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Endowments of Foundations Receive Contributions from the State Privatization Fund of the Czech Republic

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At last! Following more than eight years of waiting, thirty-nine Czech foundations have been selected to obtain a significant contribution to their registered endowment from the State Privatization Fund of the Czech Republic.

The story begins with the suppression of foundations and the confiscation of their properties shortly after the Communist Party take-over in postwar Czechoslovakia, which was the final blow after the persecution by Nazis during the war. Prior to the war, foundations made significant impacts on the development of Czech society. The foundations established by noble or rich families existed in the Lands of the Czech Crown for centuries. In fact, the foundations' legal existence until 1991 was based on an Imperial Edict from 1811, which may be taken as evidence of their sustainability and long-term recognized tradition. During the nineteenth century, and later at the very beginning of the Czechoslovak Republic, there were several important foundations, which gave origin to many institutions. After 1952, what remained were only a few palaces in Prague and other buildings in other cities that being used for purposes other than those for which the foundation was founded. Indeed, this was nothing very special in a country where all private property had become so-called "common property of the people."

November 1989 brought about not only the rebirth of democracy and pluralism in politics, but it also opened the doors to private enterprise and made it possible to return the stolen property to at least some percentage of original owners of the estates and industrial companies or their heirs. Even foundations were allowed to return to the legal framework. However, with only very few exceptions, there was no one who could claim for the legal return of the original property of foundations. Instead, several foreign foundations started to operate in Czechoslovakia, and many local civic initiatives stood behind the rapidly growing number of newly established foundations. While the former were using the assets of foreign independent foundations or state agencies and individuals who wanted to support the changes taking place in the Central Europe, the latter depended exclusively on the determination and work of a very concrete group of people and collected the assets needed for achievement of their goals from small contributions and gifts of citizens and corporations. Only a few of the local foundations were able to generate income from their own property and use it for the publicly beneficial purpose for which they were established.

Simultaneously, the need for strong domestic foundations grew, mostly due to the fact that the state was not found to be the best and the most reliable partner in co-financing new educational or other important initiatives. The need to find at least matching funds for the Central European University in Prague initiated the idea to use a small part of the funds made available by the privatization of state owned industry for an endowment of a foundation. Shortly afterwards, in the beginning of 1992, the Czech National Council (the parliament of the Czech Republic, at that time a constituent part of the Czech and Slovak Federative Republic) enacted the amendment to the Privatization Act, according to which, a part of the portfolio of state industry privatized by the voucher privatization method should be made available to the needs of foundations. At that time, the requirement to provide a certain portion of the privatized assets to foundations was accepted as reasonable and legally acceptable. Besides, the voucher privatization, as such, was considered a way of compensation not only for those from whom the property was stolen, but also to those who worked on bringing about most of the post-war assets to be privatized.

As a result, in 1992, the State Privatization Fund established the Foundation Investment Fund (FIF, or NIF in Czech) as a share holding company, and the Government of the Czech Republic created a Council for Foundations as its advisory body. While the former institution was

presumed to take care of the 1% voucher privatization portfolio and then distribute the shares or dividends from it to foundations, the latter institution, the Council for Foundations, was assigned the role of looking for foundations to which a contribution should be made.

However, the work of these institutions was not very successful. After a very emotional proclamation of the Council of Foundations in the summer of 1992, according to which foundations with good public benefit projects should apply for funds from privatization, an avalanche of newly created foundations with well-designed future projects was initiated. As a result, more than 600 foundations applied for the funds. Experts of the Council of Foundations were soon overwhelmed by the huge number of projects to choose from. All that at a time when no money nor the portfolio were available.

The initial activities were subdued by the simple fact that the first chairman of the Council of Foundations was elected Lord Mayor of Prague and his successor was not at all interested in the project. As a result, the FIF did not obtain the portfolio, nor did the Council of Foundations continue with its work.

From 1992 to 1995, the situation of foundations at several conferences of foundations was sharply criticized, but no solution was found regarding how to validate the governmental promise of funds to foundations. In March 1995, after consulting specialists, mainly the Charles Stuart Mott Foundation from USA and others, the idea of establishing a National Endowment Foundation, which would take over and further maintain the portfolio assigned originally for the FIF took the form of a draft law. While the project was rejected by the government, it had the effect of reviving the original promise of the Czech Government. Even the Council of Foundations voted against its chairman in support of the new project. The draft law was finally adopted by a group of deputies of Parliament and resubmitted again in 1996 as a proposal to establish a Czech National Foundation with a very democratic decision-making structure and annual endowment-contributions distributing organs. The Bill on the Czech National Foundation passed successfully through two readings in the Parliament, only to be taken off the agenda at the last session before the 1996 elections together with several other Bills, which were not acceptable to the Government of Civic Democratic Party of Vaclav Klaus.

The 1996 elections brought about several significant changes to the political scene of the Czech Republic. The chairmanship of the Council of Foundation was assumed by Mr. Pavel Bratinka, Minister without Portfolio of the Government. Under his chairmanship, the Council of Foundations was enlarged by several representatives of non-governmental organizations and officials from those ministries of the Government that have on their agenda the cooperation and partial support of associations. The enlarged Council soon came to the conclusion that there were already several foundations in the Czech Republic which might be given the responsibility to take care of the endowment, and, therefore, that there was no more need to establish a new Czech National Foundation. Thus, at the end of 1997 a new concept was born on how to distribute the privatization money, which had been estimated at that time to amount to CZK 500,000,000 under the State Privatization Fund and CZK 2,000,000,000 in market value from the remaining portfolio set aside by FIF.

However, one important prerequisite was still missing. It was clear that the activities of foundations should be regulated by a stricter law than what was provisionally provided by the Civil Code amendment of 1992. After seven years of drafting and negotiating, the new Law on Foundations and Funds was enacted by the Czech Parliament on September 1997 to come into force from January 1, 1998. The original foundations were given one year to register as foundations with endowment or as funds without endowments, or to transform into public benefit corporations providing public services.

The new Law on Foundations and Funds made it easier to define the legal entities to which the contributions from the privatization fund may be given. The law defined the notion of a "registered

endowment" as that part of the total assets of the foundation which may not be sold, used as a lien, nor willfully diminished by the actions of the foundation. The law allows only the income generated from the endowment to be used, but this income is fully exempt from corporate income tax, which represents a savings on tax in the region from 20% to 35% of the annual income, depending on the type of income.

Thus, the Council of Foundations, working with the approved Law on Foundations and Funds, could require the recipient of the privatization contribution to be only re-registered foundations with endowment and the contribution itself to enhance the registered endowment of the recipient foundation. In this way, it was ensured that the distributed money will not be consumed by foundations themselves, but only the income from it will serve for many years to those in need of grants from the chosen foundations.

The Government of Mr. Tošovský, which replaced the Government of Mr. Klaus in November 1997, took over the results achieved by the Council of Foundations. In May 1998 a tender for foundations interested in securing the contribution from privatization has been announced. In between, the political development in the Czech Republic continued by extraordinary elections after which a minority government of the victorious Social Democratic Party came into power. The new government also assumed responsibility for the tender for privatization contributions to foundations.

Under the chairmanship of Minister Jaroslav Bašta, the Council of Non-Governmental Organizations, into which the former Council of Foundations was transformed under the previous Government, continued to work. In March 1999, seven committees of the Council decided the fate of ninety-three applications accumulated during the tender. Only thirty-nine of these fulfilled the formal requirements of the tender and were evaluated further.

Finally, the Council recommended, and the Government approved, a proposal to the Parliament to provide contributions to twenty-six foundations, out of which 16 scored best in six nominal groups (health care promotion, social care promotion and humanitarian assistance, education promotion, culture promotion, environment protection and human rights protection), where a nationwide substantial grant-giving activity of the foundation has been required. Ten other foundations were selected from the seventh group, which was open to foundations with regional activities or their own projects instead of granting activities.

After a heated discussion and many days of lobbying by some foundations that were not recommended, the Czech Parliament finally adopted the resolution on July 8, 1999. Thirty-nine foundations that passed the test of formal requirements are to be given the contributions at the amount proportional to the points they received in each of the seven groups in the evaluation process.

Despite its compromising characteristics, the Parliament resolution is of great historical importance. It is, first of all, the long awaited realization of a promise to replace the gap in the natural process of establishment of foundations, not to speak of the complete loss of their property that resulted from the combination of the war-time Nazi occupation and the post-war Communist regime. In fact, the resolution means that there is to be a potential of CZK 500,000,000 in the endowments of the Czech foundations, which may generate annually from CZK 30,000,000 to CZK 75,000,000 in assets, which directly serves the non-governmental organizations (recipients of grants from the foundations). Moreover, the Parliament in its resolution requires the Czech Government to prepare the criteria for the second round of the tender for distributing contribution receiving foundations to the end of September 1999. This means that another portion of about CZK 2 billion may become available to foundations' endowments. It is expected that in the second round there will be about 150 to 200 successful foundations, each of which would get more than CZK 10,000,000 in contributions to their endowment. According to the proposals discussed, it is also possible that a small part of the

distributed sum, about 10% of it, may be made available to be used for direct grant making in the first one or two years. That would make the much needed money available immediately, without waiting a year or more for the interest rate or investment income from the endowment.

Several important self-regulatory and co-operative processes have been generated by the development of the case of privatization funds distribution to foundations.

First, as already mentioned above, the formal Council of Foundation has developed step-by-step into a full-fledged active and respected advisory body of the Czech Government, as well as a forum where the new plans for co-operation between civil society organizations and the state administration may be discussed and formed into concrete activities, projects or even legislative initiatives.

Second, foundations and other donor representatives, meeting under the auspices of the Donors Forum, have come up with proposals of three important documents: an ethical code for foundations, a strategy of the not-for-profit sector for the next decade, and the commitment of foundations receiving the privatization money to common investment activities.

The last mentioned initiative resulted in a special tender for a bank prepared to establish a special investment fund, which would make it possible to generate greater income from the endowments under conditions compatible with governmental requirements.

By having approved the resolution on distributing contributions to foundations, the Czech Government and Parliament have set an example to the countries where privatization is still under way. Despite the long waiting, the result is of the win-win category: the state helps private foundations regain at least partially their strength and, henceforth, civil society becomes much more self-sustainable and less dependent on foreign and/or governmental financial resources in its future development.