

Declared associations have a limited legal capacity: for instance, they cannot own real estate or receive legacies, this limited capacity goes back to the beginning of the 20th century. On the other hand, the State and declared associations benefit from tax-exemption: from taxes on income and profits, but from VAT too (only for the first six sales a year). Gifts to declared associations are deductible up to 3 % of taxable income and up to 2/1000 of the enterprise turnover.

Public utility associations have to be approved as such by the *Conseil d'Etat*, at the end of a two year procedure. Most of them are health or welfare charities. Public utility associations have a full legal capacity: they can own real estate and financial assets. Gifts to public utility associations are deductible up to 5 % of taxable income and legacies are encouraged by inheritance tax exemption.

Foundations enjoy the same tax privileges as public utility associations. They also have a full legal capacity and they own real estate and financial assets. There are few private foundations in France, only 428 in 1990. Since the law of 23 July 1987 on sponsorship development, the term foundation is protected; only an organisation which is approved by the legal authority of the Prime Minister and the *Conseil d'Etat* can be created. The reason why there are few private foundations in France is that they must have a large capital: 5 million francs. These foundations have, contrary to associations, a broad legal capacity: they can do all the civil acts, they can own houses or buildings (for instance a castle which they manage).

These foundations are managed by a council whose members are the founders, qualified persons in the arts and representatives of legal authority.

A special characteristic of foundations is that a private person has a large control of legal authority (control of the account, of the foundation activities, of the endowment and, by the council, of all the acts arranged by the foundation). As you can read in the newspaper, some foundations have financial problems; the government has organised a great debate about the functioning of this legal form. I think a new law might be passed next year.

I want now to explain the activities of a new particular foundation called "*Fondation du Patrimoine*". This foundation has been created by law. Its capital of 30 million francs comes from the gifts of ten important firms. Its activities will be based on the conservation and preservation of national monuments as are the activities of National Heritage in Great Britain. The foundation can protect and contribute to the renovation of monuments (castles, pictures, etc.). Its council is composed of representatives of the firms which are the founders, qualified personalities, and also mayors of large towns. This foundation can accept gifts and endowments from other firms and even from particulars.

This presentation would be incomplete without mention of another form called foundation. It is an account which someone can open in a large foundation. The large foundations and authorized foundations can act as a shelter for particulars or firms. The legal mechanism is the same as the trust: someone may invest money for sponsorship actions. But it is the foundation which realizes these actions. The most well-known of these typical foundations is the "*Fondation de France*" or the "*Institut de France*". The "*Fondation de France*" was created 25 years ago and shelters today about 100 foundation accounts.

To encourage sponsorship, the French government and the legislator created new legal forms, situated between the association and the foundation which we have considered.

This new form is called the "firm foundation". This firm foundation can only be created by firms and aims at sponsorship. Firm foundations are created for five years or longer. Firm foundations have the same limited legal capacity as associations. For instance, firm foundations cannot receive legacies or gifts. The firm grants money to the foundation: at the creation, the firm must pay about one million francs for five years.

A council composed by the founders manages the firm foundation. And firm foundations are created also by legal authority of *le préfet*. Today, there are about 50 firm foundations: for instance *La Poste* has created a firm foundation in sponsorship of songs and theater.



HUGBERT FLITNER

Organizational Forms for Private Sponsorship in Germany and Presentation of the Alfred Toepfer Stiftung F.V.S.

Under the legal system of the Federal Republic of Germany there are essentially *three types of organisation* available for private sector activity and sponsorship in the area of monument preservation:

1. The association (*Verein*)
2. The limited company (*GmbH*)
3. The foundation under civil law (*Stiftung*)

The association is the most common organisational form for all forms of activity within the private sector. There are over 240,000 associations in Germany.

By contrast, the corresponding Directory of the Federal Association of German Foundations 1994 only lists around 5600 foundations. There are no statistics about charitable limited companies. The number of limited companies is about 610,000 in total.

These forms of organisation have the following *differing characteristics*:

The association has members, of whom there must be at least seven when it is set up, but of whom there are usually more. Its distinguishing features are the uncomplicated way

in which its members may join and leave and the large influence on the management they may have.

The *limited company* also has members, but, as a general principle, fewer (at least one). In this case, the members are called partners (*Gesellschafter*). By law they can only be held liable for a sum up to the capital invested. This sum must be at least DM 50,000 in total, and at least DM 500 per partner. Joining and leaving a company is more difficult than is the case with an association.

The *foundation* has neither members nor partners, but is obliged to prove its access to capital or other properties. This may also take the form of claims against the founder.

A *common feature* of all three forms of organisation is that they each constitute a legal entity. To be a legal entity they require *statutes* which must be passed by the appropriate decision-making body. In the case of the *association*, this is the general assembly of its members. The statutes lay out the purpose, name and location of the institution as well as its internal organisation. Charitable organisations must also declare their charitable function in their statutes.

Besides the general assembly of members the other legally prescribed authority within the association is the managing board. The board represents the association in legal matters. The statutes may regulate its powers in detail, as is the case with further authorities such as committees, advisory bodies and boards of trustees. A great deal of freedom to regulate is accorded in this area.

The internal organisation of the *limited company* is, by contrast, regulated in detail by a specific German Limited Companies Law. It should be noted that the limited company is a principal form of organisations in the business world. The extensive and complicated regulations apply for charitable limited companies as well, which is why these are only present in those areas of cultural life where business aspects are important – as with theatres, operas or big science research institutions.

The highest authority within the limited company is the partners' meeting. Its distinguishing feature is the dominant role played by the managing director. He has practically unlimited power to act.

The *foundation* is governed by the Foundation Council as its highest authority, to which normally a Managing Board or a Managing Director reports.

An association becomes a *legal entity* when it is entered into the List of Associations (*Vereinsregister*); a limited company when it is entered into the List of Trading Companies (*Handelsregister*). Both lists are maintained at the District Court (*Amtsgericht*) in the city where the organisations are based.

Only the foundation requires state permission. This is granted by the Foundation Regulatory Authority (*Stiftungsaufsicht*) of the Federal State where the foundation is based. This authority carries out the legal supervision of the foundation. The supervision of the foundation within its field of activity is the responsibility of the relevant Ministry and in larger states is often delegated to the provincial government (*Regierungspräsidenten*).

The *charitable status* of such institutions and also their tax benefits are determined according to criteria which are described in detail in the German Excise Law (§§ 52 ff. *Abgabenordnung*). According to these tax regulations it is necessary that the purposes of the institution should exclusive-

ly, directly and without self-interest serve the general welfare in a material, cultural or moral sense. If this is the case, then the institutions are freed from corporation profits tax, trade tax and land tax, but not from purchase tax on real estate. They receive a preliminary certification of charitable status from the relevant tax authority. The certification is preliminary because the authorities may check at any time whether the activities of the institution actually fulfil the conditions of the statutes and the tax law. Whether the institution can be freed from sales tax is dependent on the extent to which it carries out a task comparable to that of a local authority body. This is checked by the responsible State authority – in most cases this is the Education Ministry.

Foundations

First let me explain the philosophy of foundations. I will begin with the word itself. The German word "*stiften*" or "*Stiftung*" means "*Founding*", which is one of the oldest Indo-Germanic words (whose ultimate origin has not yet been fully clarified). The earliest meaning of the word incorporates the concepts of the founding of buildings. Something is being erected which is to last a long time and which will at the same time provide an impetus towards something new. If we opt for newer definitions of foundations, these indicate essentially that a foundation should involve a lasting commitment of assets to purposes devoted to the public good. This means non-profit-making charitable, social and religious purposes.

Why do we have foundations at all? You will say: for tax reasons. Correct. I have already spoken about this. But tax cannot be the reason why the foundation has established itself as one of the oldest and most significant institutions in human civilisation long before the invention of taxes.

There are considerations about the fact that nothing can be donated without **reason**. According to a very old ritual each gift is connected with a reciprocal gift. Think of the formulations when giving something to another person. When he has thanked you for this gift you say "You are welcome". That means, you are invited to bring me the reciprocal gift. I allege that foundations also work to receive something, but what?

From the **earliest times** human beings associated their hopes and fears with sacrifices that were supposed to favourably influence their fate. Since then countless **foundations were based around cults**. Here you will find one of the prime purposes of foundations: namely the preservation of the religious cult and the commemoration of the deceased. Foundations dedicated to the memory of people are therefore very widespread and one could almost say that this ancient driving force has continued to be essential right up to the present day.

These **memorial foundations** are generally dedicated to *the arts*, which at one time seemed more likely to be permanent than they do today. Many theatres, concert halls, art galleries and museums are emblazoned with the *names of their founders*: Carnegie Hall, the Guggenheim Museum or the Gulbenkian Museums are just a few of the countless examples. This type of foundation also likes to be linked with monuments and heritage.

With the advent of **Christianity** the foundation concept developed to include another motive: **Caritas**. This is the

commandment to love one's neighbour, to care for the sick, the old, widows and orphans: those who had a particularly raw deal in olden days. Eternal life is to Christians what posthumous glory was to the Ancients. However, the church learned very quickly to interpose itself between the benefactor and his good deed.

These Christian foundations devote themselves to the sphere of *welfare* and comprise monasteries, orphanages, old people's homes, infirmaries, and also schools for the poor and workshops for the disabled. They bear the *name* of their founder (in the manner of the Fuggerei in Augsburg) less often than that of a saint or a description of their aims. Among the holy designations, it is the Evangelists (John and Luke), the disciples (such as Peter or James) or the Holy Trinity (the Holy Ghost, the Good Shepherd) which provide the foundations ("Stifte") with their names.

Protestantism gave the foundation special impetus.

The Protestant **Puritan** regards worldly wealth as a symbol of God's favour and this obliges him not only to be virtuous but also charitable. In addition to charity, its objectives usually lie in the field of education.

With the **Enlightenment** came **philanthropy**. This concept focused on people and their everyday environment to try to achieve improvements in it.

These **philanthropic foundations** are devoted to *improving the world*, introducing innovations in towns and in the country and have, as their primary goal, *the promotion of virtues, education and the sciences*.

The *names* of such foundations are frequently determined by their aims (the Patriotic Society..., the Foundation for the Promotion of...) or else they are named after a famous person who is associated with those aims.

Patronage today contains all these elements in varying proportions, but is characterised above all by its introduction of a *political emphasis* into the social and economic sphere. This may well be linked to the fact that today's major donors are increasingly often powerful **institutions**, such as banks, large companies, or even important public bodies. Examples include the Ford Foundation, Volkswagen Foundation, or Bertelsmann Foundation.

In comparison, the individual patron is relatively rare. Major patrons in the classical sense are now few and far between, but the number of small and medium-sized donations and charitable bequests on the part of individuals (such as those managed by the collective foundation, the *Benefactors' Association for the German Sciences*, or those represented amongst the members of the *Federal Association of German Foundations*) is growing.

Today's foundations often *call themselves* after the important owners of the donor company: e.g. Fritz Thyssen, Alfred Krupp von Bohlen, Robert Bosch etc. Indeed, a flick through the registers of foundations shows that today's foundations like their names to reflect their benefactor or his family. This is perhaps intended to counteract the depersonalisation of commercial life and multinational company development.

The Alfred Toepfer Stiftung F.V.S.

The **F.V.S. Foundation** was founded by a Hamburgian merchant. His name, which after his death was added to the

name of the foundation, was Alfred Toepfer. He started his charitable activities already in the mid-1920s. His main activity in the first years was the financing of youth hostels. Once the youth hostels organisation started to be used by the Hitler movement, Toepfer turned in 1935 to establishing cultural awards. The F.V.S. Foundation was at this time the first private organisation which dealt with cultural prizes. Even here he could not prevent the Reich Chamber of Writers (*Reichsschrifttumskammer*) from taking control and after a period of arrest in 1937, he was pressed to surrender leadership of the foundation to a state-incorporated authority for Germans living in foreign countries (*Volksdeutsche Mittelstelle*). After the war and a period of internment Alfred Toepfer was able to regain control of his foundation. Its work began anew in 1949 with a European Award for Agriculture. It is in this context that the Europa Prize for the Preservation of Monuments has its origins.

The Europa Prize for the Preservation of Monuments

On 26 October 1973, the Council of Ministers of the Council of Europe passed a series of statements of principle concerning the practical support of government departments and local authorities in the protection of monuments and places of cultural interest under their care. The subsequent series of meetings on the subject culminated in the Amsterdam Conference which rounded off the European Monument Year 1975.

As part of the preparation for this European Monument Year the Council of Europe held a conference in Zurich from 4-7 July 1973 which was organised by Europa Nostra. As representative of the Lüneburg Heath Nature Park Association Alfred Toepfer took part in this conference.

According to his notes, Toepfer held conversations on the conference with the President of Europa Nostra, Duncan Sandys. On the afternoon of 6 July 1973 he addressed the conference.

"I'll start with a couple of comments on some of this morning's speeches: anyone who restores old buildings often has to find a sensible future use for them. Here, for instance, are some examples – and maybe some encouragement.

The foundations associated with me have turned a completely derelict old tanner's house in Strasbourg which dates from 1566 into accommodation for conferences and overnight stays. In the Lüneburg Heath Nature Conservation Park old Lower Saxon farmhouses have been made available to European youth groups and meetings following a complete restoration. In Hamburg old houses from the 17th and 18th centuries have been rebuilt with exact attention to historical detail and used to provide easy-to-run, cheap flats with modern facilities for so-called elderly women and men, over the ages of 60 and 65 respectively. And in France, in the vicinity of Paris, the ruins of the old walls of an early medieval monastery farm with a substantial tract of agricultural land attached have been thoroughly restored and the buildings are now used for the accommodation of people and, as far as it is possible, of machinery as well.

Wherever it is possible and sensible, do not forget to furnish old squares and buildings etc. with the living green of trees, shrubs and flowers.

The Hamburgian F.V.S. Foundation is prepared to establish a Europa Award for the Preservation of Monuments with the value of 25,000 German Marks p.a. and a European Gold Medal for the Preservation of Monuments, which might perhaps carry the name of Michelangelo. The former would be to reward individuals who have made an exemplary contribution to monument preservation; the Gold Medal to reward governments and local authorities. Decisions would be taken by a Board of Trustees under the chairmanship of your President and a representative of the Council of Europe."

After intensive consultations with many experts Alfred Toepfer nominated for the **first Board of Advisors** (*Preiskuratorium*) of the Europa Award for the Preservation of Monuments the following persons: Prof. Ashworth, GB; Prof. De Angelis d'Ossat, Italy; Prof. Dercsényi, Hungary; Prof. Frodl, Austria; Harald Langberg, Denmark; Prof. Malinowski, Poland; Mr. Vassas, France; Prof. Wortmann, Hannover (advisory member).

In the next years the following joined the board Mrs. Aulenti, Italy; Mr. Boiret, France; Dr. Ebert, Hamburg; Prof. Geza Entz, Hungary; Prof. Gebeßler, Stuttgart; Prof. Munk Hansen, Denmark; Prof. Machatschek, Austria; Prof. Malinowski, Poland; Prof. Perbellini, Italy; Prof. Sedlmayr, Hungary; Prof. Swiechowski, Poland.

Prof. Asworth has been a member of the board from the beginning up until today.

After Frodl († 1985) Harald Langberg (1981-92) became chairman of the board, followed by the current chairman, Prof. Machatschek.

At its **constitutive meeting** on 9 August 1974 the Board of Trustees selected Professor Dr. Jan Zachwatowicz from Warsaw to be the first recipient of the prize. Prof. Zachwatowicz was director of the Polish Conservation Office after the war and was entrusted with the task of rebuilding the capital. The Prize was a sign of recognition and appreciation of the work he had started during the war to rescue, restore and secure the historical appearance of the most heavily destroyed cities in Poland.

The first prize in 1974 was connected with 3 gold medals:

One was awarded to the Alsacian city of Colmar for the exemplary renewal of the tanners' quarter and other parts of the old town; the second went to the small Danish town of Svaneke on the Island of Bornholm for the retention of old houses and the appearance of the town as it had been handed down through the ages. In both cases the award ceremonies in the town halls were accompanied by public festivals which the founder also took part in. Colmar's Gold Medal led to a special grant of 3.9 million FF by the French state for the renovation of the old town.

The third medal was intended for the former French Minister of Culture, André Malraux, and was awarded to him by the Board of Trustees in recognition of the French Monument Preservation Law from 4 August 1962 which he introduced and which bears his name ("Le Malraux"). For the Board, this law was of decisive importance in the development of monument preservation legislation in Europe and beyond.

You will find the names of subsequent **recipients** of the Awards in the Prize booklets of our foundation, which document the award ceremonies each year. The last one reports about the prize of 1995. It is the 21st report in total. If you

look through all these reports in both the laudations and the speeches of thanks, you will find the entire spectrum of thoughts on the subject of monument preservation reflected.

At the moment the Foundation intends to evaluate this material and to integrate it into a full analysis. The foundation itself is very keen to see the results.

The European National Trust

Alfred Toepfer even had the youth hostels built with the preservation of monuments and the landscape in mind. By acquiring four estate farms, Herrenhaus Siggen near Oldenburg in Holstein, the Brümmerhof and Hof Thansen in the Lüneburg Heath, and the Kalkhorst estate in Mecklenburg, Toepfer began systematically to convert valuable old farm buildings for contemporary uses. The same happened with the monastic farm in Chesnay near Paris which Toepfer mentioned in his speech. It was adapted for his Basle Goethe-Foundation and used for agriculture. The aforementioned tanner's house in Strasbourg is used by the Basle Goethe-Foundation as accommodation for its guests and conferences.

In the 1960s Toepfer devoted a great deal of energy to the preservation and expansion of the Lüneburg Heath Nature Park. He was concerned about not only the natural environment but also the economic viability of the area. Thus he converted old farms into roadhouses; and in order to facilitate an expansion of the number of flocks of heath sheep which keep the grass between the heather plants short and fertilise the soil, he established stalls whose thatched roofs fitted into the countryside. Altogether he spent more than 50 million German Marks only for the Lüneburg Heath.

Alfred Toepfer acquired the Beyling Stift in Hamburg for the Carl-Toepfer-Foundation, which his brother had set up after the war. He surrounded this home for the elderly with a selection of reconstructed old Hamburg facades. Although these had never before stood in this location, their proximity to the Museum for the History of Hamburg means that they serve as an exemplary collection as well as contributing to a harmonious residential area. Today the Brahms House and the Hamburg Low German Library with its 6000 volumes of literature in ancient German are also to be found here.

Certainly these examples of his activity in the area of monument preservation do not meet modern standards of historical accuracy. Toepfer was a merchant who thought in practical categories and who also acted with utility in mind. When he acquired the foundation buildings which are worthy of preservation, the idea that he was making a reasonable investment was always in the background. For a foundation dedicated to the conservation of nature, monuments and regional identity, it is a question of **credibility** that it should take those matters into consideration which coincide with its actual aims. This is particularly the case when as a result the investment remains less profitable in comparison to, say, modern business premises. According to my findings many American foundations have often rescued buildings from dereliction by moving into them with their administrative staff. This is what the Thyssen-Foundation in Cologne did.

Another aspect of this process is, for example, that a foundation dedicated to the preservation of the countryside should not invest in windmills, even when that may be prof-

itable and the area already has a number of windmills. A foundation loses its credibility if its investment activities contradict its aims. I consider this a question of foundation ethics; it seems to me to be a first principle which should be respected by all foundations.

In contrast to the area of natural conservation and the mentioned investments of the foundation the Alfred Toepfer Stiftung F.V. S. has up until now not become directly involved in the preservation of monuments or regional identities. Such activity would consume its capital very quickly.

It has, however, considered whether the preservation of cultivated landscapes might not be improved by adopting in Germany and Europe the British model of the **National Trust**, whose significance extends to the entire Commonwealth. In his report commissioned by the foundation Graf Strachwitz of Maecenata Management GmbH in Munich advised against such a solution for Germany. He argued that, since there are such a number of institutions charged with the preservation of monuments here, a National Trust would be in competition with these from its inception. Furthermore, he argued, such a solution would be neither practicable nor desirable. Instead, he suggested that tasks of crucial importance, such as further training of technical personnel and the clarification of fundamental positions, should be organised centrally, and in this way the individual functions of a National Trust taken over.

His report is correct in that the federal structure of the German state on the one hand and the reduction in the number of buildings worthy of listed status in Germany and in other European countries on the other hand makes the creation of a National Trust fundamentally problematic. The National Trust acquires and administers its properties in such a way that they are able to finance themselves, whereas here it will be much more difficult to find a sufficient number of properties which fulfil these criteria.

And yet it seems to me that this is not impossible. For this reason, I am of the opinion that one could start to construct on a very small scale a European National Trust to which every country and every citizen could contribute buildings and objects provided that the costs of maintenance can be covered. The necessary management skills can be learnt from the British National Trust. It might be able and possibly willing to take on the administering tasks at first for this Trust.

The legal conditions to allow such a project to proceed must be provided by a European Law drawn up in Brussels which would create those legal and tax possibilities which are at the moment only provided for in Great Britain. It is for this that I have pleaded and I do hope it may find your agreement and support.



KARL WILHELM POHL

The German Foundation for the Protection of Monuments

“A future for our past” was the motto when the German Foundation for the Protection of Monuments was founded in 1985 at Schloß Gracht near Bonn. The former President of the German Federal Republic Dr. Richard von Weizsäcker became patron of this private trust. Its task is to support the preservation and restoration of important cultural monuments in Germany. Another aim of this trust is to foster the idea of monument preservation in the public. The foundation’s starting capital of 500,000 German Marks (DM) was donated by 23 renowned German companies.

With the opening of the Eastern border in 1989 the Foundation’s mission gained a new dimension. The commitment of many citizens was necessary in order not to lose landmarks in towns and villages built in earlier centuries, irretrievable testimonies of what generations before us had created. The frightening pictures of endangered buildings and ruined (worn out) old towns in former East Germany led to an unparalleled relief action.

The total funds spent by the Foundation went up from 640,000 DM in 1989 to 3,100,000 DM in 1991. The great

public interest in saving endangered monuments, especially in the new federal states, led in 1991 to the Foundation’s admission into the circle of recipients of the funds raised by the “GlücksSpirale” lottery run by German public television. Since 1991 the sum of 277 million DM could be made available for 857 endangered monuments, through a combination of lottery funds, temporary government grants and many private donations. 735 of these monuments are located in the eastern part of the Republic.

Both public and private money for monument preservation is however declining.

Despite the proud number of projects only one application out of four could be accepted for a grant by the Foundation in 1996. Among the projects supported in 1996 were 122 town and village churches, 14 monasteries, 28 castles, 68 town residences, six technical monuments, two parks, 12 public buildings, nine archaeological sites and two town gates. In many cases only through the Foundation’s private funds could additional public funds be claimed for such endangered monuments. The Foundation’s financial contribu-