

What are the risks for European Cross-Border Giving?



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Focus on:

- Money laundering
- Terrorist financing

Looking at:

- Not-for-profit as:
 - Donor
 - Recipient

Position under European Law

- Money laundering
 - . Directive 91/308/EEC
 - . Directive 2001/97/EC
 - . A new Directive
- Terrorism
 - Council Common Positions
 - Communication from Commission of 20 October 2004
 - Draft Recommendations to Member States – 22 July 2005
 - Financial Action Task Force

Position under UK law

- Terrorism Act 2000
- Proceeds of Crime Act 2002
- Proceeds of Crime Act 2002 (Business in the Regulated Sector and Supervisory Authorities) Order 2003 (SI 2003 No 3074)
- Money Laundering Regulations 2003 (SI 2003 No 3075)

Duties of charitable trustees

Overriding duty

To act at all times in the **best interests** of the charity.

Subsidiary Duties

- To act within the charity's constitution and the law.
- To apply the assets of the charity for the purposes of the constitution.
- To avoid and/or deal appropriately with conflicts of interest.

Subsidiary Duties

- To exercise proper stewardship over the charity's assets and the running of the charity.
- To act personally.
- To act qua trustee in relation to subsidiary trusts.

Governance Issues

- Decision-making by the Trustees
- The position of the Chairman
- Delegation to Committees
- Delegation to staff

Liability issues

- Personal liability – when and who?

Not-for-profit as donor – what are the risks?

- Money laundering/terrorism
- Other
- Possible consequences

Not-for-profit as donor – managing the risks

- Financial Action Task Force on money laundering
- US Council on Foundation's guidelines
- Proper paperwork

Not-for-profit as recipient – what are the risks?

- Terrorism/money laundering
- Other
- Possible consequences

Not-for-profit as recipient – managing the risks

- Due diligence on donor
- Voluntary adoption of procedures prescribed by European Law

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