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CHAPTER 3: FUNDING OF THE PROGRAM

This chapter contains:

- A fixed fund vs. continuous payments
- Fundraising for the compensation program
- Allocating funds for partner organizations
- Administrative costs
- Compensation payments in two installments
- Financial management

INTRODUCTION: EVEN A LOT WAS NOT ENOUGH

Securing sufficient funding is often the biggest challenge when establishing a reparations program. The type of funding of such a program, for instance by a one-time fixed sum or continuous payments, shapes the entire claims processing and payment process. This is why it is important to gauge different funding possibilities to find solutions that best address the specific context and purpose of a reparations program.

One of the main challenges of the forced labor compensation program was that, while a fixed overall amount for the program had been agreed during the international negotiations phase, the exact number of beneficiaries was not known. In addition, the fact that the fixed sum had to be split up among different partner organizations made the compensation program highly complex. Among other measures, one way to ensure that all eligible persons would receive compensation was that the payments were issued in two installments. This way, it was assumed, the exact number of beneficiaries would be known after the first installment and the remaining amounts could be calculated to meet the overall funding amount. This guaranteed that the funding allocated overall and for each partner organization was not exceeded but it meant that the final amount granted to an eligible applicant in a certain category was not fixed from the outset.

This chapter describes how the funds for this program were raised and distributed and how the administrative costs were managed. It explains how the compensation payments were issued in two installments as well as the many consequences of this decision. The chapter also discusses other aspects relevant to funding, such as dealing with different currencies and financial management.

A FIXED FUND VS. CONTINUOUS PAYMENTS

A reparations program can be financed by regular (e.g. yearly) contributions from a government or donors, or by establishing a one-time fixed fund. It is also possible to mix these options by agreeing to provide additional funds if necessary. In the forced labor compensation program, the decision on funding depended primarily on the interests of the stakeholders involved, particularly with a view to the overall amount that had to be raised in order to grant appropriate individual compensation amounts. Negotiators who represented the victims' side, such as victims' associations, argued that the sum had to be based on the number of potential beneficiaries and the severity of the suffering ("bottom up"). The German negotiating side — i.e. those who had to provide the funds — centered this decision on the question of how much money they would be able to raise in the first place ("top down").

In this case, it was decided early on that the compensations would be paid out of a fixed fund. The representatives of the German companies argued from the beginning that they would only be able to raise a fixed sum in a one-time effort. An ongoing responsibility by German companies

in supplying funds to the program would not have been realistic.¹ At the same time, the negotiators felt that a fixed fund was necessary to terminate the class action lawsuits in the US against German companies. Finally, a fixed fund was a means to negotiate for a *one-time solution*, which was in the interest of all negotiators.

The commitment to a fixed fund, which would have to be collected only once, thus became the main determinant of the design of the program. At first sight, it was a real disadvantage that there was no possibility to correct the overall compensation amount according to the needs during the program. Yet, there were also clear advantages of this solution. The program would be independent from political will: Starting from the moment that the required amount was collected, the donors would no longer be interested in holding back funds. From the beginning of the program, protracted re-negotiations were excluded and all stakeholders concentrated on the common goal: to pay out compensation to the beneficiaries as fast as possible. Last but not least, a fixed fund would generate interest, which, in this case, would amount to considerable sums.

FUNDRAISING MORE THAN 5 BILLION EUROS

It was agreed during the negotiations that the German State and German companies would each pay an equal share of the agreed sum of approximately 5.2 billion Euros. While the State was able to provide its share immediately from the federal government budget, raising the money from German companies proved to be much more difficult.

The “Foundation Initiative of German Industry” represented German companies during the negotiations and was now tasked to fundraise roughly 2.6 billion Euros from many different companies with rather heterogeneous interests. The initiative itself was established by a group of 17 founding companies, mainly large manufacturers, banks, and insurance companies, which pledged that they would guarantee for any open balance of the companies’ share.²

The Foundation Initiative organized a widespread fundraising campaign. The main message of the campaign was that all contributions were voluntary and that the Initiative would not make public which amount was contributed to the fund by a specific company. Rather, this concerted effort would serve the reputation of German companies generally, irrespective of the involvement of contributors to injustices during the National Socialist era. Indeed, after the final amount was known, a large number of companies contributed to the fund.

1 This option is more realistic for a fully state-funded program, as, for example, *the Federal Foundation for the Examination of the Communist Dictatorship in Eastern Germany*, which was set up by Germany in 1998 and is largely based upon an annual budget.

2 For more information on the Foundation Initiative of the German Industry and the companies it represented see: www.wollheim-memorial.de/en/die_stiftungsinitiative_der_deutschen_wirtschaft_1999 (accessed 12 April 2017).

However, it was soon clear that more mobilization was needed. The actual contributions remained very low and generating funding was also much slower than anticipated. To this end, a liaison office was established, with support by leading industry associations. Some 200.000 companies were asked to contribute in newspaper adverts, mailings, and individual correspondence. Additional pressure came from so-called “negative lists” in the media, which listed companies who had used forced laborers during the time of National Socialism but had not yet contributed to the compensation fund. Accompanying these lists were calls to the ethical conscience of the companies and even threats of boycott. Eventually, the founding companies issued a guarantee that they would provide any missing funds to the overall fund.

Still, the expectations of the founding companies were not fulfilled. The 17 founding companies contributed about 60 percent of the ca. 2.6 billion Euros, with the result that 94 percent of the overall amount was provided by four percent of the contributing companies.

ALLOCATING FUNDS TO PARTNER ORGANIZATIONS

Not only was the overall amount for the compensation program decided during the negotiations phase, but also the fixed allocation for each partner organization. All but one of what later became the partner organizations already had stakeholders in place for the negotiation process. Five countries with so-called reconciliation foundations, later responsible for administering compensation payments in Central and Eastern European countries, and the JCC, later responsible for Jewish claimants outside these countries, took part in the negotiations. Only the IOM was appointed to administer payments for non-Jewish claimants outside of Central and Eastern Europe after the overall sum was divided into sub-funds.

Different from the negotiations about the overall amount, conflicts during the division of that sum arose not between ‘donor’ and ‘receiving’ sides, but between the representatives of different countries and victims associations on behalf of potential beneficiaries. It can be assumed that the respective size of the seven fixed funds for the compensation of victims of forced labor also resulted from the negotiation skills and assertiveness of the various stakeholders.

Consequences of fixed funding for partner organizations

Similar to the case of the overall fixed amount, there were many implications from fixing the funds available for each partner organization so early in the process. On the positive side, each of the partner organizations could work according to their own capabilities and speed, as the funds available were secure and independent from those of other organizations. For example, some of the partner organizations could draw on existing knowledge about the potential beneficiaries. With a fixed sum they were able to quickly develop a decision practice according to their knowledge and available evidence without impacting the work of the other

partner organizations. The independent funds also allowed partner organizations to consider particular victim groups in the framework of the ‘opening clause’ (see Chapter 2).

A more negative consequence of fixed funds was that some of the estimates, on which the partner organization funds were based, turned out to be inaccurate. While certain replenishing mechanisms were devised in the case of underfunding of a particular partner organization for claims in categories A and B, payments under the opening clause depended entirely on funds available within the respective partner organization. This had the consequence that some groups of beneficiaries were not treated equally throughout the program, due to the different funding situation of the partner organizations.

Partner organization	Initial fund (in million Euros)	Final fund (in million Euros)	Number of recipients
Belarus	355	355	129,485
Czech Republic	216	217	75,769
IOM	276	431	88,784
JCC	1,059	1,197	158,097
Poland	926	1,011	483,287
Russia	427	444	252,543
Ukraine	881	883	471,167
All partner organizations	4,141	4,535	1,659,132

Table 2: Table showing the initial and final allocated funds for each partner organization, as well as the number of beneficiaries. Note: All Euro amounts are rounded. The detailed table can be found in the final report on the compensation program, submitted to the German Parliament (<http://dipbt.bundestag.de/doc/btd/16/099/1609963.pdf>; accessed 15 May 2017), pg. 5.

Replenishing fixed funds of partner organizations

Early in the process it became clear that the fixed funds for some of the partner organizations were not sufficient, as they received more applications from eligible persons than anticipated. The missing sums were to be provided by the EVZ Foundation from interest that accumulated over time from the unused part of the overall fund, as well as from donations given to the

EVZ Foundation after its establishment.³ Yet, the Foundation Law did not specify how these additional funds should be distributed. Options would have been to do this in proportion to each partner organization's agreed fixed fund or according to the respective interest accrued. Foreseeing the need of a regulation of this issue, however, a provision was included in the Foundation Law that the Board of Trustees was responsible for distributing any extra funds to partner organizations, and that these funds should as a priority be used to restock missing funds for compensation of category A and B claims. This allowed the interest accrued and further donations received by the Foundation to become a means to make up for insufficient funding of the partner organizations.

In practice, a formula was developed that linked the allocation of additional monies to a calculation of missing funds consistent for each partner organization. Once the exact number of claims in categories A and B for all partner organizations was known, it became clear that the funds of the JCC, the IOM, as well as the Russian partner organization needed restocking (see Table 2). However, in the end, the interest did not cover the restocking completely and the partner organizations dealt with this through differentiation in the amounts paid in the various sub-categories.

ADMINISTRATIVE COSTS

Every reparations program has to allow for a certain portion of the money to be used as administrative costs. The administrative costs of the EVZ Foundation itself were allotted from the overall compensation fund. The administrative costs of each partner organization, however, had to be covered from the fixed fund allocated to the respective organization. One consequence of this was that the partner organizations had a lot of pressure to keep administrative costs low.

Generally, the EVZ Foundation and all partner organizations had to adhere to three main principles: expenditures had to be judged by their necessity, efficiency, and that they were as economic as possible. Given that higher administrative costs had a direct impact on the amount available for the compensation payments to the beneficiaries, the Foundation Law and partnership agreements emphasized the responsibility to use the means that were set aside for administrative costs in the most economical way. As detailed in Chapter 8, auditors commissioned by the EVZ Foundation regularly reviewed the administrative expenditures of partner organizations.

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3 The EVZ Foundation centrally managed the large overall fund and only transferred the amounts necessary for the payment of so-called "tranches" (definite lists of beneficiaries) after the partner organizations had submitted them for the EVZ Foundation's approval. That way interest could accumulate and rather significant additional funds became available with time.

The partner organizations required different levels of administrative costs. This was due to several reasons. Some partner organizations had more knowledge about the total number of claims to be expected. Also, the review and evidentiary situation was more complex for some partner organizations than for others. For example, in the case of IOM, it was uncertain, for a considerable time, how many claims would be filed and how resource-intensive the processing and review of the claims would be. There were also large differences in staff and non-staff costs between the various countries where the partner organizations operated. This meant that some partner organizations had clear advantages due to external factors that made the implementation less costly.

Each partner organization's calculation of administrative costs was reviewed together with the EVZ Foundation and the final percentage was specified either in the formal partnership agreement or in other frameworks. In most cases these costs were lower than three percent of the partner organizations' fixed funds.

COMPENSATION PAYMENTS IN TWO INSTALLMENTS

Even though the overall fund had been divided among the partner organizations, the problem of calculating the specific compensation amounts remained a task yet to be determined. How could a fixed amount be divided into an unknown number of beneficiaries and into different categories of claims? One option would have been to wait for all claims to be processed and decided before starting to pay out any compensation. The other extreme would have been to simply start paying out compensation without knowing whether the funds would be sufficient to pay the same amount to all eligible beneficiaries in a category. During the negotiations, there was wide agreement that the compensation payments should start as quickly as possible so that as many beneficiaries as possible would benefit from the compensation program, as they were already very old. The solution adopted was to make the compensation payments in *two installments*, which was already foreseen in the Foundation Law.

The beneficiaries thus received a first installment as an advance payment. The Foundation Law contained the provision that the advance payment should be at least 50 per cent for category A and at least 35 per cent for the other categories. A partner organization also had the possibility to increase the amount of the first installment with the approval of the Board of Trustees, if they could demonstrate that the allocated funds would not be exceeded. With time, all of the partner organizations used this possibility to different extents.

The second installment would be paid out only after all claims were processed, giving partner organizations the possibility to calculate the entire amount needed. With the exception of category A, which was always the maximum compensation amount, the amount of the second installment then depended on the overall number of eligible claimants in each category as well as on the amount available for the respective partner organization.

However, the two installment system had many consequences that went beyond merely calculating and paying out the compensation amount in two installments. While the negotiators had agreed on this system as the most appropriate way to administer the compensation, it made the implementation extremely complex. In the following, some of these challenges are described in more detail.

Cut-off dates

The two installment system required the setting of a cut-off date for the filing of claims, as this was the only possibility to know in due time the exact number of eligible claimants (as the program was not open-ended). Therefore, it was agreed that only the claims that were received within a certain time frame were eligible to benefit from the program. Initially, the cut-off date was set for April 2001, which was eight months after the enactment of the Foundation Law. Soon it became clear that this date was too early and it was extended to 31 December 2001.⁴

In addition to the cut-off date for filing claims, more cut-off dates were needed to implement the two installment system. As described in Chapter 2, the Foundation Law had clear provisions for the situation when claimants passed away after 15 February 1999 and legal successors became eligible for the payments. In practice however, to secure eligibility claimants only had to file a claim before the cut-off date. In case of death of the claimant, legal successors could have waited years to claim the compensation payments. To account for the exact number of beneficiaries within a reasonable time, a cut-off date was thus also established for legal successors to make themselves known, namely within six months of the death of the initial claimant. This led to many misunderstandings since some legal successors were not even aware that their family members had filed a claim for compensation under the program.

Procedural challenges

While the cut-off dates were the legal requirements for the implementation of the two installment system, a number of questions arose as to how to carry out the transition to the second installment at the practical level. The Foundation Law regulated only a few parameters: the second installment could begin immediately after all claims had been processed; to pay out the second installment earlier, the partner organizations were also allowed to reserve up to 5 percent of their funds for open appeals. Thus, the basic assumption of the Law was that, after the first installment all claims would have been decided upon (e.g. in which category a claimant would fall), and that the remaining amounts needed could therefore be precisely calculated.

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4 In fact, the payout of the first installment tranches in June 2001 proved to be a major factor for the outreach of the program, as described in Chapter 5.

In reality, however, the transition to the second installment became very complicated because there were unanticipated developments. For example, in some cases potential beneficiaries did not respond to inquiries after sending their initial application. The Foundation Law did simply not anticipate this, but since the claimants fulfilled the basic eligibility criteria, their cases remained open. Contacting each of these claimants absorbed a lot of time and resources of the partner organizations. Eventually, an overall completion date had to be imposed for finalizing all payments (31 December 2006).

Also, more procedures had to be completed before calculating and paying out the second installment. First, it was necessary to wait for the outcome of many appeals. As described in Chapter 6, the claims process entailed the possibility to file an appeal in cases where the claim was rejected or where claimants were not satisfied with the amount of the compensation. This meant that the final compensation amount in these cases could still go up as a result of the appeal decision. The Foundation Law foresaw that partner organizations could establish a reserve of up to five percent for open appeals, but it did not prescribe specifically for which cases this reserve was to be set up, and neither how much this should entail per open appeal. In the end, the partner organizations came up with a very complex calculation that took into account the success rate and average additional amount granted in appeals that were already dealt with.

Second, the emergence of new historically relevant information slowed down the claims processing, as some of this information had an effect in which category a certain claim would fall. This was particularly the case with so-called ‘other places of confinement,’ which were internment camps comparable to concentration camps in which the detainees were forced to work. Over the course of the program, about 3,900 additional places of confinement were discovered and the verification of this information turned out to be more complex than anticipated.

Third, partner organizations had some challenges with identifying legal successors, which also impacted the transition to the second installment. In some cases, legal successors had to be found, which delayed the payments. For many reasons, this was not easy: partner organizations could not know if the claimant was still alive and simply sent out the notification for the second installment. If this notification was then received by legal successors who did not contact the partner organization within six months of the death of the initial claimant, they were no longer eligible to receive the payment, which understandably led to much frustration. Such cases were also complicated for partner organizations that had set a lower compensation amount for legal successors (by classifying them as a sub-category), as the amount had to be recalculated.

Leftover funds

Even with the rather complex calculations and the two installment system, the forced labor compensation program still produced *leftover funds*. Here, the goal was to keep these leftover funds as small as possible, and to find ways to still make them available to the beneficiaries. Already in the Foundation Law it was stated that the Board of Trustees should decide how these leftover funds should be spent, which set up a number of humanitarian programs (see Chapter 11).

To conclude, the system of two installments was meant as a solution to the initial problem of the fixed amount of money available for an unknown amount of beneficiaries. The two installments allowed the partner organizations and the EVZ Foundation to calculate as precisely as possible the exact amount needed for compensations without overstressing the overall fund. Also, the approach allowed payments to start rather quickly and at a point in time where the exact number of beneficiaries was not yet known. Therefore, all claims by eligible persons received compensations. Yet, in hindsight, this solution was extremely complex and laborious, and many practical consequences only emerged during the implementation of the program.

Finally, the two installments also impacted on the acceptance of the compensation program. Both the EVZ Foundation and its partner organizations received negative feedback from beneficiaries particularly about the two installment system, which was one of the main causes for misunderstanding and frustration. While the system was practically unavoidable from the program's point of view, from the perspective of the beneficiaries it was difficult to understand why the compensation could not be paid out at once, especially given the old age of the claimants. In addition, the partner organizations and the EVZ Foundation received feedback criticizing the long wait between the two installments.

FINANCIAL MANAGEMENT

Different currencies

Depending on the context, reparations programs may also have to deal with different currencies. This was the case for the forced labor compensation program, which was administered in Germany, but payments were to be made in many countries through partner organizations, of which some operated on a national and some on an international level. At the outset of such a program, two considerations are therefore particularly important in this respect: (1) will the issue of different currencies arise (i.e. when funds are in one currency and payments are in another); and if so, (2) who will bear the risk of currency fluctuation? In the case of the

German program, these issues were relevant for the partner organizations that received funds from the EVZ Foundation in one currency and paid out compensations in another currency, as well as for the calculation of the actual compensation amounts to be paid out in different currencies to beneficiaries. Therefore, it had to be decided that either the EVZ Foundation or the partner organizations themselves would have to carry out a currency conversion. Where necessary, these provisions were included in the partnership agreements.

Still, the issue of currency conversion led to a major misunderstanding during the compensation program, which demonstrated that the organizations involved did not take into account all practical aspects of currency conversion, as well as the issue of clear communication. In June 2001, the EVZ Foundation converted the entire fixed fund for the Polish partner organization from Deutsche Mark into Polish Złoty with the intention to avoid negative effects of rising exchange rates for a stronger Złoty. In reality, however, the exchange rates for the Złoty went down significantly in the following months and it would have been possible to generate higher sums if the conversion had taken place later on and/or separately for each tranche. The overall loss was estimated at about ten percent — which meant that less money would have been available for the Polish partner organization.

This incident led not only to accusations between the Polish partner organization FPNP and the EVZ Foundation. Given the historical context of this compensation program, this was by no means a mere technical mishap, but became a palpable tension at the political level as well. The case was for some time the subject of external review. The intensive consultations that followed this incident took longer than six months, during which both sides tried to mend the damage. Eventually, the issue was closed with an agreement on 7 January 2002, which detailed that additional amounts would be made available for the Polish partner organization. These would be taken from interest rates accrued from both organizations, which prevented any losses for the beneficiaries. The incident highlights not only the necessity of clear regulations of financial aspects but also the importance of good communication and well-coordinated processes.

Managing investments

Particularly in the case of such a large compensation program, funds not yet needed for compensation should be used for investments — during various stages of the program — so that they generate as much interest as possible. At the beginning of a program it should therefore be estimated how much interest will likely accrue, what it should be used for, and where relevant, how it should be distributed. These questions were very relevant in the case of the forced labor program as the overall sum was made available right at the start of the program and thus could generate a rather significant amount of interest that was then available to the program in addition to the original sum.

In addition, the question here was *where* interest should accrue — under the auspices of the EVZ Foundation or with each partner organization? It was decided that the EVZ Foundation would manage the fund centrally, as this would eventually benefit all partner organizations and the risks would be lower. To maximize the interest on the original fund, as well as to minimize risks due to the volatility of Eastern European banks, it was decided that partner organizations would receive the overall amount allocated to them in several stages, as so-called ‘tranches.’ After the EVZ Foundation approved a list with beneficiaries that a partner organization submitted for payment, it calculated the necessary amount and transferred the required funds to the partner organization. The partner organizations were then to transfer the payments to the beneficiaries as fast as possible so that no interest would accrue in the banks effecting the payments. The EVZ Foundation, as described in Chapter 8, controlled this process.

To adequately manage the fund, the EVZ Foundation had its own financial management department. The main priorities of the financial strategy were security and liquidity. To avoid currency risks, the fund was managed first in Deutsche Mark and later Euros. The portfolio consisted of different products, such as call money, time deposits, and also short-term bonded loans. Banks that satisfied the criteria of deposit guarantee were regularly asked for relevant offers. Due to the large overall amount and the good situation in the markets in the early twenty-first century, the EVZ Foundation was able to generate interest in the amount of approximately 337 million Euros.⁵ From this sum (together with additional donations), about 318 million Euros could be used for compensation payments. The rest was then used for humanitarian projects.⁶ At no point during the program did financial management decisions delay the payment of compensation.

SUMMARY

The design and implementation of the forced labor compensation program cannot be separated from the ways it was financed. In fact, the financial model influenced the design of the program significantly. The system of two installments seemed to offer a simple way to distribute a given amount of money to an unknown number of beneficiaries. However, the many difficulties that this procedure entailed only emerged during the implementation of the program. One of the particular difficulties turned out to be establishing whether the requirements were met for paying out the second installment. This chapter further highlighted a range of aspects related to financing that need close consideration when setting up similar programs, such as administrative costs, currency issues, and financial management.

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5 See Michael Jansen, Günter Saathoff and Kai Hennig, “Final Report on the Compensation Programs Carried Out by the ‘Remembrance, Responsibility and Future Foundation,’” in *A Mutual Responsibility and a Moral Obligation: The Final Report on Germany’s Compensation Programs for Forced Labor and Other Personal Injuries*, eds. Michael Jansen and Günter Saathoff (New York: Palgrave Macmillan, 2009), 141.

6 See Chapter 11.

CHALLENGES AND LESSONS LEARNED

- The advantage of having a fixed fund is that it is predictable, no further fundraising is necessary, and once the funds have been made available, the program would be independent from political will.
- Separate fixed funds for different partner organizations can allow them to operate independently from another. However, without a mechanism to even out imbalances of the funding between different partner organizations, one risks inequalities in the evaluation of claims and subsequent compensation payments.
- The two installment system is a possibility to begin with the compensation payments before knowing the exact number of beneficiaries.
- Paying out compensation in two installments has several advantages: the first installment can be paid out rather quickly, while still calculating the overall amount. This procedure prevents large leftover sums and maximizes the amount used for individual compensation.
- A disadvantage of the two installment system is that it can make procedures very complicated and cause more work. Also, when the time span between the first and second installment becomes too long, contact to claimants can be lost. Because of the old age of the claimants in this program, there was also the danger of claimants passing away in the meantime.
- Another serious disadvantage of such a system is that eligible applicants may have difficulties in accepting payments in two installments and may be disappointed in case the second installment turns out to be smaller than expected.
- Fixed cut-off dates for claims and deadlines for paying out compensations facilitate the overall claims process, but can have an impact on the acceptance of the process if not communicated well.
- Financial management should focus on liquidity and security as well as produce new funds where possible.
- Operating in different currencies can have advantages and disadvantages. This should be considered early on.