundations themselves during the period 2000 to 2004? From an analysis of the 15 public interest foundations which had the largest expenditure (as established in a preliminary study of the sector in 2001), it was found that in some of the foundations under review there were trends to increase professionalism, transparency, accountability and cooperation, and a trend increasingly to present an image as a 'foundation'. However, these are not really general trends. It is more a case of a number of 'edifying examples' taking the lead.

1 Creating a distinct 'foundation' profile

Foundations are beginning to create a more distinct profile for themselves. Being a foundation can be a primary or a secondary identity.

While the designation 'foundation' is not a new one – just like the idea to reserve a specific donation or capital for an altruistic purpose is not a new one – only by the law

of 2 May 2002 were foundations given legal personality and was the name 'foundation' protected and reserved for this form of legal person.¹³

Since the introduction of this law public interest institutions are also thought about in terms of foundations. On the one hand, this is to discourage the proliferation of forms of legal personality, on the other hand it is meant to clearly indicate that these institutions are operating on donations or government grants (i.e. that it is public capital which is being reserved for a well-defined altruistic purpose of a distinctly public nature).

Because of the heterogeneity of the sector and the fact that the legal recognition of the organisations involved as 'foundations' is so recent, it is very early days for the development of a common identity centring on 'being a foundation' as such. Most of the foundations under review have legally conformed to the new law, but still do not present themselves as a 'foundation'. Some continue to refer to themselves as a 'public interest institution', others call themselves an NGO. To these, being a foundation is rather a secondary identity. The affiliation to a government (as in the case of the public interest institutions) or their mode of operation (as in the case of the NGO) constitute the primary source of identity.

One prime example as regards presenting a foundation image is the King Baudouin Foundation. Another is 'Het Toneelhuis', the recent amalgamation of the KNS and Blauwe Maandag theatre companies, which presents itself explicitly as a 'public interest foundation'.

It is quite interesting to see that the managers of the Marguerite Marie Delacroix Support Fund and Foundation wanted to make a clear distinction between the foundation aspect and the activities of its operational wing. The institution called 'Marguerite Marie Delacroix Foundation' since its establishment in 1957, is not defined as a foundation *pur sang*, but as a private health care institution. It is not a member of

¹³ Although initially there was some lack of clarity about whether the title 'foundation' as such was protected by law, or only 'public interest foundation' and 'private foundation', and about whether other organisations could use the name foundation or a translation of the term, in response to a parliamentary question by Mrs Trees Pieters on 7 July 2005 the Vice Prime Minister and Minister of Justice explicitly stated that by virtue of art. 32, §2, of the law of 27 June 1921 as amended by the law of 2 May 2002 it is prohibited for non-profit associations or de facto associations to use the name 'foundation'. As of 1 January 2004, non-profit associations have been given one year to conform to the new legislation. By the Royal Decree of 8 December 2004 this term was extended to 31 December 2005. In other words, not later than 31 December 2005 the term 'foundation' must be struck from the names of all non-profit associations and de facto associations (QRVA 51 097, 24-10-2005, pp. 17431-17432).

the Belgian Network of Foundations either. Only the Steunfonds ('Support Fund') which provides financial support to the institution but also to other projects and initiatives falling within the foundation's field of activity, is perceived as a 'real foundation' and is also a Member of the Belgian Network of Foundations.

As the Belgian Network of Foundations was established with the explicit purpose of making the foundations better known as foundations, one explicit way of showing one's identity as a foundation is to present oneself as a member of this Network. Although 10 of the other 14 foundations under review are members of the Belgian Network of Foundations, only two of them explicitly mention their membership of the Network in their annual report for 2004. The 'edifying examples' in this case are the King Baudouin Foundation and the Chimay-Wartoise Foundation.

2 Professionalization

Foundations are professionalizing: they reflect on their activities and procedures, adapt their organisation and structures, and make strategic plans.

With most of the public interest foundations under review, a trend towards professionalization appears from the annual reports and other information communicated by the foundations. In several large foundations reorganizations have taken place in the course of the first five years of the new millennium: a division of work took place and the number of staff members was increased to be able to perform the various tasks. With the selection and recruitment of personnel the logic of professionalism now takes precedence and the quality of goods and services provided as well as the deployment of resources are monitored more closely.

To a certain extent this evolution is related to the processes of development within the organisations themselves. For instance with Child Focus it is explicitly stated that while the organisation is still 'driven by the heart', today for the organisation as such the age of 'maturity' has arrived. And also that there has been 'an evolution from emotions to a culture of strategy and professionalism'.

Even with longer-standing institutions like the King Baudouin Foundation or the Institute of Tropical Medicine there is a continual reflection on their own operation and functioning. Sometimes this process is internal, as with the King Baudouin Foundation (which reorganised itself as a result of its new strategic plan) or with the Chimay-Wartoise Foundation (where a new action plan was drawn up).

Sometimes the reason for the reorganisation is external, as was the case for the Institute of Tropical Medicine where the reform took place as a result of the new management agreement with the authorities. These organisational restructuring processes are reflected in the reorganisation of the information in the annual report. The foundations mentioned here can be considered 'edifying examples' as regards professionalization.

3 Transparency

Transparency is high on the agenda for foundations. Annual reports, financial reports, magazines for donors and communication via internet play a key part in this.

Most foundations devote a great deal of attention to communication about their activities and achievements. Their aim in this respect is to clearly indicate their impact on society and the extent to which they actually achieve the objectives they have set for themselves. In this age of new communication facilities, the number of communication channels available is innumerable. Most of the foundations have a well-developed web site to present their operation and activities. In addition they distribute brochures to provide information about their operation. A number of foundations draw up an elaborate annual report containing even more extensive information than the brochures and the web sites. Some foundations – including the King Baudouin Foundation and the Institute of Tropical Medicine, Het Paleis, the Research Foundation – Flanders, and the European Centre for Missing and Sexually Exploited Children – Child Focus – allow their annual report to be downloaded or ordered through the web site. Recently the Foundation Tanguy Moreau de Melen – Responsible Young Drivers started publishing an e-magazine for its donors. One of its issues was completely devoted to the foundation's annual report.

Foundations that compile an extensive annual report, start this report with an exposition of their history, their development, their mission, their strategies and their methods.

Again the evolution between 2000 and 2004 in the reporting of the Foundation Tanguy Moreau de Melen – Responsible Young Drivers and of Child Focus is conspicuous. These foundations also provide extensive insight in their structure and operation. They indicate how many people they employ and how many volunteers participate.

Some, like the King Baudouin Foundation, the Research Foundation and Child Focus explicitly mention their (major) donors with their financial donations and donations in kind. Foundations working with resources made available by the authorities – such as the Institute of Tropical Medicine, the Centre d'Economie Rurale and Het Paleis, always explicitly mention these government grants or allocations.

For most of the foundations under review the financial report in 2000 already was elaborate. In some cases, for instance with the Centre d'Economie Rurale, a remarkable increase in financial transparency is notable. While no extensive financial information

is provided in the year 2000, in 2004 this definitely is the case – even to the extent of the inclusion of a retrospective report on the years 2000 to 2003. Also with the Foundation Tanguy Moreau de Melen – Responsible Young Drivers we note the striking increase of transparency in the field of finance. This is something the foundation itself considers to be an important point of action in view of the fact that the foundation is to a considerable extent involved in fund-raising.

While the financial report is often very elaborate, its interpretation is not always straightforward. To further increase transparency, some of the foundations under review provide comprehensive comments and explanations on a number of key figures and trends. The ‘shining examples’ in this respect are the King Baudouin Foundation, the Institute of Tropical Medicine, Child Focus, and for the year 2004 also the Foundation Tanguy Moreau de Melen – Responsible Young Drivers and the Fondation Chimay-Wartoise. However, the majority of the foundations under review limit themselves to a mere presentation of ‘the figures’.

In particular when a foundation has several departments, each with their own financial report, presenting one straightforward comprehensive financial report is often no mean feat. In this case one could opt for the presentation of separate accounts, or one may chose to present consolidated accounts. While the latter option is more difficult, the result is a lot more convenient and it is much easier for the interested layperson reading the annual report to obtain a clear view. Accordingly we cannot fail to note the fact that all ‘compound’ foundations have evolved from the presentation of a report with separate accounts in 2000 to a report with consolidated accounts in 2004.

4 Internal and external supervision

Transparent foundations will also allow their financial situation and their operation to be audited and verified openly.

Transparent organisations will arrange for their financial situation and their operation to be investigated by internal and external inspectors. Only ‘large’ foundations are required by law to appoint an auditor. Every year the largest foundations – the King Baudouin Foundation and the Institute of Tropical Medicine – explicitly incorporate the letter from the auditors in their annual report. But they are not the only ones. Even foundations which are not required to do so by law, do make mention of the internal and/or external inspection of their financial situation. For instance Child Focus also

publishes the letter from the auditors in the annual report. Likewise, the Foundation Tanguy Moreau de Melen – Responsible Young Drivers indicates in its annual report of 2004 that since 2002 it has appointed an auditor. The Fondation Chimay-Wartoise makes mention of an inspection and of the approval of the accounts by its Board. The Centre d’Economie Rurale and the Research Foundation – Flanders indicate the fact that their activities and finances are inspected by mentioning the existence of Supervisory Committees.

A number of foundations also mention internal evaluations and adjustments at the operational level. In this way the King Baudouin Foundation, Child Focus, and the Fondation Chimay-Wartoise make mention of internal self-assessment processes and adjustments leading to a restructuring of activities. The Institute of Tropical Medicine reformed its operations, stimulated by the new management agreement concluded with the Flemish government (see. paragraph 1). With these (self-) reflexive adjustments, all of the foundations mentioned in this section explicitly aimed at developing long-term perspectives.

5 Cooperation

The Belgian Network of Foundations promotes cooperation and self-reflection within the sector, and the visibility of the sector.

Ten of the foundations under review are members of the Belgian Network of Foundations. As stated earlier, both the King Baudouin Foundation and the Fondation Chimay-Wartoise make explicit mention of their membership of the Belgian Network of Foundations in their annual report for 2004. The King Baudouin Foundation was one of the founding members of the Belgian Network of Foundations and of its European counterpart, the European Foundation Centre.

Although the organisation Child Focus is also a founding member of the Belgian Network of Foundations, it makes no mention of its membership in its annual report for 2004. The organisation does indicate being a founding member of an international organisation active in the field of tracing and counselling missing and sexually exploited children and their families. It also mentions intensive contacts and cooperation with sister organisations abroad. Child Focus also mentions its cooperation with the King Baudouin Foundation as ‘partner from the very beginning’. Here again we note that the organisation finds its own identity primarily in the

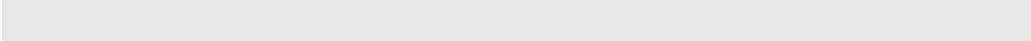
operational aspect, and not in the fact of being a foundation as such.

With the Institute of Tropical Medicine as well we find extensive reporting on cooperation with institutes and governments in developing countries.

As a former public interest institution the Institute of Tropical Medicine – like the Centre d’Economie Rurale and Het Paleis – also reports cooperative ties or management agreements with the government. The Poison Centre refers to the Royal Decrees stipulating its tasks and activities.

Some public interest foundations that were founded by private initiatives – like Child Focus and the Fondation Tanguy Moreau de Melen – Responsible Young Drivers – also make explicit mention of their cooperation with key commercial partners. The Centre d’Economie Rurale too mentions its cooperation with private promotion agencies. The King Baudouin Foundation mentions as partners the companies and private persons for whom it acts as a fund manager. The Flemish School Sport Foundation (SVS) indicates the sports federations, clubs and schools as its partners. Foundations involved in (the financing of) research or which make use of the results also mention individual professors, universities and research centres as partners.

Examples are the Research Foundation, the Centre d’Economie Rurale, the Institute of Tropical Medicine, the Marie Marguerite Delacroix Support fund and recently also Child Focus.

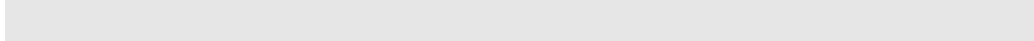


CONCLUSION

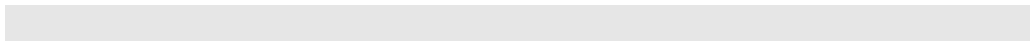
We note trends towards increased regulation and protection by the authorities, but also an increase of self-regulation. With the law of 2 May 2002 an important step was taken in the direction of more clear-cut regulation and protection of foundations. However the 'foundations/trust offices' remain idiosyncrasies. The relaxation of regulations relating to the establishment of public interest foundations, the amendment of the articles of association of public interest foundations and the administrative obligations, has the advantage of limiting the administrative burden for both the foundations and the government, and consolidating the autonomy of foundations as players in the 'civil society'. However, a disadvantage of this relaxation is that evolutions within the sector become less visible. In addition the information about private foundations is completely de-centralized. Therefore an increase is required of the willingness of foundations to provide transparent and open communications about their existence and their operation.

As is evident from the present study, the trends for a more prominent 'foundation' image and efforts to achieve better corporate governance at the level of the separate foundations are definitely present. However, at this time these are still fledgling concepts that will need more time to come to full fruition. A small number of leading foundations function as 'shining example' in this respect. For most of the organisations the fact of being a foundation comes in second place. Most of them find their primary identity in the operational aspect or in their association with a specific government body. Nevertheless, the concept of 'well managed and soundly administered service to society' can become a strong binding element for foundations.

The Belgian Network of Foundations can be an important catalyst for the consolidation and promotion of this concept. Like the umbrella organisations of cooperatives and non-profit associations it can perform this role for their members.



Such organisations develop codes of conduct, act as platforms for encounters and exchange of ideas, and function as partners in the dialogue with authorities and other social actors. Just like the Belgian Network of Foundations, all such organisations hope to be able to increase their membership – providing the members with a means to clearly express their commitment to cooperate in an open and correct way on improving society.



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