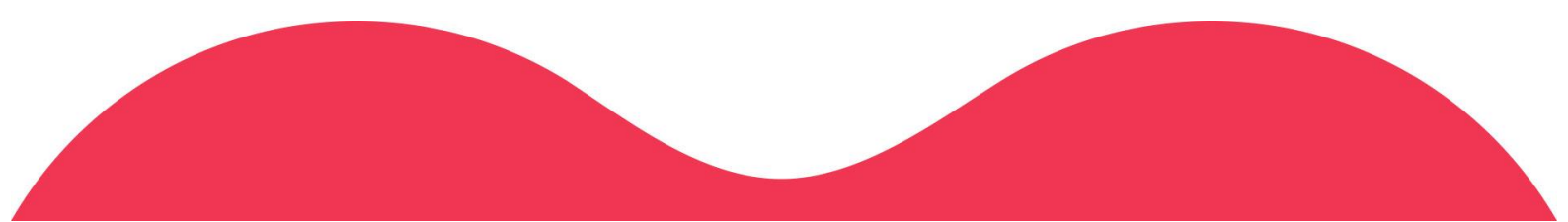


Unrestricted Funding: A Practical Guide for Funders Viewing Unrestricted Funds Through a Legal Lens

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Legal permissibility of unrestricted funds

There is no general legal rule in European jurisdictions that prohibits or restricts the provision of unrestricted funding by philanthropic foundations. As long as grants are used in pursuit of recognised public-benefit purposes and comply with basic legal requirements, foundations retain discretion to provide flexible, general operating support. Yet, despite this formal permissibility, unrestricted funding remains relatively limited. This gap can be understood by examining how legal compliance expectations, regulatory scrutiny, and governance practices interact in the European context.

Fiduciary accountability and the need to demonstrate purpose alignment

A first source of caution lies in the way fiduciary duties are interpreted in practice. Foundation boards must be able to demonstrate that grants are used in line with their statutory purposes and that resources are allocated responsibly. While this does not legally require project-level restrictions, unrestricted funding can make it harder to provide evidence of that alignment in concrete terms.

In practice, foundations rely on documentation, reporting and traceability to show that decisions were justified. When funds are unrestricted, this evidentiary chain becomes less straightforward. The issue is not illegality, but proof. Trustees may struggle to demonstrate, after the fact, how a general grant contributed to specific charitable objectives, especially where recipient organisations operate across multiple programmes or policy areas.

This concern is reinforced by broader expectations of accountability within the sector. Research shows that funders often frame restrictions as a tool for demonstrating that money is “well spent”, even if evidence suggests that unrestricted funding can produce stronger outcomes.

Escalating expectations around transparency and auditability

Across Europe, there has been a clear shift towards stronger transparency requirements for civil society funding. Public authorities, EU institutions and large institutional donors increasingly expect detailed disclosure of how funds are allocated, who ultimately benefits, and how activities relate to public policy objectives.

EU-level scrutiny illustrates this trend. Recent work by the European Court of Auditors highlights persistent concerns about the traceability and classification of NGO funding, as well as the need to clearly identify how funds are used and whether recipients comply with EU values.

This environment affects private philanthropy indirectly. Even when foundations are not legally required to disclose the same level of detail, they operate within a broader

ecosystem where transparency is becoming the norm. Unrestricted funding, by definition, reduces ex ante specification of spending categories, which can complicate ex post reporting. Some foundations therefore introduce restrictions not because the law requires them, but because it simplifies compliance with evolving transparency expectations. Transparency can also be achieved within more flexible funding models, for example through open and ongoing dialogue with grantees, narrative reporting, and shared reflection on progress and challenges. In this way, accountability is maintained while shifting the focus from detailed prior earmarking towards learning, relationships and the outcomes that funding enables in practice.

Heightened reputational risk and political scrutiny

A distinct feature of the European context is the growing politicisation of NGO funding. Civil society organisations are increasingly scrutinised for their role in public policy debates, particularly where advocacy or lobbying is involved.

Recent European policy debates have explicitly linked funding to “reputational risk”, especially where funded organisations engage with policymakers or attempt to influence legislation. The European Commission has also indicated that avoiding reputational risk should guide funding decisions in some contexts.

This has direct consequences for philanthropic practice. Unrestricted funding may be perceived as enabling activities that funders cannot fully anticipate or control, including politically sensitive work. When foundations define the scope of funding more narrowly in order to avoid being associated with contested forms of advocacy, restriction functions as a reputational safeguard rather than a legal necessity.

Politically sensitive work and lobbying are, however, core components of civil society activity. Rather than limiting flexibility, foundations can manage associated reputational risks by clarifying their overall mission and funding rationale, communicating openly about the role of advocacy in achieving social outcomes, and distinguishing between support for organisations and endorsement of specific positions.

Compliance burden and the risk of financial irregularities

Another driver of caution is the increasing complexity of compliance and reporting systems. Donor expectations, particularly among large institutional funders, have become more demanding, with stricter requirements for financial documentation, audit trails, and performance reporting.

Failures in reporting can lead to serious consequences, including suspension of funding, repayment obligations, and long-term damage to credibility.

From the perspective of foundations, unrestricted funding transfers more discretion to the recipient while leaving the funder exposed to these compliance risks. If funds cannot

be clearly matched to eligible costs or documented activities, the funder may face difficulties in demonstrating proper oversight. This is particularly relevant in co-funding environments, where philanthropic grants are combined with public or institutional funding streams subject to strict audit rules.

Actions foundations can take to avoid post hoc issues with compliance when providing unrestricted giving, include: clarifying, at the outset, the intended purpose and scope of the grant in high-level terms, even when the use of funding remains unrestricted; agreeing with grantees on proportionate forms of reporting that capture how resources are used in practice without imposing rigid budget lines; and ensuring that adequate, proportionate records are kept to demonstrate that funds support legitimate activities. In co-funding contexts, early coordination with other funders on reporting expectations and audit requirements can also reduce the risk of misalignment, while regular dialogue with grantees helps identify potential compliance issues before they arise.

Regulatory fragmentation and cross-border uncertainty

European philanthropy operates across a fragmented legal landscape, where definitions of non-profit status, reporting thresholds, and oversight mechanisms differ significantly between countries. Organisations may operate through multiple legal entities, each subject to different disclosure rules and audit requirements.

This fragmentation creates uncertainty for funders. Even where a grant is legally compliant in one jurisdiction, its treatment may differ in another, particularly in cross-border funding chains. Differences in oversight intensity and reporting standards can make it harder to ensure that funds are used and recorded consistently. Concerns about gaps in transparency and inconsistent classification of NGOs across EU systems further amplify this uncertainty.

In this context, unrestricted funding introduces an additional layer of ambiguity. Without clearly defined spending categories, it becomes more difficult to monitor financial flows across jurisdictions and organisational structures. To avoid this, funders sometimes impose at least minimal restrictions to maintain clarity. It is important to gather professional legal advice when providing flexible funding across jurisdictions. A good starting point can be the [Giving Europe Network](#) which facilitates cross-border giving while ensuring compliance with national legal and tax frameworks through due diligence and trusted intermediary partners.

Foundations may also draw on sector infrastructure such as Philea's policy and legal expertise, including its monitoring of regulatory developments and regular briefings on issues affecting the operating environment for philanthropy in Europe. This includes resources such as [country profiles](#) on legal and fiscal frameworks, targeted [comparative analyses](#) highlighting key regulatory differences across jurisdictions, and regular updates through [monitoring newsletters](#) that track ongoing EU and international policy

developments. In addition, engagement with peer-learning and expert groups, such as Philea's [Legal Affairs Committee](#), can provide access to practitioner insights and facilitate exchange on emerging compliance challenges. Staying informed through these channels can help foundations anticipate evolving expectations and reduce the risk of misalignment across jurisdictions.

Internal risk management and organisational culture

Finally, internal governance practices within foundations play a significant role. Many European foundations have adopted formal risk management frameworks that require them to identify, assess and mitigate potential risks associated with their activities.

These frameworks do not prohibit unrestricted funding, but they do require explicit consideration of risk appetite and control mechanisms. Where there is no shared understanding of acceptable risk, organisations tend to default to more conservative approaches. When designing formal risk management frameworks, it is important to account for unrestricted, flexible funding.

Research on philanthropic risk management shows that, in the absence of clear frameworks, decision-makers often err on the side of caution to avoid jeopardising the organisation's reputation or financial standing.

Unrestricted funding challenges conventional approaches to control, monitoring and evaluation. It requires funders to tolerate a higher degree of uncertainty and to rely more heavily on trust in grantees. For organisations accustomed to structured oversight, this shift can be difficult to operationalise.

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