

# Philanthropy Letter



FONDATION  
DE LUXEMBOURG

Philanthropy in action

## ‘Men argue. Nature acts.’ Voltaire

The United Nations World Commission on Environment and Development (WCED) defines sustainable development as development that meets the needs of the present without compromising the ability of future generations to meet their needs. It is about economic development that is conducted without depletion of natural resources. Last month, the US and China took an important step in this direction by unveiling clear pledges to cap their respective CO<sub>2</sub> emissions. This injects new hope for the United Nations Climate Change Summit to be held in Paris in November 2015.

Nicolas Hulot, founder of the Fondation Nicolas Hulot and advisor to the French President for the preparation of this summit, draws our attention to the major threat to humanity caused by climate change and explains the profound changes that are required in order to protect our planet. He gives an indication about the importance of philanthropic engagement in this area.

Foundations can play a significant role advocating sustainable development, in terms of financing projects that promote sustainable development, and secondly when it comes to creating awareness about the social and human consequences of climate change. An inspiring example in this area is the Green School project in Morocco by the Akuo Foundation. We interviewed Eric Scotto, co-founder of the Akuo Foundation, who explains their innovative and sustainable approach to building schools, by combining ancient local construction techniques and affordable materials with cutting-edge architectural planning.

Finally, we asked a French lawyer, Wilfried Meynet to clarify the roadmap for creating a European single market for philanthropy following the recent rulings by the EU Court of Justice about cross border donations.

We wish you a pleasant reading.

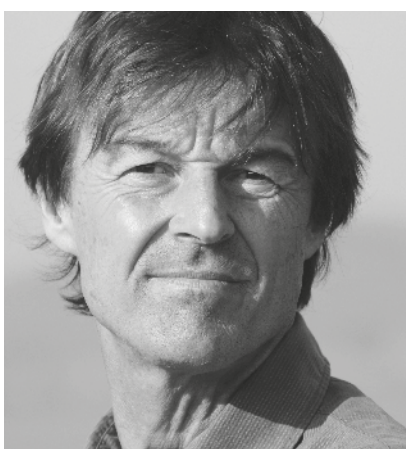
**Tonika Hirdman**

2 Nicolas Hulot about the solutions to tackling climate change  
4 Akuo Foundation: The case of the Oulad Merzoug bioclimatic school in Morocco.

6 Eurodonors: something new on the western front?  
8 Philanthropy Advisors’ vision about their clients’ philanthropy expectations



# Osons le changement et résistons au fatalisme !



Nicolas Hulot

Président de la Fondation Nicolas Hulot pour la Nature et l'Homme  
[www.fondation-nicolas-hulot.org](http://www.fondation-nicolas-hulot.org)

Journaliste et écrivain français, il est engagé dans la protection de l'environnement et la sensibilisation du grand public sur les questions écologiques.

En 1990, il crée la Fondation Ushuaïa qui devient la Fondation Nicolas-Hulot pour la Nature et l'Homme. Nicolas Hulot a été nommé conseiller par le Président français pour la préparation de la conférence des Nations-Unis sur le climat à Paris en novembre 2015.

Le changement climatique est la menace majeure à laquelle l'humanité doit faire face. Le pire danger aujourd'hui serait que, au prétexte que la période est difficile, nous soyons dans le déni.

Si j'ai un cri à lancer, c'est :  
« Réveillez-vous, indignez-vous, osez le changement et résistez au fatalisme. » Le contexte géopolitique ou économique ne sera jamais suffisamment favorable. Ne nous résignons pas.

Jusqu'à maintenant, on pouvait dire « on ne savait pas », maintenant on sait. On pouvait dire « on ne sait pas quoi faire », maintenant on sait quoi faire. Des solutions existent, mais il faut les mettre en œuvre. Cela demande des changements profonds.

## Paris 2015 sera le point focus

Lors de la conférence climat COP21 à Paris en décembre 2015, 194 Etats devront passer un accord global pour prendre la suite du protocole de Kyoto arrivé à échéance. Mais quand 194 Etats doivent remettre à plat leurs priorités économiques et acter une sortie de l'économie carbonée, c'est très compliqué...

La tâche sera d'autant plus facile pour l'Europe, si nous sommes nous mêmes engagés et cohérents. Plus nous serons ambitieux, plus nous prendrons un avantage économique pour le futur, et plus cela permettra à la diplomatie européenne d'être crédible dans ces négociations internationales.

## La transition énergétique, un enjeu majeur

Nous devons diviser par quatre nos émissions de gaz à effet de serre à l'horizon 2050, repenser l'architecture de notre système énergétique et réduire le déficit du commerce extérieur, impacté chaque année par les importations de combustibles fossiles et uranium. Si nous réduisons significativement ces importations, des milliards d'euros pourront être réinjectés dans l'économie européenne.

Cela nécessite d'engager des programmes ambitieux d'efficacité et transition énergétique, facteur déterminant de la compétitivité des entreprises, d'accélérer la rénovation thermique des bâtiments la lutte contre les gaspillages, la diversification des transports, le développement des énergies renouvelables pour dynamiser nos territoires, créer de l'emploi, réduire notre dépendance et la vulnérabilité de notre économie. Ces orientations peuvent aussi préserver le pouvoir d'achat des ménages dont l'énergie est la première dépense et être créatrices d'emploi.

La transition n'est pas facile. Je le sais. Cela nécessite une vision à long terme et un effort important d'innovation, de formation et d'information.

## La transition économique, une voie de sortie.

Depuis la révolution industrielle, l'économie s'est développée sur le principe dit linéaire : extraire des ressources naturelles, les transformer et les jeter.

Aujourd'hui la croissance ne peut plus être dépendante de la croissance d'extraction de ressources naturelles car doit prendre en compte la finitude des ressources.

Le développement durable a permis au plus grand nombre de prendre conscience de l'impact des activités humaines et la nécessité de réduire cet impact – c'est à dire de faire moins polluant, moins consommateur d'énergie et de ressources naturelles, de mieux recycler... L'étape suivante c'est de mettre notre intelligence, notre créativité, notre capacité d'innovation pour favoriser les impacts positifs pour la santé, la prospérité des entreprises, l'environnement, l'emploi.

Par exemple, imaginez que nous concevions un bâtiment comme une banque de matériau avec pour finalité d'être désassemblé, démonté et non pas démolé afin de préserver la valeur des matières dans le temps. Imaginons que nous fabriquions des voitures non pas moins polluantes, mais qui purifient l'air, que l'on crée du plastique à partir d'algues ou que l'on transforme le CO<sub>2</sub> en ressource... Imaginons que nous développions une agriculture de proximité, qualité et sans pesticides pour favoriser la santé des hommes et des sols. Imaginons des villes auto-suffisantes en énergie grâce aux énergies renouvelables.

Non seulement c'est souhaitable, mais c'est possible. Je rencontre tous les jours sur le terrain des entreprises et collectivités eco-innovantes qui adoptent ce type de démarche et qui sont rentables.



Ce n'est pas la créativité, ni l'innovation qui fait défaut, au contraire. Mais malheureusement, souvent, nous sommes aussi notre premier frein à aller de l'avant.

**On entend le fracas des arbres qui tombent mais pas le murmure de la forêt qui pousse (proverbe touareg)**

Début 2015, je lance avec ma Fondation une grande action de la mobilisation citoyenne. Un dispositif innovant pour montrer que les solutions sont en marche, valoriser et accompagner ceux qui les mettent en œuvre et offrir un rôle majeur aux citoyens. Après le Défi pour la Terre et le Pacte Ecologique, nous souhaitons favoriser l'émergence d'un autre état d'esprit où le fatalisme cède la place à l'action.

#### **The role of foundations in the combat against climate change**

As part of civil society, foundations have an important role to play in the combat against climate change. First of all through their grant making activities, but also in creating awareness about the social and human risks linked to climate change. Many foundations have chosen to finance projects that for example promote sustainable farming, planting of trees or the installation of solar-energy as single source of energy.

Some foundations have decided to make their voices heard through excluding fossil energy companies from their investments. This allows them to have a double impact by furthering the cause of the foundation.

# Akuo Foundation: The case of the Oulad Merzoug bioclimatic school in Ouarzazate, Morocco.



## Eric Scotto

Eric Scotto is the co-founder of the Akuo Foundation, created in 2010 under the aegis of Fondation de Luxembourg. Eric Scotto is also the founder and CEO of Akuo Energy, France's leading independent producer of renewable energy with subsidiary branches in eight countries.

After obtaining a degree in history from l'Université Paris-1 Panthéon-Sorbonne, Eric Scotto began his career in 1991 in the field of information technology. A true entrepreneur, Eric Scotto has created several companies, in particular in the field of wind and solar energy.

## Could you tell us about the background and mission of the Akuo Foundation?

The Akuo Foundation was created in 2010 by the French company Akuo Energy, an independent renewable energy producer. The mission is to contribute to humanitarian projects and development, while protecting the environment and biodiversity through the reduction of emissions and encouragement of sustainable agriculture. The

Foundation supports disadvantaged populations worldwide in providing access to renewable energies, education, water and health services.

Our missions are entwined and we strive, with a holistic approach, to combine respect for the environment and economic development for the local population when assessing a project.

## What is the background to Akuo Foundation's engagement in Morocco? How was the bioclimatic school project born?

Akuo Foundation was already supporting another similar project in Indonesia, the Green School of Bali that meets some of our missions: access to renewable energy, education and biodiversity and environmental protection. This gave us an exposure that luckily led us to being contacted by The Good Planet Foundation and Les Enfants des Palmiers concerning the prospect of creating a new green school. The need for schools in Morocco is such that our main goal was to create a solution that was easily replicable in terms of supply, approach and technical support. In addition, it was of course important to have a good example of our practices by making a sustainable case.

## What is your experience from collaborating with other foundations?

We genuinely believe in finding synergies and sharing best practices in order to maximize our impacts with adequate partnerships that have common values and goals. Working with other foundations enables us to deepen

our field knowledge and benefit from a local support system to implement and follow up on our projects. The added value created through collaboration also broadens the scope of opportunities by providing a holistic approach to the missions we are carrying out.

## The Green School has a bioclimatic design. What are the principles and advantages of a bioclimatic design?

The Oulad Merzoug School is located in the remote area of Ouarzazate where climatic variations are quite important as they go from 0°C up to 40°C. It was originally constructed with inappropriate materials that lead to crack, mold and holes in the ceilings with absolutely no thermal isolation. Therefore, the school's dropout rate was quite high, as the environment was not favorable to learning.

Bioclimatic architecture turns constraints into opportunities; in the case of Oulad Merzoug, the school was rebuilt with raw earth, an abundant material with great thermic qualities that act as a heat shield in summer but also holds the warmth in winter. This project answers to the environmental challenges of climate change by finding local solutions and by its absence of environmental impacts as a structure but also in the building process. The use of raw earth caused absolutely no waste in the building as opposed to concrete architecture. There has been no use of any toxic substances, the raw material is completely natural and no machines were used in the process. The carbon foot print is reduced to its minimum as there was no transportation cost of the material, it was locally



harvested. In addition, the school is energetically neutral; there is no more need for heat or air conditioning

#### What has the result been so far?

Providing solutions to environmental challenges trickles down to also benefiting access to education and knowledge. A significant rise in class attendance and in grades, due to better studying conditions for the children and a certain sense of pride makes them ambassadors of this type of constructions.

#### The children will also be educated in the protection of the environment and in sustainable agriculture. How will this be done?

Just like at the Green School in Bali, educational material is supported by real life demonstrations. A fruit and vegetable garden has been planted by MCA, Marcher Connaitre Agir, a local organization, and is being maintained by the pupils. It gives them an environment to understand in situ all the stakes and challenges they are learning about in class, such as biological agriculture, water and waste management, deforestation and desertification to cite only a few.

#### What has so far been the reaction from the local population?

The reactions have been very positive! Mainly because the approach was inspired by ancient, local and traditional techniques enhanced by cutting-edge architectural planning. By using these techniques, we have managed to prove the value of raw earth buildings in comparison to concrete. Thereby we also participate in the appreciation of the Mââlem, the workmen specialized in this craft. Indeed, job creation increased as more and more locals have asked to be trained in this know how. Moreover, legislation, that pro-



Before



After



hibits the use of raw earth for schools, is currently being debated and is very likely to change as the Oulad Merzoug school has proven its multiple benefits. We have also been lobbying intensively within the local communities in making them understand that modernity is not only concrete but can also be a blend of ancient practices based on affordable resources.

#### Have you already thought of spreading this idea further?

In Nosy Faly, an island in North West Madagascar, we have our most repre-

sentative project that is the sum of all our missions. We are trying to prove that another development pattern is possible where sustainability and profitability actually are paired and not opposed. We are currently in search of bioclimatic solutions to rebuild a school in Madagascar, on the model of the Oulad Merzoug one, and we are also working on educational materials with our different partners. Back to Morocco, we are going one step further in helping the local communities we have met, but those projects are still confidential. Check us out online [www.akuofoundation.com](http://www.akuofoundation.com) for the latest updates.

# Eurodonors: something new on the western front?



Wilfried Meynet

Member of the Luxembourg and Marseille Bars, Wilfried Meynet has been practising law for more than ten years, advising non-for-profit organisations in France and Luxembourg. He is the author of 'Code de l'économie sociale et solidaire'.

Almost six years after the mini seismic shift in the world of European philanthropy, caused by the ruling of the European Court of Justice (ECJ) on Persche and Stauffer, we can see that the free movement of donations has not been fully recognised and applied within national legislations.

Such recognition may nevertheless soon be strengthened as a result of inaction on the part of the French government.

## Case law flashback

On 27 January 2009, following on from a previous ruling (Centro di Musicologia Walter Stauffer, ECJ 14 September 2006, Case C-386/04) – which can be requested from the German tax office by any German national – the ECJ recognised the tax deductibility of a donation in kind granted to a recognised charitable body based in Portugal (Hein Persche v Finanzamt Lüdenscheid, ECJ 27 January 2009, Case C-318/07).

A subsequent addition to both these judgments aimed at German tax law came in the form of the Missionswerk ruling (ECJ 10 February 2011, Case

C-25-10), sanctioning Belgian inheritance law which allowed a consequent reduction in capital transfer tax only on gifts and legacies made to bodies with operational headquarters in Belgium or whose activities benefited the Belgian community. This was followed by a Commission vs Austria ruling (ECJ 16 June 2011, Case C-10/10), sanctioning Austrian law, which did not permit tax deductions for gifts made other than to institutions responsible for research and educational activities in Austria.

## Fresh case for the ECJ

Although, strangely enough, France has until now been spared by the ECJ, there have been numerous discussions as to the compliance of French tax law with EU law.

Just for once, the legislature in France was quick to take account of the impact of the aforementioned Persche ruling, amending the provisions of the French General Taxation Code relating to corporate sponsorship in the 2009 Amending Finance Law 2009-1674. However, this amendment for the first time differentiated between French beneficiary bodies and others in requiring the latter to

## The road towards a European Foundation statute

### September 2006 Stauffer case:

Proceedings between the Italian foundation Centro di Musicologia Walter Stauffer and the corporate tax office in Munich concerning the liability of certain income to corporate taxation. The EU Court ruling concluded that the German corporate tax provisions would infringe the free movement of capital.

### January 2009 Persche case:

The EU Court of Justice lays down the principle and defines the conditions for the deductibility of gifts to charitable bodies established in another Member State.

be approved by the French tax office via a cumbersome and intrusive administrative process.

But it is regarding another tax provision that France shortly risks condemnation.

France exempts donations and legacies made for the benefit of public interest bodies operating on French soil from registration fees. Bodies of a similar nature based in other EU States are, in contrast, subject to a tax of 60% on the value of the gifts or legacies received. Exceptions do exist, however, in the case of certain bilateral agreements reached by France, which allow for exemption from all fees, subject to reciprocity.

On the basis of the free movement of capital, the European Commission therefore considers that this disparity of treatment may discourage French tax payers from making gifts or drawing up legacies in favour of charitable bodies based elsewhere than in France.

But while France should be condemned for its tax regime relating to registration fees, it will also be obliged to modify its position on tax reductions

in the case of cross-border gifts in favour of an EU or EEA body, in accordance with the criteria common to both tax regimes, due to the foreign beneficiary body carrying out activities in France.

#### What about the Grand Duchy of Luxembourg?

Less than six months after publication of the Persche judgment, the Luxembourg Direct Tax Administration, in its circular of 20 July 2009, detailed the conditions for tax deductibility for gifts made by Luxembourg tax payers to bodies with a registered office outside Luxembourg.

This circular, replaced by circular L.I.R. No. 112/2 of 7 April 2010 from the director of taxation, places no restriction on the nationality of the benefiting body, although a reminder is given that the tax deductibility of gifts in favour of these bodies is subject to the condition that the State in which the bodies are based recognises the right to tax deduction for its own tax payers.

Thus, in terms of the different tests set out in the abovementioned European Foundation Centre

report, Luxembourg may be seen as a star pupil!

Aside from any comparative study of the tax advantages offered by Member States (even if this does seem to be an exercise that journalists currently place huge value on), what emerges is that the single market for philanthropy and the vision of a single European Foundation statute have not yet been perfected, and that, in order to secure tax-deductible gifts between Member States, often the only solution left is to turn to the Transnational Giving Europe network, of which the Fondation de Luxembourg is a member.

We must hope that the new Commission chaired by Mr Juncker will be committed to finalising the process of adopting regulation relating to the European Foundation statute. As a reminder, one of the most revolutionary aspects of this bill, put forward on 8 February 2012, is the automatic application to such a European foundation and its donors of the same tax advantages accorded to all national public interest bodies.

There is still a long way to go, but hope is not yet lost.

#### February 2012

##### The European Commission on the European Foundation statute:

The European Commission adopts the proposal for a European Foundation statute in order to facilitate cross-border activities of public benefit purpose foundations.

#### April 2012

##### The Council of Ministers on the European Foundation statute:

The Council of Ministers initiates a review of the European Foundation statute. Final reviews are ongoing.

#### July 2013

##### The European Parliament's decision:

Members of the European Parliament vote by a large majority in support of a resolution for a future European Foundation statute.

# What are your clients' expectations in terms of philanthropy services?

Diane Wolter – Philanthropy Advisor,  
Banque de Luxembourg



Banque de Luxembourg's philanthropic clients expect personalized and professional advice and support, and access to specialists. We believe that the relationship of trust we build up over time is

vital for exploring their needs. Our clients need advice in choosing the right channel of giving – should they donate directly to charities, or set up a sheltered foundation or an independent public utility foundation? We provide support in coordinating our clients' philanthropic projects and provide access to in-house and external specialists (foundation asset managers, lawyers, notaries, ...). How these expectations will be met is the objective of individual meetings with the many philanthropists we have the privilege to work with.

Jean-Francois Olivier – Head of Wealth Structuring,  
Banque Internationale à Luxembourg



It may be surprising that the current difficult economic context does not affect the philanthropic wishes of our private clients. In fact, an increasing number of clients are seeking advice in the implementation

of their charitable projects. The Wealth Analysis & Planning team, in collaboration with the Private Bankers analyze their charitable expectations, taking into account the particular situation of each client. The sheltered foundations provide an ideal structure for our customers who have well-defined projects and want to rely on philanthropy professionals. In this respect the relationship since 2009 with the Fondation de Luxembourg is an essential element of our offer in philanthropy and has so far resulted in the creation of eight foundations. In the current context, we can only applaud to the beautiful days ahead in philanthropy.

Marc Flammang – Head of Philanthropy and  
Impact Investing, Banque Degroof



Impact! Our clients are looking for innovative and lasting solutions to major problems of society. Although each philanthropist lives his own personal journey, most of our clients are increasingly

willing to collaborate on topics such as for example education, poverty and environment. And 75% are active locally or in their own country. Therefore, beyond the traditional advice in philanthropic strategy and structuring, Bank Degroof has developed a unique expertise in creating communities of changemakers. Our clients can share information, collaborate on projects, and learn from each other. Philanthropy 2.0

Nathalie Sauvanet – Global Head of Individual  
Philanthropy, BGL BNP Paribas



Clients often come to us with a question. Whilst every question is unique, one may say, "I've succeeded beyond my wildest dreams but now it's time to give back. Where do I start?"

Clients' expectations are as diverse as our clients themselves and our service adapts to suit their needs. Some look for help in defining their focus or in establishing their own foundation. Some need impact measurement tools, whilst others want to plan for after they are gone. For a client just looking to test the philanthropic waters, our own foundation, Fondation de l'Orangerie provides a secure, ready-made giving solution.

