

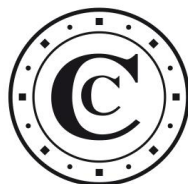
Cour des comptes



FONDATION DE FRANCE

Fiscal years 2014 to 2019
Organisation in receipt of donations

September 2021



Abstract

An original model undergoing continual expansion

The Fondation de France is an exceptional organisation owing to the circumstances behind its creation, its role in the philanthropy sector in France, the volume of its redistribution activity and the size of its balance sheet (€2.3 billion on average from 2014 to 2019). The model that the Fondation de France has gradually developed gives a central place to its role as an "umbrella foundation" with the creation of "donor-advised funds". Today, it is responsible for the activities of nearly 900 foundations under its auspices, representing 85% of its balance sheet and redistribution activities. The number of donor-advised funds that do not have a separate legal personality from the umbrella foundation is constantly growing and could quickly reach a thousand, because the Fondation de France has not set a limit or optimal level for the number of foundations it hosts.

The Fondation de France in figures (in 2019)

€2.4 billion in assets.

€435.3 million in income, including €137.8 million in donations, €59.8 million in bequests and donations and €59.2 million in income from real estate and financial assets.

€433.4 million in expenses, including €33.8 million for the Foundation's own programmes and €151.6 million for the actions of donor-advised funds.

888 foundations hosted.

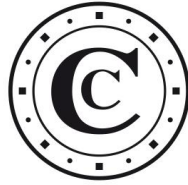
200 employees, equivalent to the headcount of an SME or midcap company.

Seven regional foundations (outside Paris) employing 25 employees and assisted by 200 volunteers.

The Fondation de France is also atypical in the French foundation landscape because of its very broad statutory purpose. Defining itself as The Foundation for All Causes, it also has the particular feature of not acting directly in its areas of intervention, but of financing the intervention of other structures, non-profit organisations or foundations, which it subsidises. As a "general sponsor", it thus differs from the usual profiles of foundations recognised as acting in the public interest, which are subject to the specialisation set out in their purpose.

The Foundation uses three redistribution methods: its own programmes, financed by individual donors and by certain foundations under its auspices; expenditure on prizes, scholarships and subsidies provided by donor-advised funds; the bridging activity set up in 1997, in which assigned donations are transferred to the organisations designated by the donors (*Transnational giving Europe* and *Friends of Fondation de France*), which were not examined as part of this audit.

The governance of the Fondation de France is based on a coherent system of committees which assist the board of directors. The composition of this board of directors shows the Foundation's concern to involve all the major founding financial institutions in its management. The State is represented on the board of directors by eight members. Most of them do not take an active part in the board's discussions – their contribution is largely based on personal initiative, with no upstream coordination.



The Fondation de France adheres to several documents intended to formalise internal control and ethics. Manuals and procedural guides document all major processes. However, the Fondation de France does not have an internal audit service. This function would seem essential for an organisation of this size, in view of the specific risks inherent in its role as an umbrella foundation.

A large number of donor-advised funds, subject to variable controls

Nearly 900 donor-advised funds without legal or moral personality have been created under private law contracts with their founders. Their size and governance and the profile of their founders vary greatly. The seven largest foundations alone account for 60% of total assets. All these foundations are an integral part of the Fondation de France, which is the only entity with legal personality and is solely accountable – financially and legally – for all of their activities.

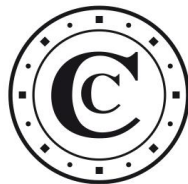
In practice, the operational autonomy granted by the Fondation de France to its donor-advised funds varies considerably. While almost full autonomy is granted to large donor-advised funds whose functioning mirrors that of the Fondation de France (project selection committees, documentation of activities, etc.), foundations whose governance is less clear-cut have much less autonomy. Most often, it is the bilateral relationship established with the founders rather than the stipulations of the incorporation agreement which determines the exact nature of relations between the donor-advised fund and the umbrella foundation. As a result, the controls carried out by the Fondation de France on the actions of donor-advised funds vary in intensity.

A flexible interpretation of the principles that apply to foundations recognised as being in the public interest

The criteria of public interest and the principles established by the Council of State regarding the operation of foundations recognised as being in the public interest are fully applicable to the Fondation de France and, *a fortiori*, to donor-advised funds, which are simply management entities. This includes having a collegial governance structure, the foundation's independence from its founders, financial transparency, management impartiality and the non-profit nature of the activity. However, the operating methods of the donor-advised funds and the formal and external control exercised by the Fondation de France do not guarantee that these various essential requirements are fully met. The principle of direct management by the umbrella foundation acting in the public interest, laid down by the law of 23 July 1987, is interpreted very loosely and this constitutes a source of structural risks. These risks are further accentuated by the steady increase in the number of donor-advised funds.

More generally, the gap between the essential principles that foundations acting in the public interest must respect and the practice observed for foundations hosted by the Fondation de France can be illustrated by three examples:

- The decision-making autonomy granted to certain donor-advised funds for the management of their financial portfolio is such that it necessarily puts the Fondation de France in the position of being a provider of investment and portfolio management services. Admittedly, orders must be validated by the Foundation's finance division before being executed, and some are refused or discouraged. However, in practice, the biggest founders choose their own investment profiles and thus partially impose the Foundation's overall risk exposure, which results from the aggregation of these individual choices.



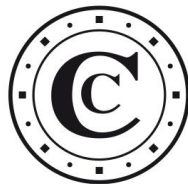
- The creation of donor-advised funds by companies or large groups, and their action in areas close to the founding company's corporate purpose could create confusion between the public interest and the company's private interest. There is sometimes a fine line between patronage and corporate social responsibility (CSR) or even between CSR and business development expenditure. These foundations are frequently run by managers or other employees of the founding company. They are therefore not volunteers and this situation is contrary to the principle of impartial management.
- Finally, the donor-advised fund model managed solely and exclusively by just the founder or by a family, in full autonomy and without a collegial body, should be gradually phased out or amended. The existence of a collegial body must become an operational requirement for all foundations hosted by the Fondation.

Insufficient consideration of the risks associated with the activities carried out by donor-advised funds

While the creation of a donor-advised fund gives rise to careful investigation and quality support for the founders, this is not the case for the control of their activities. The terms of this control do not provide any guarantee that the foundation's expenditure complies with the purpose of the Fondation de France. The control set-up is based on formal and documentary verifications, while the selection and monitoring of the activities funded is almost fully delegated to the donor-advised funds. While the Fondation de France authorises each expense, in practice, its position and its relationship with the donor-advised funds remain those of a service provider with respect to its customers. Consequently, the management of this relationship relies heavily on the principle of "trust", favouring dialogue or even persuasion in the event of disagreement with the strategy followed by the founders, whether this concerns the choice of investments, governance, or the financing of activities.

However, as the donor-advised funds do not have legal personality, the Fondation de France is responsible for all of their activities. Consequently, their very high level of management autonomy is a source of risk. The procedure for validating expenditure requests is similar to a formal external control, and is not sufficient to assess and mitigate risks. In view of the growth in the number of donor-advised funds, the Fondation de France must improve its understanding of risks, for example by explicitly identifying conflicts of interest or situations that infringe the probity and fiscal regularity of the operations carried out.

The level of the Fondation de France's involvement in monitoring the action of each foundation should be reviewed with regard to its legal and financial accountability, in particular in connection with the strategy of increasing the number of donor-advised funds. Otherwise, the tendency to move towards a situation in which it provides a hosting service, or towards a trust system, which is already visible, would gain traction. However, the possibility given to foundations acting in the public interest to manage donor-advised funds should not lead to a simple form of legal and financial "hosting" of the fund in order to limit the obligations of financial transparency or communication regarding the activity. The involvement of the Fondation de France in its capacity as an umbrella foundation - namely by providing the direct management set out by law - must be manifest and tangible. Control and supervisory mechanisms must be implemented, which will require a collegial operating structure, equal involvement of the umbrella foundation's teams, a sufficient level of transparency in the foundations' accounts and a real capacity to control the use of funds.



An institutional investor's balance sheet and a tendency to increase reserves and equity

The size of the Fondation de France's balance sheet (€2 billion) and the weight of financial assets in this balance sheet (95%) give it the characteristics of an institutional investor. The Foundation has established elaborate mechanisms to manage these financial assets, in particular a finance committee. This committee regularly monitors the allocation of assets in respect of the guidelines provided by each of the donor-advised funds. Indeed, for nearly 65% of the financial portfolio, the founders themselves rather than the Fondation de France decide how the portfolio will be managed, under a so-called specific management process. They can therefore retain their own personal financial institution as fund manager or choose to invest all of their assets in equities. Such a set-up would be totally unthinkable for an autonomous foundation, given the associated risks.

The review of the accounts showed that the Fondation de France's accounting and budgetary management is adequate and detailed. Budget monitoring is carried out at the same time as accounting monitoring. The quality of monitoring of management accounting is high. The management of donations, that is to say the process which leads to the acceptance of bequests and donations and their use in accordance with the donors' wishes, is particularly well developed. From this point of view, the Foundation has an exemplary organisation and tools.

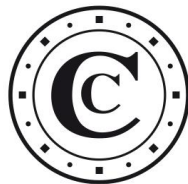
The Foundation has begun an analysis of its level of equity on the basis that it must be able to absorb various macroeconomic and financial shocks. This approach has led to a regular increase in the amounts placed in reserve and in equity, thus accentuating a natural tendency to increase these items.

Relevant thematic programmes that can be further developed

The programmes set up internally by the Fondation de France are conducted and managed in a very professional manner. The twelve employees who are responsible for these programmes are also in charge of relations with the donor-advised funds active in the same field. These programme managers play a pivotal role in bringing consistency to all of the Foundation's actions. The funding allocated by the Foundation to its own programmes seeks to support innovative approaches. The network of volunteers who lead the specialised committees and who investigate and sometimes monitor the projects functions very effectively. Emergency programmes, which are very visible in the media and often attract large volumes of donations, are closely monitored. The sample programmes examined during the audit highlight a concern for thoroughness but also for impact and benefit for the public concerned.

The method of preparing the use-of-funds statement needs to be reviewed

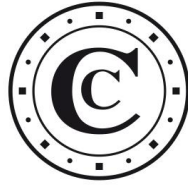
While the Fondation de France formally complies with its obligations regarding the disclosure of a public appeal for generosity and the publication of the use-of-funds statement, certain options applied in the preparation of this statement do not observe regulatory provisions or the presentation principles they require. This is mainly the case for the recognition under "social missions" of amounts held in reserve accounts during the collection of a donation for a donor-advised fund, even though these sums, by definition, have not been used. With the exception of 2018, where this mechanism reduced social missions by €10 million, this



accounting method overstated social missions by significant amounts, of between €15 million and €55 million, over five fiscal years.

This finding indirectly raises the question of the purpose and missions of the Fondation de France. Since 2018, for management accounting, the donation collection and financial management activities have been incorporated into a large "business" section. The Foundation believes that collecting and managing funds is part of its social mission, in the same way as distributing these funds and supporting projects serving good causes. This approach, which gives it the profile of a financial institution, constitutes a very broad interpretation of the statutory purpose as it was drafted in 1969.

If the activity of "collecting and managing funds" is put on the same level as the "redistribution" of these funds, then a dual approach and double risks emerge: a strategy of increasing and excessively placing funds in reserve, and the expansion and continued increase in the number of donor-advised funds. This could result in insufficient consideration of the risks linked to the operations carried out by these foundations, even though the Fondation de France is the sole organisation that is legally and financially accountable.



Summary of recommendations

Fixed term foundations

1. For fixed term foundations, specify their maximum lifespan in the incorporation agreements.

Governance and risk management

2. On the board of directors, replace the two commissioners appointed to represent the government with directors.
3. Disclose the five recipients of the highest compensation in the annual financial report.
4. Extend the scope of the code of ethics to all persons who participate in the activities of the foundations in any capacity.
5. Set up an internal audit service reporting to senior management.

Financial information and the use-of-funds statement

6. Consult the board of directors on the future and method of financing the Sassenage estate.
7. No longer accept the creation of donor-advised funds managed solely by a founder, either alone or through an exclusively family-owned holding company, and, in the case of delegated governance, provide for the establishment of a formal collegial body.
8. For foundations created by companies, ensure that the distinction between the foundation's corporate purpose and the products or services sold by the founding company is respected, in accordance with the Fondation de France's general conditions for the creation and operation of foundations.
9. Do not record amounts held in reserve and allocated to equity under the heading "social missions", but include them on the line "commitment to be made from allocated resources".
10. Explain the rules for drawing up the use-of-funds statement and have them validated by the board of directors.
11. In accordance with the accounting regulations in force, carry out a full assessment of voluntary contributions in kind, including the secondment of employees of founding companies and the interventions of volunteers.
12. Provide enhanced information to donors by systematically presenting the cost of actions carried out.
13. Resume the practice, which was stopped in 2014, of presenting financial information (simplified balance sheet and income statement) on the biggest foundations in the annual report.