



**THE GLOBAL  
PHILANTHROPY  
ENVIRONMENT  
INDEX**  
2018

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EUROPEAN EDITION



**IUPUI**

INDIANA UNIVERSITY  
Lilly Family School of Philanthropy



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# Foreword

Philanthropy plays a crucial role in addressing local and global challenges, both independently and working collaboratively with governments and corporations. Philanthropy supports innovative ideas, builds communities, and improves the lives of millions across the globe.

Philanthropy has been present in the European continent since the ancient Greeks and has evolved across diverse cultures and over time. However, very little is known about the enabling factors that can help ensure the development of philanthropy. Thus, understanding the size and scope of the philanthropic sector in Europe and how nations' environments and policies enable or constrain philanthropy is essential to maximizing its impact.

This special edition of the *2018 Global Philanthropy Environment Index* provides information about 30 European countries using a standard instrument completed by country-based experts. The report provides contextual explanations for cross-national differences in the European philanthropic environment, including legal and institutional factors, tax regulations as well as political and socio-cultural influences that shape philanthropy.

This edition aims to present the diversity and uniqueness of European philanthropy. For example, France has one of the most generous tax incentives for charitable donations, as the value of income tax deduction is 66 percent of the value of the gift (and as high as 75% for specific types of donations) within a limit of 20 percent of the taxable income. Meanwhile, the Italian government introduced the Third Sector Code in July 2017, recognizing the social value of philanthropic organizations and making registered associations and foundations eligible for tax-exempt status. And impact investing was confirmed as the fastest growing investment strategy in Europe, providing an innovative tool for philanthropy. The European Union promotes a principle of non-discrimination on the tax treatment of philanthropy to facilitate cross-border giving.

However, in some European countries more restrictive regulations and practices make philanthropy harder. For example, Hungary adopted the Law on the Transparency of Foreign Funded Organizations that puts a label and onerous burdens on philanthropic organizations that receive US \$28,300 or more within a given tax year from foreign sources. And in Turkey, after the 2016 military coup, more than 1400 philanthropic organizations were shut down and their assets were transferred to public institutions without any right to object. These examples clearly show the opportunities and challenges for growth and innovation in European philanthropy.

The Indiana University Lilly Family School of Philanthropy is pleased to launch this special edition, given the school's long-standing commitment to increasing the understanding of philanthropy and improving its practice worldwide through critical inquiry, interdisciplinary research, teaching, training, and civic engagement.

The Donors and Foundations Networks in Europe, DAFNE, is proud to support the distribution of the European edition of the *2018 Global Philanthropy Environment Index* in accordance with DAFNE's mission of providing a platform to share knowledge and strengthening the voice of the European philanthropic sector.



# Executive Summary

The special edition of the 2018 Global Philanthropy Environment Index provides information about the philanthropic landscape of 30 European countries, measuring regulatory, political, and socio-cultural environments through a standard instrument completed by country-based experts. The data offers accurate and timely information to help policy makers, philanthropic and nonprofit leaders, the business community and the public better understand the diversity and uniqueness of European philanthropy, by examining the incentives and barriers facing individuals and organizations involved in philanthropy.

## Key Findings

### Ease of Operating a Philanthropic Organization

In Europe, both informal and institutionalized philanthropy is advancing, representing an increasingly diverse community across the continent. In most countries, unregistered philanthropic organizations are allowed to operate. However, to enjoy tax benefits and be able to cooperate with governments, philanthropic organizations are required to be legally recognized and obtain public-benefit/charitable status granted by the authority. In general, reporting requirements—which are clear, but different from country to country—have become more rigorous, and it has become more burdensome for philanthropic organizations to meet the standards of anti-money laundering and counter-terrorist financing guidelines, as well as the requirements established by the new European Union General Data Protection Regulation.

### Tax Incentives

There are a wide range of tax incentives for donors who aim to give to registered public-benefit organizations or charities. However, the requirements for philanthropic organizations to receive the public-benefit or charitable status vary from country to country. Almost all of the European countries offer tax incentives to corporations, making corporate giving a significant part of private philanthropy in the continent. Individuals in several countries including Albania, Bosnia and Herzegovina, Finland, Hungary, Ireland, Serbia, and Sweden, however, are not qualified for tax deduction or credit for their charitable contributions. Tax-exempt philanthropic organizations are eligible for tax exemptions from a broad range of taxes in almost all countries except Turkey.

### Cross-Border Flows

Most European countries do not have limitations for sending and receiving cross-border donations. Indeed, the European Union's non-discrimination principle related to tax treatment of philanthropy has established that cross-border donations could be eligible for the same tax incentives if comparability can be shown between the domestic and foreign (European Union- and European Economic Area-based) philanthropic organizations. However, because of differing tax system between countries, the comparability procedure is difficult and often burdensome. In addition to the strict regulations to avoid international money laundering and terrorist financing, Hungary and Russia have also introduced special regulations and reporting requirements for foreign-funded philanthropic



organizations, categorizing them as “organizations supported from abroad” and “foreign agents” respectively.

## Political Environment

The political environment for philanthropy widely differs across Europe. While government policies actively support philanthropy in Western Europe, political tension between governments and human rights organizations have grown in Eastern Europe. Nevertheless, collaboration between the public and philanthropic sectors is outstanding in Europe. Indeed, within the European Union, philanthropic organizations are encouraged to cooperate with governmental agencies and participate in every stage of policy-making processes. And, while the level of available government funding has decreased across the continent as a consequence of the 2008 economic crisis, public spending is still a significant source for philanthropic organizations.

## Socio-Cultural Environment

Institutionalized giving and volunteering are highly developed in Western Europe and also rapidly emerging in Eastern Europe. The values of charity, solidarity and compassion—important parts of the pluralistic religious environment—are embedded in long-lasting philanthropic traditions across Europe. Religion has emphasized the importance of offering help to those in need and informal philanthropy has been part of everyday life for centuries in Europe. Because of different historical and political paths, the philanthropic infrastructure varies in Europe, and we observe significant differences between Western and Eastern Europe. Philanthropic organizations enjoy higher levels of public trust and are more professionalized in Western European countries than in Eastern European countries.

## Current trends and recommendations

It seems necessary to enhance the philanthropic sector’s **transparency and accountability** to increase public trust in and public awareness and recognition of philanthropy, and consequently to improve financial sustainability of the sector. As government funding is decreasing across Europe, philanthropic organizations need to **diversify their income sources** and develop sustainable fundraising techniques as well as cross-sector collaborations. Both the number of donors and the amount of charitable donations seem to be continuing to increase in Europe partly because of **innovative new vehicles** including corporate volunteering, impact investment, social entrepreneurships, crowdfunding, online giving, and peer-to-peer fundraising. The proposed European Union Multiannual Financial Framework 2019–2021 also reflects the rapid development and increasing significance of philanthropy. The European Commission has started dialogues with foundations, social enterprises and venture philanthropy organizations, and has discussed including items such as volunteer programs, humanitarian aid, and international collaboration with philanthropic organizations in the proposed document.

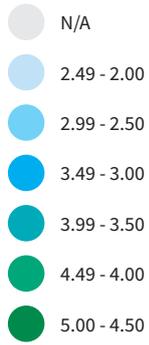


**Country experts across the continent are in agreement in suggesting that:**

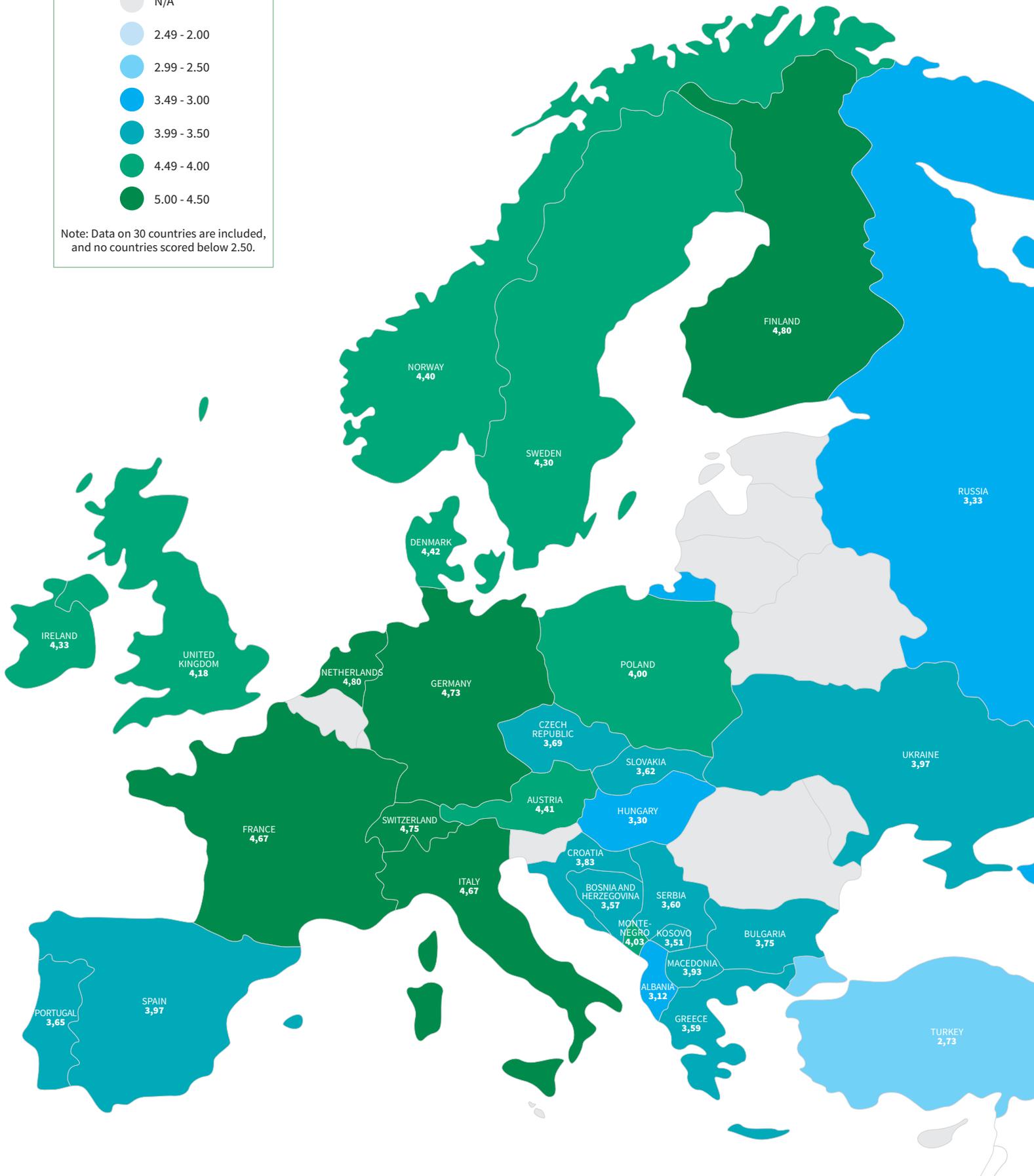
- Governments could simplify regulations on to promote individual and corporate giving;
- Policy-makers at both the national and EU-level could develop better regulations that would facilitate cross-border giving across Europe;
- Philanthropic organizations could strengthen inter- and cross-sectoral collaborations;
- Philanthropic organizations could diversify their sources of income and make them sustainable in light of intensifying competition for financial resources and the decreasing level of available government funding;
- Both donors and philanthropic organizations could take advantage of new, innovative philanthropic instruments including venture philanthropy, impact investment, and donor-advised funds; and
- It would be beneficial to practitioners, policy-makers, and scholars to develop rigorous, valid, and up-to-date sources of data to demonstrate, endorse, and improve the social significance of philanthropy.

### LEGEND

The enabling philanthropic environment measured on a scale from 1.00 to 5.00.



Note: Data on 30 countries are included, and no countries scored below 2.50.



## GLOBAL PHILANTHROPY ENVIRONMENT INDEX SCORES IN EUROPE

COUNTRY	EASE OF OPERATING	TAX INCENTIVES	CROSS-BORDER FLOWS	POLITICAL ENVIRONMENT	SOCIO-CULTURAL ENVIRONMENT	OVERALL SCORE
Albania	4,23	2,40	2,00	3,45	3,50	3,12
Austria	4,57	4,00	4,20	4,60	4,70	4,41
Bosnia and Herzegovina	4,33	3,50	4,00	3,00	3,00	3,57
Bulgaria	4,00	3,75	4,25	3,75	3,00	3,75
Croatia	4,77	3,35	3,75	3,50	3,80	3,83
Czech Republic	4,33	3,50	3,60	4,00	3,00	3,69
Denmark	4,83	4,00	4,00	4,75	4,50	4,42
Finland	5,00	4,00	5,00	5,00	5,00	4,80
France	4,33	5,00	4,00	5,00	5,00	4,67
Germany	4,67	5,00	4,00	5,00	5,00	4,73
Greece	4,63	4,00	3,60	3,30	2,40	3,59
Hungary	4,00	3,50	3,50	2,50	3,00	3,30
Ireland	4,67	4,25	4,25	4,00	4,50	4,33
Italy	4,83	4,50	4,50	5,00	4,50	4,67
Kosovo	4,07	3,00	3,25	3,75	3,50	3,51
Macedonia	4,67	3,50	4,50	3,00	4,00	3,93
Montenegro	4,80	3,50	4,70	3,55	3,60	4,03
Netherlands	5,00	4,50	5,00	4,50	5,00	4,80
Norway	5,00	4,00	4,50	4,50	4,00	4,40
Poland	5,00	3,50	5,00	2,50	4,00	4,00
Portugal	3,67	4,00	4,00	3,60	3,00	3,65
Russia	3,33	3,50	3,50	2,80	3,50	3,33
Serbia	4,67	3,50	3,50	3,35	3,00	3,60
Slovakia	4,27	3,70	4,05	3,10	3,00	3,62
Spain	4,33	4,00	4,50	3,50	3,50	3,97
Sweden	5,00	3,00	5,00	4,50	4,00	4,30
Switzerland	5,00	4,75	4,50	4,50	5,00	4,75
Turkey	2,17	2,00	3,50	2,00	4,00	2,73
Ukraine	4,57	3,85	3,90	3,85	3,70	3,97
United Kingdom	4,67	4,00	4,00	3,75	4,50	4,18
<b>EUROPE AVERAGE</b>	<b>4,45</b>	<b>3,77</b>	<b>4,07</b>	<b>3,79</b>	<b>3,87</b>	<b>3,99</b>

Detailed explanation of the categories can be found on the website: [bit.ly/GPEIEurope](https://bit.ly/GPEIEurope)

Source: Indiana University Lilly Family School of Philanthropy | Global Philanthropy Environment Index 2018

Note: Scores based on data from January 2014 through March 2018.

# REGIONAL AVERAGE SCORES BY FACTORS

## EASE OF OPERATING



## TAX INCENTIVES



## CROSS-BORDER FLOWS



## POLITICAL ENVIRONMENT



## SOCIO-CULTURAL ENVIRONMENT



## OVERALL SCORE



**EASTERN AND SOUTHERN EUROPE:** Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Greece, Hungary, Italy, Kosovo, Macedonia, Montenegro, Poland, Portugal, Russia, Serbia, Slovakia, Spain, Turkey, Ukraine

**NORTHERN AND WESTERN EUROPE:** Austria, Denmark, Finland, France, Germany, Ireland, Netherlands, Norway, Sweden, Switzerland, United Kingdom

## EUROPE AT A GLANCE

**The European special edition of the 2018 Global Philanthropy Environment Index provides information about the philanthropic landscape of 30 European countries, measuring regulatory, political, and socio-cultural environments through a standard instrument completed by country-based experts. The data offers accurate and timely information to policy makers, philanthropic and nonprofit leaders, the business community, and the public to increase understanding of the diversity and uniqueness of European philanthropy, by examining the incentives and barriers facing individuals and organizations involved in philanthropy.**

### **Ease of Operating a Philanthropic Organization**

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# What Does the Index Measure?

The *Global Philanthropy Environment Index* assesses the incentives and barriers that individuals and organizations encounter when donating to social causes and institutions around the world. The factors considered in the index can either remove the constraints that impede improvement or fulfillment of the potential of individuals and organizations to freely engage in philanthropic activities or increase the levels of independence to engage in philanthropy. In both cases, external conditions can serve to strengthen or weaken philanthropic activities. The complex and interrelated dynamics between diverse historical and cultural backgrounds and political conditions require careful attention. Therefore, although the index provides scores that help clarify how countries compare to others globally, a full comprehension of the country scores can be attained only through review of the country reports, which contain detailed contextual information submitted by country-level experts.

The index is conceptually built on a universal concept of philanthropy as “voluntary action for the public good” (Payton & Moody, 2008). The main purposes of philanthropy are “...to relieve suffering or meet other pressing needs, to improve the quality of life or civic capacity in our communities, to advocate for or express ideas or values or identities, to experiment with new ideas for social change as well as to preserve traditions in the face of impending change” (Payton & Moody, 2008, p. 36). The term embodies positive values that manifest in unique ways in different cultures in response to diverse motivations.

The index reports on factors influencing the environment for the operation of philanthropic organizations, which are defined here as forms of non-market, non-state organizations outside of the family that provide services for the public good. The term includes foundations (grant making, operating, corporate, community, or government sponsored/created), community-based organizations, village associations, professional associations, environmental groups, advocacy groups, cooperatives, charitable organizations, faith-based organizations, mutual entities, labor unions, societies, research institutes, diasporic organizations, online social-purpose portals, and transnational and cross-sectoral coalitions.

## What Is an Enabling Philanthropic Environment?

An enabling or favorable philanthropic environment provides adequate incentives and restrictions to positively influence the capacity and propensity of individuals and organizations to freely engage in philanthropic activities in a sustained and effective manner. This enabling environment is the product of a set of interrelated conditions that are the result of the deliberate policy choices made by government actors and the historical, cultural, and socio-political traditions, resources, and legacies of a country.

## What Factors Affect the Health of the Environment for Philanthropy?

The health of the philanthropy environment depends on certain external factors, or enabling conditions, such as, “the legal and regulatory framework, the political and governance context; socio-cultural characteristics, and economic conditions” (Thindwa et al., 2003, p. 3). These enabling conditions influence specific freedoms that are essential to the effectiveness of the role of civil society in the development of philanthropy: freedom of association and peaceful assembly; freedom of



expression and belief; freedom of information; freedom to mobilize financial resources to fulfill the objectives of the organization; and pluralism or provision to individuals and groups outside government to exercise voluntary initiative for social change (Payton, 1987), which includes political independence, and the existence of spaces for negotiation and rules of engagement for public debate (Anheier, 2005).

A recent study by Wiepking and Handy (2015) identified eight facilitating and inhibiting forces of free and voluntary giving, of which two are socio-political factors and three are socio-cultural in nature. These socio-political and socio-cultural factors include a) a culture of philanthropy, b) public trust, c) the state of the philanthropic sector, d) political and economic stability or growth, and e) demographic changes. Lack of understanding of the transformative role of philanthropy and the lack of public understanding and support of institutional forms of philanthropy both undermine the development of a strong formal philanthropic sector and its potential to build national and international collaborations to drive social change.

As the present study found, financial and political interdependence between government and nonprofits is key in explaining the development of philanthropic activities within countries. Government actions can hinder the growth of the philanthropic sector or provide the enabling conditions for philanthropy to flourish. This report shows that rules—both formal and informal—define the terms and conditions under which policies are made and implemented.

## What Indicators Are Used?

The 2018 *Global Philanthropy Environment Index* uses regulatory and fiscal indicators, as well as socio-cultural and political indicators, to provide a comprehensive understanding of the existence of the conditions required to build and maintain the capacity and propensity of individuals and organizations to engage in philanthropic activities.

The ten indicators have been grouped in five distinct sets of factors according to their nature. Each indicator matches one specific question in the questionnaire sent to country-level experts to collect information.

- A. Regulations for Philanthropic Organization formation, operation and dissolution**
  - 1. Ease of incorporating a philanthropic organization
  - 2. Ease of operating a philanthropic organization
  - 3. Government discretion to shut down a philanthropic organization
  
- B. Laws and regulations governing fiscal incentives and disincentives of giving and receiving donations domestically**
  - 4. Fiscal incentives for individuals making charitable donations domestically
  - 5. Fiscal incentives for organizations receiving domestic donations
  
- C. Laws and regulations governing fiscal incentives and disincentives of giving and receiving donations across borders**
  - 6. Extent to which the legal regulatory environment is favorable to sending cross-border donations



7. Extent to which the legal regulatory environment is favorable to receiving cross-border donations

**D. Political and governance environment**

8. Relations between government and philanthropic organizations
9. Government support of philanthropic giving

**E. Socio-Cultural environment**

10. Socio-cultural values, beliefs, and practices related to philanthropic organizations and philanthropic causes



# Country Reports



# Albania

**Expert:** Juliana Hoxha

**Institutional Affiliation:** Partners Albania for Change and Development

With contributions from staff at the Indiana University Lilly Family School of Philanthropy

## QUICK FACTS

**Legal forms of philanthropic organizations included in the law:** Association, Foundation, Cooperative, Other: Center

**Five main social issues addressed by these organizations:** Health and Medical research, Youth and Family, Environment, Human rights, other: Democracy and Rule of Law

**Average time established by law to register a philanthropic organization:** 31-60 days

The registration procedure for POs may vary from 25 days up to two months, longer than the time period of 15 days established by the law.

**Average cost for registering a philanthropic organization:** US \$235

The POs (Partners Albania, 2016) consider the registration cost high.

**Government levels primarily regulating the incorporation of philanthropic organizations:** Court of First Instance in the capital

### Philanthropic Environment Scores:

Year	Ease of Operating	Tax Incentives	Cross-Border Flows	Political Environment	Socio-Cultural Environment	OVERALL SCORE
2018	4.2	2.4	2.0	3.5	3.5	3.12

## **I. Formation/Registration, Operations, Dissolution of a Philanthropic Organization (PO)**

*The three questions in this section pertain to the laws and regulations governing philanthropic organizations (POs). The scoring questions for this category cover three aspects of regulations: (A) formation and registration, (B) operations, and (C) dissolution.*

### **Question 1: To what extent can individuals form and incorporate the organizations defined?**

**Score: 4.0**

The freedom of individuals to established and/or participate in a philanthropic organization is a constitutional right. It is regulated further in primary and secondary legislations in Albania. The registration of POs is not mandatory and individuals can operate freely without legal restriction. In cases of registration, the application shall contain explanations regarding the form and purpose, the object of its activity, the identification of founders and legal representatives, the structure of the organization, and the location of its headquarters.

The law on nonprofit organizations recognizes three forms of organizations: center, foundation, and association. The documentation package includes the request for registration, the charter, and the establishment act approved by the founders and certified by a notary. The founders authorize one or more persons to perform the registration and follow the registration process. In the case of foundations, initial capital equivalent to €715 (US \$804.7) is required, even though the law does not stipulate the required amount of capital (European Foundation Center, 2014). The registration of POs is filed at Tirana First Court of Instance, an independent and apolitical body. The Court shall maintain and publish the POs' Registry. It shall be open to the public, but currently there is no available official data on the total number of registered POs. The approval of registration is made by a judge in the commercial section within 15 days from the date the request is submitted to the court. If the judge finds the application file to be incomplete, he/she may decide to postpone the decision until his/her requests are met. In the case of rejection, a PO may appeal the decision at the Court of Appeals.

### **Question 2: To what extent are POs free to operate without excessive government interference?**

**Score: 3.7**

The legal framework guarantees POs the right to regulate their internal structure and management procedures without the interference of the State. POs can freely elect their representatives without any legal restriction, and can engage in any kind of lawful activity. When POs require a license to operate, they must submit a request to the competent office, which is based on straightforward criteria established by law. POs can freely establish and/or join online and offline networks, inside and outside the country, without prior notification to state authorities, and can freely use the Internet, social media, and web-based platforms without any interference from the State. The accounting and financial rules and regulations for POs are provided by the Accounting Law, Law on Public Financial Inspection, the Directive on Supervision from Tax Authorities in Support of Prevention of Money Laundry and Financing of Terrorism, and the Directive of the National Accounting Standard (NAS) for Non-Profits. NAS has introduced clear and easy procedures for financial reporting and accounting

procedures that are proportional to the size of the PO. POs with annual revenues less than 5 million Lek (approximately US \$40,000) are required to apply cash-based accounting and to submit only a statement of cash flow with explanatory notes on the type of activity or service provided. POs are also provided with standard reporting formats, which are generally considered easy to understand and clear.

**Question 3: To what extent is there government discretion in shutting down POs?**

**Score: 5.0**

The dissolution of a non-profit organization (i.e. foundation, center, association) is regulated by law No. 8788, dated May 7, 2001, which concerns non-profit organization. Dissolution can happen by decision of the organization (self-dissolution) or by a court decision based on the request of its members or its decision-making structures, or by decision of the competent state agency. The court may decide to dissolve an organization when: (i) its activities are against the Albanian constitution; (ii) it performs illegal activity; (iii) is bankrupt; and (iv) the organization was not established in compliance with the law. When the activities of the organization constitute a serious threat to the public, the court shall inform the organization in writing about the violation of the law, and give the organization 30 days to comply.

When the dissolution is decided by the non-profit organization, one or more liquidators--designated according to the charter--enact the liquidation. When the court decides on the dissolution, it also designates a liquidator, vesting in him/her the competencies necessary for the completion of the liquidation procedure. The liquidators have authority and responsibility over the assets, the property, and the representation of the non-profit organization from the date of their appointment until the conclusion of the liquidation. The activity of the liquidator is clearly described in the law. The distribution of assets in favor of the members or other persons who are subjects of the charter or the establishment act of the organization and their relatives is prohibited. Currently, there is no report of involuntary dissolution by the court or other concerns related to self-dissolution.

**II. Domestic Tax and Fiscal Issues**

*The two questions in this section pertain to laws and regulations governing the fiscal constraints of giving and receiving donations domestically.*

**Question 4: To what extent is the tax system favorable to making charitable donations?**

**Score: 2.0**

Donations in the form of sponsorship are the only type of giving recognized and regulated by the Law on Sponsorship. The tax system permits donations between 3 percent and 5 percent of profit before tax (depending on the type of activities sponsored) by entities that have the qualification of merchant, being physical, juridical persons, local, foreign, or joint ventures. However, the list of deductible activities includes only those that are humanitarian, cultural, or artistic in nature, as well as organizations focusing on sports, education, environment, works of literature, and science and research activities, excluding democracy and human rights. In-kind donations and gifts given by corporations are not tax-deductible.

Donations should be supported by sponsorship contracts and proofs of execution. Due to a lack of clarity among tax inspectors on the means of verification, donations are often considered an attempt at tax evasion. In these circumstances, there are companies that do not apply tax deductions. Because donations are only recorded in a company's books, and are not reported separately, tax authorities have no record of such activity. Individual giving does not qualify for tax deduction. The law requires that individuals with incomes above 2,000,000All (US \$15,750), about 6 percent of working labor, submit annual personal incomes, which impedes application of any tax incentive.

**Question 5: To what extent is the tax system favorable to POs in receiving charitable donations?**

**Score: 2.8**

POs have no restrictions on raising funds from private sources, whether local or international. Their grants, donations, bank deposits, and membership fees are exempt from income taxes. There is no legal restriction on private donations in regard to volume, nature, or origin. All activities that fall under "activities for the good and in the interest of public" are exempt from Value Added Tax. The law defines such activities in a broad way, and is an improvement to the now abolished "Public Benefit Status," which included only three areas (education, health care, and economic development).

In order for a PO to receive VAT exemption, it should fulfil three criteria: (i) the decision-making body must have no direct interest in the PO's activity; (ii) the non-economic activity must be significantly larger than the rest of the activities of the organization; and (iii) the service and goods delivered should not compete with the profitable commercial sector. The annual turnover from profit activity must not exceed 20 percent of the total annual revenues. POs meeting these criteria should file an application to the Regional Tax Directory. The application consists of a long list of documents, which are not standard (Court Decision; Statute of the organization and establishment act; a statement listing all the products and services provided to members and/or to third parties along with prices; statement of PO's mission, goals, and main programs; statement of persons or groups in need that the PO serves; sources of income, including percentage of income deriving or expected from economic activity). A statement on source of income is required for all newly registered POs. There are only a few POs that have applied for and been granted VAT exemption. This low number is mainly a result of the cumbersome procedures, previous negative experiences, and lack of trust in transparent decision-making within the institutions in charge of granting VAT exemption.

### **III. Cross-Border Philanthropic Flows**

*The two questions in this section concern laws and regulations governing the fiscal constraints of giving and receiving cross-border donations. The scoring for these questions pertains to the donor and receiving entities.*

**Question 6: To what extent is the legal regulatory environment favorable to sending cross-border donations?**

**Score: 2.0**

There are no restrictions in moving capital or cash across borders, except those related to money laundry, which require contract of funding and/or proof of payment. As corporate tax deduction and any other exemptions given to POs are applied only for in-country donations, cross-border donations do not qualify. In-kind donations are treated like any other exported good. So, VAT and custom duties are applied just like to any other export. Exemption from custom VAT is applied only for certain goods imported by POs, but not on export.

**Question 7: To what extent is the legal regulatory environment favorable to receiving cross-border donations?**

**Score: 2.0**

The Law on Sponsorship provides corporate tax deduction for corporations, either local or foreign, but only for those registered and donating within the country. One impediment is the lack of double tax treaties in place with many European countries. Even in such cases, where treaties exist, the problem is not solved as they do not generally cover this issue. Requirements in documenting donations received from abroad are the same as donations received within the country—there must be a funding contract or agreement that stipulates the purpose of the funding, the amount, and a timeline in which the donation will be utilized. The transaction of cash has to be implemented via bank transfers. POs are eligible and free to receive donations from abroad with no prior approval from any government institution and no reporting requirement.

In cases of international development assistance programs that support POs in Albania, the donations may be exempt from value-added tax (VAT), which is considered a contribution of the Albanian government as part of the bilateral assistance agreement. Still, even in the case of POs benefiting from external funding (i.e. EU funding schemes) they can claim VAT reimbursement with the tax authorities. However, the procedure for reimbursement is cumbersome and has proven inefficient. Until now, Albania is the only country that has never reimbursed VAT on EU grants for national POs. Organizations that are exempt from import tax include those that offer humanitarian aid or equipment that supports education and training, organizations that employ people with disabilities, and entities that provide goods for people affected by natural disasters or wars. Regardless, procedures are unclear and POs report failing to receive the VAT exemption. Other private, foreign foundations with or without offices in the country are generally not excluded from VAT.

**IV. Political and Governance Environment**

*The three indicator questions in the next two sections concern the political and governance context, socio-cultural characteristics, and economic conditions that influence the environment for philanthropy.*

**Question 8: To what extent is the political and governance environment favorable for philanthropy?**

**Score: 3.5**

The structures and mechanisms for dialogue and cooperation between POs and public institutions are established at a national scale, and have improved notably in the last four years. The National Council for Civil Society, an initiative of the nonprofit sector, was established in 2016 as a consultative body to guarantee the institutional dialogue between POs and the government. Public consultation is regulated by law and requires public authorities to consult on draft laws, national and local strategies, and policies with high public interest. Sub-legal acts are excluded from this requirement, which is considered as a maneuver to avoid public consultation on important implementation mechanisms. Each public authority should appoint a coordinator on notification and public consultation processes. Despite that, there are still public institutions that have failed to put such structures in place.

At the local government level, there are increased opportunities for cooperation with POs in the provision of social services. Still, any law development has to pass the test of implementation. The quality of consultations remains superficial. Processes are not timely and do not provide enough time for meaningful feedback. Often, institutions disregard a PO's opinion and fail to provide arguments for disregarding their opinion, which is in violation of the law. 2017 marks the Parliament Election in Albania and the political situation is tense. The opposition parties demand a technocratic government for the upcoming elections on June 18th. Until then, they are boycotting the Parliament. In the last two years, Albania has started a major judicial reform, which is considered vital in fighting corruption and enabling the country to open the negotiations for EU membership. The boycott of the parliament by the opposition has put a halt to the reform, and has created a serious constitutional crisis. It still remains to be seen the impact this crisis will have on the nonprofit sector and economic developments in the short run.

**Question 9: To what extent are public policies and practices favorable for philanthropy?**

**Score: 3.4**

The nonprofit sector is becoming a legitimate actor in policy development in the country, enhanced also by legal and institutional mechanisms in place regarding consultation and access to information. There are structures in place for cooperation with POs. For example, entities such as the Department for Development and Foreign Aid at Prime Minister's Office, the National Council for European Integration, have units/contact persons in charge of spearheading cooperation with POs at ministerial and municipal level. The attitude of the government toward the sector is positive, although there is much to be improved in the quality of cooperation. Public agencies lack the knowledge and skills on how to engage with the sector. The Albanian School of Public Administration (ASPA), as the public institution responsible to enhance professional capacities of public administration, does not include trainings on POs-government cooperation issues.

Under the Open Government Partnership initiative and EU-related reforms for the opening of accession negotiations, Albania has taken several actions to fight corruption. Although the Corruption Perception Index shows improved ranking from 88th place in 2015 to 83rd in 2016,

corruption remains a top priority. Issues of transparency in public institutions, especially with regard to conflict of interest, remain vital to strengthening the integrity of the philanthropic organizations.

There are no restrictions for POs to access any type of funding, and donors are exposed to no interference in the type of support they provide to POs. Still, the sector relies heavily on foreign funding, with the government playing a minor role in funding. The main government funding mechanism is the Agency for Support of Civil Society (ASCS), which is continuously criticized for its lack of transparency, accountability, and its dominant role in decision-making structures. The Agency is also responsible for providing training and information and for promoting a culture of voluntarism, but has not done much in this regard, and has not demonstrated a clear strategy to address the issue.

## V. Socio-Cultural Environment

**Question 10: To what extent are socio-cultural values and practices favorable for philanthropy?**

**Score: 3.5**

Albania has a diverse religious population of Orthodox Christians, Roman Catholics, and Muslims--both secular Sunnis and a significant Bektashi Shia minority comprising about 59 percent of the population. The climate of respect and mutual trust between these three main religions has positively impacted the strong sense of solidarity and social responsibility within society.

The first traces of philanthropy in the form of mutual help and support among people originate in medieval times, with the church at the core of the charitable activity and a strong emphasis towards nationalism. During the communist era, charity and philanthropy were replaced with the concept of voluntarism and solidarity. The political transformation of 1990 was accompanied by important political and economic developments toward a democratic society and open market. The establishment of POs and the development of the civil society were other factors that contributed to economic and social development. These developments established the conditions for revival of the charitable and philanthropic activity.

Corporate philanthropy has grown in volume and popularity in the last four years, although it is still in the first steps to becoming a formal and strategic sub-sector. Their main focus is on economic aid and poverty alleviation. The Corporate Social Responsibility (CSR) network brings together some major corporations and is in its first stages to promote and support CSR in the corporate sector.

During the last few years, POs have adopted a more open approach toward the media. Still, public trust in POs is low. Greater transparency and accountability from POs is imperative to improve credibility and trust. There are no legal and social barriers to participate in philanthropic activity, and POs are considered as a woman's domain, with the majority of POs led by women. The sector is diverse and encompasses religious organizations of all faiths, ethnic base and gender, including LGBTI, which register and operate freely.

## VI. Future of Philanthropy

*These questions are used to provide a general picture of the future of philanthropy in this country as well as recommendations to improve the philanthropic environment.*

### **Current state of the philanthropic sector**

Corporate philanthropy is mainly led by the owner or CEO. Only a small percentage of businesses—mainly large tax payers and foreign capital organizations—have strategies in place and designated staff to manage the corporate philanthropy organization. Predominantly, the owner or CEO is the first entry point to discuss about any philanthropic donation, regardless of size and scope. However, there are some corporations that have started setting up philanthropic foundations. Because corporate philanthropy is not strategic, it suffers from inconsistency in areas/issues supported and the volume of donations it provides. The opposite happens with large business taxpayers with foreign capital who inherit from their headquarters a strong business culture of public responsibility.

The main areas supported by philanthropic activity are poverty alleviation, education, and health—with the biggest contributors being banking and the insurance sector. Children comprise the largest beneficiary group, followed by those who are economically disadvantaged and youth. POs primarily rely on grants from foreign donors or from the government, and the main source of funding is the Agency for Support of Civil Society. However, they do not provide institutional support; rather, they provide short-term project-based funding that never exceeds 18 months. These donors are at the same time, through their programs, the main training providers that focus on improving project implementation capacity rather than institutional strengthening and sustainability. The Non-Profit Organization Academy, started in 2015 by Partners Albania, is one of the very few opportunities for PO specific informal education.

### **Three major recent events affecting the philanthropic landscape between January 2014 and December 2016**

- The Philanthropy Award Ceremony: the Philanthropy Award is an annual public event organized by Partners Albania since 2011, and is the only one of this kind in the country. It aims to express gratitude and public recognition to individuals and corporations who contribute to improve the quality of life in our society. Three Award categories are given, based on public nominations for largest contribution at the national and local level, as well as the best contribution to individuals. The “Pioneer Award” is given to families and/or individuals who started this tradition in Albania during the nineteenth and twentieth centuries.
- Adopt a nursery: the initiative was launched by the Municipality of Tirana in 2014 as a public invitation to corporations to “adopt a nursery” and to invest in the physical infrastructure and the refurbishing of nurseries. By the end of the process, 31 private businesses and individuals contributed to the reconstruction of 31 nurseries in Tirana, and will continue to take care of their needs for the years to come.
- Fundjave Ndryshe Fondacioni (Different Weekend Foundation): the initiative started in 2015 by a group of young adults who aim to support vulnerable families in Albania. It is one of the initiatives that have become very “popular,” and it is embraced by many individuals and

entities who are willing to donate for these families. In the process, families in need of assistance are identified, then, the some type of assistance or charity is planned to aid the family. These efforts are organized under the motto, “Donating does not make you poor.” Such a journey and initiative is modest and based on the goodwill of citizens coming together in their spirit of solidarity and of increasing public awareness.

### **Future development trends in the philanthropic landscape**

There is an increasing trend of private businesses engaging in philanthropic activity, which is expected to continue. The volume of donations directly linked to the financial performance of the private sector, and the optimistic growth forecast, creates room for optimism in an environment of increased total value of donations. Individual philanthropy is expected to grow as more initiatives are put into place to support people in need, health issues, and extreme poverty.

Social media will become the main platform for promoting good causes and generating individual support. Traditional media is going to play a more proactive role in identifying issues and promoting good practices of philanthropy, especially individual philanthropy. Unfortunately, corporate philanthropy is not well covered by media because of marketing restrictions. With more happening between State institutions and private businesses in terms of private-public-partnerships, awareness from the State side on philanthropic activity will increase. Greater fiscal incentives for the corporate philanthropy are also expected. In the near future, it is expected for everyone to be enrolled in the income tax system, enabling individual donations to be part of incentive schemes. The future also seems to show an increase in cooperation between POs and the private sector, following the existing successful cases of cooperation between these two sectors.

### **Three key recommendations to improve the environment for philanthropy**

- Create an enabling environment for companies and individuals to carry out philanthropic activities. The recognition of philanthropic activity in the legal framework is needed in order to promote the sector as a distinct activity apart from sponsorship. In this context, it is important to increase the fiscal incentives for corporations and to include individual donations, too. Using local models and international experience, Albanian POs should become more pro-active in collaborating with private businesses on the design and implementation of their philanthropic programs. For this reason, the government should develop policies or incentives that encourage partnership between the two sectors, as they are two important agents of social change in the country. On a practical level, it is vital to increase awareness and to educate tax authorities on the importance of the philanthropic activity in order to avoid possible barriers that may hinder any further development of philanthropy.
- Creating platforms of cooperation between civil society organizations and the business sector. To boost cooperation between the private sector and philanthropic organizations, easy and informative channels of communication are needed. Clear and publicly available documents on CSR and corporate philanthropy will help POs to effectively reach out to corporations to collaborate on common areas of interest. The same would work on the philanthropic side. POs are important partners that facilitate businesses to realize their ethical obligation to customers and the community. In order to boost businesses' confidence to

cooperate with and to view POs as reliable partners to channel their donations to, higher transparency standards are required from POs.

- Developing corporate philanthropy and CSR strategies to be implemented by corporative internal and/or external structures. This is very important for increasing businesses potential for philanthropy. Although, there is the CSR network in Albania, the number of companies with CSR strategies in place remain very limited and out of the reach of the network.



# Austria

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## QUICK FACTS

**Legal forms of philanthropic organizations included in the law:** Association, Foundation, Cooperative, Corporation, Benefit Corporation, Limited Liability Company, Company Limited by Guarantee, Trust, Endowment, Society

**Five main social issues addressed by these organizations:** Basic Needs, Youth and Family, Religion, Animals, International causes

**Average time established by law to register a philanthropic organization:** 31-60 days

Any association with established bylaws (within the regulations) can be registered within four weeks at the local government institution responsible for associations. Costs are minimal and include bylaw registration and federal tax.

**Average cost for registering a philanthropic organization:** US \$50

**Government levels primarily regulating the incorporation of philanthropic organizations:** Central/Federal Government, State Government, and Local Government

The incorporation is regulated by federal law (“Vereinsgesetz”; “Bundes-Stiftungs- und Fondsgesetz 2015”, etc.); however, the enforcement and registration of associations is done at the local government level (“Bezirksverwaltungsbehörde” - local government office), or in the case of federal municipalities at the state government level (“Landespolizeidirektion” – State Police Department, which is the government security agency of first instance).

### Philanthropic Environment Scores:

Year	Ease of Operating	Tax Incentives	Cross-Border Flows	Political Environment	Socio-Cultural Environment	OVERALL SCORE
2018	4.6	4.0	4.2	4.6	4.7	4.41

## I. Formation/Registration, Operations, Dissolution of a Philanthropic Organization (PO)

*The three questions in this section pertain to the laws and regulations governing philanthropic organizations (POs). The scoring questions for this category cover three aspects of regulations: (A) formation and registration, (B) operations, and (C) dissolution.*

### Question 1: To what extent can individuals form and incorporate the organizations defined?

<b>Score: 4.5</b>
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The Federal Act in Associations 2002 (Vereinsgesetz 2002) entitles the formation of associations and “any association of 2 or more individuals” can register whilst following certain regulations (nonprofit purpose) and become a legal entity. Associations can operate once the registration process has been initiated.

Any individual founding an association has to be at least 14 years of age, but does not have to have Austrian citizenship.

For the incorporation of an association no minimum capital is required, this changes when considering endowments or foundations (minimum starting capital of EUR €50.000), which now also follow a similar incorporation process with the new BStFG (Bundes-Stiftungs und Fondsgesetz) 2015.

Only two documents are required to form an association, which are easily accessible online. However, registration is still not possible online and has to be done in written format to the local government authority.

Albeit, the government has repeatedly expressed interest in providing an online registration process in recent years, no sign of its development can currently be witnessed.

The fee for registration includes federal taxes and is below US \$50, depending also on the extensiveness of the bylaws to be reviewed. All associations are registered within the ZMR (centralized countrywide database), where any individual can do a singular search for any association. The law also includes appropriate safeguards, such as the four (4) week timeline to review and decide upon registration, which is based on the European Convention on Human Rights and can only be denied if it is against the law in regards to the purpose, the naming, or the organizational form of the association. If concerns arise for the incorporation of the association, the government authority is granted another six (6) weeks to review the registration and a written explanation in case of denial has to be issued, stating the reasoning. An appeal to the decision, if denied, is granted at the local government office “Bezirksverwaltungsbehörde.”

According to the new federal law “Gemeinnützigkeitsgesetz (GG 2015)”, which was decided in February 2015 and activated in January 2016, philanthropic engagement should be further developed in Austria. At first glance, the new regulations should lead to additional tax benefits for donors. In addition, the new federal law (BStFG 2015) brings benefits for the creation of nonprofit foundations. The process is now twofold: first, the Federal Ministry of Finance checks the necessary nonprofit status of the organization within six (6) weeks of registration. Second, the agency for

Foundations and Endowments (local government) checks any reasons of non-incorporation based on the law (purpose of incorporation, naming, and not sufficient starting capital).

**Question 2: To what extent are POs free to operate without excessive government interference?**

**Score: 4.4**

Associations have to follow the “Vereinsgesetz” in terms of setting the structure and governance of the PO. However, apart from structural regulations (general assembly time, membership), the POs are free and the law does not constrain the discretion and freedom to run the organization’s internal affairs.

The restriction that has recently been enforced is in relation to the rising terror threats in Europe as well as first signs of political instability and discontent among Austria’s population since 2015, as assessed by the Legatum Prosperity Index 2016. Similar to the Russian foreign agent law, the National Council of Austria enacted the “Federal law on the external legal relationships of Islamic Religious Societies,” which prohibits foreign financing for the “ongoing operation” of a religious society. In addition, there are limitations to “continuous” foreign funding. This has led to Austria being noted in reports by institutions such as the Expert Council on NGO Law, which is consistently “reaffirming the right of citizens to act as free citizens, notably in association with others, i.e. through NGOs or CSOs.”

Apart from the new federal law, POs are still permitted to freely contact and cooperate with colleagues in civil society, business and government sectors, both within and outside the country. In addition, the internet and social media are free forms of communication and participation in networks is encouraged. In The Human Freedom Index 2016, Austria still ranks highly, with the “Freedom of Association”, “Autonomy of Organizations” and “Freedom to Establish Organizations” receiving 10.00 out of 10.00 points. According to the Austria Country profile of CIVICUS (2016), civil society is able to operate freely, campaign and challenge authority within the country.

Finally, clear reporting requirements exist, and are sensitive to the respective legal form and size of the PO, ranging from simple bookkeeping and accounting requirements to annual financial statements.

**Question 3: To what extent is there government discretion in shutting down POs?**

**Score: 4.8**

According to the federal law “Vereinsgesetz Art. 28”, voluntary termination of the PO is possible, as stated in the bylaws of the PO. The PO has to inform the local government in writing about the termination within four (4) weeks of shutting down the organization.

Involuntary termination, or termination by the authorities, is possible only if the organization violates the law, oversteps its statutory boundaries, or does not fulfill its legal requirements any longer (for example inactive status). The European Convention on Human Rights is used as the basis for such determinations.

Written notice of the termination is issued, however the opportunity to be heard is not given, since the voluntary termination is only granted for the reasons stipulated above. According to the federal law, a requested correction of a legal violation cannot be granted. An appeal to the decision is again granted at the local government level (local government office – “Bezirksverwaltungsbehörde”), or in the case of federal municipalities the state government (“Landespolizeidirektion”), which is the government security agency of first instance.

The situation is similar also for public benefit foundations. A public benefit foundation under the BSFG is dissolved if “no assets are left, the assets are insufficient, or the purpose cannot be fulfilled” (Art. 27 BSFG). The remaining assets are to be distributed to the beneficiaries listed in the statutes or given to another foundation with similar goals.

The founder of a private foundation can also terminate or dissolve the foundation, if such a provision was foreseen in the bylaws (Art. 34 PSG- Privatstiftungsgesetz-Private Foundation Act, 1993).

## II. Domestic Tax and Fiscal Issues

*The two questions in this section pertain to laws and regulations governing the fiscal constraints of giving and receiving donations domestically.*

### Question 4: To what extent is the tax system favorable to making charitable donations?

Score: 4.1
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In Austria, the tax system is regulated by the Federal Ministry of Finance as the supreme authority of Austria’s fiscal administration. There are limited income tax incentives, equally accessible for eligible individual and corporate donors. In each calendar year, tax deductions are limited to up to 10 percent of the taxable income (Income Tax Code of 1988 (EStG), Article 4a (1)).

In addition, donations are only deductible for Austrian income tax purposes to organizations that are approved by the Austrian tax authorities - according to Art. 4.4.6 of the Austrian Income Tax Code “Einkommensteuergesetz” for organizations in the fields of science, education in science and research, or arts, or to special scientific institutions as well as to organizations specifically mentioned in the law (Art.4.4.6.). On the Global Philanthropy Legal Environment Index, which states that “tax incentives for individuals appear effective in creating a culture of giving” – Austria receives 10 out of 11 index score points, recognizing that there is no estate tax, and no donations after death are exempt in the country. In addition, it is noted that according to the Foundation Receipt Tax Act, donations to private foundations are generally taxed at a flat rate of 2.5 percent (public-benefit foundations are tax-exempt) and donations of real property are taxed at an additional flat rate of 3.5 percent (if the property is not used for benevolent purposes) (European Foundation Center, 2014).

According to the European Fundraising Association (2015, 2017), Austria’s tax-effective giving framework was first introduced in 2009, boosting annual donations from EUR €390 to €550 million in 2014, and up to EUR €625 million in 2016. More than 900,000 Austrians make tax-effective donations on a yearly basis. However, the process of receiving tax benefits when making donations is not completely clear and predictable and has been further complicated by the

“Spendenabsetzbarkeit Neu,”<sup>1</sup> which is being launched with the beginning of 2017, especially for the administrative side of the POs.

**Question 5: To what extent is the tax system favorable to POs in receiving charitable donations?**

**Score: 3.9**

Austria provides tax benefits for POs that pursue directly and exclusively, 1) public-benefit purposes, 2) benevolent purposes or 3) religious purposes. The Federal Tax Act, §4a Article 34 – 37 (Bundesabgabenordnung) regulates and defines “public benefit purposes” as supporting the community at large, with a large number of persons needing to benefit from the foundation. “Benevolent purposes” is defined as supporting persons requiring assistance, therefore also for a small group of people. Finally, “religious purposes” includes all activities dedicated to the advancement of legally recognized churches and religious communities.

Other legal entities, including foundations, which are engaged in science and research, or entities regarded as nonprofits, benevolent or religious according to Arts 34 of the tax code have to ask for special recognition by the tax revenue department. Then, they are included in a special list published annually on the website of the Ministry of Finance (“§ 4a Abs. 3 Z 1 to 3, Abs. 4 lit a to c and lit e to g and Abs. 6 EStG”). In addition, some organizations are explicitly mentioned in Art. Article 4a (4)-(6) of the Income Tax Code as qualifying organizations, such as national and state fire departments (since 2012), museums, the Austrian National Library as well as other federal institutions. In total, the list of POs that can receive tax benefits is broad – however donations to POs that are not listed and have the “Spendenbegünstigung” according to §4a are not tax deductible in Austria. Organizations that do not fulfill the requirements any longer are eliminated from the list.

The process of receiving tax-exempt status is not simple and quite onerous. In addition, it is not predictable because there is no official letter from the Federal Ministry of Finance. The range is broad, however many charitable causes are not deductible, e.g. education, sport, and parts of culture. Finally, associations do not receive tax exemptions on property tax.

### III. Cross-Border Philanthropic Flows

*The two questions in this section concern laws and regulations governing the fiscal constraints of giving and receiving cross-border donations. The scoring for these questions pertains to the donor and receiving entities.*

**Question 6: To what extent is the legal regulatory environment favorable to sending cross-border donations?**

**Score: 4.1**

<sup>1</sup> New regulation to support individual tax deduction. Individuals will no longer be required to report their donations to the tax authority, but they need to give their data (name, date of birth) to the POs, and POs can file the necessary documents to the tax authorities. (EFA, 2017, Ministry of Finance, 2017). See: <https://www.bmf.gv.at/kampagnen/spendenservice.html>

Following a recent reform in Austrian tax law, there is no longer a distinction to whether the public-benefit foundation receiving the donation is a resident in Austria or in another EU country (this only applies to the countries that are a member of the European Union and not to other countries).

However, EU based foundations have to fulfill all legal requirements that a resident foundation in Austria has to fulfill, and have to also be included in the list kept by the Austrian Federal Ministry of Finance. The requirements also need to be confirmed by an auditor and have to include a period of at least three years; for the three main purposes; and only ancillary economic activities may be undertaken. The deductions of 10 percent can thus be made as special expenses with the Income Tax Code (Art 18.1.7), or as business expenses (Art 4.4.5 and 4.4.6). This process is very costly, and only a handful of organizations are able to fulfil this requirement.

The Foundation Receipt Tax Act (Art 2.1) provides that donations to foreign public benefit foundations, which are registered in EU/EEA member states, are taxed at a flat rate of 2.5 percent. They need to provide annual activity and account reports to establish their public benefit purpose on a yearly basis; otherwise, the flat taxation rate is 5 percent.

There is no approval process for sending charitable contributions abroad, and there are no restrictions on sending cross-border charitable donations.

**Question 7: To what extent is the legal regulatory environment favorable to receiving cross-border donations?**

**Score: 4.3**

Figures of cross-border philanthropy are still growing; however, the development is countered by dramatic developments in some parts of the world, and also within some countries in Europe, as stated by the King Baudouin Foundation in “Enabling Philanthropy across Europe.”

There are no specific costs/taxes associated with receiving cross-border philanthropic cash and/or in-kind donations, and there is no approval process for receiving such donations. The only restriction is the “Federal law on the external legal relationships of Islamic Religious Societies”, which prohibits foreign financing for the “ongoing operation” of a religious society enacted by the National Council of Austria in 2015. Accordingly, there are limitations to “continuous” foreign funding and the “ongoing operation” of a religious society has to be financed from inland (Expert Council on NGO Law, 2015). In regards to receiving tax benefits for cross-border donations, unfortunately the creation of the European Foundation Statute was withdrawn in March 2015 by the Juncker Commission, despite substantial support, since there was no consensus among the 28 member states. Austria was among the eight (8) member states that have rejected the proposal by the Italian EU presidency.

The network “Transnational Giving Europe” also promotes cross-border donations in Austria, with the “Philanthropie Foundation Austria” since April 2014 now situated in Graz as a member of the network.

#### IV. Political and Governance Environment

*The three indicator questions in the next two sections concern the political and governance context, socio-cultural characteristics, and economic conditions that influence the environment for philanthropy.*

**Question 8: To what extent is the political and governance environment favorable for philanthropy?**

**Score: 4.7**

The rules for the formation and operation of civil society groups in Austria are described as “neither obstructive nor restrictive” by the CIVICUS’s Austrian country profile (2016). There have been some instances where criminal law provisions were used to silence certain civil society groups, for example, a case with animal rights activists, however these are rare exceptions, and there is no inherent general conflict between government and the philanthropic sector. The one critical point of issue is that many POs are dependent on state funding for their survival, thus raising concerns about the state’s influence on POs’ sustainability and independence.

Abuses in Austria’s neighboring country, Germany, have been noted in the Civil Society Watch Report 2015, regarding the rise of anti-immigrant groups, which are vitiating the atmosphere for civil society to operate freely. In Austria, the one measure currently infringing on the European Convention on Human Rights is the prevention of non-citizens to be organizers of "Peaceful Assembly", within the context of recent Anti-Islam protests occurring on the streets of Vienna.

The government creates opportunities, already in the lawmaking environment, to involve philanthropic organizations in policy development and implementation. However, as assessed by Transparency International in 2014, the lobbying sphere in Austria is very complex and not all parties associated with the creation of any given law need to be registered and listed within the process. There is certainly room for improvement with the current Lobbying regulations (implemented in 2013), as also claimed by the Austrian Public Affairs Association. Economic growth in Austria has been sluggish, partly because other, faster growing Eastern European countries are seeing greater regional investment and are beginning to compete with Austria. This does not yet pose a threat to the autonomy or sustainability of the philanthropic sector, but it has given rise to the far-right populist Freedom party.

**Question 9: To what extent are public policies and practices favorable for philanthropy?**

**Score: 4.5**

The recent changes in Federal Legislation to the Tax Code, and fiscal regulations, have been enacted, because the government does want to promote a culture of philanthropic giving, which has not been in existence in Austria in similar ways as to other European nations.

In the CAF World Giving Index 2016, Austria ranks at 30<sup>th</sup> overall, 4<sup>th</sup> within Western Europe, and only 12<sup>th</sup> within all of Europe with many other European countries having far more favorable scores when it comes to helping a stranger, donating money, or volunteering time.

In terms of equal access to resources and opportunities, government tries to offer a broad range of resources, however as of 2014, only 81 percent of Austrians had access to the Internet, showing that inclusion is yet to be universal. The media is also criticized for being in the ownership of too few hands. Additionally, access primary sources of information is limited by strict government information laws. While Austria's constitution guarantees the right of freedom of expression, there are strict criminal and civil defamation laws that limit free speech, as also noted by the CIVICUS's monitoring report (2016). Access to Information and Communications receives an overall score of 91 percent on the 2017 Social Progress Index, demonstrating that there is still room for improvement.

There is no government pressure to support any specific philanthropic cause or organization, and donors and funders can choose from a wide variety of registered and tax-deductible organizations and causes to support. As of October 2016, 1,185 organizations were registered within the Federal Ministry of Finance as offering tax-deductible donations.

The coordination among government agencies to support philanthropic activities can be enhanced, as it was witnessed with the "Spendenabsetzbarkeit Neu," introduced at the beginning of 2017. The legislative regulations were not final until Fall 2016 and information to the general public was not spread.

## V. Socio-Cultural Environment

**Question 10: To what extent are socio-cultural values and practices favorable for philanthropy?**

<b>Score: 4.7</b>
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As mentioned above, Austria's ranking in the CAF World Giving Index 2016 is not high, especially for a country in Western Europe, at 30<sup>th</sup> place it lags behind others. On a 5-year average, 53 percent are helping a stranger; 53 percent donating money and 28 percent volunteering time – not much above the world's average.

There is no philanthropic tradition embedded in our societal tradition, nor is there a cultural heritage based on philanthropic values. Our society is based on the imperative that government will care for the less fortunate in the welfare state, since the time of Otto von Bismarck in Germany in the 1880s. The availability of basic human needs always scores highly in all indexes (around 100% - Social Progress Index), that is what government provides for. In recent years, there has been a change to some extent, especially in regards to the immigrant crisis and the inability of government structures to respond adequately.

There is a general understanding of what philanthropic organizations do, and POs are perceived in general as trustworthy and accountable. However, the nonprofit sector is very diverse in its structure, and therefore hard to calculate to a certain extent. Its overall value is calculated at EUR €3.4 billion (including government support), and more than 30 percent of the population are engaged with the sector in a voluntary way. According to the yearly donation report (Fundraising Verband Austria, 2016) in the year 2015, 64 percent of the Austrian population donated money, which is a 2 percent increase since the last year. The average donation amount is EUR €122; however based on the

population, it is only EUR €72 per capita, which is again lagging behind other Western European countries (FVA, 2016). There are no limitations that hinder the growth of the sector, which has seen a vast increase with EUR €390 million donated in 2009 and EUR €625 million donated in 2016 (European Fundraising Associations country report, 2015, 2017).

## VI. Future of Philanthropy

*These questions are used to provide a general picture of the future of philanthropy in this country as well as recommendations to improve the philanthropic environment.*

### Current state of the philanthropic sector

The philanthropic sector in Austria has been undergoing some changes to encourage philanthropy in recent years and establish a culture of giving within the country. With the Fundraising Verband Austria (FVA), the country has a long-standing, well-established association (founded 20 years ago, in 1996) with leverage also into politics and government affairs. Not only does the association offer the yearly donation report, it also organizes a yearly convention with international reputation; maintains different focus groups; lobbies into politics, and provides resources and guidance with a Code of Ethics to its more than 300 member organizations. It supported Austria becoming a member of the Transnational Giving Europe (TGE) Network, with the creation of the Philanthropie Foundation in April 2014. It acts as a prominent group supporting the autonomy, sustainability and impact of the sector; also as a guiding member of the European Fundraising Association.

With the potential of creating value of EUR €10 billion yearly, as recent studies demonstrate, the sector is well established and still growing profoundly on a yearly basis. According to Giving in Europe, which just released its new study, Austria's size of the philanthropic sector, which includes "households, bequests, corporations, foundations and lotteries", is around EUR €950 million.

### Three major recent events affecting the philanthropic landscape between January 2014 and December 2016

- Austria is leaning right in the Refugee crisis: Austria is surrounded by post-communist states in various stages of transition into autocracy, which have refused to cooperate with the EU in solving the migrant crisis. The far right is surging throughout Europe, as also witnessed in recent presidential elections in Austria in 2016. Yet, it has to be remembered that Austria is distinct from Hungary and Poland by way of its strong civil-society institutions, and that the social democrats also beat the far right in communal elections in fall 2015 by campaigning on the defense of human rights.
- According to the new federal nonprofit law "Gemeinnützigkeitsgesetz (GG 2015)", which was decided in February 2015 and activated with January 2016, Austria should be developed further as a country of philanthropic engagement.
- The implementation of the "Spendenabsetzbarkeit Neu" and its developments in 2016: The new regulation was introduced with the beginning of 2017, however legislative details were not final until Fall 2016 and information to the general public was not spread until late 2016. The new administrative guidelines have a profound impact on NPOs, which now have to

gather the correct and full name and birthdate of any donor, who wants to make their donations tax-deductible. It is now up to the organization's responsibility to collect, store and transmit the data to the Federal Ministry of Finance in a responsible way. The administration costs are high, with uncertainties still on the horizon.

### **Future development trends in the philanthropic landscape**

Future development trends include:

- Crowdsourcing – Using the crowds and moving the masses, with efforts such as Respekt.net, which was founded in 2010, and recently gathered momentum also for political campaigning. Its mission is to support and strengthen civil society in Austria by bringing together projects and supporters in an easy format.
- Focusing on trends and making them work to your advantage in the sector – NPOs need to tailor their advertisement taking into account that more people quit social media on their smart phones or family values and the time spent with the family are highly appreciated by the society.
- New Corporate fundraising models – Initiative “Wirtschaftshilft” of the Fundraising Verband Austria with 50 organizations chosen and described in an annual guide for for-profit companies to provide their support. Awards given to the best corporate-nonprofit partnerships, with corporate volunteering programs gaining additional popularity. Legacy fundraising is also gaining increased popularity and becoming positive (while the market is yet underdeveloped compared to the Anglo-American sector), for example with the Initiative “ForgetMeNot” to support the “good testament” with legal counseling.

NPOs are becoming more and more like brokers, with the donors dictating their level of participation and permission to make a difference in society – the young generation of donors is demanding these new ways. Organizations have to become innovative and disruptive – so they are the ones chosen and the individual is in the driver's seat receiving their place to contribute, make a change, and feel the reward.

### **Three key recommendations to improve the environment for philanthropy**

- Use of Online Methods: New generations live in the online world – in order to have their involvement, NPOs presence needs to be enhanced. Currently only 5 percent of all donations are made online, this needs to change in the near future and ways to engage online need to be provided in a better format.
- Political Support and Crowdfunding: the “Spendenabsetzbarkeit Neu” demonstrated the missing support of government and its ability to provide guidance for how the public should interact with the NPO sector. New initiatives such as crowdfunding platforms are demanding new ways of interaction; and government and its structures need to support these new ways of interaction to support civil society not by new regulations (and closed information laws), but by open communication and information to the public.

- Certification and Professionalization of the Sector: With the new momentum of the sector, new jobs are arising, and are being professionalized. Certification and training courses to provide ample opportunities for staff in this sector need to be developed. The CFRE credential is recently becoming more known in Europe, and training courses together with the international community, the FVA (and well-known Austrian institutions) are being developed and need to be free from a high threshold in terms of costs.



# Bosnia and Herzegovina

**Expert:** Aleksandra Vesic Antic

**Institutional Affiliation:** Catalyst Balkans

With contributions from staff at the Indiana University Lilly Family School of Philanthropy

## QUICK FACTS

**Legal forms of philanthropic organizations included in the law:** Association, Foundation

**Five main social issues addressed by these organizations:** Art and Culture, Basic Needs, Human rights, Sport, Socio-economic rights of special groups, Social assistance

**Average time established by law to register a philanthropic organization:** 0-30 days

**Average cost for registering a philanthropic organization:** Costs for registering a PO in Bosnia and Herzegovina differ, depending on the Law, as well as on the responsible territory and registering body. In general, registration costs between US \$100– US \$170. With administrative taxes, costs can rise to US \$270.

**Government levels primarily regulating the incorporation of philanthropic organizations:** Central/Federal Government, State Government, Local Government, Other: cantonal Ministries of Justice, district courts

### Philanthropic Environment Scores:

Year	Ease of Operating	Tax Incentives	Cross-Border Flows	Political Environment	Socio-Cultural Environment	OVERALL SCORE
2018	4.3	3.5	4.0	3.0	3.0	3.57

## I. Formation/Registration, Operations, Dissolution of a Philanthropic Organization (PO)

*The three questions in this section pertain to the laws and regulations governing philanthropic organizations (POs). The scoring questions for this category cover three aspects of regulations: (A) formation and registration, (B) operations, and (C) dissolution.*

**Question 1: To what extent can individuals form and incorporate the organizations defined?**

Score: 4.0

The legal framework governing POs in Bosnia and Herzegovina is comprised of three main laws: the Law on Associations and Foundations of Bosnia and Herzegovina, the Law on Associations and Foundations of the Federation of Bosnia and Herzegovina, and the Law on Associations and Foundations of Republic of Srpska<sup>1</sup>. Associations and Foundations can choose under which law they want to be registered, regardless of territory.

Note: To avoid repetitions, the main law to be analyzed will be the Law on Association and Foundations of Bosnia and Herzegovina, and differences in other laws will be pointed out.

The law permits the formation and operation of unregistered groups, but the registration of associations is required for an association to take part in legal or financial transactions, such as opening a bank account, having employees, etc. Foundations must be legally registered, as they are defined as legal entities by the Law. Associations can be founded by three individuals or legal entities (in any combination), while foundations require only one individual or legal entity as a founder. To act as a founder of a PO, a person must be a BIH citizen or resident, or a registered legal entity (either domestic or foreign). There are no specific mentions of minors and stateless persons as founders, but from other articles it may be concluded that minors can act as members, and therefore founders, of Associations. POs are free to pursue any legal goals, regulate their internal affairs, and operate in accordance with their statutes and by-laws. No minimum starting capital is required for registering associations, while foundations must have minimum capital of 2,000 BAM (approximately US \$1,100). Required documentation for registration is clear and documents are easy to create and obtain; templates for by-laws and other required documents are easy to access and edit for entities with basic governance structures. The registration process for POs is reasonably fast with the relevant body, and the BIH Ministry of Justice is obligated to process the request within 30 days of receiving it. Due process is defined with the appropriate rights of appeal or resubmission of further documentation. Fees and taxes for the registration process are not cost-prohibitive. Registration can be denied based on a clear and concise list of grounds; if the registration is denied, there is no right to a direct appeal, but the PO can initiate a legal proceeding with the court. A register of all POs is publicly available.

**Federation of BIH:** Foreign citizens may act as founders of associations if they have resided in the Federation of BIH at least one year. The Federation is comprised of cantons. If the PO operates in more than one canton, the body responsible for registration is the Federation-level Ministry of Justice; if the PO operates only in one canton, then the cantonal government is responsible for registration. Registration fee is approximately US \$110 (200 KM).

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<sup>1</sup> In addition, organizations can be registered under the Law on Associations and Foundations of District Brcko and cantonal laws. However, since those Laws are quite similar to other laws, this paper will not address them.

**Republic of Srpska:** Foundations are required to have some capital (cash or property), but the law does not define a minimum amount; therefore, they can be registered with symbolic capital. The body responsible for registration is the district court in the territory where the PO has its headquarters. A unique registry is kept by the Republic of Srpska's Ministry of Public Administration and Local Self-Government. Registration fee in the RS is approximately US \$165 (300 KM). The list of documentation requested for registration is shorter in both the Federation of BIH and Republic of Srpska than on the national level.

**Question 2: To what extent are POs free to operate without excessive government interference?**

**Score: 5.0**

All laws (BIH, FBIH, RS, and DB) provide a relatively simple framework of governance requirements and, for the most part, they are in line with global and European standards.

**Bosnia and Herzegovina (BIH):** Associations should have a minimum of three founders, an assembly of members (with membership defined in the statutes), and a named legal representative. Other governing bodies may be defined in the organization's statute. Foundations should have a minimum of one founder and a Board of Trustees (with at least three members). Minors, persons employed in the foundation, as well as persons that are members of other governing bodies cannot be board members. Basic responsibilities of the prescribed governance bodies are defined by the laws, but in their statutes, POs can add other responsibilities and/or define other governance bodies. POs are restricted from pursuing the following goals and/or activities: overthrowing the constitutional order of Bosnia and Herzegovina; committing a violation of guaranteed human rights; instigating or abetting inequality, hatred, or intolerance toward racial, national, religious, or other affiliations; and engaging in election campaigns, fundraising, or financing political parties and/or candidates. POs must work within the areas or topics specified within their statutes. POs are free to use any form of communication channel in their work. Cooperation between the business, government, and civil society sectors is unrestricted, both within the country and across borders. Participation in country-level or multi-country networks is common. Reporting requirements apply only to registered POs; they report to the Ministry of Justice.

**Federation of BIH (FBIH):** Associations must have an assembly and a board; minors cannot be board members for foundations. Bookkeeping rules for non-profits are regulated separately and financial reports are submitted to the Financial Intelligence Agency (FIA).

**Republic of Srpska (RS):** Associations must have an assembly and a board, or, if not a board, then a legal representative; board members cannot be employed by the foundation. Bookkeeping rules are the same as for any other legal entity and reports, though slightly simpler than in FBIH, and all reports are submitted to the Intermediary Agency for IT and Financial Services (APIF).

POs registered in the **District of Brcko (DB)** can choose whether they will apply rules for FBIH or RS.

In both entities, financial reports can be done within internal financial departments or outsourced. In both cases, financial reports must be signed and stamped by a certified accountant. POs are

obligated to conduct an independent audit if they have: a) more than 50 employees; b) property worth more than approximately US \$500,000; or c) annual income greater than US \$1 million.

**Question 3: To what extent is there government discretion in shutting down POs?**

Score: 4.0

**BIH:** The governing bodies of a PO have authority to voluntarily dissolve/terminate the PO. The conditions and procedures for such a step are required to be a part of the PO's statutes. The distribution of any property or assets from such a dissolution must be laid out in the statutes; in such cases, POs must distribute the remaining property or assets to another registered PO that has similar goals and activities. The registration authority possess the authority to involuntarily terminate the registration of a PO in the following situations: 1) the PO is engaging in activities expressly forbidden by the law, such as overthrowing constitutional order of Bosnia and Herzegovina, violating guaranteed human rights, instigating or abetting inequality, hatred, and intolerance with regard to racial, national, religious, or other affiliations, engaging in election campaigns, fundraising, or financing political party and/or candidate; 2) the PO is engaging in activities not in accordance with the registered goals and activities declared in their statutes; and 3) the PO continues to perform activity for which it has been fined (under 1 or 2). In cases of involuntary dissolution, the proceedings are initiated by the body in charge of monitoring the work of POs, and the final decision is made by the Court of Bosnia and Herzegovina. The law does not exactly define what is meant by "overthrowing of constitutional order of Bosnia and Herzegovina; violating guaranteed human rights; instigating or abetting inequality, hatred and intolerance regarding racial, national, religious, or other affiliations." Therefore, this latitude might be cause for concern; however, in practice, it has not been misused.

**Federation of BIH:** Related to involuntary termination, if PO is engaging in the activities expressly forbidden by the law (overthrowing of constitutional order of Bosnia and Herzegovina or overthrowing the constitutional order of FBiH), proceedings against the PO are initiated by either the federation or cantonal prosecutor's office—depending on the place of registration—and a decision is made by either the Supreme Court of FBiH or the relevant Cantonal Court.

**Republic of Srpska:** Related to involuntary termination, if a PO is engaging in activities expressly forbidden by the law (overthrowing of constitutional order of Bosnia and Herzegovina or overthrowing the constitutional order of RS) or if the PO continues to engage in activities for which it has previously been fined, proceedings can be initiated by the court in which the PO was registered, applying the Law on Criminal Proceedings.

## **II. Domestic Tax and Fiscal Issues**

*The two questions in this section pertain to laws and regulations governing the fiscal constraints of giving and receiving donations domestically.*

#### Question 4: To what extent is the tax system favorable to making charitable donations?

Score: 3.0

The constitutional framework of BiH provides that issues related to direct taxation fall within the jurisdiction of the respective entities (Federation of BiH and Republic of Srpska). The central government does not have jurisdiction over those issues (i.e.: income, gifts/inheritance, taxes).

**Federation of BiH:** Tax incentives for legal entities in FBiH are defined in the FBiH Legal Entity Tax Law. Under this Law, giving to humanitarian, cultural, educational, scientific, and sport purposes (except for professional sports) is tax deductible up to 3 percent of gross annual income. Scholarships are also eligible as a tax-deductible expenditure. Individuals receive income tax deductions up to 0.5 percent of the gross annual income for in-kind donations, goods, and money donated to cultural, educational, scientific, medical, humanitarian, sport, and religious activities carried out by in-country associations and other entities that operate under special regulations. In addition, donations exceeding the foregoing threshold may be tax deductible in full, following a decision of the line ministry on the implementation and financing of special programs and action furthering public benefit purposes, which fall beyond the scope of regular activities of the recipient of a donation. Citizens who are not registered entrepreneurs cannot claim tax deductions. Donations may be financial or in-kind contributions for both legal entities and individuals (entrepreneurs). The process of receiving tax benefits is clear and predictable; in reports to Tax Authorities, giving for public benefit purposes is recorded only if the amount given exceeds the prescribed amount (3% of gross income). In a recent survey on tax deductions for companies, most of the larger companies interviewed claimed that the process is clear, while numerous Small and Medium Enterprises (SMEs) stated that they are not certain when and if their giving falls under the categories described by the law. In addition, the list of public benefit activities is narrowly constructed in both laws, and there is some discrepancy in the eligible causes between Legal Entity Tax Law and Income Tax Law.

**Republic of Srpska:** Tax incentives for legal entities are defined in the RS Legal Entity Tax Law. The law recognizes as tax-deductible in-country giving for humanitarian, social, cultural, and sport purposes in an amount up to 3 percent of gross annual income. Article 20 identifies scholarships as another tax-deductible expenditure. For individuals, the RS Income Tax Law provides that sponsorships and in-country donations by registered entrepreneurs for humanitarian, cultural, educational, and sport purposes are exempt up to 2 percent of the gross annual income. As in FBiH, this means that citizens who are not entrepreneurs cannot claim tax deductions. The law does not provide a clear-cut answer as to whether in-kind donations are also recognized. The process of receiving tax benefits is not that clear. In difference to Federation of BiH, legal entities and entrepreneurs report the amount donated (not whether it exceeds the law's threshold). In a recent survey, half of respondents claimed that they do not use the mechanism for tax benefits, stating that law is not precise enough and that it was better for them to not apply for tax benefits (deductions) than risk being fined for breaking the law. As in FBiH, the list of the public benefit activities is narrowly constructed in both laws, and there is a discrepancy in the causes between Legal Entity Tax Law and Income Tax Law.

**Question 5: To what extent is the tax system favorable to POs in receiving charitable donations?**

**Score: 4.0**

In both FBiH and Republic of Srpska, associations and foundations are exempt from income taxes if their activities correspond to those that they are registered for. Tax exemption status is, therefore, automatically acquired during the process of registration, and the range of POs that are tax exempt is quite broad. POs in both entities do not pay taxes on donations. In FBiH, they also are exempt from paying taxes on membership fees, while RS associations, which are not humanitarian (registered only for humanitarian activities), must pay taxes on this type of income. POs in both entities can engage in income generating activities if they correspond to their goals/activities as defined in the statutes. In FBiH, POs are exempt from taxes on such income. In RS, however, such income is subject to taxes under the Legal Entity Tax law. If a PO engages in income generating activities that are not directly connected to activities that they are registered for, such income is subject to the Legal Entity Tax law in both entities. FBiH does not have jurisdiction over property tax; this tax is regulated by cantonal governments; thus, in Sarajevo canton (and most others), POs are not exempt from property taxes. In RS, POs are exempt from property taxes if they are using property for the purposes stated in their statutes. In both entities, the concept of public benefit status is not well developed in the tax laws, and, therefore, POs are obligated to pay value-added tax (VAT) on all goods and services they purchase, except in specific cases (see answer on Indicator 7). POs in both entities are free to receive donations and to raise funds from any public or private source, company, or individual within Bosnia and Herzegovina or abroad, without any fear of interference from the government. All donations must be documented with a donation agreement or other documentation in cases of in-kind donations.

**III. Cross-Border Philanthropic Flows**

*The two questions in this section concern laws and regulations governing the fiscal constraints of giving and receiving cross-border donations. The scoring for these questions pertains to the donor and receiving entities.*

**Question 6: To what extent is the legal regulatory environment favorable to sending cross-border donations?**

**Score: 4.0**

The tax deductions apply only to domestic donations and cannot be applied to donations out of country. Cash donations across borders need to be documented via a donation contract/agreement. There are no restrictions on the movement of capital across borders, except those that relate to anti-money laundering controls. This issue is mitigated through the presence of the donation agreement. No government approval or reporting is required for such cross-border cash donations. In-kind donations are treated just like any other export of goods. Depending on the size and content of the shipment, proper export documentation is required. As such, VAT and other fees are based on the assessed value of donations, just as they would be with any other export.

**Question 7: To what extent is the legal regulatory environment favorable to receiving cross-border donations?**

**Score: 4.0**

There are no restrictions on receiving cross-border charitable donations, and documenting such donations is the same as documenting in-country donations. In both the FBiH and RS, POs are exempt from income taxes on cross-border (foreign) donations; but they must pay VAT on purchases made from such donations. However, they have the right to ask for refund of the VAT return, and, in some cases, they are freed from paying VAT in the first place, if the cross-border donation comes from a foreign government/entity as part of their international development assistance programming and it falls under the bilateral agreements between the donor country and BiH. POs also may be freed from paying custom fees under the national BiH Customs Law (applicable to both the FBiH and RS) in specific cases such as the following: goods for distribution for humanitarian support to persons in need (food, medicines, clothes etc.); equipment and office supplies sent to nonprofit and humanitarian organizations that are necessary for their work; equipment for people with disabilities; and specified materials with educational, cultural, and scientific purposes. Exemptions, however, must be acquired in advance from the custom department. POs are free to receive donations and raise funds from any cross-border (foreign) public or private source, company, or individual, without approval procedures or any fear of interference from the government.

**IV. Political and Governance Environment**

*The three indicator questions in the next two sections concern the political and governance context, socio-cultural characteristics, and economic conditions that influence the environment for philanthropy.*

**Question 8: To what extent is the political and governance environment favorable for philanthropy?**

**Score: 3.0**

Due to the internal governance structures in BiH (federal government, entities and District Brcko) it is difficult to provide a comprehensive assessment of the relations between the government and POs. However, on all levels, while there are no extreme tensions between the governments and POs, there is no active cooperation. All governments, in fact, 'procrastinate' in creating a strategic framework for cooperation with POs, which is sporadically addressed in various legal acts, but not unified, and is rarely implemented. Thus, The Council of Ministers (CoM) BiH signed the Agreement of Cooperation (2007) between CoM and POs, but the Agreement was never fully implemented. FBiH government has not developed any strategic document for cooperation; RS government, similarly, has no overall framework, but included programming for developing civil society in the Local Self-Government Strategy; again, there is a question of implementation. Finally, District Brcko adopted the Basic Principles of Partnership with Citizens, which stresses the important role of POs in policy dialogue, which, again was never implemented. All governments formally recognize POs as actors and agents of change, however, that recognition is indeed formal, and, in many cases, due to the influence of international actors. Consequently, governments are not actively involving POs in policy development and implementation, though when pressured—either by POs or international

actors—they allow involvement. The level of true cooperation depends a lot on the current political situation. Indeed, the increasing political tensions between entities affect the work of philanthropic organizations in Bosnia. This is not particularly favorable to philanthropic development, as “more important” issues are on the politicians’ table. The economic crisis in the country continues, and, in fact, worsened over the last year, and is definitely a threat to the sustainability of POs, which, with rare exceptions, remain largely dependent on foreign sources.

**Question 9: To what extent are public policies and practices favorable for philanthropy?**

**Score: 3.0**

Governments on all levels, and in general, support philanthropy if it helps its institutions provide services to citizens that governments are obliged to provide, yet often fail to. However, it cannot be said that they consider philanthropy important enough to actively promote and/or support it. In some cases, philanthropy, especially the tradition of philanthropy, is used to accentuate national and religious differences in BiH (particularly between Bosnian and Serbian communities). In other cases, politicians, especially in the Republic of Srpska, use philanthropic causes as a way of self-promotion. When it comes to the issue of improving the legal and fiscal framework, support depends on the current political situation and interests, while success of such initiatives depends on the current political moment. In that respect, governments certainly allow access to resources and opportunities for information, services, trainings etc., but do not promote or actively support it. Donors and funders are free to support any philanthropic cause and/or organization. However, sometimes politicians use their power to promote and recruit support by local companies/wealthy individuals to certain philanthropic causes--usually humanitarian groups or organizations that support marginalized groups. This has been particularly noticeable in RS. Governments at all levels generally fail in the implementation of the laws, and while formally condemn corruption, are doing little to effectively prevent and combat it.

**V. Socio-Cultural Environment**

**Question 10: To what extent are socio-cultural values and practices favorable for philanthropy?**

**Score: 3.0**

There is a long tradition of philanthropy in Bosnia and Herzegovina, grounded in both a cultural and religious heritage. As in other former Yugoslav (FY) countries, while solidarity was promoted traditional philanthropy was neglected. Postwar Bosnian society (again as with other FY countries) has experienced a collapse of values, particularly trust; however, altruism and solidarity remained strong. In recent years, philanthropy has reappeared in various forms. However, it is perceived primarily as a way to help individuals in need and rarely as a tool for solving important issues that demand a long-term approach, such as economic development. As in most other Western Balkan countries, trust in POs is relatively low, particularly in regard to those engaged in civil society development, human rights, media freedom, etc. In fact, there is little understanding of their work and importance. However, POs that engage in direct humanitarian support or that provide services for marginalized groups--particularly children—enjoy higher levels of trust and, in fact, sometimes are more supported than institutions, which obviously also do not enjoy trust of citizens. While POs

respect legal requirements for transparency and accountability, they are investing relatively little effort in communicating their work, financial support, and, most importantly, their results to the public. There are no social barriers to participate in philanthropic activities on the side of donors; however, prejudices can influence the choice of recipients. Similarly, national and religious differences/divisions can play a role in philanthropic efforts. As in other countries, POs pursuing financial sustainability, businesses implementing CSR practices, and the failure of the State to provide basic needs are factors that encourage philanthropy, while a lack of trust and tensions based on national/religious differences remain negative factors.

## **VI. Future of Philanthropy**

*These questions are used to provide a general picture of the future of philanthropy in this country as well as recommendations to improve the philanthropic environment.*

### **Current state of the philanthropic sector**

Overall, the philanthropic sector is in the mid-level of development. While there are a number of larger organizations that are quite professionalized, the development of community-based organizations that would tackle local problems and connect to citizens is lower. The sector is overwhelmingly dependent on foreign funding, and, while efforts to attract local sources exist, there is space for significant improvement in this area. There is a small number of intermediary organizations, particularly foundations (either on national or community level). Consequently, there is a need for more support to POs to tap into local sources of funding (education, trainings or other services). POs that are successful in attracting local sources are few and are mostly oriented toward providing humanitarian support. There is still not enough understanding of the importance of developing a constituency among POs. As in other countries in the region, POs need to work on increasing transparency and accountability levels and on communicating their results to the public. Collaboration and cooperation among POs exist but need to be significantly strengthened. POs could also be investing more effort in developing collaboration with other sectors and attracting a larger number of stakeholders in developing philanthropy. Overall, it might be concluded that, while the sector has achieved certain level of development, it is now stagnating.

### **Three major recent events affecting the philanthropic landscape between January 2014 and December 2016**

- In May/June 2014, severe flooding in the region heavily hit Bosnia and Herzegovina, and created one of the largest natural disasters in recent years. It mobilized citizens, corporations, diaspora populations, and neighboring countries. It is estimated that philanthropic contributions reached over 48 million EUR.
- Failure of the State to provide resources for adequate healthcare, especially for persons/children that need medical treatment outside of the country, continuously mobilizes citizens and other actors. In the last three years, nearly 3 million EUR (and it is estimated that the amount is significantly higher) has been donated to improve conditions in the healthcare system and to support medical treatment of children, youth, and adults abroad.

- Emergence of larger and continuous non-profit campaigns, which are becoming an annual tradition, directed toward various causes. Examples include collecting donations for capital investments to help house parents whose children are in the hospital for cancer and raising money for SOS Children Villages and other similar organizations.

### **Future development trends in the philanthropic landscape**

**Donors:** Mass, individual giving will continue to increase, making citizens more ‘active’ donors, while the business sector will continue to be the type of donor who invests the largest amounts.

**Purpose of giving:** Healthcare will remain a primary cause for donations, while support for marginalized groups, poverty reduction, and education will remain as other top causes for which contributions are made. While the range of issues supported will remain wide, the number of instances and amount given for other causes will not increase in any significant measure.

**Beneficiary institutions/primary recipients:** Individuals will continue to be important recipients of philanthropic contributions. Philanthropic organizations and the State will maintain the current level of support, although some increase in the amount donated to humanitarian and organizations serving children might be expected.

**Final beneficiaries:** Key final beneficiaries will remain persons with health issues and those who are economically disadvantaged; there might be an increase of support to populations of local communities and people with disabilities, as well as to children without parental care. No significant increase is expected for other beneficiary groups.

**What is donated:** Money will remain the primary type of donation, with possible smaller increases in in-kind donations.

**Ways of donating/fundraising:** Campaigns, crowdfunding, and cause-related marketing will be increasingly used.

**Legal and fiscal environment:** No major improvements are likely to be achieved in the next year or two, although smaller steps might be made.

**Infrastructure:** No significant change is expected in terms of building infrastructure; intermediary organizations will remain on the current level, both in numbers and in strength and capacity. However, more organizations will try to attract philanthropic contributions. No significant changes are expected in terms of networks (either in number or effectiveness).

### **Three key recommendations to improve the environment for philanthropy**

- Increase pressure on the governments all levels and entities to harmonize and unify the legal and fiscal framework; also, enable a more efficient use of already existing mechanisms, such as tax-deductions for the business sector or introducing deductions for individuals).

- Increase efforts to develop the infrastructure for philanthropy. Increase intermediaries that support POs in attracting local contributions and organizations that educate and support donors. Offer services to both POs and donors, and strengthen networks with clear goals.
- Invest in efforts to increase POs' transparency and communication toward the public. Release data related to giving. Transparency of recipients both in terms of donation amounts and results achieved.



# Bulgaria

**Expert:** Luben Panov

**Institutional Affiliation:** BCNL

With contributions from staff at the Indiana University Lilly Family School of Philanthropy

## QUICK FACTS

**Legal forms of philanthropic organizations included in the law:** Association, Foundation

**Five main social issues addressed by these organizations:** Primary and High School Education, Arts and Culture, Basic Needs, Youth and Family, Environment

**Average time established by law to register a philanthropic organization:** 0-30 days

Currently, the practice of registration varies around the country, but it may take more than a month in some cases to register an NGO. The system will change from January 1, 2018 when registration is transferred from courts to the Registry Agency, where registration should take three days.

**Average cost for registering a philanthropic organization:** US \$80

**Government levels primarily regulating the incorporation of philanthropic organizations:**  
Other: Courts

Registration takes place in the regional courts. There are 28 regional courts in Bulgaria covering the whole territory of the country. From 1 January 2018 the registration procedure will change, and registration will be transferred from the courts to the Registry Agency – a body under the Ministry of Justice that has regional offices throughout the country.

### Philanthropic Environment Scores:

Year	Ease of Operating	Tax Incentives	Cross-Border Flows	Political Environment	Socio-Cultural Environment	OVERALL SCORE
2018	4.0	3.8	4.3	3.8	3.0	3.75

## I. Formation/Registration, Operations, Dissolution of a Philanthropic Organization (PO)

*The three questions in this section pertain to the laws and regulations governing philanthropic organizations (POs). The scoring questions for this category cover three aspects of regulations: (A) formation and registration, (B) operations, and (C) dissolution.*

### Question 1: To what extent can individuals form and incorporate the organizations defined?

<b>Score: 4.0</b>
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The Bulgarian Constitution guarantees freedom of association, and the Law on Legal Entities with Nonprofit Purposes (NGO Law) provides that both Bulgarian and foreign legal entities and individuals with legal capacity can found a nongovernmental organization (NGO). (Only minors under 18 years of age and persons under guardianship cannot found an NGO.) The traditional forms of POs are associations and foundations. There is no minimum capital requirement to establish either of the two forms of organization (although foundations are required to provide some capital to pursue their objectives).

Currently, organizations register in the courts and there are some delays with the registration process. In addition, some of the court practices have been questionable, including limiting the use foreign words in the names of organizations, requiring public benefit foundations to have a collective management body, even though the law does not state such a requirement, or limiting any possible economic activity to NGOs, including the establishment of commercial subsidiaries. The establishment of NGOs is not costly or likely to deter applicants. Registration is not mandatory, and people can associate without forming a legal entity.

The only limitation to the possible goals of an association is given by Article 12 of the Constitution, which states that “Citizens’ associations, including trade unions, shall not pursue any political objectives, nor shall they engage in any political activity which is in the domain of the political parties.” Additionally, Article 44 prohibits NGOs from acting “in detriment of the country’s sovereignty and national integrity, or the unity of the nation.” It proceeds, “nor shall it incite racial, national, ethnic or religious enmity or an encroachment on the rights and freedoms of citizens; ... establish clandestine or paramilitary structures or shall seek to attain its aims through violence.” These laws have not really been used to limit the operation of NGOs, except for a few specific cases; for instance, the notable case of OMO Ilinden was refused registration and was found to be in violation of Article 11 of the ECHR. However, the reasons behind this decision were mostly related to the political situation and Bulgaria’s relations with neighboring Macedonia, and it is not representative of the regular practice in the country.

### Question 2: To what extent are POs free to operate without excessive government interference?

<b>Score: 4.0</b>
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The law allows both associations and foundations to have a flexible structure. There is a minimum structure required by law – general assembly of all members and a management board or a manager (in the case of associations). For foundations, the structure is even more lenient and only public

benefit foundations are required to have 2 bodies – a collective governance body and a management body. The only limitations, other than the ones prescribed by the Constitution, refer to specific areas; for example, hospitals or banks cannot be NGOs. Further, there has been no recorded administrative harassment or cases where the government acted against NGOs. In 2015, the Prosecutor's Office inspected the personal income of NGO leaders that took part in anti-government protests this year. In 2016, they initiated checks on several environmental organizations based on negative media publications, which were clearly unsubstantiated.

There is no limitation on the communications of POs, either nationally or internationally, and Bulgaria is among the countries with the highest Internet accessibility. Internet is fast and costs are affordable; further, Internet access is free in many public spaces, yet 33 percent of the population do not use the Internet.

Reporting might be a little burdensome, as all organizations are required to submit reports to the National Statistical Institute, regardless of whether they have had any activity in the prior year. There is no differentiation between bigger and smaller organizations with regard to reporting, except that big organizations – where cash flow for the year exceeds approximately EUR €512,000 (approximately US \$588,090) – are required by law to have their finances audited.

### **Question 3: To what extent is there government discretion in shutting down POs?**

**Score: 4.0**

NGOs can be terminated voluntarily, based on a decision of their highest body. They can be dissolved involuntarily in specific cases. These cases are described quite generally; for example, NGOs can be terminated for a violation of the Constitution, the laws, or the good morals/manners. Even though the reasons are general, there have been no reported cases of problematic termination. Moreover, the law requires that in any case of involuntary termination, NGOs should be given up to 6 months to correct the reason for termination. The only exception to this rule is based on the adoption of the Law for Countering Terrorism, adopted in December 2016. If a NGO is included in the list of individuals or entities against which there is a criminal procedure for terrorism, is found to be financing terrorism, or there is data that proves that the NGO engages in activities supporting terrorism then it can be involuntarily terminated.

These rationales for termination might be too broad, but there have been no such cases yet. In cases like these, the Chief Prosecutor can request the termination of the NGO and no period for rectification of the violation is given. In all cases, the decision for termination is made by a court.

## II. Domestic Tax and Fiscal Issues

*The two questions in this section pertain to laws and regulations governing the fiscal constraints of giving and receiving donations domestically.*

### Question 4: To what extent is the tax system favorable to making charitable donations?

Score: 3.5

Both corporate and individual donors receive tax deductions for making donations to eligible NGOs (registered as public benefit organizations). There are, however, limits to these tax deductions (Law on Corporate Income Taxation) – up to 10 percent of the profit for companies and up to 5 percent of the annual income for individuals. Moreover, the law provides various limits depending on the type of the donation and recipient organization, which creates different incentives for donating. For example, donations to arts & culture organizations have a limit of up to 15 percent, while donations to two state-established healthcare funds can receive 50 percent tax deductions. This puts NGOs in a less-advantaged position.

The procedures for getting tax exemptions are not complicated, although it is necessary to submit documents that prove that the recipient of the donation is a qualifying entity with a tax declaration. If the donor works under a labor contract, the donations could be made through the employer, in which case there is no need to file a tax declaration to gain a tax benefit.

With regard to in-kind donations, individuals need to show the market value of the donation in order to be able to claim deduction, which might be a little more complicated. In-kind donations also face a problem with regard to Value Added Tax (VAT), as companies cannot deduct the VAT for the donations they make. The only exception, introduced in 2016 and entered into force in January 2017, relates to the donation of food. There are, however, a number of practical problems and limitations with regard to this process. Still, this is an important breakthrough. An important practical problem for donations is the impossibility for pledges – promises to make donations in the future. However, this leads to practical obstacles; NGOs cannot enter into agreements with donors from whom they will be receiving donations in the future or will be receiving one donation in several portions.

### Question 5: To what extent is the tax system favorable to POs in receiving charitable donations?

Score: 4.0

NGOs do not pay tax on the income from donations. There is a corporate tax and a local tax, which is paid to the municipality, for donations, but public benefit NGOs are exempt from these taxes. In 2015, confusion arose about whether or not NGOs were obliged to declare donations they receive to the tax authorities, regardless of if they were tax-exempt or not. In order to clarify this, an amendment to the Local Taxes and Fees Law was made to ensure they are exempt from the declaration requirement as well. Public benefit NGOs are exempt from tax on inheritance (bequests). Moreover, tax is paid only on inheritances exceeding BGN 250,000 (approximately US \$146,500).

However, NGOs are not exempt from property tax. Only a special form of NGOs (community centers) and the Bulgarian Red Cross are exempt. The 2015 Philanthropy Report of the Bulgarian Donors' Forum shows that the officially reported donations from companies and individuals comprise less than 50 percent of all donations for that year (individual donations accounted for less than 6 percent, a little above US \$3.5 million). A problem with tracking donations has arisen since, beginning in 2015, the tax administration stopped tracking the types of donation recipients ; therefore, it is not clear what percentage of the recipients are NGOs (other qualifying categories include social care institutions, municipalities, etc.).

### III. Cross-Border Philanthropic Flows

*The two questions in this section concern laws and regulations governing the fiscal constraints of giving and receiving cross-border donations. The scoring for these questions pertains to the donor and receiving entities.*

#### **Question 6: To what extent is the legal regulatory environment favorable to sending cross-border donations?**

**Score: 4.0**

There are no limitations to making donations abroad. With regard to bank transfers, there are no special limitations to donations either. The standard bank fees apply for such transfers. With regard to the possibility to use tax benefits for donations abroad, foreign entities based in the EU or the European Economic area can benefit from the same tax exemptions as local entities.

The text of Article 48. 11 (3) of the Local Taxes and Fees law states that the status of the recipients of the donation should be "identical or similar persons established in another Member State of the European Union or in a State which is a Contracting Party to the Agreement on the European Economic Area. In such cases, exemption shall be contingent upon the presentation by the person of an official document, attesting the status or the capacity in which the said person acquires the property, which is issued or certified by the competent authority of the relevant State, as well as the legalized translation of the said document into the Bulgarian language." Similar provisions exist with regard to the exemption from corporate income tax and individual income tax.

#### **Question 7: To what extent is the legal regulatory environment favorable to receiving cross-border donations?**

**Score: 4.5**

In general, the tax treatment of the donation recipient does not change when the donation comes from abroad. The imports of goods by charitable and philanthropic organizations that have been received without payment are VAT-exempt. There are also exemptions from customs duties for goods with educational and healthcare purposes. In addition, there are exemptions for goods of first priority (food, medication, clothes), if they are provided free of charge to needy people and imported by public benefit organizations. There is no procedure for approval or notification to donations received from abroad. There is however, a requirement related to the regulation of money laundering and fight against terrorism financing. NGOs that receive funding (including donations) exceeding

BGN 30,000 (US \$17,590) or that have regular interaction with certain partners need to identify whom their donor/partner is. They also need to request a declaration of the origin of the funding. This applies to all payments, not just ones from abroad.

#### IV. Political and Governance Environment

*The three indicator questions in the next two sections concern the political and governance context, socio-cultural characteristics, and economic conditions that influence the environment for philanthropy.*

**Question 8: To what extent is the political and governance environment favorable for philanthropy?**

**Score: 4.0**

The political environment in the period 2014-2016 was marked with political instability and three different government regimes. In 2014, the socialist-led government faced street protests and boycotts by a number of civic leaders and NGOs. This blocked any interaction with organizations, and there were few positive partnership examples. On the other hand, 2016 saw some positive developments, such as adoption of amendments to the Law on Normative Acts that provided for better regulation of citizen participation. In September 2016, amendments to the NGO Law were adopted that would guarantee the implementation of regular strategies for NGO support and ensure that funds from the national budget are provided to support NGO projects and to establish the Civil Society Development Council. The amendments, however, will not enter into force until 2018.

Citizen participation remains to be further developed in Bulgaria. The Citizen Participation Index, developed by the Citizen Participation Forum and the Bulgarian Center for Not-for-Profit Law (BCNL) indicated that the score for participation is only 3.39 (out of a maximum of 6) in 2015. Very often, the public councils or other forms of public participation are just a formality. Additionally, the lowest score of the CSO Sustainability Index for Bulgaria is for financial viability. The main sources of funding continue to be foreign donors. Individual giving remains really low, although there are a few organizations trying to engage in fundraising from individuals. State funding for NGOs is limited and a large part of it is provided without a bidding process to a few traditional organizations, such as the Bulgarian Red Cross, The Union of the Blind People, etc.

**Question 9: To what extent are public policies and practices favorable for philanthropy?**

**Score: 3.5**

Because of the multiple changes in government, the government strategy for the support of civic organizations adopted by the previous government officials was not implemented. Its timeline expired at the end of 2015, and no new strategy has been in place since then. One of the activities in the government's implementation plan included supporting philanthropy and even appointing an Ambassador for Philanthropy. This activity was never really implemented. The only activity implemented to support philanthropy was the adoption of the amendments to the VAT law that allowed for the donation of food.

The government promotes philanthropy for its own benefit, e.g. a special tax benefits for two state health-related funds and the granting of equal tax benefits to donations to public benefit NGOs and to municipalities and state-owned companies. Therefore, it is fair to say that the government does not exert pressure over NGOs; however, the government provides incentives for donations given to their own organizations rather than to independent NGOs. One of the biggest donation campaigns is coordinated by the President and is called Bulgarian Christmas.

State funding is limited, with the majority of it going to youth and sports organizations/initiatives, as well as to organizations for people with disabilities. State funding is also provided for the contracting of social services, which in most cases are contracted to NGOs. After a long debate, the government adopted a school standard for civic education, which should ideally also cover philanthropy). Unfortunately, in the end, there will not be an exclusive or mandatory class on civic education, rather the matter will be integrated with other topics and will be a voluntary class.

## V. Socio-Cultural Environment

**Question 10: To what extent are socio-cultural values and practices favorable for philanthropy?**

**Score: 3.0**

There was a developed tradition of philanthropy in Bulgaria before 1944 when the country began its socialist development. All foundation assets at that time were nationalized and the private initiatives were terminated. All needs were supposed to be satisfied by the government. There were few NGOs dealing with social issues, either.

In 1989, the development of the civil society began again. However, 27 years is not sufficient to rebuild a strong philanthropic culture. Additional obstacles include the fact that Bulgaria is the poorest EU state member with a large portion of the population living below the poverty level. Moreover, there is still no sufficient private wealth accumulated; therefore, donations from individuals are scarce. According to the World Giving Index 2016, only 13 percent of Bulgarians have donated to NGOs. Similarly, only 7 percent of society volunteered for NGOs.

A Bulgarian Donors' Forum research from 2015 shows that the most popular methods for donating are through donor text messages and through collection boxes, and although both are easy ways to collect charitable giving, they do not necessarily show a strategic approach to fundraising. According to a recent Open Society Institute (OSI) survey in Bulgaria, only 33 percent of the population trusts NGOs and 39 percent distrusts them; nevertheless, this makes NGOs more trusted than the Parliament, the government, and political parties. According to the survey, the largest proportion of people (25) distrusts NGOs, which might be a sign of the lack of knowledge of what NGOs are and what is their role in society. In general, the survey shows the general lack of trust professed by the Bulgarian society, as only 2 institutions are trusted by more than 50 percent of the respondents—the EU and the Orthodox Church. In recent years, there have been several cases of media attacks against NGOs. The publications questioned several NGOs' motives for carrying out their activities and began a debate about whether NGOs protect national interests if the funding source is foreign.

## VI. Future of Philanthropy

*These questions are used to provide a general picture of the future of philanthropy in this country as well as recommendations to improve the philanthropic environment.*

### Current state of the philanthropic sector

The NGO sector in Bulgaria is still developing. One of the biggest problems for organizations is their financial sustainability. Most organizations have been recently established (in the last 25 years) and there are very few that can be considered stable institutions. The traditional mechanism for funding NGOs has been through project funding (predominantly by international donors). With the accession of Bulgaria to the EU, a number of private foreign donors have decided to leave the country. The EU has become a major donor, but its funding is different both in terms of procedures and also in terms of objectives (e.g. more focused on services than human rights and democracy). The biggest donor supporting NGO capacity building and sustainability is the America for Bulgaria Foundation.

In the last two years, there have been a series of biased, negative attacks on NGOs in some local media. The attacks primarily target environmental or human rights and watchdog organizations. This is in-line with what is happening in some other countries, such as Hungary, for example. In terms of philanthropy, this is still a largely underdeveloped area in Bulgaria because of a lack of trust and traditions, but also because of a lack of skills and awareness of NGOs. The primary target and source of donations for NGOs in Bulgaria are companies and not individuals. In terms of individual giving, the most popular tool used is the donor text message (DMS).

### Three major recent events affecting the philanthropic landscape between January 2014 and December 2016

- In this period, there have been many changes in the political landscape, and three different governments were ruling. These changes affected NGOs – not only because of the involvement of some NGO leaders in the protests, but also because of the lack of stability in terms of whom to partner within the government;
- The New NGO law adopted in September 2016 will definitely have an impact on the NGO sector and its relations with the government and its policies. It remains to be seen what this effect will be as the law enters into force in 2018; and
- The amendments to the VAT law allow for the donation of food, as well as the receipt of VAT exemption. The mechanism created is rather complicated and began working in 2017, but it has the potential to have a positive effect in the near future.

### Future development trends in the philanthropic landscape

- With regard to NGOs, a number of new nonprofits are established. Many of these organizations are volunteer-based. The more established organizations would likely be more interested in engaging in fundraising from individuals and companies and it is hoped that their share of donations in the NGO budgets will increase;

- Corporate donations have been decreasing in the last two years. There could be two possible developments related to this: i) the discussion of the need to establish corporate foundations, although this is not currently a major trend; and ii) the increase of individual donations, although their levels are currently very low; and
- Social entrepreneurship has been growing or has become trendy in the last years. NGOs have seriously started considering engaging in mission-related business activities. While companies see investments in social entrepreneurship as an efficient way to support social ideas, it remains to be seen how this will affect traditional philanthropy.

### **Three key recommendations to improve the environment for philanthropy**

- The first recommendation relates to the promotion and visibility of the work in which NGOs engage. They need to improve their skills to tell their story and show their impact in order to engage people to support their causes – as volunteers, donors, members, or simply supporters;
- With regard to the regulatory environment, every measure attempting to simplify donations should be supported. An example is the possibility for donation pledges, or the promise to make a donation in the future. Another important aspect is the need to eliminate and prevent unfair conditions for donations by providing better tax exemptions for donations to state institutions; and
- Finally, yet importantly, it is necessary to continue to improve the interactions between NGOs and the authorities, not only in regard to policy-making but also in regard to collaboration on implementing programs and on devising solutions to public social issues. One very important problem-solving strategy is for the government to observe and copy some of the nongovernmental sector innovative models and to fund these initiatives and improve their sustainability. In addition, partnerships should not just remain policies and intentions, but they must be translated into practice.



# Croatia

**Expert:** Mladen Ivanovic

**Institutional Affiliation:** Independent Expert

With contributions from staff at the Indiana University Lilly Family School of Philanthropy

## QUICK FACTS

**Legal forms of philanthropic organizations included the law:** Association, Foundation

**Five main social issues addressed by these organizations:** Animals, Human rights, Arts and Culture, Basic Needs, and Environment

**Average time established by law to register a philanthropic organization:** 0-30 days

**Average cost for registering a philanthropic organization:** US \$10

**Government levels primarily regulating the incorporation of philanthropic organizations:** Central/Federal Government

### Philanthropic Environment Scores:

Year	Ease of Operating	Tax Incentives	Cross-Border Flows	Political Environment	Socio-Cultural Environment	OVERALL SCORE
2018	4.8	3.4	3.8	3.5	3.8	3.83

## I. Formation/Registration, Operations, Dissolution of a Philanthropic Organization (PO)

*The three questions in this section pertain to the laws and regulations governing philanthropic organizations (POs). The scoring questions for this category cover three aspects of regulations: (A) formation and registration, (B) operations, and (C) dissolution.*

### Question 1: To what extent can individuals form and incorporate the organizations defined?

Score: 4.5

The process of registration of POs is rather smooth and simple. Any three (3) individuals or legal person, whether native or foreign, are free to establish a PO or to be a member of one. Persons without legal capacity (14 years or less, or individuals with intellectual disabilities) can also be founders or members of a PO if they have the permission of their legal guardian.

Property is required only for the establishment of a foundation, because the law defines a foundation as “property permanently assigned to serve some generally beneficial or charitable purpose.” No property is required for the establishment of an association.

Registered POs can pursue their goals through unregistered associations, as well. An unregistered association is established by contract between founders. The major difference between registered and unregistered POs is that the latter cannot be the beneficiary of public funds.

The process of registration is quite easy and cheap—with no hidden costs—and requires a defined list of reasonable documentation. The timeline for registration is limited to 30 days. If the registration process is not finalized in that period, registration is nonetheless presumed. The administrative fee is about US \$7. There is a clear and final list of grounds on which registration may be denied. Written explanation of denial is mandatory and the applicant’s right to appeal is guaranteed.

POs are free to pursue any legal purpose indicated in their statutes, and they are free to comment on or attempt to influence legislation or public policies.

Registration is performed by 21 state administrative offices, and is fairly quick and transparent. Nonetheless, registration offices still have too much discretion in the interpretation of the permissible content of the statutes. Additionally, the registration of foundations and funds is regulated by an obsolete legislation, which needs to be updated.

### Question 2: To what extent are POs free to operate without excessive government interference?

Score: 5.0

There are only minimal requirements prescribed by law regarding the internal structure and governance of POs. Only a basic structure is mandatory—all POs must have an assembly and legal representative—while any other managing body is optional.

POs are free to pursue any activity not forbidden by law. POs cannot gain profit for their members or third parties. Any profit that POs generate must be used exclusively to advance the purposes set forth in its charter. Certain types of goals can only be pursued by certain types of POs (e.g., only trade unions are authorized for collective bargaining, etc.). POs can pursue various goals (educational, national, ecological, humanitarian, cultural, social, etc.). Economic (for-profit) activities can be pursued by a PO, but only if those activities are related to the goals set up in the statutes and are within the limited framework set up by law because POs cannot compete with for-profit companies.

POs are free to cooperate among themselves and with any entity in the country and abroad without any permission. They are also free to form networks, unions or any other form of cooperation. They are free to use the Internet and all forms of social media in any way they consider necessary and appropriate.

There is no mandatory narrative report POs must submit to the government. However, they must submit a financial report once a year, like any other legal person. Newly established POs must submit a full financial report within the first 3 years of establishment. After that, they can then use simplified accounting if their property value is at least 230,000 HRK, and their yearly income is at least 230,000 HRK (about US \$33,000). Reporting requirements are clear and consistent, and are based on a number of standardized forms, which must be sent to the relevant authority.

### **Question 3: To what extent is there government discretion in shutting down POs?**

**Score: 4.8**

While a PO can be terminated only for the reasons prescribed by law, the governing body is free to terminate a PO voluntarily. An exception is made for foundations where the governing body can propose termination; however, the registration office is the only entity that can pass the decision due to the protection of the will of the founder or founders.

The registration office can terminate a PO for several reasons: 1) if the PO stops to operate; 2) if the number of members falls under the number which is minimum for establishment of the PO; 3) if the assembly meeting was not held in a period that is twice as long as the period prescribed by statute; and 4) if the PO was divided into two or more legal persons or attached to some other legal person. The PO can actively participate in the procedure through its legal representative or attorney. Once the decision is made, an appeal can be submitted to the ministry for reconsideration. The decision of the ministry can be challenged before Administrative Court.

One of the reasons for involuntary termination is determined by court decision. However, the law does not provide any specific guidelines to the court about the reasons to terminate a PO. Therefore, the reasons must be found in other legislation. Meaning, a PO may be terminated only for a severe violation of the system—for example, if it was established for criminal activities or if its existence was mostly used for criminal activities. Additionally, a PO may be terminated for reasons set up by the European Charter on Human Rights and Freedoms, such as if termination is necessary for the protection of the freedom and rights of others, for the protection of public health and public morality, etc. The procedure before the court is public. The representation of the PO during the process and appeal is guaranteed.

In the case of termination of a PO, the assembly can decide to give its property to another PO with similar goals. If that is not possible for any reason, the property belongs to the local government where the PO has a seat.

## II. Domestic Tax and Fiscal Issues

*The two questions in this section pertain to laws and regulations governing the fiscal constraints of giving and receiving donations domestically.*

### Question 4: To what extent is the tax system favorable to making charitable donations?

Score: 3.7

Both individuals and legal persons (corporations) are free to donate to POs.

Personal income tax-payers can deduct donations--by raising the personal allowance--made within the country, in money or in-kind, for cultural, educational, scientific, health, humanitarian, sports or religious purposes, up to 2 percent of their income reported to the tax administration. Personal allowance can be additionally increased if the donation is made based on the decision of the relevant ministry for the pursuit of specific programs and actions, but not for common activities of the donee. There is no ceiling for donations based on net income.

Businesses and other legal entities may deduct donations to POs for a broad range of public benefit activities (including cultural, scientific, educational, health, humanitarian, sport, religious, ecological, and other activities) up to 2 percent of gross income from the previous year. The threshold may be even higher if the donation is made on the basis of the decision of the relevant ministry for the pursuit specific programs and actions. A donation that exceeds 2 percent of the gross income is not deductible.

The process of receiving tax benefits is based on accounting records and is fairly simple, but it requires credible documentation that must clearly state the receiver, present the bank statement of transaction, and proof that it is up to 2 percent of the payer's gross income from the previous year.

### Question 5: To what extent is the tax system favorable to POs in receiving charitable donations?

Score: 3.0

POs are exempt from profit tax, including foreign grants and donations. However, the PO may have to pay tax if it engages in for-profit activity and if tax exemption would give it an "unjustified privileged position in the market." The law does not explain what constitutes an "unjustified privileged position," so the Tax Administration has discretion on this matter. If the PO crosses the "unjustified privileged position" threshold, that particular for-profit activity is taxed at the rate of 12 percent or 18 percent, depending on the amount of the income.

Donations received from individuals or legal persons for medical treatment or medications that are not covered by health insurance are not considered income and are tax-free. VAT is required to be collected by POs whose turnover exceeds 230,000 HKR (approximately US \$33,000) in a given year. The general Value Added Tax (VAT) rate is 25 percent. VAT is not paid for goods and services provided by charity and other public benefit organizations to their members, so long as the members are paying membership fees or real expenses for the service and the tax exemption would not give the PO an “unjustified privileged position” in the market.

A very short number of POs (funds, foundations, Red Cross and humanitarian organizations) are exempt from Real estate transfer tax. These POs are also exempt from taxes on inheritance and donations. The process of receiving tax benefits is based on accounting data and is fairly simple. The facts must be supported by credible documents (proof of payment, original documents, etc.).

### III. Cross-Border Philanthropic Flows

*The two questions in this section concern laws and regulations governing the fiscal constraints of giving and receiving cross-border donations. The scoring for these questions pertains to the donor and receiving entities.*

**Question 6: To what extent is the legal regulatory environment favorable to sending cross-border donations?**

Score: 4.0

There are no specific costs set up by Croatian authorities for private donors (individual or corporate) who are donating cash or in-kind donations abroad. Neither are there specific limitations for cross-board donations (i.e. the target country, the amount, etc.). However, there are no tax benefits whatsoever for those who are donating abroad; benefits apply only for donations made to local organizations.

**Question 7: To what extent is the legal regulatory environment favorable to receiving cross-border donations?**

Score: 3.5

There is no approval process to receive charitable contributions from abroad. Therefore, POs are free to receive monetary or in-kind donations from abroad without any limitation in terms of the amount, country of origin, type of activity, etc. Even though foreign monetary donations are not subject to tax or custom duty, goods and services paid for out of foreign monetary donations are subject to VAT and 25 percent of a monetary donation is taken by the State.

In the case of in-kind donations, only goods (such as food, medicine, and clothes) imported by the State or a charity organizations to cover basic human needs and goods donated to charity do not pay VAT; this does not apply to alcohol, tobacco, coffee, tea or motor vehicles (except ambulances). Imported goods specially designed and used for education, employment, and the social rehabilitation of individuals who are blind or who have physical or intellectual disabilities are also exempt from VAT.

#### IV. Political and Governance Environment

*The three indicator questions in the next two sections concern the political and governance context, socio-cultural characteristics, and economic conditions that influence the environment for philanthropy.*

##### **Question 8: To what extent is the political and governance environment favorable for philanthropy?**

**Score: 3.5**

In the past few years, the philanthropic sector has been affected by the country's economic crisis. According to the World Bank, "before the return of growth in 2015, Croatia had witnessed six years of recession, with GDP declining by 13 percent." These economic conditions reflected on fewer funds for POs. The government did nothing during the crisis to additionally support the philanthropic sector or to help it survive through the rainy days. Now that the crisis is over and things are returning to normal, these are promising times for POs, due mainly to the general recovery of the society, and not because of specific government policies that support the sector.

There are no open conflicts between the government and the philanthropic sector. However, that might be because citizens of Croatia, generally speaking, are not used to public or organized protesting, and they have learned to accommodate to the mandate of the administration who won the elections.

Even though the government provides funds to support some social and charity programs implemented by POs, systematic and consistent efforts of cooperation between the government and POs are rare. Government support to POs depends not only on the nature of their activities, but also on the ideology that the organization (or their founders or members) defends. However, the position of organizations like the Red Cross is traditionally better than other POs, because of a specific law (The Law on the Red Cross) that protects the status, funding, and operations of the Red Cross.

##### **Question 9: To what extent are public policies and practices favorable for philanthropy?**

**Score: 3.5**

There are no limitations for donors in terms of which PO they choose to support. Even though it can basically be said that all POs are equal, it is also true that some traditional POs receive fairer treatment than others (i.e. Red Cross and Caritas, a Catholic organization).

The government does not have a systematic approach to the promotion of philanthropy. There is no specific policy about it, nor are there consistent measures implemented to support the sector. The development of philanthropy has depended mostly on the persistence of some individuals and legal entities who understand the value of philanthropy for society. Government has implemented some isolated measures to support the sector. For example, beginning two years ago, companies are not required to pay tax on donated food with passed expiration dates; however, this came after an

extensive public debate, which has shown the lack of willingness on the government side to make changes.

Lately, the government invested a lot of energy and resources to fight corruption through systemically implemented policies and measures. Some results are already visible, but there is a long way ahead. The perception of corruption in the public is still relatively high (55th place on Transparency International's Corruption Perceptions Index for 2016).

## V. Socio-Cultural Environment

**Question 10: To what extent are socio-cultural values and practices favorable for philanthropy?**

**Score: 3.8**

Croatian society seems to be more responsive to provide humanitarian support in cases of emergency than to understand philanthropy as a long-term practice. While reaction to humanitarian crises is usually quick and plentiful, there have been less than 200 foundations registered in 25 years. Natural disasters or individual tragedies often mobilize the whole society, stimulating a very short-term response from numerous individuals and companies to participate in humanitarian efforts. However, long-term philanthropic initiatives are not as popular. Also, the Croatian legal framework is not encouraging for philanthropy, especially considering the very modest incentives for donors.

The present state of philanthropy is a consequence of history and lack of tradition. Before 1990, for almost 50 years, philanthropic initiatives were mostly occasional humanitarian help. Caritas, a humanitarian organization of the Catholic Church, was active during that time but had a smaller scope of operations and significantly less visibility than today. The major philanthropic organization was the Red Cross. The State used to take care of citizens' basic needs (i.e. housing, employment, and health care) and only very rarely were members of the community formally asked to contribute to provide additional humanitarian support. For that reason, there was no adequate legal framework for philanthropy or organizations (e.g. foundations and associations) as we know them today.

Public perception of civil society, in general, has developed significantly in the last 20 years. Beginning with a poor legal framework for the establishment and operation of POs, through POs being perceived as State enemies in the nineties, we are now in the presence of a legal framework that enables the easy establishment and operation of various POs, a significant number of registered organizations, and a much better public perception of POs. However, occasional public scandals involving POs undermine the intentions to build a more positive image.

## VI. Future of Philanthropy

*These questions are used to provide a general picture of the future of philanthropy in this country as well as recommendations to improve the philanthropic environment.*

## **Current state of the philanthropic sector**

It is realistic to say that the philanthropic sector is still weak and fragile in Croatia. The legal and institutional framework is more or less in place but it still requires some improvements (the Law on Foundations and Funds has not been updated in 20 years, incentives for donors are weak, etc.). What has been achieved so far is not enough to be considered a significant development of the sector.

The lack of tradition of philanthropy requires educating citizens about the benefits and beauty of philanthropy. The systematic education of citizens is a task for civil society organizations, which some organizations are already doing, as well as the government. Tax benefits to donors, although not encouraging enough, must become familiar to a wider audience. We need to change public mistrust of philanthropic organizations and the public's reluctance to donate (because, as they usually say, "who knows where will my donation go?").

As Croatia is a small country with limited philanthropic potential and resources, it is unlikely that philanthropy will survive by relying on private initiatives and money alone. It is important to create a sustainable and transparent system of support from public policies and funds. Even though some support is already in place (e.g. National Foundation for the Development of Civil Society and alike), the access to resources is too dependent on daily politics.

## **Three major recent events affecting the philanthropic landscape between January 2014 and December 2016**

- Suspension of the VAT for donations of food with passed expiration date (late 2015);
- Reduction of funds from lottery to civil society organizations in mid-2016 (few funds for the National Foundation for Civil Society Development and many other CSOs); and
- First Croatian "Week of Philanthropy," organized in seven cities (September 2016).

## **Future development trends in the philanthropic landscape**

Because it has a huge heart, Croatia is a country with great philanthropic potential. However, the growth and institutionalization of the sector has been limited by the amount of resources that can be invested in charity and other common good causes. If future economic and social development strengthen the differences between rich and poor, it is likely that philanthropy will become a domain of rich people. Taking into consideration that the Croatian political and legal systems are stable, we do not expect major changes—either positive or negative—to affect philanthropy in the next few years. Given that the government has never developed consistent and strong policies to promote philanthropy, it is very likely that in the near future (up to 5 years), the state of philanthropy in Croatia will not change significantly.

### **Three key recommendations to improve the environment for philanthropy**

- Continuous promotion of philanthropy among the general public. Public presentation of philanthropic achievements, promotion of philanthropy by leading national personalities (politicians, artists, athletes, etc.).
- Fewer expenses for donees (goods and services paid for with donations should be excluded from VAT).
- More benefits for donors.



# Czech Republic

**Expert:** Kateřina Ronovská

**Institutional Affiliation:** Faculty of Law, Masaryk University, Brno, Czech Republic and Foundation Fund Via Clarita, Prague, Czech Republic

With contributions from staff at the Indiana University Lilly Family School of Philanthropy

## QUICK FACTS

**Legal forms of philanthropic organizations included in the law:** Association, Foundation, Cooperative, Corporation, Benefit Corporation, Limited Liability Company, Others: Institution (ústav, in Czech) and also Trust Fund (svěřenský fond, in Czech, trust-like form)

**Five main social issues addressed by these organizations:** International Causes, Human Rights, Basic Needs, Environment, Other: Sport

**Average time established by law to register a philanthropic organization:** 0-30 days

**Average cost for registering a philanthropic organization:** US \$0

To establish a foundation, CZK 500,000 (US \$21,400) is required as minimum capital (Civil Code, Section 336)

**Government levels primarily regulating the incorporation of philanthropic organizations:** Central/Federal Government

### Philanthropic Environment Scores:

Year	Ease of Operating	Tax Incentives	Cross-Border Flows	Political Environment	Socio-Cultural Environment	OVERALL SCORE
2018	4.3	3.5	3.6	4.0	3.0	3.69

## I. Formation/Registration, Operations, Dissolution of a Philanthropic Organization (PO)

*The three questions in this section pertain to the laws and regulations governing philanthropic organizations (POs). The scoring questions for this category cover three aspects of regulations: (A) formation and registration, (B) operations, and (C) dissolution.*

### Question 1: To what extent can individuals form and incorporate the organizations defined?

Score: 4.0

Czech Law permits individuals to act collectively through unregistered groups and organizations. The formation/establishment and registration of POs (two stage character of formation) is regulated in the Czech Civil Code (n. 89/2012 Coll.). Individuals enjoy freedom of association and freedom to own and dispose of property; there are some restrictions on the types and purposes of organizations and *numerus clausus* (fixed maximum number of entrants admissible) of legal persons. For example, Section 145 of the Czech Civil Code prohibits the formation of legal persons with unlawful purposes, such as organizations that seek to deny or limit political rights or incite violence. Further, a foundation cannot be formed to support political parties or movements, as explained in Section 306, and an association cannot involve business or other profit activities, unless these activities support the primary activity of the association, as explained in Section 217.

The registration of a PO is regulated in law no. 304/2013 Coll. on the Public Registries (records) of Legal and Natural Persons. The registration entity is a regional court and the procedure is very quick and free of charge. It is also possible to ask a notary to register the PO in the Registries directly, so long as certain requirements are met. This option is commonly used when the statutes have to be executed in the form of notarial deed, such as by foundations and some other kinds of business corporations. For other organizations, such as foundation funds, associations, institutions etc., the notarial deed is optional. POs have the right to be registered when they fulfill the substantive and procedural statutory requirements.

The registration process requires moderate time and resources. The governing body is consistent and apolitical. In 2014, there was a recodification process of private law, so the legal practice is still a bit unsettled.

### Question 2: To what extent are POs free to operate without excessive government interference?

Score: 4.0

POs are free to operate without excessive government interference. POs are minimally inhibited in their internal governance, with few impediments on the purposes of their activities. The guidelines for operating associations and foundations, such as membership guidelines, organizational structure requirements, meetings, and, in the case of foundations, aspects referring to the endowment capital, board functioning and annual reports are clearly established in the Civil Code. Organizations are free to communicate through various media channels and to cooperate with domestic and international entities. The reporting requirements are predictable, consistent, accessible, and require reasonable resources for completion.

**Question 3: To what extent is there government discretion in shutting down POs?**

Score: 5.0

The organization's governing body is able to voluntarily terminate its activities. In the case of foundations, termination mostly depends on the will of the founder expressed in the foundation deed. Involuntary termination by a government entity occurs only during severe violation and failure to correct said violation, as established in the Civil Code. Clear and fair legal regulations exist to guide the involuntary dissolution of an organization. Section 168 of the Civil Code establishes that a legal person can be dissolved through a juridical act, by expiry of approved legal period, by a decision of a public body, or by achieving the purpose for which it was created, as well as other reasons provided by a statute.

The reasons for involuntary dissolution of an association include unlawful purposes, being involved in profit activities that do not support their primary purpose, or forcing individuals to become members of the association, as explained in Section 217). In the case of foundations, foundations can be voluntarily dissolved if the purpose for which the foundation was created is achieved (Section 376). Foundations will be involuntarily dissolved if:

- it pursues unlawful purposes;
- if it becomes a business company's member with unlimited liability;
- it repeatedly violates the prohibition to provide foundation grant to members, employees, or persons close to the foundation;
- it provides foundation grants for more than two years without having a serious reason to do so;
- it disposes the endowment principal to secure a debt, or for purposes contrary to the will of the person who provided the gift to the foundation;
- the value of the endowment principal decreases below CZK 500,000 (US \$21,400) for more than one year;
- the endowment principal has not generated any yield for more than two years; or
- it is not possible for the foundation to continue to fulfil its purpose.

These provisions generally apply to Institutes (*ústav*) as well; however, the provisions on endowment do not apply (Civil Code Article 418).

**II. Domestic Tax and Fiscal Issues**

*The two questions in this section pertain to laws and regulations governing the fiscal constraints of giving and receiving donations domestically.*

**Question 4: To what extent is the tax system favorable to making charitable donations?**

Score: 4.0

Individuals and corporations have access to tax deductions in the case of a charitable donation. The process of receiving a tax benefit is quite clear (see sec. 20 of the Czech Income Tax Act). Entities

making the donations are relatively free from extensive government regulation. Any disputes that arise between donors and the tax authority may be submitted to the court.

**Question 5: To what extent is the tax system favorable to POs in receiving charitable donations?**

**Score: 3.0**

Organizations receive moderate tax exemptions and tax incentives. The process to receive tax-exempt status is clear and consistent, but somewhat demanding, requiring moderate time and resources. Additionally, the tax law changes quite often. There are some limitations on the types of organizations that qualify for tax benefits, but the primary deciding factor is whether or not the organization fulfills a public benefit purpose, which can be found in Income Tax Act Section 19. Organizations are able to raise funds from private sources. Any disputes that arise between POs and the tax authority may be submitted to the court.

### III. Cross-Border Philanthropic Flows

*The two questions in this section concern laws and regulations governing the fiscal constraints of giving and receiving cross-border donations. The scoring for these questions pertains to the donor and receiving entities.*

**Question 6: To what extent is the legal regulatory environment favorable to sending cross-border donations?**

**Score: 3.6**

Cross-border charitable donations can be sent without additional cost. These are not eligible for the same tax incentives as domestic donations, except in EU and EFTA countries). This is regulated in the Art 20 of Czech Income Tax Act. The process to send charitable donations abroad is quite clear and consistent, requiring a moderate amount of resources and time. There could be some limitations on the type of activities supported through cross-border contributions.

**Question 7: To what extent is the legal regulatory environment favorable to receiving cross-border donations?**

**Score: 3.6**

Cross-border charitable donations can often be received without additional cost, and they are generally eligible for the same tax incentives as domestic donations. There is difference between the EU/EFTA regime and other countries. It is regulated in the Czech Income Tax Act. The process for receiving charitable donations from abroad is quite clear and consistent, requiring a moderate amount of resources and time, at least on the side of POs. There are some limitations on the type of activities supported through cross-border contributions.

#### IV. Political and Governance Environment

*The three indicator questions in the next two sections concern the political and governance context, socio-cultural characteristics, and economic conditions that influence the environment for philanthropy.*

**Question 8: To what extent is the political and governance environment favorable for philanthropy?**

**Score: 4.0**

There is collaboration between the government and the philanthropic sector. The government recognizes the role of philanthropic organizations as useful. The government has allowed, in certain occasions, the participation of philanthropic organizations in advocating for social causes and in implementing public programs. There is an acceptable level of political and economic stability, which is favorable for the success of philanthropy. There is also the Government Council for Non-Governmental Non-Profit Organisations, which is an advisory body of the government of the Czech Republic, but it has limited impact on the real government decision-making.

**Question 9: To what extent are public policies and practices favorable for philanthropy?**

**Score: 4.0**

The government promotes philanthropic values and generally facilitates equal access to national and international resources and opportunities. Donors are generally free to support any philanthropic cause without government pressure. Government agencies demonstrate enough capacity to support and oversee POs. The granting of subsidies to POs is partly regulated by law and partly a matter of policy of the central or local government authorities. Grant rules are mostly set by ministries, public funds, regions, or municipalities on a case-by-case basis.

#### V. Socio-Cultural Environment

**Question 10: To what extent are socio-cultural values and practices favorable for philanthropy?**

**Score: 3.0**

Most of the funding to philanthropic organizations in the Czech Republic comes from grants and public funding, which may be sometimes an obstacle for the successful development of philanthropy as an independent sector. People tend to sometimes distrust POs due to issues with transparency and accountability, and perceive that POs do not always function efficiently. The tradition of individual giving is not well developed, and most of the private giving comes from corporate donors. The country rates low in the 2016 Global Civic Engagement Index and the 2016 World Giving Index although it is now better positioned than in previous years. In general, people still believe that it is solely the government's obligation to solve social problems.

## VI. Future of Philanthropy

*These questions are used to provide a general picture of the future of philanthropy in this country as well as recommendations to improve the philanthropic environment.*

### Current state of the philanthropic sector

Private giving – both corporate and individual – has more than doubled since 2000. On the other hand, until 1989 all forms of organized philanthropy were suppressed by the communist regime, which motivated low levels of private giving prior to 1989. After 1989, there has been a substantial growth in philanthropic interests, especially interests in philanthropic causes pushing for changes in society (Sacher, 2011).

The philanthropic sector is created by a wide range of well-organized and professional organizations, as well as by grassroots, informal groups of people that care about various societal issues. Recently, we have observed substantial growth in on-line giving. What is also positive is that more attention is being given to "major gifts."

### Three major recent events affecting the philanthropic landscape between January 2014 and December 2016

- April, 2015 – Earthquake in Nepal and crisis response;
- September, 2015 – Migration Crises in Europe; and
- November 29, 2016 – first ever Giving Tuesday Campaign in the Czech Republic.

### Future development trends in the philanthropic landscape

We expect to see a growth in online giving, especially as a result of peer-to-peer campaigns. We also expect to see more "more giving" taking place in the Czech Republic.

### Three key recommendations to improve the environment for philanthropy

- Good and self-confident fundraising concepts for POs, as well as transparent and accountable POs able to speak about and prove their impact on society;
- Hopes for the wealthy philanthropist to start "Czech giving pledge"; and
- Maintain the stability of the legal environment, such as tax and civil law.



# Denmark

**Expert:** Lars Skov Henriksen

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With contributions from staff at the Indiana University Lilly Family School of Philanthropy

## QUICK FACTS

**Legal forms of philanthropic organizations included in the law:** Association, Foundation, Cooperative, Trust, Endowment, Society, Others: Self-governing Institution or 'selvejende institution'

**Five main social issues addressed by these organizations:** Primary and High School Education, Arts and Culture, Housing and Economic Development, International Causes, Other: Sports and Leisure

**Average time established by law to register a philanthropic organization:** 0-30 Days

**Average cost for registering a philanthropic organization:** US \$0

**Government levels primarily regulating the incorporation of philanthropic organizations:** Central/ Federal Government

### Philanthropic Environment Scores:

	Ease of Operating	Tax Incentives	Cross-Border Flows	Political Environment	Socio-Cultural Environment	OVERALL SCORE
2018	4.8	4.0	4.0	4.8	4.5	4.42

## I. Formation/Registration, Operations, Dissolution of a Philanthropic Organization (PO)

*The three questions in this section pertain to the laws and regulations governing philanthropic organizations (POs). The scoring questions for this category cover three aspects of regulations: (A) formation and registration, (B) operations, and (C) dissolution.*

### Question 1: To what extent can individuals form and incorporate the organizations defined?

<b>Score: 5.0</b>
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Denmark has three dominant organizational forms of POs: (1) the association, which can have various names besides association, such as club or society; (2) foundations or trusts ('stiftelse'); and (3) 'self-governing institutions' ('selvejende institution') (Ibsen and Habermann, 2006).

Denmark has guaranteed the freedom of association in its written constitution, which dates back to 1849. Articles 77, 78, and 79 guarantee freedom of expression, freedom of association, and freedom of peaceful assembly. The positive right of freedom protects the right to form and become a member of associations of one's own choice, as long as the association pursues legal goals. Associations that use or encourage the use of violence are dissolved by court order. This means that government cannot dissolve an association unless the case is tested in court. These limitations are in accordance with the UN Declaration of Human Rights, which Denmark has ratified.

Besides the constitutional guarantee, Denmark does not have an act on associations as such. The basis for the law is instead based on precedents, commonly accepted principles of association, and legal doctrine (Gjems-Onstad, 1996). This also means that there is no legal or government requirement for registration of associations, no official register, and no registration fee. Any person or group can form an association, and there is no restriction on its purpose as long as it is legal. The criteria for an association to be established as a legal entity is quite vague, though written documents containing the statutes of the association and a formally elected board at a yearly general assembly—where all members have one vote—is the most common practice, most legal experts would say that this is not necessary for the association to have legal capacity (i.e. be able to exercise rights and be subject to legal obligations (Gjems-Onstad, 1996)).

Foundations, on the other hand, are subject to statutory regulation, under the Law of Foundations and Certain Types of Associations. This law also applies to certain associations within the field of work, i.e. unions, employers' associations, and other associations that represent members' economic interests. A foundation (or 'stiftelse') must have a written statute with its name, common good purpose, founder, size, number of persons on the board, rules of accounting, and intended use of any surplus. Foundations are subject to the non-distribution constraint and must have yearly audit procedures. Foundations are subject to the authority of the Ministry of Justice. However, according to a new law from 2014, only foundations holding assets exceeding DKK 1 million are subject to the law. Smaller foundations are legally regarded as an association or a self-governing institution (described in the next paragraph).

Besides associations and foundations, Danish law also holds a category called self-governing institutions ('selvejende institution', literally 'self-owning institution'). Most of these are subject to the law of foundations. Others are regulated by a local agreement. The difference between the

foundation and the self-governing institution is that the latter typically is organizing or running a nonprofit activity or service, such as a school, kindergarten, sports facility, or homeless shelter. The self-governing institution is a legal and economic entity, self-owned, pursuing a specific purpose described in its written statutes, and subject to the non-distribution constraint. The self-governing institution is accountable only to itself—not its founder or a mother-association. Contrary to the association, the self-governing institution does not have members.

**Question 2: To what extent are POs free to operate without excessive government interference?**

**Score: 5.0**

POs in Denmark are free to choose their legal form according to what suits their purpose best. The association is by far the most dominant form and institutionally recognized as a legitimate way of pursuing a purpose or an activity for a membership that shares a common goal. The association can operate without governmental interference. An association is not required to be registered officially. However, if the association receives support from the government, registration is required in the so-called Central Corporate Register (CVR register) which registers name, address, bank account, digital mailbox, etc.

Associations operate on literally all fields in Danish society and their possibilities to receive public support vary according to the specific field.

Most associations that receive public support do so according to the law on general education (Folkeoplysningsloven) administered by the local government. This law is operative within the fields of sports, leisure, culture, arts, and education, which are the dominant voluntary fields in Denmark. This law requires associations to be democratically governed, i.e. they must have elected boards, yearly general assembly meetings, open membership, etc. However, there is not much governmental control with the actual operations of associations within these fields. The general rule is that associations are obliged to document that public funds have been used for the purpose for which they were granted, usually through yearly accounts. According to the law on social service (Serviceloven, article 18), Danish municipalities are obliged to financially support local associations and organizations within the health and social work fields. Amounts, however, are small and organizations must apply each year for specific activities or projects. Within this field, there is comparatively more government control, but there is considerable local variation.

Foundations are required to distribute money according to their purpose as described in their written statutes. Any person or association can establish a foundation. However, the founder or donor must hand over all decision-making authority to the foundation, i.e. the board. The Ministry of Justice can, according to the foundation law, require information about whether the operations of the foundation are in accordance with the statutes and the general law. Foundations holding a net capital above DKK 3 million must use an auditor authorized by the State.

Self-governing institutions usually operate an institution or a service on a contract or agreement with the local government. As such, they are subject to closer control and accountability, and they are usually subject to the same set of regulations, which are in effect for public bodies operating within

the same field. For instance, a self-governing free school is subject to the same law as public schools.

Besides these rules and regulations, POs are free to communicate and cooperate with whomever they want. Several umbrella organizations, such as The Danish Adult Education Association (Dansk Folkeoplysnings Samråd) or the National Center for Volunteer Work, publish handbooks for associations and website guides that are easily accessible for citizens and associations.

**Question 3: To what extent is there government discretion in shutting down POs?**

**Score: 4.5**

An association is free to dissolve itself without interference from the government. Usually the written statute specifies the rules of dissolution, e.g. that a majority should vote for this at two consecutive general assemblies, and the liquidation of its assets. The government can dissolve associations that use or encourage the use of violence by court order. This means that government cannot dissolve an association unless the case is tested in court.

Dissolution, changes in the statutes of a foundation, or merging of two foundations requires permission from the foundation authority ('fondsmyndighed'), i.e. the Ministry of Justice.

A self-governing institution operating under a contract with the government can terminate the contract according to the regulations set up in the agreement.

## II. Domestic Tax and Fiscal Issues

*The two questions in this section pertain to laws and regulations governing the fiscal constraints of giving and receiving donations domestically.*

**Question 4: To what extent is the tax system favorable to making charitable donations?**

**Score: 4.0**

According to the tax law (Ligningsloven article 8A and 12) individual persons or corporations get a tax deduction for charitable donations of up to a maximum amount of DKK 15,200, as of 2016. It is also possible to donate larger amounts (maximum 15 percent of an individual's yearly income) to officially accepted charitable and religious organizations (see criteria in next paragraph) under the condition that the individual donates a yearly amount over a period of at least 10 years.

The Danish tax authorities publish a list of officially accepted charitable organizations on their website for which donors can deduct contributions. Organizations must meet the following criteria to be accepted for this list: the yearly revenue must exceed DKK 150,000; the association must have a democratically elected board; the organization must not be working against democracy or freedom of rights; must have a least 300 fee paying members; and it must receive more than 100 donations a year of a least DKK 200.

Recent technology makes it possible for donors to have donations paid via smart phones automatically registered as tax deductible by the tax authorities.

**Question 5: To what extent is the tax system favorable to POs in receiving charitable donations?**

**Score: 4.0**

Associations are exempt from tax if the association pursues charitable or common good (almennyttige) purposes as stated in a written statute. Any surplus must be used for the purpose of the association and profits must not be distributed. Any sale of goods or services must be in accordance with the purpose of the association. Upon request, associations must also be able to document that revenue is used for common good purposes.

Associations can also receive gifts or donations without paying tax. Recipient associations must inform the Danish tax authorities about donations. The activities of the receiving organization are not restricted to Denmark.

In general, associations are also exempt from value added tax (VAT). However, associations whose sale of goods or services exceeds DKK 50,000 can be required to pay VAT, if their activities are regarded as violating free market competition.

Working as a volunteer, for instance as a board member, for an association, an individual can receive a tax free compensation or reimbursement to be used for travels, telephone, or internet in the service of the association. Expenses should not be documented, but should be rendered probable upon request.

Foundations are tax-exempt for distributions and grants donated for charitable or common good purposes. Foundations get a deduction of 125 percent for donations to common good purposes (i.e. in effect a public subvention).

### III. Cross-Border Philanthropic Flows

*The two questions in this section concern laws and regulations governing the fiscal constraints of giving and receiving cross-border donations. The scoring for these questions pertains to the donor and receiving entities.*

**Question 6: To what extent is the legal regulatory environment favorable to sending cross-border donations?**

**Score: 4.0**

Under the restriction that the foreign charitable organization receiving the donation is accepted as a charitable organization, and under the restriction that the organization informs the Danish tax authorities about the donation, it is possible to deduct donations to organizations working within the European Union (EU) or the European Economic Area (EEA).

Donations for organizations working outside the EU or EEA are not tax deductible. Such organizations must establish a legal entity in Denmark or the EU to be accepted.

In general, rules in this area are not easily understandable or accessible. Over the past years the EU has pursued stricter anti-terror and “whitewashing” measures which have made cross-border donations subject to more control. Research that documents whether this causes problems for POs is limited; most likely it does not because surveillance seems very specific.

**Question 7: To what extent is the legal regulatory environment favorable to receiving cross-border donations?**

**Score: 4.0**

Danish tax law does not seem to provide any explicit rules or regulations regarding receiving cross-border donation. In general, rules in this area are not easily understandable or accessible.

#### **IV. Political and Governance Environment**

*The three indicator questions in the next two sections concern the political and governance context, socio-cultural characteristics, and economic conditions that influence the environment for philanthropy.*

**Question 8: To what extent is the political and governance environment favorable for philanthropy?**

**Score: 5.0**

In general, there are not open conflicts between the government and the voluntary sector, and civil society organizations are recognized as important sources of pluralism, innovation, and public legitimacy. Because Denmark has a long history of free association and a strong tradition of negotiated democratic culture, there is real space and acceptance of a free public sphere where associations, interest groups, and concerned citizens can have a say in public decision-making and also raise their voice in public and advocate change.

Two concerns, however, are important. First, the refugee crisis in 2015-2016 brought many refugees to Denmark and this event has brought about a much more conflict-ridden and polarized public debate in relation to immigration and integration issues in particular. The current political climate is not to the benefit of a deliberative political culture. New social media is a channel for critical voices and mobilization, but also for populism.

Second, students of corporatism are raising concerns that central government is increasingly closing off interest organizations in hearing processes and speeding up the tempo in the law making processes to the detriment of the quality of laws (Christiansen et al., 2010).

Despite these caveats, the political climate is supportive of philanthropic organizations and volunteering. Recent government white papers have underlined the importance of civil society organizations and civic engagement. Much of this political interest is directed at organizations' and

volunteers' contributions to solving welfare challenges, such as growing elderly populations, integration of immigrants, and creating meaningful activities and job opportunities for marginalized groups in the labor market. The downside of this is a more instrumental understanding of the value of civic engagement. Moreover, the political discourse on partnerships and co-creation adds to this agenda, which, in the longer run, may compromise the autonomy and critical voice of voluntary organizations.

Denmark has a stable economic environment, which makes it possible for people to direct their time and energy to organizations in civil society. Between 35 and 40 percent of the population has volunteered within the last year and this level has been stable over the past 10 years. However, recent surveys suggest that citizens' time used for volunteering is decreasing. Some of this trend can be explained by a decrease in the share of voluntary work being done by members of voluntary organizations. Instead, citizens prefer not to be members of the organizations for which they volunteer, and this drives down loyalty, stability, and time investment among the volunteer population (Qvist, Henriksen, and Fridberg, 2017).

Donations remain at a high level, with approximately 70 per cent of the population donating money to POs within the last year. Additionally, the amount is going up, probably with increasing wealth and income, as well as improved and easy donation technology through smart phones and the like. On average, donors make a contribution of DKK 2,000 per year (Petrovski, 2017).

**Question 9: To what extent are public policies and practices favorable for philanthropy?**

<b>Score: 4.5</b>
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In general, the government promotes and supports civic engagement. Most of the support structure and services for voluntary action is run by independent national voluntary organizations, which act as umbrella organizations for regional or local member organizations. Nordic civil societies have a legacy of vertical integration. This means that, for instance, local sport clubs have access to courses organized by the national sport federation or that local clubs can call upon national consultants to help with local problems. This structure is typical within most fields and underscores the autonomy of the voluntary sector.

Additionally, the central government has been building an infrastructure of support organizations, particularly within the welfare fields, to support volunteering and civic engagement. Thus, a national council of volunteering and a national center for voluntary social work has been in place since the beginning of the 1990s. Likewise, locally, local governments are supporting local volunteer centers and are also increasingly employing volunteer consultants to coordinate and cultivate civic action and cooperation between public and private actors. As of 2016, 80 out of 98 Danish municipalities have a politically approved local policy for the voluntary sector (frivillighedspolitik).

However, there is not a coordinated government policy toward the voluntary sector. Rather, policies are being formulated and pursued within separate policy domains.

In general, there is very little corruption in Denmark, in particular due to effective institutions.

## V. Socio-Cultural Environment

**Question 10: To what extent are socio-cultural values and practices favorable for philanthropy?**

Score: 4.5

Denmark has a long tradition of philanthropy and volunteering, which the present society relies on. This tradition, though in the beginning connected to the Lutheran State Church, is today primarily of a secular kind. In effect, we find half of all voluntary organizations within the fields of sport, culture, and leisure. Trust in voluntary organizations is very high, and people find organizations important for the pursuit of interests, for organizing leisure and cultural activities, and as vehicles for social capital. There is more skepticism when it comes to voluntary organizations as providers of welfare services, because this is considered a public responsibility within the context of a universal welfare state (Frederiksen, 2015).

The relative egalitarian structure of the Danish society is supportive of increasing participation rates across status groups. Status selection mechanisms are softer compared to more hierarchical organized societies, and there is a comparatively high take up of low status groups into the voluntary sector. Among unemployed people, 28 percent volunteered, and among immigrants, 21 percent volunteered (Fridberg and Henriksen, 2014). Though still lacking significantly behind the better off, these are high rates in international comparisons.

Among the younger generations, the gender gap has disappeared. There are gender differences, however, related to which fields men and women are active in. In particular, men are more active in sports.

Concerning philanthropic giving, one cannot say that there is an equally strong culture. Within a welfare state that relies heavily on taxes, and where resources are subject to redistribution through a progressive tax system, many people feel that solidarity is better expressed by paying taxes. This does not mean that people don't give to philanthropic causes, but the amounts are smaller, and there is not a societal contract relying on private donations. However, private foundations are increasingly playing a strategic role within different policy areas, such as welfare, city planning, education, and research. There is a growing recognition of engaging in private giving, and through the internet and social media much more crowdfunding initiatives have popped up over the recent years.

## VI. Future of Philanthropy

*These questions are used to provide a general picture of the future of philanthropy in this country as well as recommendations to improve the philanthropic environment.*

### Current state of the philanthropic sector

The voluntary sector in Denmark is well-organized and strongly institutionalized.

### **Three major recent events affecting the philanthropic landscape between January 2014 and December 2016**

- The refugee crisis in 2015-2016 brought many refugees to Denmark and this event has brought about a much more conflict-ridden and polarized public debate in relation to immigration and integration issues in particular. The current political climate is not to the benefit of a deliberative political culture. New social media is a channel for critical voices and mobilization, but also for populism;
- Students of corporatism are raising concerns that the central government increasingly is closing off interest organizations in hearing processes and speeding up the tempo in law making processes to the detriment of the quality of laws; and
- Local governments have started to recruit and organize the use of volunteers in public institutions. In this way, the public sector has started to compete with local associations for volunteers.

### **Future development trends in the philanthropic landscape**

There is probably a change in the intensity and commitment of volunteers – away from the classic membership based forms of volunteering – and increasingly toward episodic and low intensive forms of volunteering. In parallel with this, we have witnessed an expansion of new organizational forms. Some of these are results of active and neo-liberal government policies that aim at activating the responsible citizen, others are results of creative citizens inventing new forms of civic engagement, and others, again, are results of efforts within the voluntary sector to re-invent organizational forms that can keep the organizations attractive to their membership base or broaden their recruitment base. Some of those could not have come about without the rapid invention and expansion of new technologies, notably the internet and related social media.

These new forms include: volunteer centers, volunteering at public institutions, such as elderly homes or hospitals; internet based helping platforms, such as ‘Homework online;’ internet based social activism, such as “Refugees Welcome;” micro-activism, such as citizens helping refugees to cross borders; privately organized collection of funds for particular individuals (crowdfunding philanthropy); social enterprises, etc. The implication of this development, both for the traditional organizations and for the voluntary sector as such, is, however, a complicated question.

### **Three key recommendations to improve the environment for philanthropy**

- Tax laws are not always easily accessible and cross-border donations are especially complicated;
- Public support for associations is generous in many cases, but there is not equal treatment across fields. Sports associations are treated with less control than welfare associations in many cases; and
- Public sector interest in voluntary organizations and volunteers should not focus only on the strategic use of POs as a welfare resource.



# Finland

**Expert:** Martti Muukkonen

**Institutional Affiliation:** University of Eastern Finland

With contributions from staff at the Indiana University Lilly Family School of Philanthropy

## QUICK FACTS

**Legal forms of philanthropic organizations included in the law:** Association, Foundation, Cooperative, Social Enterprise

**Five main social issues addressed by these organizations:** Arts and Culture, Youth and Family, Religion, Human Rights, Sports

**Average time established by law to register a philanthropic organization:** 0-30 days

**Average cost for registering a philanthropic organization:** US \$150

For associations, the average registration cost is US \$150. The average time for registration is same for different organizations. However, the registration cost for foundations is about US \$1,100, for cooperatives is US \$500 and for social companies, it is between US \$100-\$500, depending on the form of the company and the process of registration- electronic or manual.

**Government levels primarily regulating the incorporation of philanthropic organizations:** Central/Federal government, Local government

Local municipalities typically either sponsor associations or buy services from them (or other forms of POs) and that gives them possibility for regulation. Legal regulation takes place at the national level.

### Philanthropic Environment Scores:

	Ease of Operating	Tax Incentives	Cross-Border Flows	Political Environment	Socio-Cultural Environment	OVERALL SCORE
2018	5.0	4.0	5.0	5.0	5.0	4.80

## I. Formation/Registration, Operations, Dissolution of a Philanthropic Organization (PO)

*The three questions in this section pertain to the laws and regulations governing philanthropic organizations (POs). The scoring questions for this category cover three aspects of regulations: (A) formation and registration, (B) operations, and (C) dissolution.*

**Question 1: To what extent can individuals form and incorporate the organizations defined?**

**Score: 5.0**

Military organized associations are forbidden. Associations can only do business that is related to their purpose or that is so small by volume that it can be seen as insignificant. Foundations must have a public benefit purpose. Foundations that support the kin of the founder are not allowed. The minimum founding capital for a foundation is EUR €25,000 (approximately US \$26,500). Social enterprises are for profit companies wherein a minimum of 30 percent of its workforce are individuals with disabilities or individuals who were unemployed long term. Registration as a Social Enterprise gives the company special support from the state, for example easier procedure and a longer time frame for employment supports. Associations and foundations can be exempt from paying income taxes but not from paying value-added tax (VAT). Other organizations are treated like any other for-profit company. Associations, foundations, cooperatives and social enterprises must be registered in the Finnish Patent and Registration Office. Social Enterprises are also entered in the register of the Ministry of Economic Affairs and Employment.

**Question 2: To what extent are POs free to operate without excessive government interference?**

**Score: 5.0**

Naturally, all organizations must obey national laws, such as the Income Tax Act, and specific laws like the Association Act, Foundation Act, Co-operative Act, Finnish Act on Social Enterprises, and the Law on Social Companies. However, they merely provide rules that ensure the rights of members and of an organization's interactions with the rest of society. For example, the chairman of an association cannot be a minor.

**Question 3: To what extent is there government discretion in shutting down POs?**

**Score: 5.0**

Termination of an association by the government is extremely rare. There have been two major occasions; firstly, after World War II the Commission of the Allied Forces (de facto Russians) required the termination of all "Fascist organizations," which meant local militia and women's military aid organizations. Secondly, a few years ago, the Register of Associations cleaned its registries and terminated associations that had not shown any activity since 1995. However, even those had the possibility to inform the Register that they were still active, and then they would not be involuntary terminated.

## II. Domestic Tax and Fiscal Issues

*The two questions in this section pertain to laws and regulations governing the fiscal constraints of giving and receiving donations domestically.*

### Question 4: To what extent is the tax system favorable to making charitable donations?

Score: 3.0
------------

Tax deduction can only be granted to corporations when the donations support organizations promoting sciences, arts, or Finnish cultural heritage. The minimum threshold for eligible donations is EUR €850 (US \$920) and the maximum donation is EUR €250,000 (US \$270,010) on the condition that the recipient is an EEA state, government-financed university, institute of higher education, or university fiancé entity resident in the EEA. Alternatively, the maximum donation is EUR €50,000 (US \$54,000) on the condition that the recipient is endorsed by the National Board of Taxes as an association, foundation, or fund. The list of accepted organizations is quite short and leaves out all social, youth, sports, and recreational POs.

However, there is a way around this limitation; if an association "sells" ads to its publication or for the wall of its building, it is considered normal business and a purchaser can count it as costs. Similarly, a company can "buy" products and services—such as recreation services—provided by some association/foundation.

There is no tax deduction for individual charitable contributions.

### Question 5: To what extent is the tax system favorable to POs in receiving charitable donations?

Score: 5.0
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Fundraising typically requires permission from the local police departments or the National Police Board, which checks that the purpose of the fundraising is legal. Fundraising permits can be applied for according to the applicant's operating area. POs receive tax exemptions on all of their income that is not-for-profit, including member fees, donations, and income from lotteries and events. Divided incomes are tax free as well. Any other business income or income derived from real property is taxable, but a PO can apply to be exempt from its payment on a case-by-case basis. Individuals receiving grants and awards from foundations and public entities are tax free up to certain amount of income (in 2017 EUR €20,309 [US \$27,545]).

## III. Cross-Border Philanthropic Flows

*The two questions in this section concern laws and regulations governing the fiscal constraints of giving and receiving cross-border donations. The scoring for these questions pertains to the donor and receiving entities.*

**Question 6: To what extent is the legal regulatory environment favorable to sending cross-border donations?**

**Score: 5.0**

There is no difference from domestic practices if the organization is within the EU and EEA. The Finnish tax law makes no difference whether the recipient PO is resides in Finland or in another EU or EEA country, but the foreign PO registered in another EU or EEA country must fulfill all legal requirements that a domestic PO must. Other cross-border donations may also be tax deductible for the donor, but the receiving foundation must be approved by the Finnish tax authorities (Herberts and Paavo, 2015)

**Question 7: To what extent is the legal regulatory environment favorable to receiving cross-border donations?**

**Score: 5.0**

There is no difference from domestic practices. Finnish POs can receive donations without restrictions.

#### **IV. Political and Governance Environment**

*The three indicator questions in the next two sections concern the political and governance context, socio-cultural characteristics, and economic conditions that influence the environment for philanthropy.*

**Question 8: To what extent is the political and governance environment favorable for philanthropy?**

**Score: 5.0**

It must be noted that Finland is a Nordic welfare state where the government takes care of most of the welfare services. However, there are some niches where philanthropic organizations work effectively. The government has a plan to open the welfare services – health care and social services – to competition in the beginning of 2019, but it is widely opposed and the major opposition party has said that if they win the next election in April 2019, the reform would be cancelled.

**Question 9: To what extent are public policies and practices favorable for philanthropy?**

**Score: 5.0**

Associations and foundations are free to do whatever they want under the prevailing legislation and their bylaws. For example, foundations can be established if the purpose of the foundation is useful, but since the definition of the word “useful” is not clear this criterion “has only a nominal meaning” (Herberts and Hohti, 2015, p.8). Foundations are not, however, allowed to give political donations if it is not mentioned as their purpose in their bylaws ([Finnish Supreme Court, precedent 2016:39, paragraph 55](#)).

## V. Socio-Cultural Environment

**Question 10: To what extent are socio-cultural values and practices favorable for philanthropy?**

<b>Score: 5.0</b>
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Here again—Finns greatly value their public welfare services. However, this does not limit their positive attitude toward philanthropic giving. In 2016, there were almost 139,000 registered associations in Finland, and the individuals' participation of donating money for charities (CAF - World Giving Index 2016) has been increasing in the last years. According to the Finnish Patent and Registration Office, in January–February 2017 34,975 associations were stricken off the register, with only 104,022 remaining. The average number of new registrations of nonprofit associations between 2013 and 2015 was approximately 2,300. An average of 35 new foundations registered in the same period, amounting to 3,245 foundations in 2015. According to the Council of Finnish Foundations, currently an approximate 30 percent of the existing foundations are grant making foundations; the rest are either operative (for example nursing homes), or a mixture of operations and grant making. Additionally, by the end of 2016, 4,315 cooperatives were registered in the Trade Register.

## VI. Future of Philanthropy

*These questions are used to provide a general picture of the future of philanthropy in this country as well as recommendations to improve the philanthropic environment.*

### Current state of the philanthropic sector

Finns call Finland the “Promised Land of Associations.” It is a traditional way of co-operation. Foundations are an important part of the society, too. Cooperatives (as well as mutual benefit companies) have changed to resemble other companies, but still have a significant role in the society. Indeed, the largest commercial chain in Finland is a cooperative (supermarkets, gasoline stations, hotels, restaurants, and so on), as well as the second largest bank. On the side of producer cooperatives, the largest dairy chain in the country is also a cooperative. The concept of social enterprises are quite a new innovation and it cannot be said how the model will succeed.

### Three major recent events affecting the philanthropic landscape between January 2014 and December 2016

- The flow of refugees coming to the country was mostly dealt by centers organized by the Red Cross and local Lutheran parishes (which, however, are part of the public sector);
- Discussions of the termination of one fascist anti-immigrant organization (Soldiers of Odin) that has been organized according to military discipline; and

- Discussions on the children's rights in some religious organizations. Ombudsman for Children has made a proposal to monitor that these organizations do not violate children's rights ([LAPSI-ASIA, 2017](#)).

### **Future development trends in the philanthropic landscape**

Much depends on which kind of an agreement the parliament can come to in the case of welfare reform. Fears are that the big international companies will catch the welfare industry, and the quality of services will go down and the costs go up. However, in that case, there is a possibility that the large cooperatives will start enlarging their businesses and, hopefully, push the international companies out of the country, as they have done with gasoline stations.

### **Three key recommendations to improve the environment for philanthropy**

- Tax deductions for individuals and companies for philanthropic donations to all associations and foundations without limits;
- More research and teaching on public benefit sector. Finland has only one master's program on the subject, and even that focuses more on social movements than on associations and foundations; and
- More knowledge on associations. Officials and other public decision-makers only understand public and commercial organizations, but do not understand the potential of associations and other POs.



# France

**Expert:** Philippe-Henri Dutheil

**Institutional Affiliation:** EY Société d'Avocats

With contributions from staff at the Indiana University Lilly Family School of Philanthropy

## QUICK FACTS

**Legal forms of philanthropic organizations included in the law:** Association, Foundation, Cooperative, Endowment, Other: Social Utility Company (ESUS)

**Five main social issues addressed by these organizations:** Primary and High School Education, Arts and Culture, Health and Medical Research, International Causes, Other: Sports

**Average time established by law to register a philanthropic organization:** 31-60 days or more

Depending on the PO, the time it takes to register can vary from 31-60 days to more than 90 days. However, for public utility foundations or associations it could take 12 to 18 months since the organization has to apply for its “public utility” recognition in the “Ministère de l’Intérieur” (Ministry of Interior). Afterward, the Ministry transfers the application to the “Conseil d’Etat” (French Council of State) for advice. The government can follow the advice of the French Council of State by publishing a decree of recognition of public utility.

**Average cost for registering a philanthropic organization:** EUR €165 (US \$204 approx.)

Registration costs are the following: EUR €44 for association, EUR €150 for endowment funds, and EUR €300 for corporate foundations.

**Government levels primarily regulating the incorporation of philanthropic organizations:** Central Government, Local Government

Concerning Public Utility Foundation, the application for “public utility” recognition is made by the government (“Ministère de l’Intérieur”).

Concerning associations, endowment funds, and corporate foundations, registration is made by the Prefecture (French local administrative authority).

### Philanthropic Environment Scores:

	Ease of Operating	Tax Incentives	Cross-Border Flows	Political Environment	Socio-Cultural Environment	OVERALL SCORE
2018	4.3	5.0	4.0	5.0	5.0	4.67

## I. Formation/Registration, Operations, Dissolution of a Philanthropic Organization (PO)

*The three questions in this section pertain to the laws and regulations governing philanthropic organizations (POs). The scoring questions for this category cover three aspects of regulations: (A) formation and registration, (B) operations, and (C) dissolution.*

### Question 1: To what extent can individuals form and incorporate the organizations defined?

<b>Score: 4.0</b>
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In France, there is no restriction concerning the purpose of a PO as long as the aim of the organization is not to share profits among members or to pursue an unlawful purpose. There are several kinds of POs, including associations and foundations, which are further subdivided into public utility foundations, sheltered foundations, corporate foundations, etc. and endowment funds. These organizations are subject to different regulatory regimes.

French Law currently permits the easy creation and registration of POs, and it is relatively simple to create an association or an endowment fund within a prefecture. The process usually takes about 4 to 6 weeks. For public utility foundations, however, the process is more complex. New POs have to apply for “public utility” recognition within the “Ministère de l’Intérieur” (Ministry of Interior), which can take 12 to 18 months to receive approval, and in some cases, even longer.

There is no minimal endowment required for POs, except for public utility foundations, which are mandated to have no less than EUR €1,500,000 (US \$1,578,947) for registration. The law on Social and Solidarity Economy, enacted on July 31, 2014, also establishes a minimum endowment required to create an endowment fund, which has been set up at EUR €15,000 (US \$15,789) by the decree enacted on January 2015.

Founders of associations and endowment funds also have to pay registration fees (EUR €44 for association and EUR €150 for endowment fund) to cover the costs associated with the public announcement of their registration in the “Journal Officiel” (French journal of registration).

French law covers all ranges of existing POs. Since the aforementioned law enacted on July 31, 2014, for-profit organizations are able to participate in the social and solidarity economy, provided that they meet certain requirements established in the law. French corporate law does not provide a minimum fixed amount of shared capital to create a “société à responsabilité limitée” (limited liability company) nor to create a “société par actions simplifiée” (simplified joint-stock company), except for “société anonyme” (corporation) which requires a minimum of EUR €37,000 (US \$38,947) shared capital.

**Question 2: To what extent are POs free to operate without excessive government interference?**

Score: 4.0

Subject to France's freedom of association, the French Law of July 1, 1901 does not constrain the founders by deciding the governance structure of an association. This same principle also governs endowment funds. For public utility foundations, their governance is modeled on standard statutes. POs may conduct any activities that are not illegal or reserved for another type of organization. While associations and foundations may engage in economic activities, such activities must not be their primary function.

Some specific kinds of associations can be created for the purposes of financing a political party or an election campaign. Such associations are ruled by the law of March 11, 1988. According to this law, such associations have to receive an accreditation from the "Commission nationale des comptes de campagne" (National Commission of Campaign Accounts) in order to operate. How easy it is for these political associations to receive gifts, however, is limited, as a donor cannot give more than EUR €7,500 (US \$7,895) per year to a political association.

Like any other organization, a philanthropic organization is free to communicate through all media and to participate in various networks, provided that such actions are consistent with their statutory objects. There are, however, various requirements to fulfill if a PO wants to receive public donations. The most important among these requirements are the financial reporting obligations, which stipulate that if a PO receives more than EUR €153,000 (US \$161,053) in public subsidies or donations in a year, it must publish its accounts within 3 months following its approbation.

Associations are also required to have a statutory auditor if they receive more than EUR €153,000 (US \$161,053) in public subsidies or if they receive donations eligible for tax deductions exceeding EUR €153,000 a year. Additionally, they may be required to use an auditor if they meet at least two of the following three thresholds: the organization has 50 employees, the organization has an annual turnover greater than EUR €3,100,000 (US \$3,263,158), or it has more than EUR €1,550,000 (US \$1,631,579) worth of assets. The nomination of a statutory auditor may also be triggered by other, more specific regulations. Similarly, endowment funds also have an obligation to have a statutory auditor if their resources exceed EUR €10,000 (US \$10,526). Finally, foundations always have an obligation to appoint a statutory auditor unless they are organized as a sheltered foundation.

POs supporting a scientific, social, family, humanitarian, philanthropic, educational, athletic, cultural or environmental-protection cause may make appeals to the public by a fundraising campaign with prior administrative declaration. By way of exception, endowment funds need to ask for an authorization within the Prefecture (French local administrative authority).

**Question 3: To what extent is there government discretion in shutting down POs?**

Score: 5.0

The founders of a PO can decide whenever they want to pursue the dissolution of their organization. The law does not, however, limit the right of dissolution solely to the founders; the involuntary

termination of an association or an endowment fund may be imposed by a court. In practice, however, such decisions are very rare, and are only carried out if they violate Article 3 of Law about associations of July 1, 1901, which states that “any association founded on a cause or with unlawful objectives, contrary to the law, morality, or which aims to interfere with the interests of national territory and the republican form of Government, is null and void.” In some cases, a judge can pronounce the dissolution of the association, but only if the proceedings are brought by a person with a direct and personal interest in the matter. The causes of dissolution are diverse, but can usually be related to unlawful purposes, criminal offenses, or “proper reasons.”

For public utility foundations, the “Ministère de l’Intérieur” (Ministry of Interior) can decide to retire its recognition of public interest if the foundation no longer meets the requirements for eligibility, which effectively dissolves the foundation. Before retiring the recognition, the Ministry notifies the affected foundation and provides time to rectify the error(s). Again, in practice, this case is very rare. After an involuntary dissolution, the goods and assets of the entity are liquidated, and the court appoints a person to oversee the liquidation.

## II. Domestic Tax and Fiscal Issues

*The two questions in this section pertain to laws and regulations governing the fiscal constraints of giving and receiving donations domestically.*

### Question 4: To what extent is the tax system favorable to making charitable donations?

Score: 5.0
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Article 200 of the French Tax Code provides that individual donations to the type of organizations listed in its statutes are entitled to tax deduction at the rate of 66 percent of the amount paid, within a limit of 20 percent of the taxable income. In order for individuals to be entitled to this tax deduction, it must be demonstrated that the donations were made to those organizations that are listed in article 200 of the French Tax Code. Eligible organizations include: public interest works or organizations of a philanthropic, educational, scientific, social, humanitarian, athletic, family-related or cultural nature; endowment funds; corporate foundations; not-for-profit higher education or artistic education institutions (public or private); religious and charitable associations, and recognized public religious institutions in Alsace-Moselle; cultural heritage foundations or certain related organizations for donations that finance the restoration of private historical monuments; and university foundations and partnership foundations. Critically, taxpayers liable for the “Impôt de solidarité sur la fortune” (ISF) – direct tax levied on French citizens whose assets exceed EUR €1,300,000 (US \$1,368,421) – may claim 75 percent of the amount of any donations made to certain public-interest organizations over the amount of their ISF payment, within a limit of EUR €50,000 (US \$52,631). These contributions can either be made in the form of cash donations or fee-simple donations of shares of companies listed on a regulated French or foreign market.

There also exists a category of for-profit organizations that donors can contribute to and still receive tax benefits. Organizations in this category include: public or private institutions for research or higher or artistic education that are of public interest; recognized public-utility foundations; university foundations; partnership foundations; professional and occupational integration organizations; the

French National Research Agency; and recognized public-utility associations whose objective is financing and assisting in setting-up or takeover of companies.

According to article 238 of the French tax code, companies that fall within the scope of the Corporate Income Tax or income tax schedules under certain taxation regimes may benefit from France's corporate patronage regime. Under this regime, corporate patronage transactions grant tax deductions that equal 60 percent of the amounts paid. These deductions are, however, limited to 0.5 percent of the company's revenue, excluding taxes.

**Question 5: To what extent is the tax system favorable to POs in receiving charitable donations?**

**Score: 5.0**

Associations, endowment funds, and foundations are generally exempt from commercial taxes, such as corporate income taxes, turnover taxes, and professional taxes. However, special rules apply to VAT. According to article 261, 7.1 of the French Tax Code, earnings from economic activities are exempt from taxes if they meet certain conditions. First, the management of the organization must perform their functions on a voluntary basis. It is also worth noting that the fact that the PO also has a salaried director does question the voluntary nature of the management. Additionally, a PO cannot distribute benefits among its members or founders. This prohibition includes distribution of direct and indirect benefits, no matter their kind. Second, if the organization carries out a competitive activity, it must perform this activity in conditions that are different from those of commercial companies.

To determine if the PO is in competition with a company, organizations are assessed on four criteria: the product, the price, the public component, and promotion. In order to avoid falling within the scope of competition, it is imperative that the organization perform these four activities in conditions that are different from those practiced by commercial operators in the field.

If the analysis of these activities leads to the conclusion that some of them are for-profit, they may still be entitled to an exemption from business taxes for ancillary for-profit activities, provided that these activities are less than EUR €61,145 (US \$64,363) of the organization's annual revenue.

Even if these criteria are fulfilled, an organization may still be classified as having a for-profit purpose if it maintains privileged relations with organizations in the commercial sector that draw a competitive advantage therefrom. According to France's tax administration, a privileged relation is defined as cases when companies draw a competitive advantage from the activities of an organization that allows them to either reduce their expenses or increase their income.

### III. Cross-Border Philanthropic Flows

*The two questions in this section concern laws and regulations governing the fiscal constraints of giving and receiving cross-border donations. The scoring for these questions pertains to the donor and receiving entities.*

**Question 6: To what extent is the legal regulatory environment favorable to sending cross-border donations?**

**Score: 4.0**

The eligibility to receive tax incentives generally depends on the legislation of the country of the donor. According to the Persche judgment of the Court of Justice of the European Communities on January 27, 2009 (aff. C-318/07, hein Persche c / Finanzamt Lüdenscheid), the principle of free movement of capital under Article 56 of the Treaty of the European Community prevents a Member State from restricting the benefits of its tax system to only include payments made to a public interest entity established inside its territory, if it can be shown that a gift or a payment made to a body in another Member State meets the requirements of the tax system. This essentially prevents member countries from designing their tax codes to unfairly discriminate against recipients in other member states.

Therefore, France – Article 35 of the Third Amended Finance Act for 2009 (No. 2009-1674 of December 30, 2009 – extends the scope of the tax benefits available to entities making sponsorship donations and payments to include foreign organizations established in a Member State of the European Union. It also extends these benefits to those members of the European Economic Area (EEA) that have settled with France tax treaties containing an administrative assistance clause aiding to fight against fraud and tax evasion, provided that organizations in these countries have objectives and characteristics similar to eligible organizations headquartered in France. Donations made to bodies established outside these states are excluded from France's tax scheme.

**Question 7: To what extent is the legal regulatory environment favorable to receiving cross-border donations?**

**Score: 4.0**

There are no additional costs on cross-border donations. According to the jurisprudence of the European Court of Justice, a member state has no right to refuse to provide tax benefits to a donor if the receiving organization is based in another member state and meets the conditions granting a tax benefit in the country of residence of the donor. The cross-border donations should be done in compliance with international regulations on financial flows and money laundering. Lastly, while cross-border donations are not subject to VAT, there are no income tax exemptions offered on cross-border donations.

#### IV. Political and Governance Environment

*The three indicator questions in the next two sections concern the political and governance context, socio-cultural characteristics, and economic conditions that influence the environment for philanthropy.*

**Question 8: To what extent is the political and governance environment favorable for philanthropy?**

<b>Score: 5.0</b>
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Relations between the government and the philanthropic sector from the distant past to the Law of July 1, 1901 were mainly characterized by the government's intentions to control and narrow the scope of actions of POs. From ignorance and mistrust, the government has progressively moved to establishing close relationships with the philanthropic sector.

With growing democratic values, the philanthropic sector affirmed its legitimacy and its social role. Today in France, POs enjoy a large range of liberties and a liberal status. POs are considered an independent credible voice between the State and civil society. It represents and assumes various interests and points of view of the civil society. It also assumes some of the social activities and causes that public authorities do not provide. There is a common understanding that POs have a role in the implementation of public policies. For this reason, POs are entitled to public subsidies.

The government strongly encourages philanthropic initiatives. The main evidence is the tax deduction on the amounts paid by individuals making donations.

The French philanthropic sector shows a good dynamism; nowadays, there are 1.6 million associations in France, and 67,000 new associations are registered per year. Concerning foundations, there were 4,546 in France in 2016, compared to 2,733 in 2011. This increase is due to the high number of endowment funds in 2016 (2,226), though this type of philanthropic organization has only existed since 2009.

A major law (Law No. 2014-856 on social and solidarity economy) was enacted on July 31, 2014. This law introduced the formalization of the social and solidarity economy. It created a legal frame gathering the three pre-existing strata, namely social economy, solidarity economy, and social entrepreneurship around shared values. This text provides new guidelines for the sector, gives a definition of the social and solidarity economy, and includes in its scope for-profit organizations, provided that they fulfill certain conditions laid out in the law. Several regulations have been issued to implement this text.

Following Article 1 of the aforementioned law, for-profit organizations may be part of the social and solidarity economy sector provided they meet certain requirements, such as:

- the aim pursued by the partnership is not only profit-sharing;
- the organization utilizes democratic governance, not only based on the level of financial contribution: for commercial companies, governance shall include participative mechanisms;

- the potential benefits must be mainly used to maintain or develop the activity of the entity; some rules apply to the use of capital, as well as on their indivisibility and non-shareable character; and
- their activity must comply with at least one of the “social utility” objectives set in Article 2 of the law: to provide support, through its activities, to people in fragile situations, and/or contribute to create or maintain local solidarity, and/or concur to sustainable development in the economic, social, environmental dimensions.

The French landscape of philanthropy shows that various public institutions dedicated to the sector have been created, and that the government is more and more proactive in the philanthropic sector. The “Conseil National des Chambres Régionales de l’Economie Sociale” (National Council of Regional Chambers of Social and Solidarity Economy) was created in 2004, and the “Haut Conseil à la Vie Associative” (High Council for Associative Activities) was created in 2011. Following the law enacted on July 31, 2014, the tasks of the “Conseil Supérieur de l’Economie Sociale et Solidaire” (High Council of Social and Solidarity Economy) have been extended.

All these public institutions establish the link between politics and POs, including profit-making organizations acting in the social and solidarity economy sector. They promote dialogue and work to improve the relevance of the measures taken by public authorities regarding the philanthropic sector.

Further, in 2014, the government designed the accreditation of “La France s’engage”, which promotes innovative social projects implemented by social and solidarity economy organizations. Projects can be initiated in various fields: education, culture, solidarity, ecology, healthcare or citizenship. It gives these organizations the opportunity to benefit from financial support, growing notoriety, and general support to develop their projects. A foundation is currently being set up in order to implement this program.

There is no political crisis that may affect the development of philanthropy. Nevertheless, it must be noted that public funds are becoming scarce. In such circumstances, new funding technics from the private sector are encouraged (crowdfunding for example). Public entities bearing public services assignments are increasingly relying on patronage. For instance, a survey on local authorities and patronage conducted by EY/Régions de France has shown that in 2015, 26 percent of patrons’ enterprises supported public entities, such as local authorities, compared with 13 percent in 2013. Furthermore, 10 percent of local authorities’ budget comes from patronage. It should be noted that the presidential elections to be held in May 2017 are likely to have an impact on the philanthropic sector.

**Question 9: To what extent are public policies and practices favorable for philanthropy?**

**Score: 5.0**

The French government actively promotes philanthropic values and facilitates equal access to national resources and opportunities. Various regulations have implemented mechanisms to access resources, such as:

- The “contrat pluriannuel d’objectifs,” a multi-annual contract to be signed between the State and POs, in order to obtain public funds for 4 years. The government strongly promotes the use of such a contract because it provides long-term support; and

- The “best value for social matters” criteria, which is often used within public procurements by the contracting authority in order to select the bidder, providing this criteria doesn’t lead to discrimination.

Donors and funders of POs have to know beforehand whether the recipient organization is recognized as “tax-exempt” or not in order to be entitled to tax deduction at the rate of 66 percent of the amount paid, within a limit of 20 percent of the taxable income. Corporations are entitled to a tax deduction equal to 60 percent of the amounts paid, limited to 0.5 percent of the company’s revenue, excluding taxes.

It must be demonstrated that the donations were made to organizations in the patronage regime. These are philanthropic organizations that:

- operate in France;
- develop activities in at least one of the public interest fields listed in Article 200 of the French Tax Code, as mentioned in Question 4;
- do not operate with the purpose of making profit; and
- do not operate for the benefit of a restricted circle of beneficiaries.

In addition, French regulation facilitates cross-border donations; the scope of the tax benefits available to entities making sponsorship donations and payments is extended to foreign organizations established in the European Union or in the European Economic Area (EEA) (see question 6).

It must be noted that, regardless of whether the PO is entitled to patronage, donors and funders of POs are free to support any philanthropic cause or organization without government pressure, as long as the purpose of the PO is lawful. For instance, activities carried out by sects are unlawful and registered on a list established by a Parliamentary Investigatory Commission on sects.

To access public funds, there are conditions that must be fulfilled depending on the legal structure of the PO. For example, an endowment fund is not eligible, per se, to public funds.

In order to prevent corruption, a law recently enacted on December 9, 2016 has created the “Agence française anticorruption” (French Anti-corruption Agency). It is in charge of controlling the quality and efficiency of the procedures implemented within associations and public utility foundations in order to prevent and detect corruption, influence peddling, bribery, unlawful taking of interest, embezzlement of public funds, and favoritism.

Moreover, the last Amending Finance Law enacted on December 29, 2016 states that the French Tax Administration now has the ability to check on-site the conformity of the donations and payments actually received, and cause the issuance of tax receipts. This inspection may occur independently of an accounting audit.

## V. Socio-Cultural Environment

**Question 10: To what extent are socio-cultural values and practices favorable for philanthropy?**

**Score: 5.0**

According to France Générosités ([2016](#)), in France in 2015, 58 percent of the population financially supported POs. Donations for EUR €4.4 billion (US \$4.6 billion) were raised in France. Despite the economic crisis, donations to POs increased by 1.7 percent over the previous year 2014. The average amount of donations using check or other means of payment was EUR €63 (US \$66), except for donations on the internet that averaged EUR €104 (US \$109). It must be noted that 41 percent donations in France are made between October and December, half of them in December. In 2015, donors were mostly composed of women (55%), people aged more than 50 (52%), people who have done more than three years of study after high school (26%), or people with religious beliefs (68%).

Furthermore, donors are loyal, since 93 percent of donations are made by donors who gave to the PO in the past.

In terms of income, 45 percent of donors earn at least EUR €2,300 (US \$2,421) per month, 22 percent of donors earn between EUR €1,500 and EUR €2,300 (US \$1,579 and US \$2,421) per month, and 26 percent of donors earn less than EUR €1,500 (US \$1,579) per month.

Moreover, 82 percent of taxpayers liable for the ISF (Impôt de solidarité sur la fortune) have made a donation at least once in 2016. The philanthropic subsectors privileged by this category of donor are healthcare, aid to the most deprived, and education. Fifty-three percent of these donors consider donating the same amount in the year ahead. It is important to note that in 2016, 91 percent of these people have deducted from their income tax and 50 percent of them from their ISF tax. In 2015, EUR €220 million (US \$232 million) were raised in France under this tax incentive.

On the corporate patronage side, in 2015, the amount of corporate patronage activities had reached EUR €3.5 billion (US \$3.7 billion), and 14 percent of for-profit organizations were patrons. The involvement is steady for enterprises with between 1 and 9 employees. It is increasing for small and medium-sized enterprises and large enterprises. In 2015, 47 percent of large enterprises were patrons, compared with 28 percent in 2013.

It is to be noted that interest in skill development has increased. A survey on foundations and endowment funds conducted by EY/Entreprises pour la Cité in 2016 has shown that 68 percent of patrons companies suggest skill development for their employees.

There are no limitations for women to participate in philanthropic activities. Men and women are equally free to join a philanthropic cause, whatever the involved issue is, as long as the activities of the organization are lawful or not reserved for another type of organization. This freedom is preserved by the French law of July 1, 1901, and has constitutional value. Since the enactment of the law on equality and citizenship on January 27, 2017, young people under the age of 18 can join a PO—this was forbidden before. Additionally, any young people under the age of 16 can contribute

to create an association with written approval of his/her legal representative and may also perform all actions, except transactions relating to rights or property.

## VI. Future of Philanthropy

*These questions are used to provide a general picture of the future of philanthropy in this country as well as recommendations to improve the philanthropic environment.*

### Current state of the philanthropic sector

The philanthropic sector in France is mature, institutionalized, and prevalent. Nevertheless, if 60-70 percent of the sector is institutionalized, many small POs, often at a local level, have difficulties getting known by public entities.

### Three major recent events affecting the philanthropic landscape between January 2014 and December 2016

- Law on social and solidarity economy dated July 31, 2014, aforementioned;
- Decree on endowment funds dated January 22, 2015, which set up the minimum endowment required to create an endowment fund at EUR €15,000; and
- The clarification of the concept of “narrow circle” of beneficiaries in July 2016 by the French Tax Administration in its guidelines (BOI-IR-RICI-250-10-10). This concept is essential, as it conditions the public interest character of a PO and the subsequent tax incentive for individuals or companies. The Administration suggests resorting to circumstantial evidence in order to concretely determine what the PO goal and targeted public is. The precise guidelines, among other things, such as the number of beneficiaries or the limited geographic area, are not relevant indicators.

### Future development trends in the philanthropic landscape

There is an increasing diversity of organizations pursuing activities in the social and solidarity economy. Commercial entities, by nature, are more and more proactive in this sector. Since they may have “social utility,” they claim the same incentives (especially tax incentives) and benefits that are offered to POs.

Further, philanthropy is becoming easier and more accessible; it is now possible to make a donation by text message (SMS), and there are more and more crowdfunding platforms that encourage people to donate.

### Three key recommendations to improve the environment for philanthropy

In order to improve the environment for philanthropy, it would be recommended:

- To maintain tax incentives, especially for taxpayers liable for the direct wealth tax (ISF), or in case of elimination, to replace it with another advantage;

- To ease regulation for cross-border donations to promote this practice; and
- To strengthen the privileged status of philanthropic organizations with public authorities.



# Germany

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With contributions from staff at the Indiana University Lilly Family School of Philanthropy

## QUICK FACTS

**Legal forms of philanthropic organizations included in the law:** Association, Foundation, Cooperative, Limited Liability Company, Dependent Foundation

**Five main social issues addressed by these organizations:** Higher Education, Primary and High School Education, Arts and Culture, Youth and Family.

**Average time established by law to register a philanthropic organization:** 31-60 days

**Average cost for registering a philanthropic organization:** US \$3,000

There is no fee for the public registration of a foundation. However, the transfer of assets to the PO may require notary assistance with notary costs attached. This also applies to the establishment of an association where notary fees are required for registration. For foundations, the notary fees depend on the amount of the assets. Given that more than 70 percent of all foundations have assets of less than €1 million, the cost estimate represents the costs needed for a notary-approved donation of that size. The notary cost would apply in the case of establishing a limited liability corporation. For small organizations, the cost is correspondingly lower. The time to establish an organization varies according to the practice of regional authorities, but is limited because, in general, the civil code grants a right to establish a foundation if no violation of other law is applicable.

**Government levels primarily regulating the incorporation of philanthropic organizations:** Central/Federal Government, State Government.

The civil code and the tax code regulate the basic norms on a Federal level (types of legal forms, basic requirements for their establishment, tax treatment, etc.). Within this framework, implementation guidelines on the civil level are regulated in State (Länder) legislation. Tax jurisdiction is exclusively Federal.

### Philanthropic Environment Scores:

Year	Ease of Operating	Tax Incentives	Cross-Border Flows	Political Environment	Socio-cultural Environment	OVERALL SCORE
2018	4.7	5.0	4.0	5.0	5.0	4.73

## I. Formation/Registration, Operations, Dissolution of a Philanthropic Organization (PO)

*The three questions in this section pertain to the laws and regulations governing philanthropic organizations (POs). The scoring questions for this category cover three aspects of regulations: (A) formation and registration, (B) operations, and (C) dissolution.*

### Question 1: To what extent can individuals form and incorporate the organizations defined?

Score: 5.0
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The fundamental freedoms of expression, association, and assembly are fully granted in the Constitution. Most forms of POs require legal personality, although the association and the dependent foundation (type of trust) do not. The founders are free to choose their form. If POs apply for charitable status, purposes/goals that benefit the members/founders are not permitted; therefore, cooperatives, associations, foundations can only enjoy the tax privileges of charitable status (Gemeinnützigkeit) if they pursue public benefit purposes specified by the tax code.

For the establishment of POs, including foundations, the civil code grants the right of establishment to natural and legal persons so long as the establishment does not violate any other legal norms (right to establishment for any lawful purpose). The registration procedures for the different legal forms of POs are the responsibility of different levels of jurisdiction, with basic norms being regulated on a federal level and more detailed norms of implementation being the responsibility of the States (Länders).

### Question 2: To what extent are POs free to operate without excessive government interference?

Score: 5.0
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POs have to comply with a limited number of governance norms, depending on the legal form chosen. These basic norms are regulated in the civil code and are complemented by governance and reporting requirements in the State (Länder) legislation. For each legal form of PO, there are norms regulating the governance structure requirements; normally, only one level (tier) of governance is required, but organizations have the freedom to apply two-tiers of governance, which is usually appropriate for larger organizations.

There is no restriction on the freedom of (international) communication or cooperation. Cooperation with international partners, however, should fulfill the organization's mission and be within the boundaries of the charter of the organization.

All POs, if charitable, are all subject to the same reporting requirements to the tax authorities (however, without publicity requirement). Concerning reporting to civil authorities, the requirements are different, yet consistent, for each legal form.

**Question 3: To what extent is there government discretion in shutting down POs?**

Score: 4.0

The governing body of a German PO is not free to voluntarily terminate the existence of the organization. Two main considerations apply, depending on the legal form:

The foundation form is legally regulated to exist in perpetuity, except for foundations that are structured to spend down, as established by the charter provisions. Therefore, neither the governing body nor the supervisory authorities can dissolve such a foundation, except in cases in which the mission and purposes of the foundation have become impossible to pursue. In such cases, a change of purpose, a merger with another organization, or the integration into another organization has to be considered with the consent of supervisory authorities. Their basic legal role is the protection of (original) donor intent.

Involuntary termination of activities is only applicable in legally defined cases following investigation, requirement of amendment or correction, and are subject to court appeal (supervision).

The other restriction to voluntary termination originates from the tax law that prohibits charitable from being re-privatized. Voluntary termination, therefore, requires that organizations must transfer their assets to another charitable or public organization that continues to apply the assets to the original purposes or a similar one. For voluntary termination, it is required that the organization's charter includes a clause of provision for the use of assets.

**II. Domestic Tax and Fiscal Issues**

*The two questions in this section pertain to laws and regulations governing the fiscal constraints of giving and receiving donations domestically.*

**Question 4: To what extent is the tax system favorable to making charitable donations?**

Score: 5.0

As charitable organizations, both POs and donors are eligible for substantial tax privileges. Some of the privileges are particularly targeted at endowed foundations, as there are additional privileges for this form of philanthropic organization. Donors can generally deduct donations up to a ceiling of 20 percent (personal income tax) of their taxable income by filing them in their tax declaration. Corporate income taxpayers can deduct up to a ceiling of 4 per thousand of their total of turnover and wages and salaries. These ceiling were substantially increased from previously half that level about 15 years ago.

All donations to a tax-exempt PO made from an estate, or as a result of a last will, are free of any inheritance tax. This exemption from inheritance tax for the part of the estate donated can also be claimed by the heirs up to two years after death of the original owner.

Special privileges apply for endowment donations to foundations. In addition to the above, such donations can be deducted from taxable income up to a ceiling of €1 million (US \$1,139,950) per

taxpayer, which can be carried forward over a period of ten years if income in the first year is lower than the donation. This is equivalent to a lump sum deduction from taxable income up to the amount of €1,000,000 per year over a period of a maximum of ten years.

The donations can be deducted if made to any of the eligible purposes of charitable organizations specified below (see comment on question 5).

**Question 5: To what extent is the tax system favorable to POs in receiving charitable donations?**

**Score: 5.0**

All POs themselves are exempt from paying any taxes, except VAT if charitable status (public benefit purposes) applies. Public benefit status is granted to all legal forms if the organization pursues purposes specified on a list of eligible purposes in the tax code, or any purpose similar thereto (opening clause). For the list, see § 52 AO (tax code). Purposes also include the unselfish support to persons in need (§ 53 AO (tax code)) and the support for religious purposes (§54 AO (tax code)).

Tax-exempt status is granted by application to the tax authorities for pursuing any of the above purposes.

There are, however, clear restrictions for unrelated purposes. Charitable organizations can only conduct unrelated activities if they are not the dominant activity of the organization. Charitable organizations can, however, own for-profit business organizations, either as part of their endowment—in the case of foundations—or as part of their assets in general. In cases of POs that provide social services, this has led to large-holding conglomerates of both charitable and for-profit organizations.

### III. Cross-Border Philanthropic Flows

*The two questions in this section concern laws and regulations governing the fiscal constraints of giving and receiving cross-border donations. The scoring for these questions pertains to the donor and receiving entities.*

**Question 6: To what extent is the legal regulatory environment favorable to sending cross-border donations?**

**Score: 4.0**

POs are free to send philanthropic contributions (grants, disaster relief funding, development aid, etc.) abroad. This is not subject to approval by the supervisory authorities, but is subject to their mission as laid out in their charter document. There are no specific tariffs or duties on such payments, provided that POs are charitable organizations. However, POs themselves are responsible for including evidence in their reports to supervisory authorities that their funds were spent according to their mission and purposes, as well as according to legal requirements of civil and tax code legislation, especially concerning the recipient organizations performing lawful operations as

charities, rather than as commercial entities. This liability requirement applies to funds spent abroad and to those spent within Germany.

**Question 7: To what extent is the legal regulatory environment favorable to receiving cross-border donations?**

**Score: 4.0**

POs are free to receive donations from abroad without restriction, even though these donations, if made by private donors and not by grant-makers, may not be tax-effective.

However, donors may face limitations when claiming deductions for donations made to organizations abroad. As a consequence of recent judgments of the European Court of Justice, which are endorsing a non-discrimination approach within the European Union based on the basic freedoms according to the European Treaties, donors have the right to deduct donations to organizations in other Member States if the deductions are to purposes and organizations which would also be eligible in for charitable Status in Germany. However, this requirement depends on the equivalency test of the German financial authorities and still leaves room for discretion on the part of tax authorities.

Except banking fees, there are no costs for receiving foreign donations, provided the PO has charitable status. German POs are free to receive donations or grants from abroad. There are no specific restrictions on receiving foreign grants of any type, except that POs must include written documentation to both civil and tax authorities.

#### **IV. Political and Governance Environment**

*The three indicator questions in the next two sections concern the political and governance context, socio-cultural characteristics, and economic conditions that influence the environment for philanthropy.*

**Question 8: To what extent is the political and governance environment favorable for philanthropy?**

**Score: 5.0**

In general, the philanthropic sector in Germany has enjoyed a favorable political climate across all relevant parties in Parliament for approximately the last 20 years (at least since 1998). An intergovernmental working group, including federal and state level representatives, issued a report in September 2016 that includes suggestions to further improvements to foundation law, such as official codes in the legislation, which will most likely take effect after the next federal elections in September 2017. More specifically, the report addresses the consequences of the financial crisis and its aftermath for foundations, as well as the conclusions thereof for legislation (e.g. improved regulations for mergers, improved publicity and transparency requirements).

The government allows, and specifically promotes, the involvement of POs in political advocacy and public debate. The size of the philanthropic sector and the nonprofit share of the economy (above

4% of GDP) suggest that the sector is generally accepted and highly relevant, in some aspects like in the social policy legislation, POs are even legally supported by having a right to be involved in advocacy and in legislation according to the social code (1st book).

The growth of the philanthropic sector in the last 15 years, wherein the number of organizations more than doubled, has provided additional support to this relevance of the sector. The German foundation sector is the largest in Europe, both in terms of number of organizations and assets. Bundesverband Deutscher Stiftungen estimated 100,000 million assets in 2017.

**Question 9: To what extent are public policies and practices favorable for philanthropy?**

**Score: 5.0**

As mentioned above in question 8, the Federal government and Parliament have repeatedly considered reforms to promote philanthropy, namely in 2000, 2002, 2007.

In addition to supporting the philanthropic sector, the government pursues an explicit strategy to promote volunteering/civic engagement.

There are no restrictions by the government or any kind of interference whatsoever to philanthropic purposes pursued.

Networking, training and information opportunities are provided independently by the sector. There is government support for research and information purposes, especially in the context of civic engagement/ volunteering.

## **V. Socio-Cultural Environment**

**Question 10: To what extent are socio-cultural values and practices favorable for philanthropy?**

**Score: 5.0**

Generally, there are strong philanthropic traditions and a high level of citizen involvement. There is growth trend of the foundation sector, and equivalent growth trend of volunteering to currently 43 percent of the adult population being regularly involved in volunteering activities (2014 data, according to Freiwilligen survey, longitudinal every five years, issue no. 4, funded by Federal Government).

Germany has had a strong philanthropic tradition from pre-modern times, which was vigorous in the 19th century and pre WW I. The two world wars and Nazi dictatorship, as well as Communist rule in East Germany until 1989, were, however, very detrimental to the sector (two hyper-inflations in the 20th century), so the current development can be regarded as a renaissance of a long tradition.

A strong social entrepreneurship tradition that originated in the 19th century (last third of the century) laid the ground for some of the largest operating nonprofits in the country, which play a very strong and competitive role in delivering the services of the German social welfare system in regulated

quasi-markets and in competition with for-profit and public entities. This segment of the sector is particularly relevant for the more than four percent contribution to the German economic value creation.

## VI. Future of Philanthropy

*These questions are used to provide a general picture of the future of philanthropy in this country as well as recommendations to improve the philanthropic environment.*

### Current state of the philanthropic sector

Philanthropy in Germany is a well-organized and highly institutionalized sector. It enjoys the regular support of a large proportion of the population. The German Association of Foundations (Bundesverband Deutscher Stiftungen) is the largest foundation association in world, next to the Council on Foundations of the US, and has more than 4,000 members. Through umbrella foundation organizations, it represents more than 7,000 of the 22,000 German foundations. A parliamentary advisory committee of the German Association counts 92 Members of Parliament (Federal: Deutscher Bundestag).

Next to foundations, the country has a six-digit amount of other nonprofits (exact number unknown due to lack of central register, and because organizations are only registered in decentralized registers and by different legal forms).

There are numerous other umbrella associations organized by field or purpose, by type of organizations (e.g. fundraising nonprofits), or by political advocacy agendas.

### Three major recent events affecting the philanthropic landscape between January 2014 and December 2016

- Event 1: "Annual Conference of the German Association of Foundations (Bundesverband Deutscher Stiftungen, every May)"
- Event 2: Report of Intergovernmental Commission on Improvements of foundation law published in September 2016
- Event 3: Annual "Forschungsgipfel" hosted by Stifterverband für die Deutsche Wissenschaft (a large private umbrella foundation structure administering about 600 foundations or trusts with assets of about € 2.5 billion) as the "Federal Summit on R&D and Innovation"

### Future development trends in the philanthropic landscape

The sector will continue to grow.

Another legal reform bill at the beginning of the next parliament period, after the elections in September 2017, will most likely bring further gradual improvements.

Community Foundations, which have only existed since 1996 and according to the US model, will continue to grow as a segment for small and medium sized donors to promote more effective giving by joining forces and reducing administrative costs.

Impact Investing will most likely be a growing trend in the next few years among German foundations.

**Three key recommendations to improve the environment for philanthropy**

- Recommendation 1: Include full publicity requirement in the reform bill for 2017 following legislation.
- Recommendation 2: Promote the growth of impact investment as a market-based vehicle of increased philanthropic effectiveness.
- Recommendation 3: Strengthen the landscape of professional capacity building further to improve the overall effectiveness of the sector and meet donor values of high impact expectations.



# Greece

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**Institutional Affiliation:** Independent Expert / Athens University of Economics and Business  
With contributions from staff at the Indiana University Lilly Family School of Philanthropy

## QUICK FACTS

**Legal forms of philanthropic organizations included in the law:** Association, Foundation, Other(s): Civil Non-profit Company, Collection Committee, Union, Other Legal Entities of Private Law (e.g. social associational enterprises or "KOINSEP"), some Legal Entities of Public Law (e.g. church, chambers of commerce)

**Five main social issues addressed by these organizations:** Arts and Culture, Health and Medical Research, Basic Needs, Youth and Family, Environment

**Average time established by law to register a philanthropic organization:** More than 90 days

**Average cost for registering a philanthropic organization:** US \$500

This is the case for an association (somateio), which is the most commonly used legal form of PO in Greece because of the special tax treatment that is provided for this legal status (exclusion from value added tax and no obligation to maintain records typically required for other institutions).

**Government levels primarily regulating the incorporation of philanthropic organizations:** Central/Federal Government

### Philanthropic Environment Scores:

Year	Ease of Operating	Tax Incentives	Cross-Border Flows	Political Environment	Socio-Cultural Environment	OVERALL SCORE
2018	4.6	4.0	3.6	3.3	2.4	3.59

## I. Formation/Registration, Operations, Dissolution of a Philanthropic Organization (PO)

*The three questions in this section pertain to the laws and regulations governing philanthropic organizations (POs). The scoring questions for this category cover three aspects of regulations: (A) formation and registration, (B) operations, and (C) dissolution.*

### Question 1: To what extent can individuals form and incorporate the organizations defined?

Score: 4.2

The Greek Constitution in article 12 clearly grants all Greek people the right to form nonprofit associations and unions, in compliance with the law. Moreover, article 14 paragraph 1 guarantees free expression indicating that every person may express and propagate his thoughts orally, in writing and through the press in compliance with the laws of the State. However, there is no specific legal framework for the formation and operation of POs in Greece. In this context, a PO can be founded under the current provisions of the civil code as a not-for-profit legal person of private law (e.g. a union of persons, an association, a foundation, a civil non-profit company, a collection committee etc.).

The registration process is somewhat demanding. For the setting up of an association, a request is made to the Court of First Instance that should include a constituent act, the names of the members that will manage the association, and a dated statute with the signatures of at least 20 people (members). If the legal conditions are met, the court accepts the application. Then the PO is required to submit a publication in the press as well as enroll in the "Association's book" in order to acquire the legal status. The whole process usually takes around six months. The judgment of the Court of First Instance is subject only to an appeal. The decision that rejects the petition is only open to challenge by the person who submitted the application, while the decision that accepts the application is only open to challenge by the State for public interest purposes.

The simplest way to institutionalize a PO is through a union of persons which is something between an association and a civil non-profit company and it is considered to be a temporal form as well as a pre-stage for founding an association. The process of founding a civil non-profit company is also relatively simple, requiring the participation of only two people.

### Question 2: To what extent are POs free to operate without excessive government interference?

Score: 4.9

As was mentioned earlier, there is no specific legal framework for the operation of POs in Greece. The picture concerning the public bodies involved in monitoring their operations is fragmented, with many Ministries involved in overseeing POs in different sectors and maintaining different databases of such organizations. However, the legal/regulatory framework is now under scrutiny. In 2014, the government, through the Minister for Administrative Reform and E-Governance submitted a draft law to the parliament regarding the transparency of the economic status of POs. This law (4305/2014, article 16) requires POs to upload all the donations they receive yearly from the public sector above the amount of EUR €3,000 (US \$3,450) to the web platform "Diavgeia", a tool for transparency and

control of activities undertaken by the State. To be more specific, with the application of this law, all the POs are required to publish to this web platform a detailed statement of the allocation of the public grants they received. Failure to publish results in the exclusion of liable entities from any type of subsidy or financing from general government entities in the future.

**Question 3: To what extent is there government discretion in shutting down POs?**

**Score: 4.8**

When a PO in Greece is dissolved and liquidated, any residual property, if not otherwise indicated by the statute, comes to the State, which ensures that it will provide it to purposes that are related to those of the PO. To be more specific, an association dissolves in the manner defined by its statutes, which means if its members become less than ten, with a decision of its general assembly that is taken with an increased quorum and majority as well as with a decision of the Court of First Instance following the request of one fifth of its members or its board of directors or the supervisory authority for several reasons (e.g. management is not possible due to the decrease of members, fulfillment of the association's purpose or failure to fulfill it, pursuit of a different purpose, the purpose became irrelevant or unlawful).

**II. Domestic Tax and Fiscal Issues**

*The two questions in this section pertain to laws and regulations governing the fiscal constraints of giving and receiving donations domestically.*

**Question 4: To what extent is the tax system favorable to making charitable donations?**

**Score: 4.0**

According to the Greek tax law that foresees tax incentives for donations to POs, the donor can deduct the amount of the donation in his/her tax declaration (tax deduction). To be more specific, individual donors may deduct from their taxpayer's gross income, up to 20 percent of the sums of their donations to several cases of POs that are specifically defined by the tax law.

The value of gifts and donations is deductible only if their aggregate sum exceeds the amount of EUR €100 (US \$115). The deduction will apply only if the total amount of donations and sponsorships does not exceed 10 percent of the donor's total income taxed under the general provisions. Additionally, the Greek tax law provides a range of deductions for donations and sponsorships made by legal entities. Specifically, monetary sums paid at the rate of 10 percent over the total net income or profits resulting from balance sheets are deducted from gross income of businesses when given as donations to specific cases of POs that are clearly defined in the tax law. The total amount of donations that are deductible may not exceed the amount of net profits generated by the removal of these amounts from the gross revenues of the relevant accounting year. In order to get the tax incentive the donor must state in his/her tax declaration that the PO, which received his/her donation, fulfils all the tax law requirements. The responsible Greek tax authority (in the region where the donor is registered) performs the comparability test for each specific case/request for a tax incentive by the donor. This individual decision is not kept in any register/list and may be judged differently for the same PO by another donor's responsible local tax authority. The donor has the burden of proof. The

donor must provide a cash receipt voucher, which indicates the donor and the recipient, the amount of donation or sponsorship, the date, and the signature of donor or sponsor.

**Question 5: To what extent is the tax system favorable to POs in receiving charitable donations?**

**Score: 4.0**

In Greek tax law, specific exclusionary provisions have been established regarding philanthropic activities. Since 2010, Greece has imposed a very low gift and inheritance tax rate of 0.5 percent to POs. The rate is applicable to legal entities receiving assets by way of inheritance, which have been incorporated or are under incorporation in Greece, as well as by the respective foreign legal entities on the condition of reciprocity. This holds as long as these entities are proven to pursue national or religious or in a wider sense charitable, educational or artistic purposes, and furthermore to churches, monasteries, the sacred space of the Holy Sepulchre, the Holy Monastery of Mount Sinai, the Ecumenical Patriarchate Kostantinoupoleos, the Jerusalem Patriarchate, the Patriarchate of Alexandria, the Church of Cyprus and the Orthodox Church of Albania. A foreign tax credit is provided for these cases.

The deduction of the bequests from the assets of the inheritance is subject to the attachment in the inheritance tax return of a certification by the executors or administrators of the bequest or by the PO, to which the bequest has been made or by the persons exercising its management, certifying that the bequest has been deposited together with any overdue interest. Cash donations in excess of EUR €1,000 (US \$1,150) are subject to the same rate of 0.5 percent. Foreign legal entities qualify on condition of reciprocity.

### III. Cross-Border Philanthropic Flows

*The two questions in this section concern laws and regulations governing the fiscal constraints of giving and receiving cross-border donations. The scoring for these questions pertains to the donor and receiving entities.*

**Question 6: To what extent is the legal regulatory environment favorable to sending cross-border donations?**

**Score: 3.7**

Capital controls were imposed in Greece on June 28 2015. Restrictions have been gradually relaxed, with the latest changes taking place on 22 July 2016. However, in this context, capital transfers abroad are prohibited unless included in the exceptions processed on a daily basis by the banks' Special Subcommittees and the Bank Transactions Approval Committee. The transfer of funds or cash abroad in any manner whatsoever is prohibited.

**Question 7: To what extent is the legal regulatory environment favorable to receiving cross-border donations?**

Score: 3.5

The available information about this topic is very limited. In general, the wording of the law in Greece includes a non-discrimination rule for donors as well as for foreign-based POs, which means that individual/corporate donors giving to comparable EU/EEA-based POs get the same tax benefits as they would for giving to a domestic PO. Moreover, where corporate income tax exemptions exist for domestic POs, the same benefits are available for comparable EU/EEA based POs. However, the competent authority awards tax-privilege status on a case-by-case basis.

**IV. Political and Governance Environment**

*The three indicator questions in the next two sections concern the political and governance context, socio-cultural characteristics, and economic conditions that influence the environment for philanthropy.*

**Question 8: To what extent is the political and governance environment favorable for philanthropy?**

Score: 3.0

The political environment in Greece is characterized by inconsistent government policies towards POs as well as by the adoption of different set of criteria and definitions for POs. These inconsistent and sporadic government policies towards POs have led to the segmentation of the philanthropic sector and the development of a wide variety of organizational forms. Moreover, the Greek political system is distorted with clientelistic networks that the Greek political elites have created throughout the years. State dominance and patriarchy halted the emergence of a modern state organization and thus the rise of a healthy and active philanthropic sector. Therefore, the Greek philanthropic sector has been historically weak, featuring low levels of social solidarity and volunteerism. POs have become very closely attached to the party system and the State in order to secure funds.

Additionally, Greece has become the epicenter of the recent global economic crisis, suffering in terms of GDP loss (almost 30 percent), rising unemployment (reaching an unprecedented 28 percent) and deepening poverty. Alongside the Greek society, the philanthropic sector has suffered the consequences of the economic crisis. While available funding has decreased, demand for philanthropic services has substantially increased. More and more often, POs are called upon to fill the gap that a retreating welfare state leaves behind and to contribute to promoting human rights and democratic values at a time of pronounced political disillusionment.

**Question 9: To what extent are public policies and practices favorable for philanthropy?**

Score: 3.6

A legal and institutional framework for the operation of POs in Greece as well as concrete information on the identification of the sector organizations, their activity, their staff, and other information

regarding them do not exist. The estimates about the number of nonprofits and their contribution in Greek society and economy are almost subjective. Numbers vary as there are no official records, something that could be attributed to the lack of consistent government policy towards the sector and the different set of criteria and definitions that are adopted. Thus, the philanthropic sector has hardly developed and hardly managed to bring about any major accomplishments.

## V. Socio-Cultural Environment

**Question 10: To what extent are socio-cultural values and practices favorable for philanthropy?**

<b>Score: 2.4</b>
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The characteristics that have dominated the philanthropic sector in Greece are the strong intervention of the State and the Orthodox Church in the provision of social services, the weak government support towards POs, and the fact that family and networks of relatives have always created the basic framework of mutual aid, solidarity and cooperation. Traditionally, Greeks have learned to rely mostly on their families and not on the community. Greeks lack social trust, which is a prerequisite for the development of POs. This is made worse in the context of a strongly centralized State. As a consequence, volunteering has not been widely promoted or accepted in the Greek society. Moreover, the deepening of the economic crisis has turned an initial economic recession into an era characterized by a crisis of values, heavily affecting the way Greek citizens see themselves and their relationships to others. To be more specific, the crisis has turned a significant part of the Greek Society into a state of introversion and ethnocentrism. In this context, humanitarian action is increasingly functioning in the local level. The Church is gaining ground, taking up humanitarian action in the national level through church related POs, local parishes, individual priests.

In addition, POs tend to be perceived as untrustworthy by Greek citizens, because the more established of them have maintained close relationships to the State and frequently the majority of their board members have a strong party affiliation. Consequently, POs have been attacked by the media for the mismanagement of public funds, corruption and clientelism. The media paints a bleak picture of POs as corrupted and immoral, which is challenging for those organizations that have genuine motives.

## VI. Future of Philanthropy

*These questions are used to provide a general picture of the future of philanthropy in this country as well as recommendations to improve the philanthropic environment.*

### **Current state of the philanthropic sector**

The absence of a strong philanthropic sector constitutes a structural characteristic of the Greek society. To be more specific, the Greek philanthropic sector is fragmented, relatively underdeveloped and poorly organized with a very weak structure. Most formal POs do not attract a significant number of members or a significant amount of funds. However, the existence of informal groups plays an important role in Greek society. As a result, the Greek philanthropic sector performance is very weak

with its contribution to social capital building and its participation in policymaking is limited. Moreover, Greek POs use a small amount of voluntary participation, depend on the State, and fail to invite and accept members from wider social groups. Their performance in strategic planning, organizing, leading, and controlling is relatively poor.

### **Three major recent events affecting the philanthropic landscape between January 2014 and December 2016**

- Greek financial and economic crisis (requirement of a third bailout within five years in 2015, implementation of capital controls in 2015, multiple austerity measures since 2010, tangible impact on Greeks – by 2015, nearly 20 percent of Greeks lacked funds to meet daily food expenses, 24 percent unemployment rate for 2016);
- Migrant crisis (unprecedented influx of 850,000 migrants in 2015 and 150,000 more arrivals by the end of March 2016). This is the biggest migration crisis since WWII; and
- With the newest agreement between the EU and Turkey in March 2016, thousands of migrants are currently stuck in Greece confronted with an unclear future.

### **Future development trends in the philanthropic landscape**

In this challenging environment that combines multiple crises, Greek POs face significant threats to their financial performance and organizational effectiveness. Their own survival is constantly at stake, they receive almost no public support, they are not able to raise sufficient donations, and Greek citizens perceive them as untrustworthy. However, their role is emerging and appears to be crucial in mitigating the consequences of the crises currently affecting the country. In this context, they attempt to fill the gap between social welfare needs and the State's ability to provide welfare services. So, they constantly develop new programs to feed the hungry, provide primary health care and psychological support services, support people in need (migrants, unemployed, homeless people, children, families). Under these uncertain and turbulent circumstances, the following trends are emerging:

- New philanthropic initiatives are developing, which tend to be independent from the State, to adopt more effective management practices as well as innovative business models, to seek funding from international organizations, to emphasize voluntary participation, and to collaborate with for-profit businesses;
- Private foundations are emerging as the leading donors to Greek POs;
- Volunteerism is rising, reflecting to some extent the high levels of unemployment;
- Old and established POs realize the need to adjust their strategy and overall organizational mission in order to reflect the new reality and stay relevant to the needs of Greek citizens; and
- Greek POs acquire huge knowledge and expertise on handling economic and migration crises.

### **Three key recommendations to improve the environment for philanthropy**

- Creation of an official registry of POs;

- Development and application of a clear and solid legal framework that will realistically define philanthropic activities and regulate all the aspects of the operations of POs (tax regulations, funding rules, volunteering, etc.); and
- Systematic development of civic education that will cultivate and promote the volunteering mentality in Greek society.



# Hungary

**Expert:** Eszter Hartay

**Institutional Affiliation:** European Center for Not-for-Profit Law

With Contribution from Staff at the Indiana University Lilly Family School of Philanthropy

## QUICK FACTS

**Legal forms of philanthropic organizations included in the law:** Association, Foundation, Civil Group

**Five main social issues addressed by these organizations:** Leisure and Culture, Sports, Education, Health and Social Care, Environment Protection

**Average time established by law to register a philanthropic organization:** 31-60 days

**Average cost for registering a philanthropic organization:** US \$0

**Government levels primarily regulating the incorporation of philanthropic organizations:** Central/Federal Government

### Philanthropic Environment Scores:

Year	Ease of Operating	Tax Incentives	Cross-Border Flows	Political Environment	Socio-Cultural Environment	OVERALL SCORE
2018	4.0	3.5	3.5	2.5	3.0	3.30

## I. Formation/Registration, Operations, Dissolution of a Philanthropic Organization (PO)

*The three questions in this section pertain to the laws and regulations governing philanthropic organizations (POs). The scoring questions for this category cover three aspects of regulations: (A) formation and registration, (B) operations, and (C) dissolution.*

### Question 1: To what extent can individuals form and incorporate the organizations defined?

<b>Score: 4.0</b>
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The Hungarian legislation ensures the right to everyone to establish and join organizations and communities based on freedom of association. The two traditional legal forms of nonprofit organizations are the association and the foundation. In addition to these, the CSO Law (Law CLXXV of 2011 on freedom of association, public benefit status and the operation and support of civil society organizations) recognizes an unincorporated legal form called ‘civil group’ (‘civil társaság’) that operates without legal personality. These three legal forms are considered ‘civil society organization’ as per the definition of the law. Political parties and trade unions are special forms of associations, however, they are excluded from the definition of CSO and regulated by other laws. Therefore, the current questionnaire will not reflect on them. In addition, the Hungarian legislation recognizes additional nonprofit organizational forms, including nonprofit companies, which are also not covered under the questionnaire. In addition, natural persons may create informal communities without registered membership, internal governance structure and regular operation.

Associations are generally permitted to engage in all activities that are not prohibited by a law and correspond with the Fundamental Law of Hungary (i.e., the Constitution). Associations cannot be formed for criminal or military purposes, to violate the rights and freedom of others, or to undertake a public task which is reserved for state bodies (Article 3 (3)-(5) of the CSO Law). In addition, it cannot be formed for the purpose of economic activities and may conduct such activity only if it is directly related to the realization of the organization’s purpose.

Foundations are established for the continuous realization of a permanent purpose. Similarly to associations, there are limitations on economic activities. In addition, foundations cannot be established in the interest of the founder, donor, officer or members of any bodies of the foundation or their relatives (Article 3:379 (4) of the Law V of 2013 on Civil Code). However, Article 3:386 of the Civil Code provides exception for foundations that are engaged in nurturing the scientific, literary or artistic work of the founder or a relative or provide medical assistance, bear the health care costs or support the studies of a relative.

Civil society organizations (CSOs) are registered by the competent county court. The process of registration remains to be lengthy, up to 60 days or even longer in the event that a correction of application is necessary, as the timeframe provided for correction may be up to 45 days and may be extended one time upon request. The Law on the Court Registration of CSOs (Law CLXXXI of 2011 on the Court Registration of CSOs and the Relative Procedural Rules) regulates the list of documents that need to be submitted along with the application. The registration time is shorter – 15 days – in case of simplified electronic registration with template statute. If the court fails to meet this deadline and the decision is not made in the next 30 days, the registration takes place on the following day by course of law (Article 32 (2) of the Law on the Court Registration of CSOs). The Law regulates a

closed list of grounds for rejection and ensures the right to appeal. The decision-making of the county courts is generally independent and apolitical, however, there have been concerns related to the inconsistency of decisions as judges interpret the legal requirements differently in the absence of any central guidance or position ([USAID, 2015](#)).

There is no limitation for the establishment of CSOs by foreigners. Minimum founding assets are not required for associations. For foundations, however, the founder shall provide the founding assets necessary to accomplish the purpose of the foundation (Article 3:382 (1) of the Civil Code). The legislation does not set minimum amount; the sufficiency of the founding asset is decided on a case-by-case basis, depending on the purpose of the organization. The total amount of the founding asset shall be given to the foundation one year after the registration at the latest. The registration process is free of charge.

**Question 2: To what extent are POs free to operate without excessive government interference?**

<b>Score: 4.0</b>
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The constant alteration of the legal environment, including the adoption of the new Civil Code, caused a serious hindrance to organizations' daily operations and put increasing administrative burden both financially and in terms of time spent on performing such tasks ([EU-Russia Civil Society Forum, 2017](#)). CSOs had until March 15, 2016 to adapt their statutes to the provisions of the new Civil Code, which deadline was extended until March 15, 2017. Smaller organizations were particularly unlikely to be able to change their statutes as needed without external assistance (USAID, 2015).

The governance rules of the new Civil Code are generally permissive, i.e. allow alteration from the law, with certain exceptions. The three categories of exception are: if 1) the law prohibits variance from the law; 2) the different regulation would unambiguously violate the rights of the creditors, employees or the minority members of the legal person; or 3) jeopardize the supervision of the legitimate operation of the legal person (Article 3:4 of the Civil Code). In a few cases the prohibition to differ from the law may unnecessarily restrict the freedom of a CSO to determine internal governance, e.g., the executive director of an association cannot have a term exceeding five years. Also, it depends on the court practice how the other two categories of exceptions are applied. As an example, according to the new Civil Code the board of trustees of the foundations consists of three natural persons out of which at least two need to have a permanent address in Hungary. In case of associations, the executive officers shall all be appointed from among the members of the association; based on the authorization of the articles of association up to one third of the executive officers may be appointed from non-members. According to some experiences, the court practice does not allow difference from these regulations, either.

CSOs can freely cooperate with other CSOs and businesses in- and outside of Hungary and create networks. There are no limitations on using the Internet and all forms of social media. At the same time, the Hungarian government views CSOs that are critical of the government and those who receive funding from abroad as its adversaries and aims to undermine their credibility (see further details under question 8).

CSOs are subject to complex reporting requirements. All CSOs need to prepare and deposit their annual report and public benefit annex at the National Office for the Judiciary, including those that do not have a public benefit status and are not aiming to obtain it in the future. The reports are publicly accessible at the court registry and shall be also disclosed on the organization's website, if such exists. In addition, those CSOs that receive donation or 1 percent tax designation shall develop separate reports on the utilization of these sources of funding.

Despite such stringent reporting requirements, the National Anti-Corruption Program for 2015-2018 has foreseen introducing further measures regarding the transparency of CSOs and examining the possibilities of widening the scope of civil society leaders obliged to submit a declaration of property. In December 2016, the legislative agenda of the Parliament for spring 2017 proposed the amendment of the CSO Law and the scope of those obliged to submit a declaration of assets, with reference to the National Anti-Corruption Program and a related Government resolution from 2015. While the rules on asset declaration remained unchanged, the Parliament adopted the Law on the Transparency of Foreign Funded Organizations in June 2017 burdening CSOs with additional reporting requirements on their foreign resources. The Law is widely viewed by intergovernmental and civil society organizations as a major obstacle to the work of Hungarian CSOs and their interactions with civil society domestically and internationally (see further details under question 7).

**Question 3: To what extent is there government discretion in shutting down POs?**

<b>Score: 4.0</b>
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The general assembly of a Hungarian association is free to decide on the voluntary termination, merger or demerger of the organization. In case of foundations, however, the founder is not entitled to voluntarily terminate the organization. A foundation terminates without legal successor only in the following cases: the organization was established for a definite period and such period expired; the termination of the organization is bound to the occurrence of a specific condition; the organization accomplished its original purpose and the founder did not determine a new purpose; the accomplishment of the purpose became impossible and it is not possible to change the purpose or merge with another foundation; or, it has not carried out activities in pursuit of its objectives throughout the past three years. If any of these cases occurs, the board of trustees is required by law to both inform the founder to take the necessary steps and to notify the supervisory board and the auditor. If the founder does not take the necessary steps within 30 days, this failure constitutes grounds for termination and must be reported by the board of trustees to the court. Finally, voluntary termination may also occur if the founder decides to merge or demerge the foundation, but only if the founder already provided the founding assets for the organization. In addition, the merger or demerger may not derogate the assets or jeopardize the purpose of the foundation.

The procedures for involuntarily termination are different from those associated with voluntary termination. Under Hungarian law, the court may dissolve a CSO upon the court procedure initiated by the prosecutor in case its activity or operation violates the CSO Law: a CSO is formed for criminal, military or unlawful purposes; established to violate the rights and freedoms of others; or to undertake a public task that is reserved for state bodies. In addition, CSOs may involuntarily terminate as a result of bankruptcy and liquidation procedures. The process for bankruptcy and liquidation is, however, quite complex and both the CSO Law and the Law XLIX of 1991 – which defines bankruptcy and liquidation procedures – have to be applied in tandem which may cause difficulties

for CSOs. CSOs shall receive advance written notification about the claim and may dispute it in civil proceedings. Upon the request of the CSO the court may provide up to 90 days delay in payment. The suspension of a tax identification number can also lead to legal and existential uncertainty for CSOs, as demonstrated during the investigation carried out by the Government Control Office against the NGO Operator Consortium and the beneficiaries of the EEA/Norway Grants NGO Fund (see further information under question 8). Also, failure to comply with the new Law on the Transparency of Foreign Funded Organizations may result in high fines and possibly termination (see further information under question 7).

## II. Domestic Tax and Fiscal Issues

*The two questions in this section pertain to laws and regulations governing the fiscal constraints of giving and receiving donations domestically.*

### Question 4: To what extent is the tax system favorable to making charitable donations?

Score: 4.0

Since 1 January 2010, individuals and private entrepreneurs have no longer been entitled to tax benefits for charitable donations. Tax benefits were abolished together with several other tax benefits as part of an austerity package during the financial crisis.

As a result, tax deductions are only available for corporate donations and are subject to certain limitations. Such donations are only tax-deductible if they are made to Hungarian CSOs with public benefit status. These deductions allow qualifying firms to reduce the pre-tax profits by 20 percent of the donation if the donation supports the public benefit activity of a public benefit organization. Furthermore, an additional 20 percent of the donation may be deducted if it is provided under a long-term donation contract wherein the donor pledges to continue providing the donation for at least the next three years. It is important to note that tax deductions may be applied up to the amount of the aggregate pre-tax profit.

The process for claiming the deduction – articulated in Article 7 (1) (z) and 7(7) of CIT Law – is simple and a corporation needs only to obtain a certificate from the beneficiary organization and indicate the amount of the tax deduction in its annual financial report.

As of 1997, individual taxpayers can designate 1 percent of their personal income tax to a CSO that carries out public benefit activities as well as some other institutions. Furthermore, according to Law CXXVI of 1996, an additional 1 percent can be dedicated to churches and a specific budget priority.

### Question 5: To what extent is the tax system favorable to POs in receiving charitable donations?

Score: 3.0

Associations and foundations enjoy various benefits including exemptions from corporate income tax, local taxes, and other taxes and duties. Limited additional benefits are also available for those associations and foundations that have public benefit status.

The income of associations and foundations is exempt from corporate income tax if it is derived from the following activities: (1) the acceptance of donations; (2) mission-related activities (including public benefit activities); (3) the placement of funds into deposit, security, or company share; and (4) the purchase of real estate, assignment, and transfer of its use is (Act LXXXI/1996 Section 9(1a) and Act CLXXV/2011 Section 2 point 11). Furthermore, there is a tax-exempt threshold under which the foundations and associations shall not pay corporate income tax after income arising from business activity. This threshold is currently set at 10 percent of annual income and the income from business activity shall not exceed HUF 10 million (approximately US \$39,200).

Organizations also benefit from a number of smaller incentives, and not only are foundations and associations exempt from all local taxes but they also enjoy personal duty exemptions from gift duties, inheritance duties, duties on property transfers, and procedural duties. Nonetheless, these benefits are tempered by the fact that Hungarian organizations may only enjoy such exemptions if they have no tax liability on their income from business activities in the previous year. Similarly, vehicles owned by foundations and associations are also exempt from the vehicle taxes provided that they have no corporate tax liability from the previous year.

Finally, limited additional indirect benefits are available for those CSOs that have public benefit status. In addition to the eligibility for tax deductions after a corporate donation, public benefit organizations are also eligible for a higher tax-exempt threshold of 15 percent after income from business activities.

Taken together, the range of CSOs that are eligible to tax exemptions is relatively broad. However, CSOs that benefit from such tax exemptions do not automatically benefit from tax deductible donation. While people are generally allowed to donate to CSOs, only public benefit organizations (PBOs) are eligible to receive tax benefited donations. The number of PBOs, however, declined dramatically due to the new public benefit criteria and the requirements for re-registration. Specifically, the CSO Law introduced an overly narrow interpretation of public benefit activity, and focuses on the CSO's contribution to government tasks – central or at the local government level – rather than the broader meaning of public goods. CSOs have to prove that they have maintained sufficient levels of resources and social support in the past two years. All organizations that were awarded their public benefit status under the former Law CLVI of 1997 on public benefit organizations had until May 2014 to reapply and prove that they complied with the new criteria in order to retain their status. As a consequence, the number of PBOs decreased from 55 percent to 19 percent of the sector ([Central Statistical Office, 2018](#)). In addition, the scope of tax benefits to support team sports, film production and organizations engaged in performing arts was extended and due to the more favorable conditions they gained bigger popularity among domestic companies and thereby discouraged donations to CSOs ([Hungarian Donors Forum, 2013](#)).

### III. Cross-Border Philanthropic Flows

*The two questions in this section concern laws and regulations governing the fiscal constraints of giving and receiving cross-border donations. The scoring for these questions pertains to the donor and receiving entities.*

**Question 6: To what extent is the legal regulatory environment favorable to sending cross-border donations?**

**Score: 4.0**

Cross-border charitable donations can be sent without incurring additional costs. As described earlier, there is no tax deduction available for donations by individuals, and the same paucity applies to cross-border donations by individuals. In cases involving corporate donations, tax benefits are attainable only for those charitable donations provided to Hungarian public benefit organizations, given that the beneficiary organization has to carry out public benefit activity as per the definition described in the CSO Law. Namely, public benefit activity is defined as an activity that directly or indirectly serves public (governmental or local governmental) duties and hereby contributes to the satisfaction of the joint needs of the society and the individuals. As a result, while Hungarian firms and citizens are not prevented from giving to foreign organizations, they are presented with no incentives to do so.

**Question 7: To what extent is the legal regulatory environment favorable to receiving cross-border donations?**

**Score: 3.0**

In June 2017 Hungary adopted the Law on the Transparency of Foreign Funded Organizations that puts a label and onerous burdens on CSOs that fall under its scope. The law introduces the new category of “foreign-funded organizations,” which applies to all Hungarian associations and foundations receiving HUF 7.2 million (approximately US \$28,300) or more within a given tax year from foreign sources, including individuals, foundations, government aid agencies, and directly from the European Union (EU). Such organizations must notify the court to be registered as “foreign-funded organizations”. Organizations are also publicly labelled meaning they must indicate their status on their websites and in their publications and press materials. The status is published on the CSO Registry and on the electronic portal of the Ministry of Human Capacities. CSOs are burdened with additional reporting requirements on their foreign resources – e.g., they have to report on each transaction they have had with donors who have contributed at least HUF 500,000 (approximately US \$2,000) per tax year, and provide donor’s names, location, etc. Failure to comply with the law (e.g., to notify the court) will result in high fines and possible termination. There are concerns that the law, coupled with a negative campaign by the government, will threaten CSO ability to raise and disburse funds as well as their sustainability and ability to operate. The international community, including the [Venice Commission](#), [CoE Conference of INGOs Expert Council on NGO Law](#), [EU Parliament](#), [UN Special Rapporteurs](#), have all warned that the Law violates international standards, including the rights to freedom of association and expression. In December 2017, the European Commission referred Hungary to the European Court of Justice to challenge the Law. (For further

information see: <http://ecnl.org/hungarian-law-on-the-transparency-of-organisations-supported-from-abroad-what-is-at-stake/>)

The Hungarian government's earlier treatment of the EEA/Norway Grants NGO Fund and organizations funded by Soros Open Society Foundations demonstrate that cross-border funding of CSOs, and especially the human rights and watchdog organizations, has been in jeopardy already in 2015-2016 (see further information under question 8). As early as December 2014 the prime minister intimated in an interview that he would back legislation to force non-governmental organizations funded from abroad to be specially registered to know "who's in the background" of such groups. Foreign funded organizations have been subject to hostile government rhetoric, including accusation of inciting violation of law and interfering with Hungarian politics. In September 2016, the deputy head of the ruling party requested the National Security Committee and security agencies to inspect the organizations "cooperating with the Soros-network". In October 2017, the Prime Minister called for Hungarian intelligence agencies to investigate Soros-funded CSOs and their connections, suggesting that such organizations undermine national security by trying to influence immigration policy.

#### IV. Political and Governance Environment

*The three indicator questions in the next two sections concern the political and governance context, socio-cultural characteristics, and economic conditions that influence the environment for philanthropy.*

**Question 8: To what extent is the political and governance environment favorable for philanthropy?**

<b>Score: 3.0</b>
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Hungarian CSOs note a general deterioration of their interaction with national authorities ([Council of Europe, 2016](#)). The government views CSOs that are critical of the government as its enemies and aims to undermine their credibility ([Eötvös Károly Policy Institute et al., 2014](#)). CSOs have been subject to harmful rhetoric denouncing the sector and labelling some CSOs as foreign agents, paid political activists serving foreign interests ([Cabinet Office of the Prime Minister, 2014](#)) and Soros-organizations. Independent CSOs are denied access to State-run media outlets, face funding impediments, are blacklisted from government cooperation and are subjected to excessive and unjustified inspections ([Michel Forst, the UN Special Rapporteur on the situation of human rights defenders, 2017](#)). The investigation carried out by the Government Control Office against the NGO Operator Consortium and the beneficiaries of the EEA/Norway Grants NGO Fund - which has been supporting projects in the areas of democracy and human rights, gender and equal opportunities, empowerment of vulnerable groups and other issues crucial for pluralism - has been emblematic of this tension. Government accusations suggested that the leading member of the Consortium is politically affiliated and the grants may be distributed to support political interests. The Government Control Office (KEHI) carried out a comprehensive investigation on the spending of the Norwegian NGO Funds, despite the fact that the Consortium members, the Norwegian Government and the beneficiary CSOs all claim that KEHI does not have any authority to do so. The tax number of the Consortium members were suspended, the office of two Consortium members were raided in September 2014. The international community, including the Council of Europe Commissioner for

Human Rights (2014) also expressed their concerns. The raids were found to be unlawful by the court in January 2015. Despite the serious accusations raised during the investigation, not a single proceeding had resulted in a conviction (Michel Forst, 2017). Prodded by the Hungarian government to follow suit, local elected representatives in several cities launched attacks on CSOs in 2017, questioning their credibility and compromising their operations. One of the local governments adopted a municipal decree declaring “Soros organizations” undesirable and calling on citizens and local businesses not to provide services to them. Some CSOs have found it difficult to rent an office or organize an event in such municipalities.

The space for CSOs participation in policymaking has also been shrinking. The government prefers to use MPs’ legislative motions, which are exempt from the legal requirement for consultation under the Law CXXXI of 2010 on the social participation in the preparation of the legal regulations. According to the opinions of CSO leaders, professional cooperation with high-ranking officials of state institutions has become almost impossible because differing opinions are depicted by the government as political differences, and in most areas, the decisions are based on political considerations. (EU-Russia Civil Society Forum, 2017).

**Question 9: To what extent are public policies and practices favorable for philanthropy?**

<b>Score: 2.0</b>
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The government measures and negative rhetoric against CSOs, and particularly the human rights and watchdog organizations, generally impede CSOs philanthropic efforts and equal access to resources. The government has made attempts to control how international funding is distributed to CSOs and discredit organizations that benefit from foreign resources, as demonstrated by the EEA/Norway Grants NGO Fund case and the negative rhetoric against Soros foundations. Also, the new Law on the Transparency of Foreign Funded Organizations adopted in June discriminates against organizations that receive foreign funding.

According to the latest statistics (Central Statistical Office, 2018) state funding represented 38 percent of the total revenues of CSOs in 2016. The civil fund, currently known as the National Cooperation Fund (NEA), has been one of the most important governmental source of institutional and project support for CSOs. However, its budget has been subject to major fluctuations since 2009, as the law does not set a minimum amount. The decision-making process is politicized and lacks transparency. The members of NEA’s decision-making body appointed by the government are in the majority; the presidents of the bodies making decisions and controlling the Fund are appointed by the minister and 10 percent of the Fund resources are allocated by the minister in his own scope of authority (EU-Russia Civil Society Forum, 2017). Government contracting of CSOs has practically disappeared, and the remaining contracts also mainly benefit pro-government organizations and churches. Under these circumstances, many CSOs – especially those engaged in advocacy or politically disfavored issues such as women’s rights, LGBT rights, and work with drug users – cannot rely on public sources at all (USAID, 2015).

There are few initiatives that can indirectly promote private giving to Hungarian CSOs. The National Cooperation Fund provides institutional support to CSOs partially as so-called “supplementary normative support”. The support may equal 5 percent of the donations collected and declared by the applicant organization in the previous tax year but may not total more than HUF 500,000

(approximately US \$2,000) (Law CLXXV of 2011, 56. § (1) a), and of 5/2012. (II.16.) KIM Decree, art. 12 (3)). In addition, some county Civil Information Centers organize fundraising training for CSOs. Also, regulation on the percentage designation mechanism underwent some positive changes in 2015. Since then taxpayers can decide to reveal their identity to the beneficiary CSOs which can facilitate long-term collaboration with donors. In 2017, the mechanism was simplified for churches by allowing a one-time designation that is renewed annually until the taxpayer withdraws the designation or replaces it with a new beneficiary church. Despite advocacy efforts, the CSO scheme was not similarly simplified, demonstrating the government's discriminatory treatment of CSOs.

## V. Socio-Cultural Environment

**Question 10: To what extent are socio-cultural values and practices favorable for philanthropy?**

<b>Score: 3.0</b>
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The concept of corporate social responsibility emerged broadly in the first decade of the 21st century though the phenomenon was not completely new (Hungarian Donors Forum, 2013). Corporate philanthropy has a long tradition in Hungary, which was not fully broken in the communist era. For state-run companies it was almost obligatory to develop some form of corporate welfare policy ([Harsányi et al., 2005](#)). However, corporate giving is still more widespread among multinational companies and dependent on the management in case of SMEs.

The 2017 World Giving Index showed a decline in donations, with 17 percent of respondents donating to charities in 2016, compared to 20 percent in 2014 and 24 percent in 2013 ([CAF, 2017](#)). However, crowdsourcing is spreading through websites such as adjukossze.hu, which is operated by the Nonprofit Information and Education Center (NIOK) (USAID, 2015). The collected amount and number of donors have been gradually increasing. In 2015, there were 60 successful campaigns with HUF 21.5 million (approximately US \$84,500) collected by 3,000 donors. In 2016, 69 campaigns were run on the site, collecting nearly US \$100,000 from almost 3,500 people (NIOK, 2015 and 2016).

According to surveys annually prepared by the Association of Community Developers, the public trusts CSOs more than any other institution, including local governments, the police, the church, the courts, Parliament, politicians and the public administration. According to the latest survey (2017), trust towards CSOs has become firmer and more vigorous since 2012. This may be attributed to various reasons, including civil society advocacy efforts becoming more powerful; social reflections to events such as the migration crisis; and the contra productivity of aggressive government measures, including legal constraints and administrative harassment against CSOs ([Péterfi, 2017](#)). However, the public is still unclear about the role and activities of CSOs, especially with regard to activities that can be deemed political in any way. Such activities are often portrayed as interfering with the roles of government and politicians. In this regard, the distinction between party politics and policymaking is often blurred (USAID, 2015). The MACI campaign, which so far has been supported by around 500 CSOs, aims to promote public understanding of CSOs' work and increase 1 percent tax assignments to CSOs ([sziamaci.hu](#)).

## VI. Future of Philanthropy

*These questions are used to provide a general picture of the future of philanthropy in this country as well as recommendations to improve the philanthropic environment.*

### Current state of the philanthropic sector

Hungary has a vivid civil society, including approximately 54,000 registered associations and foundations. In addition, many informal groups have been formed to respond to emerging challenges, such as the influx of refugees (e.g. Migration Aid), poverty and homelessness (Heti Betevő), which later have become institutionalized. More than 154 thousand people work for nonprofit organizations and more than 400 thousand people volunteer in the sector (Central Statistical Office, 2018). The community foundation sector is emerging and there are promising new initiatives (USAID, 2015).

### Three major recent events affecting the philanthropic landscape between January 2014 and December 2017

- Attacks against EEA/Norway Grants NGO Fund: The investigation carried out by the Government Control Office against the NGO Operator Consortium and the beneficiaries of the EEA/Norway Grants NGO Fund has been emblematic of the government's attempts to control independent sources of funding and delegitimize CSOs active in the field of promoting human rights and democratic values. As a response, the sector launched the so-called MACI (Magyar Civilszervezetek/"Hungarian civil society organizations") communication campaign in 2015 that aims to raise awareness of CSOs work and contribution to society (sziamaci.hu);
- Refugee crisis and anti-Soros campaign: In 2015, Hungary was challenged by an influx of refugees, largely from Syria. The government's negative campaign prompted an unprecedented response from civil society. Informal groups emerged to provide care for the thousands of refugees who arrived daily and were neglected by the public welfare system (USAID, 2015). On the other hand, it also prompted unprecedented government accusations against CSOs claiming that the flooding in of migrants is enhanced by those activists "who support everything that weakens the nation states" (Cabinet Office of the Prime Minister, 2015) and the "entire domestic pro-migrant civil sector belongs to the sphere of influence of Soros". This culminated in the national consultation and led to the adoption of the Law on the Transparency of Foreign Funded Organizations in 2017, which stigmatize foreign funded CSOs and influence the general environment for charity and philanthropy; and
- Proliferation of new, digitally based fundraising methods: Private giving is becoming more popular through new fundraising methods such as crowdfunding, SMS and bank transfers through specialized web portal [www.adhat.hu](http://www.adhat.hu) maintained by the Nonprofit Information and Training Center.

### Future development trends in the philanthropic landscape

The environment for CSOs operation will further deteriorate during year 2018. On January 18, 2018, the Hungarian government introduced a package of three draft laws targeting CSOs under the title "Stop Soros" ("Stop-Soros Package"). The revised version submitted to the Parliament in February

targets CSOs that work on migration and asylum in almost any capacity. CSOs that fit such vague criteria would have to obtain a license from the Minister of Interior to continue activities such as conducting advocacy activity and campaigns, producing information materials, engaging volunteers, and using foreign funds. The licensing process could take up to nine months and would include national security screenings. Failure to apply for a license would trigger legal proceedings against the organization that could ultimately result in dissolution by a court. Licensed groups would be required to pay 25 percent tax on any foreign funding or face a fine of 50 percent of their foreign funding. Key international bodies have issued statements expressing grave concerns and calling on Hungary to withdraw the bill (see, [COE Human Rights Commissioner](#), [UN Human Rights Council \(UNHRC\)](#), and [UN Office of the High Commissioner for Human Rights \(OHCHR\)](#)). According to the latest government statements, voting on the Stop Soros Package is expected to take place after the April 2018 national elections.

### **Three key recommendations to improve the environment for philanthropy**

- There is a need for a stable and supportive legal and fiscal environment for civil society. The government and public officials should refrain from the harmful and accusatory rhetoric, which stigmatizes CSOs, particularly those that receive international funding;
- The Law on the Transparency of Foreign Funded Organizations and the draft Stop Soros Package should be withdrawn and the government should refrain from any future measures that hinder CSOs' operation and access to resources. We recommend to re-introduce meaningful tax benefits for individual giving to CSOs in order to incentivize people to donate to CSO; and
- Hungarian CSO sector and especially the targeted advocacy groups need international solidarity, financial and advocacy support now more than ever. Any measure against CSOs have an ultimate impact on the citizens and others benefiting from their public benefit services.



# Ireland

**Expert:** Dr. Oonagh B. Breen

**Institutional Affiliation:** Sutherland School of Law, University College Dublin

With contributions from staff at the Indiana University Lilly Family School of Philanthropy

## QUICK FACTS

**Legal forms of philanthropic organizations included in the law:** Association, Corporation, Company Limited by Guarantee, Society

**Five main social issues addressed by these organizations:** Higher Education, Primary and High School Education, Basic Needs, Housing and Economic Development, Religion

**Average time established by law to register a philanthropic organization:** More than 90 days

**Average cost for registering a philanthropic organization:** US \$0

There is currently no charge to register a charity in Ireland. The register of charities was established in October 2014, so the registration process is still in its infancy and this explains the longer time currently experienced when seeking registration.

**Government levels primarily regulating the incorporation of philanthropic organizations:** Central/ Federal Government

### Philanthropic Environment Scores:

Year	Ease of Operating	Tax Incentives	Cross-Border Flows	Political Environment	Socio-Cultural Environment	OVERALL SCORE
2018	4.7	4.3	4.3	4.0	4.5	4.33

## I. Formation/Registration, Operations, Dissolution of a Philanthropic Organization (PO)

*The three questions in this section pertain to the laws and regulations governing philanthropic organizations (POs). The scoring questions for this category cover three aspects of regulations: (A) formation and registration, (B) operations, and (C) dissolution.*

### Question 1: To what extent can individuals form and incorporate the organizations defined?

Score: 4.5

Individuals are generally free to form organizations in Ireland without State approval. For POs, there are no minimum capital requirements or registration processes other than those required by the nature of the entity created. Thus, if the PO is formed as a corporation it must register with the Companies Registration Office. However, if the PO is unincorporated and is formed by way of a constitution or a set of rules, no registration or approval process is required from an establishment perspective.

The Irish Constitution, *Bunreacht na hEireann*, guarantees individuals the freedoms of association, expression, and assembly. In the interests of public order, the freedom to form associations is regulated for organizations that pursue certain purposes prohibited by section 18 of the Offences against the State Act 1939. Such unlawful organizations would include those established for the promotion or encouragement of treason, violence, criminal or terrorist offenses, or the obstruction of justice.

The treatment of charities differs from other POs. POs desiring tax-exempt charitable status require the approval of their governing instruments by the Revenue Commissioner. The Charities Act 2009, which came into force on October 16, 2014, further regulates charities and requires all charitable organizations to register with the Charities Regulatory Authority (CRA). The CRA has the power to refuse registration to those organizations that fail to meet the new statutory definition for charitable purposes or the public benefit test. No guidance has yet been issued as to how the CRA will interpret section 3 of the 2009 Act, which sets out the definition of charitable purpose. Despite a discussion concerning an annual registration fee for all charities—proportionate to the size and turnover of the charity—none applies to date. It is an offense to hold an organization out as a charity unless it is registered with the CRA.

### Question 2: To what extent are POs free to operate without excessive government interference?

Score: 4.5

Irish law does not impose onerous governance rules on POs, and organizations enjoy freedom to run their own internal affairs. The previous absence of statutory regulations prompted the nonprofit sector to develop voluntary codes to encourage better governance standards among POs. Charities require prior approval from the Charity Regulator before altering their governing instruments. While POs are free to engage in a wide range of lawful activities, charities are more restricted than other POs in undertaking unrelated trading or political activities. No restrictions are placed on the ability of

POs to contact and cooperate with colleagues in civil society, business, or government sectors, both within and outside the country.

Irish POs are also permitted to participate in networks and to use the Internet and all forms of social media. While the government does not impose restrictions on any of these forms of communication, broadcast media restrictions do apply and can affect certain POs. Section 10(3) of the Radio and Television Act 1988, for example, provides: "No advertisement shall be broadcast which is directed towards any religious or political end or which has any relation to an industrial dispute." Advertisements for certain charities (e.g. the Irish Catholic and the Catholic bookseller, Veritas) have been banned, resulting in calls for legislation revision. PO reporting and auditing requirements depend on the legal form.

The Charities Act 2009 dictates the reporting requirements for unincorporated charities; incorporated charities reporting requirements are governed by the Companies Act 2014. Irish tax law requires all charities with annual turnover exceeding EUR €100,000 (US \$114,215) to prepare audited accounts to be available for inspection at Revenue's request. All registered charities must file an annual activity report with the Charities Regulator, regardless of legal form.

### **Question 3: To what extent is there government discretion in shutting down POs?**

<b>Score: 5.0</b>
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The governing body of the relevant PO can voluntarily terminate its activities in line with the governing documents of the organization. If the entity in question is a charity, then the Cy Près doctrine will apply, under which the Charities Regulatory Authority (CRA) will frame a scheme transferring any remaining charitable assets of the dissolved organization to another charity whose purpose is as near as possible to that of the original organization, so that these assets remain in the charitable sphere.

Under the Charities Act 2009, the CRA has the power to remove charities from the Register of Charities when those organizations become 'excluded bodies' within the meaning of the Act, at which point they will cease to be charities – but not cease to exist. An excluded body is one whose purposes are: (a) unlawful; (b) contrary to public morality; (c) contrary to public policy; (d) in support of terrorism or terrorist activities; or (e) for the benefit of an organization, membership of which is unlawful. The CRA must consult with the Irish police force prior to exercising this power. The CRA must also provide reasons for revoking the registration of a charity, and these reasons are required to be published in the Register.

A PO that has been formed as a company can also be involuntarily terminated by being struck off the Companies Register under the Companies Act 2014. An involuntary strike off arises at the instigation of either the Registrar of Companies – should the PO fail to file returns – or the Revenue Commissioners. A compulsory winding up of a corporate PO can also occur if either a creditor or a member of the PO petitions the High Court. The resulting procedure of such a petition is regulated by statute. Common grounds for such a petition include instances when a company is unable to pay its debts or where it is just and equitable to wind up the company under section 569 of the Companies Act 2014.

## II. Domestic Tax and Fiscal Issues

*The two questions in this section pertain to laws and regulations governing the fiscal constraints of giving and receiving donations domestically.*

### Question 4: To what extent is the tax system favorable to making charitable donations?

Score: 3.5
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Tax incentives for donations are primarily limited to charities, rather than POs more generally. Individual donors do not receive tax deductions or credits for donations, rather the recipient charity can reclaim a percentage value of tax already paid on the gift, provided that the charity qualifies under tax law as ‘an eligible charity.’ This qualification requirement is in addition to being registered with the Revenue Commissioners as a tax-exempt charity. Ireland revised its tax relief scheme for charitable donations in the Finance Act 2013, and this has improved the workability of the regime. In the case of corporate donations, a company claims a deduction for a donation as if it were a trading expense. These deductions are, in turn, given directly to the corporate donor. In the case of an individual taxpayer – whether his or her taxes are paid through payroll or are self-assessed – the relief is given on a “grossed-up” basis at a blended rate of 31 percent to the eligible charity or approved body, as the case may be, rather than by way of a separate claim to tax relief by the donor.

The minimum qualifying donation to a designated charity or other approved body is EUR €250 (US \$250) per year, and donations made in installments also qualify. There are some limits on the amounts that can be donated for tax relief purposes in a given tax year. First, the aggregate of donations to an approved body or bodies in any tax year from 2013 onwards cannot, for tax relief purposes, exceed EUR €1,000,000 (US \$1,142,150). Second, if the donor is associated with either the charity or the approved body to which the donation is made, tax relief is limited to 10 percent of the individual's total income during the year of assessment. A donor is “associated” with an eligible charity if he or she is an employee or member of either that charity at the time of donation or of another approved body that is associated with the charity.

### Question 5: To what extent is the tax system favorable to POs in receiving charitable donations?

Score: 5.0
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POs registered as tax-exempt charities receive significant tax exemptions for charities from the following taxes: Income Tax; Corporation Tax (in the case of companies); Capital Gains Tax; Deposit Interest Retention Tax (DIRT); Capital Acquisitions Tax; Stamp Duty; and Dividend Withholding Tax. To be eligible, a PO must first apply to the CRA for charitable status before making an application to Revenue for charitable tax exemption. The Charities Act definition of charitable purpose, while expanding the common law definition, coincides with previous Revenue practice, deliberately excluding certain purposes (e.g., promotion of human rights and sporting activities) that Revenue has not recognized as meriting charitable tax exemption. S.7 of the Charities Act expressly provides that when deliberating upon any charitable application for tax exemption, the Revenue is not bound by any determination of the CRA as to whether a purpose is for the public benefit or not. In principle, this means that the CRA could register a body as charitable and yet Revenue could refuse its tax-

exempt status. Revenue and the CRA have agreed and published common requirements for charities to ease the likelihood of differing approaches.

Section 848A of the Taxes Consolidation Act 1997 provides for a scheme of tax relief for certain “eligible charities” and other “approved bodies” with respect to donations received on or after April 6th, 2001. A charity may apply for authorization as an “eligible charity” under the provisions of this scheme after it has been granted exemption from tax by the Revenue Commissioners for a period of not less than 2 years. There is no general exemption with respect to Value Added Tax (VAT) for organizations that are granted charitable tax exemption. Specific reliefs from VAT may, however, apply in certain circumstances, such as in cases involving humanitarian aid and medical equipment.

### III. Cross-Border Philanthropic Flows

*The two questions in this section concern laws and regulations governing the fiscal constraints of giving and receiving cross-border donations. The scoring for these questions pertains to the donor and receiving entities.*

#### **Question 6: To what extent is the legal regulatory environment favorable to sending cross-border donations?**

<b>Score: 4.0</b>
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Cross-border charitable donations can be sent without incurring additional costs. Cross-border donations are not, however, eligible for the same tax incentives as domestic donations unless they are sent to a resident charity of either the European Economic Area or the European Free Trade Association that has been recognized by the Office of the Revenue Commissioners as tax equivalent to a domestic charity.

As part of its efforts to comply with the Financial Action Task Force’s (FATF) 40 recommendations and nine special recommendations, Ireland has strengthened the frameworks of its anti-money laundering and terrorism financing interdiction apparatuses with the enactment of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 and the Criminal Justice Act 2013. These Acts address, inter alia, customer due diligence provisions and other preventive measures, which have been brought into line with FATF’s recommendations. In 2012, the Irish financial services industry issued guidelines intended to prevent the use of the financial system for money laundering or terrorist financing, and expanded upon the provisions of the 2010 Act. These guidelines address the treatment of nonprofits and charities by designated financial service providers and set out clear and consistent processes. The combination of the new statutory regulation and the non-statutory guidelines resulted in Ireland being removed from the FATF’s regular follow-up process for partially compliant countries in 2013.

**Question 7: To what extent is the legal regulatory environment favorable to receiving cross-border donations?**

Score: 4.5

EU law guarantees free movement of capital between member states and non-discrimination on grounds of nationality in the cross-border tax treatment of PO funds. To this end, the Charities Act 2009 recognizes European Economic Area (EEA)-established POs that meet the Irish statutory test for charitable purposes and requires them to apply for registration.

A charity established in an EEA or EFTA State may seek a determination by the Office of the Revenue Commissioners as to whether it would qualify for the exemptions, provided that it had taxable income in Ireland. To date, the Office has recognized 9 such UK charities. Ireland participates in the Transnational Giving Europe project (TGE). Operating at a European level, TGE is a practical solution to support a beneficiary located in a foreign country with all the tax advantages in the country of residence of the donor. Donors can give their gifts to the national TGE partner that transfers the gift to the foreign beneficiary and provides all the national fiscal advantages to the donor. This enables income tax deductible gifts for foreign donors and tax efficient fundraising campaigns in other TGE countries.

For US tax equivalency purposes, the United States International Grantmaking Project covers Ireland. Section 23(A) (2) of the Electoral Act 2001 provides that a third party – including POs – may not accept a "foreign donation" for political purposes, including advocacy related activities. A foreign donation is a donation from an individual – other than an Irish citizen – who resides outside Ireland or a donation from a corporate body or an unincorporated body of persons who do not keep an office in Ireland. If a foreign donation is received, the third party must return the donation to the donor and keep a record of its return or remit it to the Standards in Public Office Commission. Failure to do so is an offense.

**IV. Political and Governance Environment**

*The three indicator questions in the next two sections concern the political and governance context, socio-cultural characteristics, and economic conditions that influence the environment for philanthropy.*

**Question 8: To what extent is the political and governance environment favorable for philanthropy?**

Score: 4.0

Collaboration between the government and the philanthropic sector exists in Ireland. A history of such formal collaboration was established with the creation of a community and voluntary pillar in Ireland's Social Partnership Governance Model in 1997, which saw PO representatives join business, government, and trade union representatives to agree on an economic and social progress program for Ireland. With the collapse of social partnership during the financial crisis and the severe public funding cuts to charities that ensued, the economic climate threatened the sustainability of a number of POs and forced them to seek other forms of funding outside of State funding. As economic

stability begins to return in 2017, the AIB Report on Governance and Growth reveals that POs are now seeking to keep their operations on a sustainable footing, while also funding growth opportunities.

Since the early 1990s, politically, the nonprofit sector has worked constructively with the government to advocate for the introduction of a proportionate yet robust regulatory system for charities – a goal achieved only in 2014 with the commencement of the Charities Act 2009. Paradoxically, governance scandals in the charity sector forced the government to find the resources to establish the Regulator and to give it investigatory powers. Recent research by Atlantic Philanthropies (AP) examined the extent to which the AP approach of working with government to influence policy and practice – with a particular focus on public service reform – can be considered innovative and successful. Findings made by AP made a significant contribution to influencing government policy and practice between 2003-2014, AP explored the development of a partnership approach, the development and use of evidence, and the reform of service delivery, and shared lessons that will be useful for other POs engaged in collaboration with the government or who are intent on acting as agents of change.

**Question 9: To what extent are public policies and practices favorable for philanthropy?**

**Score: 4.0**

There is a strong State support for national and international philanthropy in Ireland. Ireland's overseas development budget for 2017 is EUR €651 million (US \$743 million), an increase of EUR €10 million (US \$11.42 million) from 2016. Of this, EUR €486 million (US \$555 million) will be managed by Irish Aid, a division of the Department of Foreign Affairs, with a further EUR €165 million (US \$188.45 million) due to come from other government departments.

Ireland has an international commitment to spend 0.7 percent of national income on helping the world's poorest people. According to the government's own growth projections, the 2017 aid budget will leave overseas aid at approximately 0.3 percent of national income. Ireland is the 12th largest Development Assistance Committee (DAC) in terms of ODA as a percentage of GNI, and the 19th largest in terms of volume. Ireland is one of the best performing donors when it comes to directing its development aid to the world's neediest countries, according to OECD 2014 peer review findings.

At a national level, the government established the Forum on Philanthropy in May 2006 in order to promote a culture of philanthropy in Ireland. In 2011, the responsibility of the Forum was transferred to the Department of the Environment, Community, and Local Government and its focus broadened. The Forum's vision for the period 2011-2016 aimed to reinforce that the role of and the legitimacy of the contribution of philanthropy and strategic charitable fundraising in Irish society, as well as ensure that it was properly understood and valued. In order to make progress on the goals of the Forum, responsibility was assigned to three existing organizations – Philanthropy Ireland, Fundraising Ireland, and Irish Charities Tax Research Ltd (now Charities Institute Ireland) – and a new organization, the Social Innovation Fund Ireland, which was established in 2013. The Department provides funding to the four organizations on a 50:50 matched funding basis. Donors and funders of POs are free to support any philanthropic cause or organization without government pressure in Ireland.

## V. Socio-Cultural Environment

**Question 10: To what extent are socio-cultural values and practices favorable for philanthropy?**

Score: 4.5

Ireland has a long history of philanthropy with a strong tradition of charitable giving and has traditionally been perceived as a generous nation. Over the past five years, Ireland has ranked consistently in the top ten countries on the World Giving Index in terms of the percentage of people who donate money, volunteer time, or help strangers. In 2011, Ireland ranked as the number one nation for giving donations, with 79 percent of those surveyed donating money in the previous month. By 2016, this fell to 66 percent, and Ireland dropped to 10th in the rankings. The past absence of a modern charity regulatory framework and recent charity scandals have weakened public trust and have adversely affected charitable donations. Irish philanthropy tends more toward the spontaneous ad hoc nature of unplanned charitable giving with only an estimated 15 percent of donors engaged in continuous planned giving. The lack of planned giving in Ireland is cultural, with only 34 percent of Irish residents making a will. Of those making a will in 2012, three in ten respondents were likely to make a bequest to charity, representing a notable increase of 100 percent in this finding since 2006. Using Lester Salamon's and Helmut Anheier's typology, the relationship between the Irish State and its nonprofit sector can be classified as corporatist in nature; Irish nonprofits work closely with the State in the provision of public services and are largely funded by the State. This has, in turn, resulted in extensive government social welfare spending and a sizeable nonprofit sector, based on numbers employed. Since 2005, the Irish government has spent between 15-22 percent of GDP on public social expenditure (16.1% in 2016). Given this high level of public spending, it is not surprising that the Global Civil Society Project reveals that Irish POs rely heavily on public sector income—from which between 40-50 percent of nonprofit revenue is derived in many cases.

## VI. Future of Philanthropy

*These questions are used to provide a general picture of the future of philanthropy in this country as well as recommendations to improve the philanthropic environment.*

### **Current state of the philanthropic sector**

Informal, non-institutionalized philanthropy is prevalent in Ireland. Culturally, Irish people are generous by nature and ad hoc public collections in aid of good causes are common. The sector (comprised of 19,355 nonprofits – of which 8,300 are registered, active charities – Public Register, April 2017) is not yet well-organized. The greater focus of the Charities Act 2009 on financial reporting, good governance and higher fundraising standards is spurring professionalization. In 2016, Fundraising Ireland merged with the capacity building organization ICTR (Irish Charities Tax Research Ltd) to form the Charities Institute Ireland (CII). CII encourages charities to actively demonstrate openness, transparency, and integrity to beneficiaries and donors by operating to 'triple lock' standards – transparent reporting, good fundraising, and good governance. While CII membership is restricted to charities, The Wheel, a support and representative network for the community and voluntary sector in Ireland, accepts broader membership and act as secretariat for the sector-developed Governance Code.

Thirdly, Benefacts, a nonprofit established in 2014 with government and philanthropic support, maintains and publishes a nonprofit database derived from publicly-available sources augmented by voluntary disclosures. The database, focused on nonprofit entities established for public benefit, however constituted, aims to better assist the government, nonprofit sector, and stakeholders in order to understand the objects and performance of POs by providing reliable and rich empirical data on the sector for the first time.

Inter-sectoral collaboration is common, particularly between the POs and the State in the areas of education, health, housing, and social welfare. Charities act as public service providers, heavily funded by the State. In terms of intra-sectoral collaboration, POs have collaborated to develop codes of good practice in the areas of fundraising practice and good governance in 2010 and 2012.

### **Three major recent events affecting the philanthropic landscape between January 2014 and December 2016**

- Revelation of Console Charity Scandal in June 2016: Media investigations revealed the related directors of a national bereavement charity allegedly benefitted by almost EUR €500,000 (US \$571,075) in salaries and cars over three years, and that the family allegedly spent thousands of euro of Console money on designer clothes, restaurants, and holidays. The charity was ultimately dissolved;
- Commencement of the Charities Act 2009 in October 2014 with the establishment of Charities Regulatory Authority and the creation of Register of Charities; and
- Central Remedial Clinic Charity Scandal in January 2014: The Central Remedial Clinic used charitable funds to top up the salaries of senior staff members, resulting in a Public Accounts Committee Hearing and the resignation of the Board of this charity.

### **Future development trends in the philanthropic landscape**

Ireland has entered a new era of charity regulation with a focus on registration, and a promised focus on financial and narrative reporting to come. Coupled with the development of the Benefacts (the database of civil society in Ireland), which is providing a growing and rich knowledge base on the sector for the first time, this regulation should lead to higher standards of behavior within the nonprofit sector, improve our overall understanding of the sector, and shine a light on poor practices of the past. When it comes to government-nonprofit hybrids, to date, Ireland has not engaged in the creation of new legal forms to assist social enterprise growth. There are no equivalents to the CIC (community enterprise company), bencorp (benefit corporation) or L3C (low profit limited liability company) in Ireland. So, room for growth exists here.

More generally, the Growth and Governance in the Nonprofit Sector Report (AIB, 2017) revealed that, while 64 percent of the surveyed 175 respondents from the nonprofit sector expected their organization to expand the scope of their services and activities (with 14 percent planning to expand internationally), 32 percent expected to merge with other organizations. 78 percent of respondents viewed themselves as low-risk investors. Interestingly, however, investment decisions were made by the board on only 59 percent of cases, while less than half (47%) of the organizations with

investment, assets had a documented investment policy in place. Ireland's small foundation sector has shrunk over the past decade with major grant making foundations either closing (e.g., One Foundation) or currently engaged in spend down mode (e.g. Atlantic Philanthropies). The European Foundation Centre estimates the existence of approximately 40 public-benefit foundations in Ireland with total assets of approximately EUR €725 million (US \$828 million). New research by the Harvard-led Global Philanthropy Study should provide current data on the health of the foundation sector in 2017.

### **Three key recommendations to improve the environment for philanthropy**

- Ensuring the accuracy of the Register of Charities is essential. Of the 7,890 charities registered, more than 3,000 have yet to engage with the regulator to update their details. Building a robust register of reliable charity data is key to the successful regulation of and an improved environment for philanthropy in Ireland;
- Amendment of the Charities Act 2009 and/or the Companies Act 2014 is required to introduce uniform financial reporting standards for charities, which at present differ greatly depending upon whether a charity is incorporated or unincorporated. Incorporated charities can, under company law, file abridged accounts, avail of an audit exemption threshold, and are not obligated to follow the Charities Statement of Recommended Practice when preparing their accounts; and
- As we develop a modern framework for the regulation of charities in Ireland, guidance from the regulator on matters ranging from the interpretation of the statutory charitable purposes, the meaning of public benefit, and the essentials for good trusteeship of charitable assets would be welcome.



# Italy

**Expert:** Raffaella Rametta

**Institutional Affiliation:** University of Teramo

With contributions from staff at the Indiana University Lilly Family School of Philanthropy

## QUICK FACTS

**Legal forms of philanthropic organizations included in the law:** Association, Foundation, Trust, Society, Other(s): Social cooperative, Corporation of registered as social enterprise, Limited Liability Company, if registered as social enterprise, Company limited by guarantee if registered as social enterprise

Additionally, under the newly enacted Third Sector Code (Legislative Decree n. 117/2017), any private entity (except for corporations/companies not registered as social enterprise) that pursues public-benefit purposes in the sectors listed by the law and is bound by the non-distribution constraint rule, can register with the Third Sector national register and obtain the “Third Sector entity” status for tax purposes. Public administrations, political associations, labor unions, professional associations and employers’ associations are not eligible for the “Third Sector entity” status.

**Five main social issues addressed by these organizations:** Higher Education, Primary and High School Education, Arts and Culture, Health and Medical Research, Basic Needs, Religion

**Average time established by law to register a philanthropic organization:** More than 90 days

31-60 days: 60 days under the Third Sector Code enacted in 2017, which applies to all nonprofit entities registering with the Third Sector national register in order to obtain the “Third Sector entity” status for tax purposes. This term can be shortened up to 30 days if the creation of documents comply with standard models approved by the Ministry of Labor and Social Policy.

More than 90 days: 120 days, under the Presidential Decree (n.361/2000), associations and foundations other than the Third Sector associations/foundations obtain the legal personality through the registration in the Legal Persons register that is kept by Prefectures and Regions.

**Average cost for registering a philanthropic organization:** US \$20

Costs for registration with the Legal Persons register: EUR €16 (US \$20) (revenue stamp) except for certain tax-exempt entities (e.g., volunteering organizations). Costs for registration with the Third Sector register: still unknown.

**Government levels primarily regulating the incorporation of philanthropic organizations:**  
Central

National laws and Government regulations primarily regulate the matter.

**Philanthropic Environment Scores:**

<b>Year</b>	<b>Ease of Operating</b>	<b>Tax Incentives</b>	<b>Cross-Border Flows</b>	<b>Political Environment</b>	<b>Socio-Cultural Environment</b>	<b>OVERALL SCORE</b>
<b>2018</b>	4.8	4.5	4.5	5.0	4.5	4.67

## I. Formation/Registration, Operations, Dissolution of a Philanthropic Organization (PO)

*The three questions in this section pertain to the laws and regulations governing philanthropic organizations (POs). The scoring questions for this category cover three aspects of regulations: (A) formation and registration, (B) operations, and (C) dissolution.*

### Question 1: To what extent can individuals form and incorporate the organizations defined?

<b>Score: 5.0</b>
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The Italian Constitution guarantees the fundamental freedoms of peaceful assembly (art. 17), association (art. 18), religion (art. 19), expression (art. 21), establishment of trade unions (art. 39) and establishment of parties (art. 49). Additionally, the Italian law permits the formation and operation of both organizations recognized as legal persons and unrecognized organizations (which have not applied for the recognition or have not received it). To date, most of the Italian nonprofit organizations operate as unrecognized associations (Nonprofit Census by the National Statistics Institute, 2017). Moreover, under the constitutional principle of “horizontal subsidiarity” (art. 118, par. 4.), the citizens (both as individuals and as members of associations), rather than the state and local administrations, are vested with primary responsibility in carrying out activities aimed at public-benefit goals (e.g., education, research, health, culture, arts, etc.) In accord with this principle, the newly adopted Third Sector Code (Legislative Decree n. 117/2017) aimed at harmonizing and incentivizing the Italian Third Sector, recognizing the social value of Third Sector organizations as expressions of participation, solidarity and pluralism, and encouraging the sector growth and contribution to the common good (art. 2).

According to latest Nonprofit Census by the Italian National Statistics Institute (ISTAT, 20 December 2017), most of the Italian nonprofit organizations are constituted in the form of association (85.3%). This legal form is followed by social cooperatives (4.8%), foundations (1.9%), and other legal forms (8%). Currently, the formation, registration, operation and dissolution of Italian nonprofit organizations are regulated by several sources of law:

- the Civil Code provisions of 1942 on private legal persons,
- the Presidential Decree n. 361/2000 on recognition of legal personality (D.P.R. n. 361/2000),
- the new Third Sector Code (Legislative Decree n. 117/2017) regulating all nonprofit entities registered in the Third Sector national register for tax purposes, and eventually
- Several special laws that regulate peculiar philanthropic entities created by the law (e.g., foundations of banking origins, lyric foundations, cultural foundations, university foundations, etc.).

Under the D.P.R. n. 361/2000, any association, foundation and private institution pursuing a lawful and possible purpose and equipped with adequate assets can acquire legal personality through registration in the register of Private Legal Persons that is kept by the Prefectures or Regions. The registration authority must decide upon registration by 120 days; in case of denial for lack of legal conditions, the entity has the right to appeal. The legal personality allows the separation of the assets of the organization from those of the individual members and board members.

The application forms and details on the documentation are publicly available on the Prefecture and Region websites. The registration fee amounts to EUR €16 (US \$20) (revenue stamp), except for certain tax-exempt organizations.

Under the new Third Sector Code, any nonprofit private entity carrying out activities of general interest in the fields listed in the law and pursuing civic, solidarity and social utility purposes, can obtain the “Third Sector entity” status (for tax purposes) registering with the Third Sector national register administered by the Ministry of Labor and Social Policy. The Third Sector Register Office must review and decide upon registration within 60 days; this term can be shortened up to 30 days if the creation documents (i.e., articles of incorporations and bylaws) comply with standard models approved by the Ministry of Labor and Social Policy. In case of denial, the law recognizes the right to appeal before the competent administrative tribunal. In order to simplify the process, the Third Sector Code also allows Third Sector associations and foundations to acquire legal personality through single registration with the Third Sector national register; the minimum amount of capital required for the incorporation is EUR €15,000 (US \$18,400) for associations and EUR €30,000 (US \$36,800) for foundations. Upon request filed by the notary responsible for the association/foundation’s deed, the Third Sector Register Office incorporates the entity, subject only to a control over the formal regularity of the documentation.

Costs for registration with the Third Sector register is still unknown as the implementing decrees of the Third Sector reform of 2017 have not been approved yet.

**Question 2: To what extent are POs free to operate without excessive government interference?**

**Score: 4.5**

According to the Civil Code of 1942, the rules on governance and operation of private legal persons must be stated in their bylaws; a few provisions regulate general meetings, members’ rights and directors’ liability. The governmental authority is vested with broad controlling powers over the administration of recognized organizations (particularly foundations). Such provisions, that were approved as far back as 1942, are obsolete (and indeed not used in practice), as they are based upon a cultural and political approach that recognizes neither full autonomy nor the strength of the principle of subsidiarity (see below). Finally, within the Civil Code, unrecognized associations and committees enjoy larger organizational freedom, as the entity is governed by agreements among members.

Aimed at ensuring the fulfillment of public-benefit goals by tax-exempt entities, the new Third Sector Code of 2017 regulates in detail the governance of Third Sector associations and foundations. It covers matters such as mandatory governance structures and legal auditing of accounts (with different requirements depending on net assets, income and the number of employees); competences of assembly; conflicts of interests; liability of board members; and others.

Third Sector organizations must engage exclusively in nonprofit activities of general interest; specific limits are set for activities other than those of general interest, which are admitted only if they remain as secondary and instrumental activities. The distribution of funds, income or other assets of Third Sector organizations is prohibited.

Within these boundaries, nonprofit organizations are allowed to communicate and cooperate with partners from private and public sectors (both inside and outside the country), and to participate in networks such as “Assifero”, association of philanthropic entities, “ACRI”, association of foundations of banking origins, and “DAFNE”, donors and foundations network at European level.

The 2011 Nonprofit Census by the Italian National Statistics Institute gathered information about the level of innovation reached by nonprofit institutions in using different types of communication tools, either traditional communication or innovative tools. “The nonprofit institutions using at least one communication tool are 205,792, equal to 68.3 percent of NPIs. On average nonprofit institutions use two communication tools, while 72.8 percent of them uses at least an interactive communication tool such as blog, forum, chat, social network and website ” (ISTAT, 2014, p. 14).

Finally, all Third Sector entities are subject to reporting requirements, in particular: all organizations are required to file annual financial reports with the Third Sector Register Office. Besides, Third Sector entities with annual income exceeding EUR €1,000,000 (US \$1,200,000) are required to file a social statement in accordance with uniform guidelines issued by the Ministry of Labor and Social Policies. Third Sector entities with annual income exceeding EUR €100,000 (US \$120,000) are required to publish on their websites any form of emolument, compensation or payment granted to board members, directors and members (art.14.2).

The Ministry of Labor and Social Policies has the ultimate responsibility to monitor, oversee, and control Third Sector entities; moreover, the Tax Administration Authority is vested with autonomous controlling powers for tax exemption purposes.

**Question 3: To what extent is there government discretion in shutting down POs?**

<b>Score: 5.0</b>
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Under the Civil Code of 1942, the dissolution and liquidation of private legal persons occur only for causes set forth in the founding acts and bylaws, or in the case of voluntary termination decided by a three-fourths majority vote of members (associations). Dissolution can also occur if the organization has achieved its scope or it has become impossible to achieve its purpose (Civil Code, art. 27), or upon the death of all members (associations). As of 2000, the governmental authority has no longer ex-officio powers to declare the termination of a legal person.

After dissolution has been officially declared, the liquidation procedure is implemented under the supervision of the tribunal. Only in the absence of specific provisions contained in the foundation acts, bylaws or members resolution, the governmental authority will transfer the remaining assets to other nonprofit organizations pursuing similar purposes.

Under the new Third Sector Code of 2017, the involuntary termination of a Third Sector entity by the Third Sector Register Office can occur in case of failure to comply with the reporting requirements; if a requested correction of the violation has not occurred (minimum duration of the correction period is 180 days); or in case of failure to comply with the legal requirements for registration with the Third Sector national register.

The involuntary termination and dissolution is subject to judicial supervision by the competent administrative Tribunal.

If the Third Sector organization is dissolved or otherwise ceases to exist, the remaining assets are transferred to other Third Sector entities in accordance with the bylaws or board's resolution, or the Fondazione Italia Sociale (a foundation created by the law to support the activities of Third Sector entities).

## II. Domestic Tax and Fiscal Issues

*The two questions in this section pertain to laws and regulations governing the fiscal constraints of giving and receiving donations domestically.*

### Question 4: To what extent is the tax system favorable to making charitable donations?

Score: 4.5
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Over the last decades, several reforms have gradually disrupted the not particularly beneficial tax treatment that Italian nonprofit organizations have received traditionally in terms of both income tax exemption and deductibility of charitable contributions.

In 2017, the newly adopted Third Sector Code provided a reorganization and harmonization of tax reliefs and regulations applicable to Third Sector entities (e.g., review of the definition of non-commercial entity for tax purposes, rationalization of tax benefits, new measures for raising venture capital and, more generally, for funding the Third Sector).

Under the Third Sector Code, thus, Italian law provides for several tax incentives for donors and receiving entities. In particular,

- Individual donors can deduct 30 percent of cash or in-kind contributions to non-commercial Third Sector organizations and social cooperatives, up to a maximum of EUR €30,000 (US \$36,000) for each tax period from their gross income tax. The percentage is raised to 35 percent for cash contributions to volunteering organizations (art. 83.1). Alternatively, individual donors can deduct from their total declared income cash and in-kind contributions to non-commercial Third Sector entities and social cooperatives, for an amount not exceeding 10 percent of the total declared income (art. 83.2);
- Corporate donors can deduct from their total declared income cash and in-kind contributions to non-commercial Third Sector entities and social cooperatives, for an amount not exceeding 10 percent of the total declared income (the excess can be deducted up to the fourth subsequent tax period) (art. 83.2); and
- Individuals and corporations also have access to tax credits (65 percent for individuals and non-commercial entities, up to a ceiling of 15 percent of declared income; 50 percent for corporations, up to a ceiling of 5 per thousand of annual income) when making cash donations to support projects of Third Sector entities aimed at the renovation of unused public buildings

and any assets confiscated from organized crime that will be devoted to non-commercial activities (art. 82-1 and 2).

Other tax benefits for charitable donations to specific nonprofit entities are provided under special laws.

**Question 5: To what extent is the tax system favorable to POs in receiving charitable donations?**

<b>Score: 4.5</b>
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Changes in the law have also created a more beneficial environment for philanthropic organizations in relation to tax exemptions. In 2017, the newly adopted Third Sector Code implemented several tax incentives for donors and receiving entities. In particular, under the Third sector code, the Third sector organizations enjoy the following tax benefits (art. 79 and 82):

- Exemption from corporate income tax, limited to Third Sector organizations (other than social enterprises) assuming non-commercial status (i.e. with non-commercial activities prevailing over the commercial ones). In this case, profits from commercial activities are taxed with an optional flat rate system. Resources derived from fundraising as well as public funds are not considered taxable income;
- exemption from gift and inheritance taxes, mortgages and cadastral taxes on free-of-charge transfers of assets destined to general interest activities (extended to social cooperatives);
- fixed rate registration, mortgages and cadastral taxes on transfers for consideration of real properties destined to general interests activities (extended to social enterprises);
- real estate tax exemption for properties of non-commercial Third Sector organizations that are exclusively devoted to non-commercial activities in certain fields (e.g., social assistance, health, scientific research, culture recreation and sport, religion);
- exemption or reduction (based on regional regulations) from regional taxes on productive activities;
- other exemptions (e.g., stamp duty tax, entertainment tax, taxes on government concessions); and
- Especially favorable tax provisions for volunteering organizations and social promotion associations (e.g., VAT exemptions).

Other tax benefits for specific types of receiving entities are provided for under special laws.

Please note:

1. The tax benefits provided for under the new Third Sector Code are still being reviewed by the EU Commission to assess their compatibility with the EU State Aid Regime

2. Information on the process of receiving tax exemption is not available since the implementing decrees have not been adopted yet.

### III. Cross-Border Philanthropic Flows

*The two questions in this section concern laws and regulations governing the fiscal constraints of giving and receiving cross-border donations. The scoring for these questions pertains to the donor and receiving entities.*

#### **Question 6: To what extent is the legal regulatory environment favorable to sending cross-border donations?**

<b>Score: 4.5</b>
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EU Treaties provide for the free movement of capital between Member States and freedom of establishment; therefore, it is a breach of those provisions for a Member State to refuse tax deductions on gifts to charitable organizations within other Member States simply on the basis that they are not established in the Member State in question.

On this legal basis, three key rulings by the European Court of Justice called for a favorable and non-discriminatory tax treatment for donors and philanthropic organizations throughout the EU Member States: the “Stauffer”, the “Persche” and the “Missionswerk” cases. These judgments altered the ground rules for the tax deductibility of charitable donations throughout the European Union, by establishing that Member States must award equal tax concessions to charities based in other Member States where the foreign charities can be shown to be “comparable” to domestic organizations holding charitable tax status. More specifically:

1. In Centro di Musicologia Walter Stauffer v Finanzamt München für Körperschaften (EU ECJ C-386/04), an Italian foundation claimed tax relief in Germany on rental income arising from property which it owned in Germany. It was held that the German tax authority was in breach for refusing to grant the tax exemption that would have been available to a domestic charity because the claimant charity was based abroad;
2. In Hein Persche v Finanzamt Lüdenscheid (EU ECJ C-318/07), a German donor claimed relief on a gift to a Portuguese charity and, as in Stauffer, the German tax authority refused to grant the tax relief that would have been available had the charity been German, because it was based abroad. As in Stauffer, the Grand Chamber of the CJEU declared this to be in breach of EU law; and
3. In Missionswerk Werner Heukelbach eV v Etat Belge (EU ECJ C-25/10), a German foundation claimed relief on the excess succession duties that it had been required to pay on a legacy from a Belgian national, over and above what it would have paid had the foundation been based in Belgium. The CJEU confirmed that EU legislation precluded a Member State from creating legislation that reserves reliefs for nonprofit making bodies operating in that Member State.

A number of large European foundations have established a partnership to make tax-exempt cross-border cash donations within Europe possible (Transnational Giving Europe-TGE). The TGE network enables donors, both corporations and individuals, residing in one of the participating countries, to financially support nonprofit organizations in other member countries, while benefiting directly from the tax advantages provided for in the legislation of their country of residence. A 5 percent fee is taken on the donated amount for gifts up to EUR €100,000 (US \$120,000), for higher gifts 1 percent of the amount in excess of the EUR €100,000 (US \$120,000) is charged; the maximum fee is EUR €15,000 (US \$18,000). This contribution helps the TGE mission “enabling philanthropy across Europe” through activities such as finding new partners in all the Member States of the EU, providing free practical information concerning cross-border philanthropy in Europe or attending small amount donations.

The TGE network also enables organizations to extend fundraising to foreign countries, without having to set up branches or sister organizations for that sole purpose and without having to master different national laws. Two concrete examples of beneficiaries using TGE are museums having donors abroad and high schools or universities relying on donations from individuals and companies and having a significant number of alumni in other countries. TGE is currently operational for donations from and to Italy.

With specific respect to Italian environment, representatives from the foundation sector confirm the situation not being any easier for donors giving across borders within the EU, observing that *“if you are an individual or corporate donor giving/ donating/legating to a public-benefit organization based in another EU Member State you find it also hard to claim the tax incentives in income tax you are entitled to. What do you have to do? Where do you find information if you get a tax incentive? Can you clarify the situation before making the donation/legacy? No one should end up having made a donation and only then finding out that your tax authority does not consider the recipient organization not comparable. Or you may find out that the tax authority applies a high rate of gift and inheritance tax on your cross-border donation or legacy.”*

**Question 7: To what extent is the legal regulatory environment favorable to receiving cross-border donations?**

**Score: 4.5**

Following the “Stauffer”, the “Persche” and the “Missionswerk” case judgments, the Italian tax law no longer makes a distinction based on whether the recipient public-benefit organization is resident in Italy or in another country. In particular, according to the regulation of the Italian Tax authority (Circolare n. 24 of 2006), a foreign-based public-benefit organization is eligible to get in Italy the tax-exempt status provided that it complies with all legal requirements that a resident nonprofit organization has to fulfill (e.g., exclusively pursuing public-benefit purposes, no distribution of profits, reporting requirements, assets devolution, etc.).

However, despite formal compliance with EU law, practical barriers and legal uncertainties continue to exist. Indeed, according to a recent report by TGE and European Foundation Center (Boosting cross-border philanthropy in Europe: towards a tax-effective environment, 2017), while cross-border philanthropy in Europe is growing, *“the fiscal environment for cross-border philanthropy, even within the European Union, is still far from satisfactory. Although the EU’s non-discrimination principle*

*(which applies to all areas of activity from the economy to civil rights, clearly also must apply to philanthropy), some legislators and authorities still discriminate against comparable foreign EU-based philanthropic players. And processes to gain equal treatment - where they are indeed available – are burdensome, lengthy and costly. Furthermore, demonstrating comparability and seeking tax incentives can be so complex that it hinders or even deters cross border-philanthropy. The bottom line is that in only a few European countries are cross-border giving and philanthropic investment today as effective as they should be according to European law”.*

#### IV. Political and Governance Environment

*The three indicator questions in the next two sections concern the political and governance context, socio-cultural characteristics, and economic conditions that influence the environment for philanthropy.*

**Question 8: To what extent is the political and governance environment favorable for philanthropy?**

Score: 5.0
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In 2001, the “horizontal subsidiarity” principle was introduced in the Italian Constitution (art.118, paragraph 4), reshaping the relationships between private and public actors and recognizing the primary competence of citizens (single or associated), rather than the state, in carrying out of activities of general interest. The core idea is that the state should have a subsidiary function, performing only those tasks that cannot be performed effectively at a more immediate or local level by private entities.

Since then, there have been gradual reforms of the legal framework aimed at implementing a governance model that recognizes the social value of nonprofit organizations and subsequently grants them several tax benefits and provides supporting measures.

Based on this fundamental principle, in 2003, two key judgments by the Constitutional Court concerning foundations of banking origin (n. 300 and n. 301 of 2003), declared the use of administrative acts designed to reduce the autonomy of the foundations by the Supervision Authority unconstitutional (e.g. general measures or regulations intended to change the list of sectors where the foundations can pursue their socially-oriented goals).

Finally, in accordance with this constitutional perspective the Third Sector Code entered into effect in 2017 recognizing the social value of Third Sector organizations (e.g., associations, philanthropic foundations, volunteer organizations, social enterprises, mutual societies etc.), as entities that promote solidarity and pluralism in a context of autonomy and cooperation with governmental authorities for programming and implementing public welfare policies.

In order to assure the fulfillment of public-benefit goals by autonomous organizations that are granted tax breaks, the Third Sector Code requires transparency and reporting of activities, as well as social impact assessment for Third Sector organizations (Third Sector Code, art. 13 and 14.) Social impact assessment is defined as “qualitative and quantitative evaluation of the effects of activities promoted

on the local community over the short, medium and long term, with respect to the target groups identified”.

**Question 9: To what extent are public policies and practices favorable for philanthropy?**

**Score: 5.0**

In accordance with the political approach described above (see question 8), the recent reform of Third Sector organizations promotes the Third Sector culture, and particularly the culture of volunteering among young people (e.g., establishing that universities may recognize academic credits for volunteering activities carried out at Third Sector organizations).

Moreover, under the new Third Sector Code, all levels of governments (State, regions and provinces) are required to provide Third Sector entities with free access to their facilities (e.g., buildings) for temporary events or initiatives organized by Third Sector organizations. Unused public buildings can be assigned (by loan contracts of up to 30 years term) to Third Sector organizations for non-commercial purposes. Eventually, public cultural buildings can be given in concession to Third Sector entities at a lower rate in accordance with renovation and development projects implemented by Third Sector entities.

Donors are free to support any philanthropic cause. Indeed, the new Code provides an open list of general interest activities that are granted tax benefits, including, beyond social services, health, education and research, arts and heritage, several other sectors such as social housing, social agriculture, fair trade, micro-loans, humanitarian reception of migrants, development of disused public buildings and property confiscated from organized crime organizations, etc.

A monitoring system is administered by the Ministry of Labor and Social Policies through the regional Offices of the Third Sector Register. The national/territorial control organizations are entrusted with specific monitoring functions over local service centers for volunteering. Autonomous oversight powers are granted to the Tax Administration Authority. Moreover, the National Council for the Third Sector (a representative body of Third Sector organizations established by the Third Sector Code) is assigned an advisory function for policymaking and is also involved in the monitoring and control functions of the Ministry of Labor together with network organizations of the Third Sector.

**V. Socio-Cultural Environment**

**Question 10: To what extent are socio-cultural values and practices favorable for philanthropy?**

**Score: 4.5**

One of the most significant features of Italy’s social and civic landscape today is certainly the phenomenon referred to as the “rediscovery of philanthropy” (M. Demarie and A. Monteverdi, 2007). In fact, philanthropy has a longstanding history in Italy; as observed by leading representatives of the foundation sector, “much of what has happened can be described as the unveiling and the recasting in different institutional forms of a deep philanthropic structure of Italian society”.

Yet, in the last century, some cultural and structural obstacles (i.e., the ideology of an all-encompassing role for the State) overshadowed the concept of philanthropy and brought it into almost complete disuse. The historical roots of these obstacles go back to the nation and state-building processes, which took place between the 1860s and the 1890s (based on a conflict between the secular political institutions and the Catholic Church), causing the destruction of large portions of Italian civil society which were religiously inspired.

As of the early 1990s, the rediscovery of philanthropy has been occurring in the context of a Third Sector which itself has been reaching remarkable size and social impact. Giving has emerged as a socially praiseworthy activity and step-by-step the idea of philanthropy is gaining a renewed and widespread legitimacy.

Overall, Italy is experimenting with new and updated ways of promoting philanthropy, following trends developed in countries like the US and UK which possess a longer and more established tradition in the management of philanthropy. Individuals, corporations and foundations are understating that giving responsibly requires competence and knowledge. As a result, although a donors' community is not yet in place, certainly the culture of giving has been gaining momentum over last decades.

## VI. Future of Philanthropy

*These questions are used to provide a general picture of the future of philanthropy in this country as well as recommendations to improve the philanthropic environment.*

### Current state of the philanthropic sector

Over the last decades, the size and the role of the Italian nonprofit sector have undergone dramatic transformations along with major changes in the legal framework (including both civil law and tax law) and the crisis of the welfare state.

Based on the International Classification of Nonprofit Organizations - ICNPO system, the latest Nonprofit Census published by the Italian National Institute for Statistics (ISTAT, December 2017), shows that on 31 December 2015 the Italian nonprofit sector had 336,275 nonprofit organizations (with a growth of 11.6 percent since the last census of 2011), relying on the working contribution of more than 5.5 million volunteers (with an increase of 16.2 percent since 2011), and 788,000 paid workers (with an increase of 15.8 percent since 2011, demonstrating that the sector is increasingly an important source of employment to the country). Even though other legal forms have become more common (especially foundations and social cooperatives), associations are still the main legal form adopted by nonprofit institutions (amounting to 286,942).

According to the Nonprofit Census (ISTAT, December 2017) the primary sector of activity is culture, sports and recreation (64.9 percent of total nonprofit institutions active in Italy). Followed by Social services (9.2%), business and professional associations, unions (6.1%), religion (4.3%), education and research (4.0%), health (3.4%), and other sectors (8.0%). With respect to the type of beneficiaries of provided services, 63.3 percent of Italian nonprofit institutions surveyed qualify as public-benefit organizations (more active in the sectors of international cooperation, religion, social assistance and civil protection, economic development and social cohesion, philanthropy and

promotion of volunteering, health), with 36.7 percent classified as mutual organizations (more active in the sectors of business and professional associations and unions, culture, sport and recreation). However, much more than the sheer number of organizations involved, it is noteworthy that the sector is experiencing growth in professionalism as well as in the scope of the issues targeted for action (e.g., social welfare and cohesion, education, culture and heritage, and research), all of them crucial for national and local development. Moreover, while traditionally dependent on government funding, the nonprofit sector is beginning to deploy more sophisticated techniques of fundraising, making efforts to engage the public at large as well as corporations and foundations or other nonprofit grant making institutions. At the same time, as already pointed out (see Tax law section), Italian legal and fiscal framework has slowly become more favorable to donations, including the introduction of a supportive tax treatment of charitable donations provided by the new Third Sector Code.

Finally, foundations of banking origins are certainly the most innovative and fastest growing element that brought Italian philanthropy into the European and international scene. These 88 foundations are philanthropic entities, private in nature, which engage solely in socially oriented and economic development undertakings. Originally, they were created in the early 1990s from the privatization of formerly public banks, which in turn were the final result of private philanthropic initiatives coming into being at the beginning of the nineteenth century during the critical phase of the passage from an agricultural to an industrial society (with some of them established between 1400 and 1500: so-called “Monti di Pietà”). According to the report published by the Association of Italian savings banks and foundations with banking origin (ACRI, 2017), on 31st December 2016, the book value of the net assets of the foundations of banking origin amounted to EUR €39.7 billion (US \$47.8 billion) (accounting for 86 percent of total assets which added up to EUR €46.3 billion (US \$55.7 billion). Through the quality and quantity of their philanthropic resources, these foundations are a fundamental force shaping Italian philanthropy, by developing highly professionalized grant making management tools, formulating mid-term action strategies and looking for transnational connections. Besides the universe of foundations of banking origins providing a major source of philanthropic funding in Italy, the last decades have seen the creation of other types of philanthropic foundations: the lyric-symphonic foundations and the cultural foundations that originated from the privatization of formerly publicly-owned cultural institutions; the community foundations and the so-called “fondazioni di partecipazione”. These are foundations with a participatory structure created with the aim of facilitating public-private cooperation (particularly in the fields of cultural activities and heritage management).

This seems to be the state of Italian philanthropic environment: becoming larger, more self-conscious, more professional and more open to the sharing of good practices and collaborative work. This state does not constitute a new phenomenon, as Italian philanthropic tradition began in the 15th century. As pointed out by leading representatives of the sector, current Italian philanthropy is largely tapping into the resources of a rich and articulated past, which material and immaterial legacy has made present scene much better.

### **Three major recent events affecting the philanthropic landscape between January 2014 and December 2017**

- During the last decades, the expected adoption of a substantial reform of the Italian Third Sector failed to occur on several occasions for various political reasons, causing the legislative process to restart again. Finally, in June 2016, the Italian Parliament approved the

Reform Law n. 106/2016 delegating powers to the Government to implement (through one or more decrees) the reform of the Third Sector and social enterprise (and also the discipline of universal civil service). In accordance with the constitutional principle of “horizontal subsidiarity”, one of the key features of the reform is the establishment of collaborative relationships between government and the Third Sector in providing social services (with a new role of Third Sector organizations in the design of public policies in the area of welfare, not only in the implementation of those policies). This must be accompanied with the development of public and private support to the Third Sector through rationalization of tax benefits and new measures for raising venture capital and more generally for funding the Third Sector. By August 2017, the implementing **Legislative Decree n. 117/2017** introduced the Third Sector Code, which throughout its 104 articles seeks to reduce the fragmentation of laws traditionally affecting the various entities of the Italian Third Sector and harmonize the core characteristics of the “Third Sector entities” status that allows them to receive tax incentives and other benefits;

- Another important achievement is the enactment of the **reform law of social enterprises** (Legislative Decree n. 112/2017, abolishing the Legislative Decree n. 155/2006), introducing greater flexibility for social enterprises. In fact, social enterprises, if incorporated as companies, will be entitled to distribute dividends within certain limits. This reform favors new sources of funding through investments (as opposed to the mere search for grants). Within the reforming law, such interception of private capital is incentivized by tax advantages, which will be granted to investors, together with the possibility for new social enterprises to gain capital also through equity-based crowdfunding platforms; and
- In terms of self-regulation, a major event has been the **adoption of the Charter of the Foundations of Banking Origins** (a code of ethics) launched in 2012, followed by the Memorandum of Understanding of the Association of Foundations of Banking Origin (ACRI) and the Ministry of Economy and Finance (the authority supervising the foundations of banking origins) in 2015. Such Memorandum commits the foundations associated with ACRI to change their statutes in accordance with the principles outlined within the Memorandum, agreeing to reinforce the diversification of investments, enhance transparency in disbursements, and introduce more rigorous governance guidelines. On the other side, the Supervisory Authority accepted to enforce the newly implemented statutory provisions in the carrying out of its monitoring tasks over the sector.

### **Future development trends in the philanthropic landscape**

Several changes are affecting the Italian nonprofit sector in recent times. Please find listed below the most significant trends:

1. Above all, there is a trend towards an entrepreneurial approach that promotes growth, innovation and employment. In fact, one of the most important innovations implemented by the recent Third Sector reform of 2017, concerns social enterprises, which are defined as private enterprises that serve the general interest and whose main goal is to have a positive social impact by means of the production or trade of goods or services of public interest, and which prevalently use profits to reach social objectives and adopt transparent and responsible management models that involve employees, users and relevant stakeholders as much as

possible. According to the Legislative Decree n. 112/2017, social enterprises may have access to forms of capital-raising through website portals (crowdfunding), just like innovative startups; they will be able to distribute profits, appoint representatives of private businesses and public administrations to their boards of directors as well as one or two statutory auditors within supervisory bodies; and they will have access to tax incentives and a specific, ad hoc revolving fund.

2. Moreover, the recent legislative developments are strengthening the value of transparency on Third Sector organizations' goals, governance model and financial data as well as the measurement of social impact of the organizations' activities. To these purposes, the recent reforms enhance the self-regulatory role of network organizations of the Third Sector.
3. Finally, a key innovation implemented by the Third Sector reform is the provision of new formats of fundraising (crowdfunding), and new social finance tools (so-called "solidarity bonds").

### **Three key recommendations to improve the environment for philanthropy**

- The enactment of a Third Sector Code certainly represents a turning point within the legislative evolution of the Italian nonprofit sector, as it finally introduced a common regulatory framework with specific features for "the complex of private entities constituted for the pursuit of nonprofit, civic, solidarity and social utility purposes and which, in pursuance of the principle of subsidiarity and in accordance with their respective statutes or constitutive acts, promote and carry out activities of general interest by means of voluntary and free forms of action, mutuality or production/exchange of goods or services" (Law n. 106 of 2016, art. 1.); and
- Yet, the Italian landscape of nonprofit organizations is a very fragmented world comprising diverse entities with very different structures: e.g., foundations, recognized and unrecognized associations, volunteer organizations, social enterprises, social cooperatives, nongovernmental organizations, mutual benefit societies, foundations created by the law (e.g., foundations of banking origins, lyric foundations, university foundations, cultural foundations etc.), etc. Thus, a more comprehensive reform is still necessary in an aim to simplify and harmonize a relevant set of special (often overlapping) laws that still remain into force outside the new Third Sector Code.



# Kosovo

**Expert:** Mjellma Hapciu Alijaj

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With contributions from staff at the Indiana University Lilly Family School of Philanthropy

## QUICK FACTS

**Legal forms of philanthropic organizations included in the law:** Association, Foundation

**Five main social issues addressed by these organizations:** Human rights, Arts and Culture, Environment, Other(s): Economic Development, Development of Democratic Principles

**Average time established by law to register a philanthropic organization:** 31-60 days

**Average cost for registering a philanthropic organization:** US \$0

There are no financial requirements for POs to register.

**Government levels primarily regulating the incorporation of philanthropic organizations:** Central/Federal

Registration is done online via the Ministry of Public Administration website.

### Philanthropic Environment Scores:

Year	Ease of Operating	Tax Incentives	Cross-Border Flows	Political Environment	Socio-Cultural Environment	OVERALL SCORE
2018	4.1	3.0	3.3	3.8	3.5	3.51

## **I. Formation/Registration, Operations, Dissolution of a Philanthropic Organization (PO)**

*The three questions in this section pertain to the laws and regulations governing philanthropic organizations (POs). The scoring questions for this category cover three aspects of regulations: (A) formation and registration, (B) operations, and (C) dissolution.*

### **Question 1: To what extent can individuals form and incorporate the organizations defined?**

**Score: 4.2**

The legal framework guarantees the fundamental freedoms of expression, association, and peaceful assembly. However, in order to obtain legal status, organizations are required to register at the Office for Non-Governmental Organizations in the Ministry of Public Administration. An NGO is defined in Law no.03/L-134 on Freedom of Association in Non-governmental Organizations as a domestic association or foundation established in Kosovo that seeks to accomplish a purpose based on the law, either for public benefit or for mutual interest. NGOs can choose to register as one of the two legal forms of domestic NGOs: association or foundations. The registration process in Kosovo, as stipulated by Law no.03/L-134, may take up to sixty (60) days. Article 9.9 of this Law states that the competent body shall issue to an NGO a registration certificate or a written decision denying registration within sixty (60) days of receiving an application to register, unless the competent body requests in writing further information or clarification within this same time period. If registration is denied, the competent body shall include an explanation of the grounds for denying registration.

The registration process is clear and there are simple procedures in place. An association can be registered by at least three or more individuals, and at least one of them has to be a permanent resident of Kosovo. A foundation may be established by one or more persons, at least one of them with residence in Kosovo (Article 5). The law requires a clear list of documents needed for registration, such as the statutes and programming of the organization, the founding statement, the list of members (for associations), or the list of board members (for foundations), as well as a copy of ID cards for each of the founding members.

### **Question 2: To what extent are POs free to operate without excessive government interference?**

**Score: 4.0**

The law gives full discretion to POs, and there are no government rules that constrain the discretion or freedom to run the internal affairs of an organization. POs are free to communicate and cooperate with other colleagues in the civil society sector or elsewhere in the business and government sectors. There are no restrictions that could stop or disrupt the work of the organizations, and organizations are entitled to use their own means of communication, such as traditional media, social media, internet, etc. However, Article 15 of LAW No.03/L134 on Freedom of Association in Nongovernmental Organizations establishes that NGOs may not engage in fundraising or campaigning in order to support political parties or candidates for political office, nor may they propose, register, or endorse candidates in any way for public office.

Reporting requirements are clear and they are applicable to all. Every organization that has been granted public beneficiary status is obliged to provide annual reports of their activities. Domestic NGOs with beneficiary status and an annual income or expenditures in excess of one hundred thousand (100,000) €, as well as international NGOs with an annual income or expenditures, in connection with their operations and activities within Kosovo, in excess of one hundred thousand (100,000) € shall include an opinion, signed by an independent auditor in addition to their financial statements (Law No. 03/L-134 on Freedom of Association in NGOs, Article 18.9).

**Question 3: To what extent is there government discretion in shutting down POs?**

**Score: 4.0**

The highest governing body of an organization is able to voluntarily terminate a PO (Article 20). The law provides that a PO has to file a statement of their decision to terminate their work. The involuntary termination of the PO by the Office for Non-Government Organization can be done only in the case of flagrant violations, yet even in those cases the decision of the Office can be appealed in the Ministry.

Associations and foundations can also be suspended and terminated by the competent body. Suspension occurs when an NGO fails to complete the annual report, or if the competent body determines that the NGO no longer meets the requirements for public benefit status (Article 19). Involuntary termination may occur if the organization becomes insolvent or the stated time limit expires. An organization may be removed from the register based on the decision of the competent body when it has failed to file the tax declaration, does not fulfil the necessary obligations or the removal is on a legal decision (Article 21).

**II. Domestic Tax and Fiscal Issues**

*The two questions in this section pertain to laws and regulations governing the fiscal constraints of giving and receiving donations domestically.*

**Question 4: To what extent is the tax system favorable to making charitable donations?**

**Score: 3.0**

Corporations can receive a tax deduction of up to 10 percent of their taxable income for humanitarian, health, education, religious, scientific, and cultural donations, as well as, donations for the protection of environment, or sports (Law No. 05/L -029 On Corporate Income Tax, Article 10.2). The recipient of these donations has to be an organization with public beneficiary status. The law does not specify if corporations are exempt from taxes in the case of in-kind donations. Moreover, in regard to donations from corporations, the law is not clear when it comes to moving the expenditure in the following fiscal years.

Law No. 03/L-115 on Personal Income Tax states that individual charitable contributions are allowed a deduction up to a maximum of five percent (5%) of taxable income computed before the charitable contribution is deducted (Article 16).

**Question 5: To what extent is the tax system favorable to POs in receiving charitable donations?**

**Score: 3.0**

All NGOs that are registered under the Law on Freedom of Association in Non-governmental Organizations may apply for public beneficiary status as long as the PO undertakes activities such as humanitarian assistance and relief, support for persons with disabilities, charity activities, education, health, and cultural programming, environmental conservation or protection, economic reconstruction and development, the promotion of human rights, the promotion of democratic practices and civil society, or any other activity that serves the public. Any commercial activity conducted by an NGO not exclusively related to its public purpose shall be charged income tax at the rate of ten percent (10%) on income derived from such unrelated business activity (Article 34).

NGOs registered with such status are eligible to receive tax exemptions from the corporate income tax, public funds, and free of charge usage of public space, as long as the income is used exclusively to further the organization's public purpose. The process of receiving public beneficiary status is clear, however, until now the amount of donations received from private donors or public grants is very small, if any. NGOs without public benefit status are taxed on their profits in the same manner as other legal entities—10 percent on taxable profit (Council on Foundations, 2016).

However, organizations have to ask for special permission to accept any contribution in excess of €1,000 from a single source in a single day, or disburse currency in excess of €5,000 in a single day to any single recipient, according to the Law 03/L-196 on the Prevention of Money Laundering and Financing of Terrorism (Article 24). Article 24.3 establishes that to make or receive payments that exceed the amounts specified above, the NGO must request exemption from the Financial Intelligence Unit of Kosovo (FIU-K). The FIU shall respond to the request in writing within thirty (30) days, and may decide to grant, conditionally grant, or deny the exemption. These requirements, according to the Kosovar Civil Society Foundation (2014), "are cumbersome to the CSOs since they may create problems for the reception of funds from donors or for the payment of funds from local grant donors" (p.13).

According to Law No. 05/L -037 on Value Added Tax, several public service goods and activities are exempt from Value Added Tax (VAT), including areas of service covered by public benefit organizations (Article 27).

### **III. Cross-Border Philanthropic Flows**

*The two questions in this section concern laws and regulations governing the fiscal constraints of giving and receiving cross-border donations. The scoring for these questions pertains to the donor and receiving entities.*

**Question 6: To what extent is the legal regulatory environment favorable to sending cross-border donations?**

**Score: 3.0**

Bearing in mind that Kosovo is still a relatively new country, and is considered to be one of the poorest countries in Europe, there is no practice of sending charitable donations abroad. Law No. 05/L -037 on Value Added Tax exempts from VAT all charitable and philanthropic organizations that send goods outside Kosovo, as long as there is no commercial intent and the goods will be used exclusively for charitable work and activities of the PO (Article 30). The exemption applies only to organizations that keep appropriate accounts and allow competent bodies to supervise their operations.

Additionally, in regard to the established limits on receiving and sending currency, Law 03/L-196 on the Prevention of Money Laundering and Financing of Terrorism states that NGOs must annually report contributions greater than €5,000 received during the year from a particular source, or any disbursement in currency during the year to a particular recipient greater than €10,000.

**Question 7: To what extent is the legal regulatory environment favorable to receiving cross-border donations?**

**Score: 3.5**

The procedures for international charitable donations are similar to the procedures for domestic donations. The same tax incentives apply, and foreign grants and donations are also tax exempt (Law on Corporate Income Tax). The process is clear and consistent, and it requires a reasonable amount of resources and time. Law No. 05/L -037 on Value Added Tax, Article 30, states that goods imported free of charge by charitable and philanthropic organizations intended for free distribution to persons in need of assistance, or goods sent free of charge and without any commercial intent, are exempt from VAT.

**IV. Political and Governance Environment**

*The three indicator questions in the next two sections concern the political and governance context, socio-cultural characteristics, and economic conditions that influence the environment for philanthropy.*

**Question 8: To what extent is the political and governance environment favorable for philanthropy?**

**Score: 3.5**

Philanthropy has had a key role in helping to develop Kosovo's nascent economy, and to date there are no political tensions between the government and the philanthropic sector. On the contrary, there is a constructive collaboration between the two sectors, and the government understands and promotes the role of philanthropic organizations as effective agents of change. The monitoring report from CiviKos Platform (2016), an organization created to formalize the relationships between

government and the civil society, accounts the adoption of a Government Strategy and the establishment of the Council as the first steps in the formalization of this cooperation since the declaration of independence of Republic of Kosovo. The recently published report of the implementation of the government strategy for cooperation with civil society (CiviKos, 2017) shows that the implementation level of the strategies to ensure strong participation of civil society in drafting and implementation of policies and legislation is low (70.8%). Levels of implementation of strategies establish a criteria to financially support CSO's (41.1%) and promoting an integrated approach to volunteering development (33%) is also low in both cases.

The POs are free to advocate and implement public programs. While there is a good level of political stability for the success of philanthropy, there is no economic stability, which mainly explains why there are limited or no public grants available for POs. Moreover, private donations are small, if non-existent, and "civil society in Kosovo remains financially dependent on foreign donors, especially those organizations that have a larger number of funds in circulation" (Kosovar Civil Society Foundation, 2014, p.5). The monitoring report of CiviKos (2016) gathers that, according to the civil society index for 2014, 74.0 percent of civil society organizations in Kosovo are financially supported by foreign donors.

**Question 9: To what extent are public policies and practices favorable for philanthropy?**

**Score: 4.0**

The government actively and strategically promotes philanthropic values, and facilitates equal access to national and international resources and opportunities, and donors are free to support any cause without government pressure. The Office for Non-Governmental Organizations demonstrates good capacities to support and oversee POs.

However, the European Commission Country Report for Kosovo (2016) highlights that although some progress has been made in improving cooperation between government and civil society, the participation of civil society in policy-making remains uneven and there is lack of transparency in public funding for civil society remains a concern.

**V. Socio-Cultural Environment**

**Question 10: To what extent are socio-cultural values and practices favorable for philanthropy?**

**Score: 3.5**

Kosovo has philanthropic traditions and societal values that encourage giving supported by values of generosity and solidarity. Even though Kosovo ranks among the countries with the lowest levels of civic engagement—measured by people's inclination to give their money, time, or assistance to others in need—Kosovars demonstrate generosity in helping others, though not necessarily through institutionalized forms of philanthropy. In her article published in the Catalyst Blog, Spahija (2012) explains that, despite these philanthropic traditions and continuous work in philanthropy, findings from an analysis by the Forum for Civic Initiatives suggest that companies do not give to their full

capacity and individual giving is not yet fully developed. While the author believes that this is due to the financial crises, low socio-economic development in the country, and endemic poverty, we also believe that Kosovo people tend to distrust POs mainly because there is a public perception of POs lacking transparency and are inefficient.

In terms of equal opportunities, there are few social and cultural restrictions, and the social and human capitals of the country provide the necessary conditions for the development of the sector. However, there still exists the need to work on building public trust of POs. The participation of women in philanthropic activities occurs in conditions of equality, and there are no social barriers when it comes to ethnicity, culture, or age.

## **VI. Future of Philanthropy**

*These questions are used to provide a general picture of the future of philanthropy in this country as well as recommendations to improve the philanthropic environment.*

### **Current state of the philanthropic sector**

In general, philanthropy is not yet a well-organized and institutionalized sector in Kosovo. The private sector is still not engaged enough in supporting philanthropy; moreover, society still has reservations about trusting philanthropic organizations. The sector is not fully professionalized, and there is a need to further build and develop POs, and, at the same time, it is necessary to work on raising public awareness regarding the importance of philanthropy.

### **Three major recent events affecting the philanthropic landscape between January 2014 and December 2016**

- Philanthropy Forum organized by The Forum for Civic Initiatives on November 18th, 2015; and
- FIDES award to individuals or companies supporting philanthropic activities and projects.

### **Future development trends in the philanthropic landscape**

On one hand, future development trends are mainly linked to the further improvement of the current legal framework. On the other hand, positive economic trends in the country will have a positive impact in the process of developing and enhancing the philanthropic landscape in the country. Moreover, the increased awareness of the private sector in Kosovo would also help philanthropic initiatives in the near future.

### **Three key recommendations to improve the environment for philanthropy**

- The law should be more specific and should regulate separately the status of NGOs and POs. The current law regulates all NGOs as one category, yet it is apparent there are certain issues with this treatment, which requires further clarification and regulation in order to remove any uncertainty.

- Greater awareness of philanthropy in Kosovo is required. The key actors should do more in promoting their work, as well as trying to attract and engage other stakeholders.
- POs should be more transparent in offering information regarding their funds.



# Macedonia

**Expert:** Branko Dokuzovski

**Institutional Affiliation:** Executive Director, HORUS Macedonia

With contributions from staff at the Indiana University Lilly Family School of Philanthropy

## QUICK FACTS

**Legal forms of philanthropic organizations included in the law:** Association, Foundation, Cooperative, Corporation, Company Limited by Guarantee, Trust, Endowment, and Society

**Five main social issues addressed by these organizations:** Human rights, Health and Medical Research, Youth and Family, Housing and economic development, Environment

**Average time established by law to register a philanthropic organization:** 0-30 days

**Average cost for registering a philanthropic organization:** US \$50

**Government levels primarily regulating the incorporation of philanthropic organizations:** Central/Federal Government

### Philanthropic Environment Scores:

Year	Ease of Operating	Tax Incentives	Cross-Border Flows	Political Environment	Socio-Cultural Environment	OVERALL SCORE
2018	4.7	3.5	4.5	3.0	4.0	3.93

## I. Formation/Registration, Operations, Dissolution of a Philanthropic Organization (PO)

*The three questions in this section pertain to the laws and regulations governing philanthropic organizations (POs). The scoring questions for this category cover three aspects of regulations: (A) formation and registration, (B) operations, and (C) dissolution.*

### **Question 1: To what extent can individuals form and incorporate the organizations defined?**

**Score: 5.0**

Freedom of association, assembly, expression, and information are rights guaranteed in the Macedonian Constitution, and particularly in the Law of Associations and Foundations. This includes a guarantee that all individuals and legal entities will not be discriminated against based on gender, race, nationality, sexual orientation, or religious views, and that everyone is allowed to establish and participate in an informal or registered organization. The law establishes that an association can be created by five adult citizens, while a foundation can be created by one or more founders.

The Law on Associations and Foundations provides a broad framework for the operation of associations and foundations. The Central Registry of Republic of Macedonia is the government agency responsible for the registration of all legal entities of interest. Duties by the Central Registry are performed in a professional, consistent, independent, and apolitical manner. Registration is generally fast (approximately up to 5 days if documentation is submitted in order), affordable (more than US \$60), and easy to complete. The Central Registry is obliged to respond to the submitted Request for Registration in 5 working days after submission (Article 43). No capital or assets are required at the time of establishment of an association. Foundations are required to possess capital or assets no less than EUR 10,000 on the day of submission of the registration paperwork. The Law on Associations and Foundations is sufficiently clear with respect to organizational governance, functioning of the philanthropic organizations (POs), reporting obligations, and other aspects of operations. POs are generally able to work without government interference. POs are allowed to perform economic activities that align with their statutory goals. POs can also participate in public procurement bids at the national and central levels under the same conditions as other entities.

### **Question 2: To what extent are POs free to operate without excessive government interference?**

**Score: 4.0**

Current laws in Macedonia guarantee that central and local government agencies do not interfere in the internal affairs of associations and foundations. The internal governance of the organizations is mainly self-regulated, allowing the associations/foundations to adopt the most suitable model for operation. POs are also free to communicate, collaborate, network and partner with domestic and international organizations. Freedom of expression is also granted, as POs are free to safely share and access information through any media. There are no restrictions, either, in regard to access/use of Internet and social media. Regarding reporting and financial reporting requirements, it is important to note that POs in Macedonia have to obey the same financial reporting and accounting standards as any other legal entity. These are applied in the same manner, regardless of the size/type of the organization.

### Question 3: To what extent is there government discretion in shutting down POs?

Score: 5.0

According to the Law on Associations and Foundations, the governing body of the organization (assembly or board) is authorized to voluntarily terminate it. The organization's governing body is obliged to adopt a termination/liquidation act (decision), and the organization has to be able to cover all its debts and liabilities prior to termination. The request for termination/liquidation is submitted to the Central Registry, who, if all preconditions are met, terminates the organization, and it ceases to exist as a legal entity.

In Macedonia, philanthropic organizations can be involuntary terminated and their activities banned if: the organization undertakes unconstitutional actions; encourages and calls for military aggression; promotes racism, nationalism, or religious hatred; encourages the violation of human rights; or is engaged in activities linked to terrorism. Any citizen or legal entity can submit a request for involuntary termination of any PO to the competent public prosecutor. In cases when there is solid evidence, the public prosecutor submits a termination lawsuit to the competent court. The organization subject to the legal process of involuntary termination can file a legal complaint/appeal to the competent court 15 days following the written notification.

## II. Domestic Tax and Fiscal Issues

*The two questions in this section pertain to laws and regulations governing the fiscal constraints of giving and receiving donations domestically.*

### Question 4: To what extent is the tax system favorable to making charitable donations?

Score: 4.0

In Macedonia, the Law on Donations and Sponsorships of Public Benefit Activities sets out a comprehensive framework for tax benefits on donations and sponsorship—both from corporate and individual donors. Philanthropic organizations are eligible to receive donations if they engage in activities that support and promote public benefit purposes. The law requires that both the donor and the recipient organization sign a donation/sponsorship agreement. At a donor's request, the Ministry of Justice, with the approval of the competent ministry, will issue a decision confirming that a donation in question will serve a public benefit purpose. In the past, the law provided that the Ministry issued a decision following a quite elaborate and time-consuming procedure.

Corporations can deduct up to 5 percent of their taxable income of donations for qualifying public benefit purposes, if this amount does not exceed 60,000 EUR (US \$69,135). Individuals may deduct up to 20 percent of their taxable income on donations to qualifying public benefit purposes, but in any event they cannot deduct more than 24,000 MKD (US \$425). In-kind donations are exempt from Value Added Tax (VAT).

The law prescribes excessive administrative requirements for both the donor and the recipient of the donation, including: entering into the agreement in writing; filling a report on the execution on

donations; and filling a request with the Ministry of Justice to issue a decision on public benefit purpose on each and every donation. The implementation and supervision of the donations incur significant costs on the supervising authority. While the underlying goal of those provisions is to ensure transparency and compliance with the law, they are not proportional to the benefits.

**Question 5: To what extent is the tax system favorable to POs in receiving charitable donations?**

**Score: 3.0**

POs that engage in public benefit activities are exempt from gifts and inheritance taxes on goods and objects they receive, if they use them to further their main (not-for-profit) objectives. Income generated from gifts is not taxed in the course of five years following the transfer of the gift to the recipient. In terms of how and whether the tax deductions are obtained, the Law on Donations and Sponsorships establishes the procedure for obtaining a deduction. Tax deductions apply to the individual donations (regardless of the value) and not to the organization, meaning that an organization cannot obtain a permanent tax deduction on all donations based on its status. In other words, the PO has to apply for tax deduction for each received donation, regardless of source, value, or type. This represents a significant administrative and financial burden, which often forces donors and recipients not to apply for tax deduction at all.

Philanthropic organizations are eligible to receive donations if they engage in activities that support and promote public benefit purposes. In addition to POs, other domestic legal entities, including public institutions, state bodies, and local municipalities may also be recipients.

Both the donor and the recipient of donations are subject to specific reporting requirements on given/received donations, which they have to file with the tax authority within 30 days following the execution of the agreement (Law on Donations and Sponsorships). In addition, following the execution of the agreement, a recipient is obliged to issue to a donor a written receipt, and the format is detailed by regulations issued by the Ministry of Justice.

The Law on Associations and Foundations provides a framework for granting status of public benefit organization to POs. Article 88 of the Law establishes that public benefit organizations shall have additional tax and customs benefits in accordance with law.

### **III. Cross-Border Philanthropic Flows**

*The two questions in this section concern laws and regulations governing the fiscal constraints of giving and receiving cross-border donations. The scoring for these questions pertains to the donor and receiving entities.*

**Question 6: To what extent is the legal regulatory environment favorable to sending cross-border donations?**

**Score: 4.0**

In Macedonia, legal entities and individuals can send donations abroad without any restrictions. The donors are obliged to pay transaction fees to the bank for financial donations. The Law on Donations and Sponsorships provides tax deductions to donations made abroad only in cases of natural and other types of humanitarian disasters and catastrophes. According to the Law on Prevention of Money Laundering and Financing of Terrorism (Article 6), the measures for the detection and prevention of money laundering and financing terrorism include: client due diligence; monitoring of certain transactions; introduction of internal programs for implementation of certain measures and actions for the prevention of money laundering and financing terrorism; and collecting, keeping, and submitting data on transactions and clients. These measures are being implemented by financial institutions, as well as by associations, foundations, and other organizations sending or receiving money. The client due diligence procedures are applied when carrying out one or several connected transactions amounting to EUR 15,000 in Macedonian Denar counter-value. The law requires that records of all transactions, identification data, account files, and business correspondence are kept for up to five years. These requirements are in full compliance with the international standards for the prevention of money laundering and terrorism financing.

**Question 7: To what extent is the legal regulatory environment favorable to receiving cross-border donations?**

**Score: 5.0**

The organizations in Macedonia are free to receive donations from abroad to support their activities. Apart from bank fees, no taxation or other expenses are applied to cross-border donations. There is neither a specific approval process nor preconditions implied by governmental institutions. The only control system that applies is defined by the Law on Prevention of Money Laundering and Financing of Terrorism and is applied only to one or several transactions amounting to 15,000 EUR. There are no restrictions in regard to what type of activities can be supported by the cross-border charity donations, as long as these are in line with the Constitution and the Laws of the Republic of Macedonia.

#### **IV. Political and Governance Environment**

*The three indicator questions in the next two sections concern the political and governance context, socio-cultural characteristics, and economic conditions that influence the environment for philanthropy.*

**Question 8: To what extent is the political and governance environment favorable for philanthropy?**

**Score: 3.0**

The National Strategy for Collaboration between the Government of Macedonia and the Civil Society 2012–2017 is the main document setting the ground for institutionalized cooperation between POs and the government of Macedonia. Yet, as the political situation in Macedonia deteriorated significantly in 2015 and 2016, POs have had increasing difficulty accessing and cooperating with government institutions. Although there were no cases of POs closing down due to pressure from the State in 2014–2016, there were numerous cases of verbal threats and badmouthing of POs that were critical of government policy. PO involvement in policy development declined and, though there is an electronic consultation system, Ministries rarely adhere to requirements or deadlines for public consultation. The drafts of laws/policies are not vetted with civil society organizations in a timely manner and, oftentimes, updates to the draft are made in the final phase of its implementation.

Between June and the end of 2015, 389,900 refugees and migrants transited through Macedonia. The refugee crisis culminated in June and July when a state of emergency was declared for the area bordering Greece. In September, the parliament extended the state of emergency through June 2016. POs and members of the public showed support for refugees and migrants. Despite these extraordinary circumstances, it is important to stress that the philanthropic sector experienced an increase both in number and in value of donations in 2014 and 2015.

**Question 9: To what extent are public policies and practices favorable for philanthropy?**

**Score: 3.0**

In general, the Macedonian Government does not show a significant level of commitment towards the promotion of a culture of giving and fostering philanthropy. Funding for philanthropy comes predominantly from foreign sources. Donors are, in general, free to support and direct their funding to the initiatives and causes they find important and worth supporting with no government interference; although, larger donors usually coordinate and collaborate with institutions in central and local government offices in order to prioritize sectors and areas of support.

Despite several initiatives aimed at strengthening the governmental support to philanthropic organizations, the distribution of public funding is still not transparent. Although there is a policy regulating the distribution of public funds, the measures introduced are neither sufficient nor properly implemented. In addition, procedures for regular monitoring and reporting of public funds spending are also inexistent. There is also a lack of transparency and clarity in the procedures to grant non-financial State support to associations and foundations. Government funds are distributed through several institutions, including the Government Unit for Cooperation with Civil Society, which is part of the General Secretariat of the Government, the Ministry of Labor and Social Policy, the Ministry of Culture, and the Secretariat for Implementation of the Ohrid Framework Agreement. Such funds tend to support project activities, not institutional or co-financing support, and are not always distributed transparently. Lottery profits are distributed to a limited number of POs using non-transparent procedures.

## V. Socio-Cultural Environment

**Question 10: To what extent are socio-cultural values and practices favorable for philanthropy?**

Score: 4.0

Citizens of the Republic of Macedonia mainly experience philanthropy as assistance for socially vulnerable groups and individuals, and, in that sense they support the humanitarian activities and actions that are organized for such purposes. Philanthropic organizations appear as the initiators of these activities and invite citizens and businesses to contribute to the success of the campaign. Companies, especially large companies that want to be seen as socially responsible entities, openly support and often initiate philanthropic efforts in their communities. There is a high level of commitment to donate among citizens from all strata of society, which shows a strong social trend to have a positive attitude, determination, and behavior toward giving.

Citizens' socio-economic statuses seem to determine their giving behavior—more established economic groups, such as businessmen and intellectuals, appear as more frequent donors. In regard to corporative giving, in most cases the decision to make donations is based on the current need and capabilities to positively respond to requests from individuals and organizations in the community. Smaller companies prefer in-kind donations to POs, and both small and large companies prefer to donate financial support to those POs that they are familiar with or have successfully collaborated with in the past.

## VI. Future of Philanthropy

*These questions are used to provide a general picture of the future of philanthropy in this country as well as recommendations to improve the philanthropic environment.*

### **Current state of the philanthropic sector**

Even though there is less international funding available, POs in Macedonia are generally hesitant to approach the corporate sector and individual donors. Fundraising efforts are still largely focused on Requests for Proposals from international donors. Unfortunately, POs often have a passive approach toward fundraising, waiting for funding opportunities to come to them, rather than a proactive approach to market themselves for potential funding opportunities. As a result, many POs in Macedonia have made themselves dependent on only one or two major donors.

Although most POs in Macedonia recognize the need for engagement in fundraising from local resources and have developed a sense of the arguments and causes that are most suitable for local fundraising, only a small number of organizations raise funds from local sources on regular basis. This is mainly due to the lack of a strategic approach toward planning and performing local fundraising and a lack of appropriately trained staff and volunteers that could engage in fundraising activities. There is still the idea that the more sustainable and effective source of support for philanthropy should come from international donors.

POs in Macedonia are well organized in different networks and umbrella organizations. There are approximately 200 networks and coalitions in Macedonia. Also, there are legally specified umbrella bodies, for example sports unions.

### **Three major recent events affecting the philanthropic landscape between January 2014 and December 2016**

- The deep political crisis, which came after the 2015 revelations of wide-spread illegal interceptions of communications (wiretaps) and their serious content released in 2016.
- Adoption of amendments to the Law on Donations and Sponsorships by Macedonian Parliament in February 2014.
- The refugee crisis and the influx of refugees from Syria, Iraq, Afganistan, and other countries in 2015 and 2016.

### **Future development trends in the philanthropic landscape**

It is very important to strengthen the role of the Macedonian civil society in the ongoing initiatives for creating a favorable legal and financial environment for mobilization of local resources, income generating activities, service delivery by POs, and the development of volunteering at a local level. It also necessary to develop a network structure that will serve as platform for fostering cooperation between the philanthropic and business sector, the media, local authorities, public institutions, etc. These collaborations could be a door to more stable partnerships and increasing philanthropic initiatives among the business sector and individuals. The network will also provide infrastructure and will serve as a knowledge base for all institutions, organizations, and individuals interested in the local fundraising.

It is also necessary to support the development of intermediary organizations and community foundations that will engage with companies and individual donors to encourage greater giving and will help increase the impact of properly directed giving through research, advisory, and management services. Interventions should seek to develop a consensus around best practices in impact assessment, transparency, and reporting norms through promoting and sharing knowledge with different sets of stakeholders in the philanthropic sector in Macedonia—including donors, management staff of philanthropic organizations, and experts in various sectors.

### **Three key recommendations to improve the environment for philanthropy**

- Create a whole new ecosystem for data collection, analytics, and usage in the nonprofit sector;
- Create a more favorable fiscal treatment of POs through amendments to the relevant tax laws; and
- Stimulate the replication of the community foundation model within Macedonia.



# Montenegro

**Expert:** Anto Jankovic

**Institutional Affiliation:** Fund for Active Citizenship

With contributions from staff at the Indiana University Lilly Family School of Philanthropy

## QUICK FACTS

**Legal forms of philanthropic organizations included in the law:** Association, Foundation.

**Five main social issues addressed by these organizations:** Arts and Culture, Youth and Family, Housing and Economic Development, Environment, Human Rights.

**Average time established by law to register a philanthropic organization:** 0-30 days

**Average cost for registering a philanthropic organization:** US \$50

According to Article 18 of the Law on Non-governmental Organizations, passed on July 22, 2011, registration of a PO can take up to 10 days. There are 5-7 days needed for approval during the registration at the National Statistical Office, the Revenue Bureau, and the Commercial Court in case the PO will run a business activity. Registration is free of charge and templates of registration documents are available free of charge, but all duties for registrations at the Statistical Office, Revenue Bureau, and the Commercial Court would cost around US \$50 in total.

**Government levels primarily regulating the incorporation of philanthropic organizations:** Central/Federal Government

### Philanthropic Environment Scores:

Year	Ease of Operating	Tax Incentives	Cross-Border Flows	Political Environment	Socio-Cultural Environment	OVERALL SCORE
2018	4.8	3.5	4.7	3.6	3.6	4.03

## I. Formation/Registration, Operations, Dissolution of a Philanthropic Organization (PO)

*The three questions in this section pertain to the laws and regulations governing philanthropic organizations (POs). The scoring questions for this category cover three aspects of regulations: (A) formation and registration, (B) operations, and (C) dissolution.*

**Question 1: To what extent can individuals form and incorporate the organizations defined?**

**Score: 4.6**

Individuals are free to form philanthropic organizations and are allowed to act collectively through unregistered groups, too. The registration process is clear and consistent, requiring a reasonable amount of time and resources. The governing body is independent, apolitical, and transparent. The Law on NGOs defines two types of organizations: non-governmental associations and non-governmental foundations, which may perform economic activities if the profit is used to further the activities and goals of the organization. The law also mentions foreign non-governmental organizations, which may operate on the territory of Montenegro, but must follow the regulations of the country where they were founded. Usually, these organizations are implementing their projects and strategies according to their headquarters programs. They are not seen as philanthropic organizations, and most of them operate a low level of activities.

There is a minimum requisite of three founders (one of whom must have residence, domicile, or registered office in Montenegro) to create an association, while only one person is required in order to establish a foundation. POs are not restricted from pursuing any legal purposes, but the framework that clearly differentiates different types of POs is insufficient—there is no law regarding private charity foundations, humanitarian organizations, social economy organizations, professional associations, etc. Thus, the existing regulations in the Law on NGOs create some limitations for their operations.

There are no restrictions on who may serve as a founder (individuals, legal entities, foreigners, stateless persons, minors, etc.). No minimum capital or assets are required at the time of registration, there are no registration fees, and the registration process is straightforward, as drafts of the necessary documentation required by law are available for any applicant. The law provides appropriate safeguards concerning formation and registration process.

POs obtain legal personality after their entry into the national registry. Registration occurs within the next ten days after the submission date, when the application is complete and correct. If registration of a complete application does not occur within the established period, it will be regarded as if the registration occurred on the first day after the expiration period, and the competent ministry will issue a decision of registration within the three days after expiration.

**Question 2: To what extent are POs free to operate without excessive government interference?**

**Score: 4.8**

Organizations are minimally inhibited in their internal governance, with little to no impediments on the purposes of their activities. Organizations are free to communicate through various media channels and cooperate with domestic and international entities. The reporting requirements are clear, consistent, accessible, and require reasonable resources for completion. The law allows sufficient discretion in setting the structure and governance of the PO.

In the case of an association, the law requires creating an assembly as the managing authority and having a legal representative (Director, President, Secretary General, etc.) who is responsible for the legal activities carried out by the PO. Founders have freedom to define the title and type of managing authority by statutes to freely operate the organization. In the case of a foundation, the managing authorities are the board of directors and a legal representative (Director, President, Secretary General, etc.), unless otherwise stated in the statutes.

There are no great restrictions on the activities of a PO. However, “political,” “extremist,” or other activities that undermine “national security” and morality are regulated by the Constitution and other laws regulating POs and all legal entities in the country. POs can freely contact and cooperate with colleagues in the civil society, business, and government sectors, both within and outside the country, without restrictions. They are also free to participate in any network and use any form of social media, without governmental restrictions. Reporting requirements are clear and predictable, and they are applicable to all philanthropic organizations.

**Question 3: To what extent is there government discretion in shutting down POs?**

**Score: 5.0**

The governing body of philanthropic organizations is able to voluntarily terminate the organization’s activities. Involuntary termination by a government entity occurs only during severe violation of the law and failure to correct the reported violation. Clear and fair legal regulations exist to guide the involuntary dissolution of an organization.

The law limits involuntary termination, and gives the opportunity to be heard prior to termination. An investigation is also conducted by the inspection authorities in accordance with the law. As with any other entity, POs can ask for competent judicial supervision.

By law, termination can occur in the following cases: 1) when the period for which the organization was established expires; 2) on the basis of the decision on termination by the authorized representative of the organization; 3) based on the decision on prohibition of work; and 4) on the basis of the decision on the completion of bankruptcy or voluntary liquidation.

## II. Domestic Tax and Fiscal Issues

The two questions in this section pertain to laws and regulations governing the fiscal constraints of giving and receiving donations domestically.

### Question 4: To what extent is the tax system favorable to making charitable donations?

Score: 3.0

There are income tax incentives, through the Personal Income Tax and Corporate Income Tax laws, in the form of credits and deductions for individuals and/or corporations when donating money to POs. Additionally, donations of certain services of public interest are excluded from VAT. Article 24 of the Personal Income Tax Law provides that in-country donations ("expenses") are exempt from taxes up to 3 percent of the gross annual income, but only to a restricted number of purposes. Expenses incurred for healthcare, education, scientific, religious, culture, sports and humanitarian purposes, as well as for the environmental protection, shall be recognized as expenditures to a maximum of 3 percent of the total revenue.

It is not the case with the recently harmonized Corporate Income Tax Law, which provides a tax deduction up to 3.5 percent of the gross annual income to a range of public benefit activities, as defined in Article 32 of NGO Law : *“social and medical care, poverty reduction, protection of persons with special needs, children, youth and elderly care, promotion and protection of human and minority rights, rule of law, support to civil society and volunteer activities, support to Euro-Atlantic and European integration, institutional and informal education, science, art, culture and technical culture, environmental protection, agricultural and rural development, sustainable development, consumer protection, gender equality, addressing corruption and organized crime, prevention of drug addiction, as well as other goals and activities deemed for public benefit, as provided by separate law.”*

The process of receiving a tax benefit is clear but inconsistent, requiring moderate time and resources due to the lack of necessary by-laws and legal procedures. Companies and individuals usually donate without using tax deduction either because they are not familiar with the tax exemptions or because they would rather register a donation as a “marketing expense” in their accounts than to start an uncertain tax exemption procedure. In addition, data on the amount of tax exemption is not available from the Revenue Bureau. While Personal Income Tax Law does not recognize in-kind contributions, Corporate Income Tax Law only recently recognizes goods and services as donations , as decided when the Montenegrin Parliament adopted in August 2016 amendments of the Corporate Income Tax Law, which came into effect on 1 January 2017 (PwC, 2017).

### Question 5: To what extent is the tax system favorable to POs in receiving charitable donations?

Score: 4.0

Organizations are eligible to receive tax exemptions. The process to receive tax-exempt status is clear and consistent, with few restrictions on the types of organizations that can receive such tax benefits. Organizations are able to raise a significant amount of funds from private sources. POs

receive tax exemptions in the form of property tax exemption, income tax exemption or VAT exemption, except when performing economic activities (up to 4,000 EUR or 20% of annual income). Donations are tax-free for philanthropic organizations. Article 10 of Property Tax Law provides tax exemption for POs when the property is used for their basic activities, except when the property is used to make money through real estate (i.e. charging rent). Article 6 of the Corporate Profit Tax Law provides that "non-governmental organizations" are exempt from profit taxes, except from the income received through economic activities. Tax regulations still fail to address the issue of carry-over donations or the limitations incurred when a specific timeline—during which a donation must be utilized—is implemented. Additionally, tax regulations do not set a specific threshold with respect to the organization's overhead expenses. At the present time, it seems that entering organizations into the registry and granting them legal personality makes them instantly eligible for tax-exemption. These issues may be addressed in a donation agreement. Nevertheless, it remains unclear whether by this agreement tax-exempt statuses on donations would be carried over to subsequent fiscal years.

### III. Cross-Border Philanthropic Flows

*The two questions in this section concern laws and regulations governing the fiscal constraints of giving and receiving cross-border donations. The scoring for these questions pertains to the donor and receiving entities.*

**Question 6: To what extent is the legal regulatory environment favorable to sending cross-border donations?**

Score: 4.7

Cross-border charitable donations can be sent without additional cost to entities and individuals. Cross-border donations are not eligible for the same tax incentives as domestic donations. The process to send charitable donations abroad is clear and consistent, requiring a reasonable amount of resources and time. A wide range of activities can be supported through donated cross-border contributions. There are no costs/taxes on sending cross-border philanthropic cash and/or in-kind donations (e.g. customs, duties, Value-Added Tax, etc.). In addition, there is no approval process for sending charitable contributions abroad, except regular finance reporting requirements; for example, the donation needs to be recorded in the organization's accounting books.

**Question 7: To what extent is the legal regulatory environment favorable to receiving cross-border donations?**

Score: 4.7

Cross-border charitable donations can be received without additional cost. Similar tax incentives to philanthropic organizations can be obtained for charitable international donations and domestic donations. The process to receive charitable donations from abroad is clear and consistent, requiring a reasonable amount of resources and time. A wide range of activities can be supported by cross-border contributions. There are no costs/taxes on receiving cross-border philanthropic cash and/or in-kind donations, no approval process to receive cross-border charitable contributions is necessary, and there are no restrictions on receiving cross-border charitable donations. There is, however, a

restriction on financial transactions with sanctioned countries, according to international law and bilateral/multilateral contracts between the government of Montenegro and international organizations.

#### **IV. Political and Governance Environment**

*The three indicator questions in the next two sections concern the political and governance context, socio-cultural characteristics, and economic conditions that influence the environment for philanthropy.*

##### **Question 8: To what extent is the political and governance environment favorable for philanthropy?**

**Score: 3.6**

The political-economic system recognizes independent groups as actors and agents of social change. However, the government needs to create more opportunities to involve philanthropic organizations in policy development and implementation. Collaboration between the government and the philanthropic sector has progressed recently, but additional resources and transparency are needed in government structures and procedures for collaboration and consultation with POs.

The work of the institutions responsible for cooperation between the government and the philanthropic sector is limited and inconsistent. POs participate in working groups, but are dissatisfied with their level of involvement in policy-making and access to information. In general, many philanthropic organizations currently have a negative opinion about the mechanisms for dialogue and cooperation between POs and governmental agencies. The Technical Assistance for Civil Society Organizations (TACSO) survey, from February 2016, reports “a relatively low participation of the POs in the consultation processes at the national and local level was registered— 25 percent of organizations in the past three years participated in some consultation process at the local or national level” (TACSO, 2016, p.29).

Montenegro still needs to develop an overall societal approach, institutional culture, and legal framework to facilitate grassroots activities by civil society and to deal constructively with criticism to state institutions. Many priorities identified in the strategy for development of non-governmental organizations (NGOs) 2014-2016 have not been addressed yet. The political and economic conditions are somehow unstable and may be an obstacle for the success of philanthropy.

##### **Question 9: To what extent are public policies and practices favorable for philanthropy?**

**Score: 3.5**

Government promotes philanthropic values and generally facilitates equal access to national and international resources and opportunities. Donors are generally free to support any philanthropic cause without government pressure. Government agencies do not demonstrate enough capacity to support and/or oversee POs. There are no regulations or internal government procedures to keep statistics and records related to the POs; therefore, there is a highly concerning lack of official data on employees and volunteers, incomes (donations from domestic or foreign sources, economical

activities, membership etc.), offices, and technological equipment. Without such data, the quality of research and analysis of the current state of the POs and their requirements is very limited.

Montenegro has achieved some progress in fighting against corruption, but corruption remains prevalent in many areas and continues to be a serious problem. Nevertheless, there has been good progress in meeting the EU's recommendation to establish the Anti-Corruption Agency, which began working on January 1, 2016. The process of strengthening the institution is at an advanced stage, leading to a more proactive attitude from institutions to comply with their mandate.

## V. Socio-Cultural Environment

**Question 10: To what extent are socio-cultural values and practices favorable for philanthropy?**

Score: 3.6

There is some cultural and religious heritage on which philanthropy is grounded in the country, but this philanthropic tradition was interrupted during the post-socialist transition period. Citizens of Montenegro have a deep sense of humanity and solidarity, which was repeatedly demonstrated during major humanitarian disasters. However, in order to make philanthropy an institutionalized practice, it is necessary to develop a supportive environment and remove the barriers to a successful philanthropic sector that currently exist in society. One of which is the lack of information about philanthropy as a growing sector that can benefit society as a whole. Montenegro has a long philanthropic tradition, and the level of philanthropic development follows the level of socio-economic development in the country.

In general, philanthropic organizations are perceived as good for society and important to address societal problems. Paradoxically, the perception of non-transparency or lack of accountability also is part of their general perception of how these organizations operate, undermining people's trust in philanthropic organizations. A certain number of philanthropic organizations are politicized and assume a critical position towards government without providing real solutions; others focus on criticizing organizations that are against government. Weak promotion of philanthropy also contributes to this perception. A recent survey (De Facto Consultancy, 2012) showed that 47.5 percent of Montenegrin citizens are willing to participate in activities for the common good, but a large number of them are not in a position to do so due to lack of funds. Further, they do not believe that the money will go into the right hands. Almost forty percent of respondents said that they participate in philanthropic actions only once or less than once per year, while only a few percent do it more often than once a month. Nevertheless, as mentioned, the general perception is positive.

## VI. Future of Philanthropy

*These questions are used to provide a general picture of the future of philanthropy in this country as well as recommendations to improve the philanthropic environment.*

## **Current state of the philanthropic sector**

In general, there is lack of understanding of what philanthropic organizations do. The social structure partially facilitates the free development of philanthropic activities with no social barriers for participation based on ethnicity, culture, age, sexual orientation, gender identity, nationality, or religion. However, a key barrier for participation is the lack of trust and economic inequality. A majority of Montenegrin POs are small, poorly resourced, and municipally based organizations dedicated to address imminent issues in the local communities. The lack of financial resources and dependence on short-term projects produces a situation in which a relatively small number of Montenegrin POs continuously conduct activities.

Viewed as a whole, the philanthropic sector in Montenegro is under-funded and financially vulnerable. The stronger, leading philanthropic organizations are generally more financially secure. They have good relations with many foreign donors and, in most cases, they have succeeded in securing support from a variety of foreign agencies simultaneously, which has made these organizations more resilient and financially sustainable. A number of organizations are funded by individuals and the private sector. During 2012, only 22 percent of POs in Montenegro have used funds received from citizens—either money, free volunteer work, or other in-kind assistance. A slightly higher percentage of POs have used the funds of private companies operating in Montenegro, approximately 24 percent. Inter and intra-sectoral collaborations are a common practice, but not at a high level since the sector is not professionalized. Informal, non-institutionalized philanthropy is prevalent due to the lack of adequate institutional framework and supporting mechanisms.

## **Three major recent events affecting the philanthropic landscape between January 2014 and December 2016**

- The 2014 flood disaster in the region. In several days Montenegro citizens, companies, and the government collected several million EUR donations for citizens of Bosnia and Herzegovina and Serbia. The success of this campaign led to the decision of the Ministry of Finance to provide VAT exemption for humanitarian fundraising campaigns via SMS. The demonstrated willingness of the Ministry to provide VAT exemption brought about the willingness of phone operating companies to withdraw fee charges.
- ISKRA ("Spark" in English) Philanthropy Excellence Award, which recognizes the best philanthropic practices in the country, continued to raise great public interest in philanthropy. The Award is organized by the Fund for Active Citizenship, the Montenegro Chamber of Commerce, and the Directorate for Diaspora (Ministry of Foreign Affairs), and supported by the European Union, the Charles Stewart Mott Foundation, and the Rockefeller Brothers Fund.
- Fundraising campaigns for sick children. In 2016, several individual campaigns for the treatment of sick children collected several tens or hundreds of thousands of EUR, which demonstrates the need for a more organized philanthropic environment).

## **Future development trends in the philanthropic landscape**

The biggest remaining challenges are financial sustainability and the fiscal treatment of foundations and their donors. Therefore, the focus of future activities will be on these areas, in order to enable POs to fulfil their potential, both in terms of developing the civil society sector, and in regard to supporting a better provision of services the state cannot fully provide. It is expected that building the required capacities for philanthropy will strengthen philanthropic organizations. The most needed areas for capacity building include fundraising, project cycle management--with particular emphasis on management of the EU funds and the EU application procedures--strategic planning, advocacy, establishment and development of networks and coalitions, CSR, and communication with businesses. Becoming an EU member could provide a positive push for a strengthened civil society since the creation of an enabling environment was highlighted in the negotiation processes. Technical support to cross-sectoral cooperation should improve the institutional framework and provide conditions for full implementation of the national Strategy for Development of NGOs. In addition, it is expected that the Law on NGOs regulate the minimal percentage of the public budget that would be allocated to support philanthropic organizations.

Public support to POs also needs to be improved in order to achieve more effective and transparent allocation of available funds, in accordance to State and public priorities. Additionally, it is expected that operating grants to POs, as well as program funding (as it is case with some EU programs), will be introduced. Furthermore, the harmonization of the tax incentive system should also be approved, as well as the adoption of necessary regulations to fully implement the system, together with public campaigns to raise awareness on corporate and individual giving.

## **Three key recommendations to improve the environment for philanthropy**

- Enhance the legal environment in the country in order to cover all other civil society players, beyond the Law on NGOs. Primarily, it is necessary to adopt a legislation dealing exclusively with endowments and foundations, professional associations, social entrepreneurship, and other sectors of the civil society in order to boost philanthropy in the country.
- Tax incentives for individual donations should be reformed to allow an appropriate level of incentives to inspire individual donors to donate or establish foundations. At the same time, the procedures for claiming such incentives, both for individual and corporate donations, should be easy to administer and should not deter donors.
- It is necessary to raise public awareness about the important role that POs play, as well as to increase the level of transparency of POs in order to gain trust from the public and from potential donors.



# The Netherlands

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With contributions from staff at the Indiana University Lilly Family School of Philanthropy

## QUICK FACTS

**Legal forms of philanthropic organizations included in the law:** Association, Foundation, Cooperative, Limited Liability Company,

Limited liability companies are rarely used. Religious organizations can opt for an association or foundation but also for a legal form known as the 'kerkgenootschap,' which is a legal form of its own.

**Five main social issues addressed by these organizations:** Primary and High School Education, Health and Medical Research, Housing and Economic Development, International Causes, Other(s): Sports and Recreation

**Average time established by law to register a philanthropic organization:** 0-30 days

Registration is normally completed within one day.

**Average cost for registering a philanthropic organization:** EUR €53 (US \$62)

**Government levels primarily regulating the incorporation of philanthropic organizations:** Central/Federal Government

### Philanthropic Environment Scores:

Year	Ease of Operating	Tax Incentives	Cross-Border Flows	Political Environment	Socio-Cultural Environment	OVERALL SCORE
2018	5.0	4.5	5.0	4.5	5.0	4.80

## I. Formation/Registration, Operations, Dissolution of a Philanthropic Organization (PO)

*The three questions in this section pertain to the laws and regulations governing philanthropic organizations (POs). The scoring questions for this category cover three aspects of regulations: (A) formation and registration, (B) operations, and (C) dissolution.*

### Question 1: To what extent can individuals form and incorporate the organizations defined?

**Score: 5.0**

The formation of POs is free from governmental involvement and is considered to be an act of civil law. Registration with the Trade register is compulsory only for POs if they are incorporated by notarial deed. POs that are not formed by means of a notarial deed (informal associations) are not obliged to register, but they can choose to do so. The registration is not related to obtaining legal personality; however, board members of non-registered POs are jointly and severally liable for the debts of the PO that originated prior to its registration.

POs can take part in social and economic life prior to incorporation or registration. Individuals that have acted in the name of a PO that is not (yet) incorporated are personally liable for the obligations entered into. The PO can take on such obligations after its incorporation by ratification.

Registration occurs in the trade register held by the Chamber of Commerce, which is an apolitical, semi-public institution. The Chamber of Commerce provides guidance and operates in accordance with clear standard procedures and forms that are available on its website. Registration is usually implemented within a day after the application. When the PO is incorporated by means of notarial deed, the notary usually takes care of registration. The registration fee is EUR €50 (US \$58.5).

There are no prohibitions related to nationality, residency, or age with respect to the eligibility to found or join a PO or to be a member of the board. Minors can found and join an association and serve on its board. When the PO runs a business, however, prior court approval is required for a minor to serve on the board. There is no minimum capital/endowment requirement for establishing an association or foundation. An association should have at least one member at all times.

### Question 2: To what extent are POs free to operate without excessive government interference?

**Score: 5.0**

POs are required to have a management board that is charged with managing the PO and its representation. Associations have a membership body that is authorized to resolve issues, such as membership, annual accounts, appointments, dismissal of directors, amendment of the articles of association, mergers, demergers, and dissolution. The law allows for deviation from the provisions in the law, within certain boundaries to guarantee that a certain level of checks and balances is maintained. Other corporate bodies can be created in the articles of association, such as a supervisory board, audit committees, and advisory boards.

There are no other restrictions with respect to the objects and activities other than that it is prohibited to have objects or activities that are against the public order. In order to be eligible for tax benefits for the PO and/or its donors, the objects and activities have to be of public benefit (ANBI-status) or of social benefit (SBBI-status). See the responses to questions 4 and 5 for more information.

There are no restrictions concerning the use of social media or other media with respect to communications with the membership, the broader public or other POs with the Netherlands or abroad. Meetings of the board of directors or of the membership can be held real time by means of electronic communication systems.

POs are not subject to reporting requirements. Exceptions apply to POs that provide public services funded by public means (hospitals, etc.) and recognized public benefit organizations (Algemeen nut beogende instellingen or 'ANBIs') that enjoy a favorable tax status.

ANBIs are required to make certain information available via the Internet. They may do so via their own website or via a website of another organization, such as an umbrella organization. The specifics of the information to be made public are available on the website of the Dutch tax service (also in English).

### **Question 3: To what extent is there government discretion in shutting down POs?**

<b>Score: 5.0</b>
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With respect to associations and cooperatives, the members' meeting is authorized to resolve to dissolution. There is no judicial review of this process, unless the resolution is contested in court by a member or director. General provisions concerning liquidation of legal persons are provided for by law. With respect to foundations, the board of directors is authorized to resolve on the dissolution, but the articles may provide otherwise. As with associations, there is no judicial involvement or general provisions concerning the liquidation of legal persons.

Involuntary dissolution may take place by the Chamber of Commerce, but only with respect to empty shell POs and following a certain procedure involving an attempt to find the board members. This dissolution is subject to court review.

Involuntary dissolution in other cases can only take place by means of a court order, on request of the public prosecutor, or a party with a justified interest. Dissolution can be ordered if: (i) there are defects in the incorporation; (ii) the articles are not compliant with the law; (iii) the PO is not in conformity with the legal characteristics of its chosen form; or (iv) its activities are violating the public order. A foundation can also be dissolved by court order if it lacks the financial means to achieve its objectives and there is no reasonable prospect that it will be able to raise such means within a foreseeable time, or when the objects of the foundation are achieved or can no longer be achieved and an amendment of the objects is not an option.

## II. Domestic Tax and Fiscal Issues

*The two questions in this section pertain to laws and regulations governing the fiscal constraints of giving and receiving donations domestically.*

### Question 4: To what extent is the tax system favorable to making charitable donations?

Score: 4.0
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For a charitable donation (in cash and/or in kind) to be deductible, the relevant organization has to be recognized as a public benefit organization ('ANBI'), and registered as such with the tax authorities. Such donations are automatically accepted as being tax deductible.

Periodical donations, covering at least five years and comprising at least one donation a year, are deductible without limitation. This applies also to associations that are not recognized as an ANBI. Other donations are deductible up to a maximum of 10 percent of the taxable income (disregarding personal deductions), which can be increased for ANBIs with cultural objects to a maximum of 25 percent or EUR €1,250 (US \$1,463).

With respect to corporate income taxes, donations are deductible up to a maximum of (the lower of) 50 percent of the annual profit or EUR €100,000 (US \$117,080), which can be increased for ANBIs with cultural objects to a maximum of 5 percent or EUR €2,500 (US \$2,927). Quid pro quo contributions, such as sponsoring payments, are deductible without limitations.

Other than this, tax deductions are allowed for time dedicated as a volunteer to an ANBI and for costs incurred as a volunteer for an ANBI.

### Question 5: To what extent is the tax system favorable to POs in receiving charitable donations?

Score: 5.0
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All POs are eligible for support from private donors. See the response to question 4. In order to qualify as an ANBI, a PO has to be recognized as such. A list of ANBIs is available on the website of the Dutch internal revenue service ('DIRS'). The procedure, criteria, and conditions for obtaining and maintaining ANBI status are clearly described and available on the website of the DIRS. In my experience, the criteria are consistently and objectively applied and rulings are issued timely. There is no closed list of objectives or types of activities that are eligible for ANBI status. There is also no requirement that the activities or part of them should take place in The Netherlands.

Types of organizations that qualify as ANBI include inter alia schools, universities, scientific institutions, religious institutions, sports federations, development aid organizations, environmental organizations, animal welfare organizations, housing, elderly care, health care, and political parties. Another type of tax classification for POs is the SBBI (Social Interest Organization (social belang beogende instelling)), which enjoys the same tax treatment as ANBIs with respect to receiving donations and legacies. However, an SBBI cannot make tax-free donations unless they are made to another ANBI or SBBI. SBBIs include choirs, sports clubs, music societies, etc. Donations to SBBIs,

however, are not tax deductible, with the exception of donations to ‘support SBBI’s’. “A ‘support SBBI’s’ is a type of SBBI that is set up to support the celebration of an anniversary of another SBBI in the field of sports or music” (IPF 2015). A support SBBI, however, has to be listed as such with the tax authorities. The procedure, criteria, and conditions are clearly described and available via the website of the DIRS. POs that are neither an ANBI nor an SBBI can receive neither donations/legacies nor inheritances free of gift tax/inheritance tax up to EUR €2,012 (US \$2,356) per donation/legacy.

POs are not subject to corporate income tax, unless they run a business that is competing with regular businesses.

ANBIs and SBBI’s are eligible for a 50 percent refund of energy tax paid by them.

### III. Cross-Border Philanthropic Flows

*The two questions in this section concern laws and regulations governing the fiscal constraints of giving and receiving cross-border donations. The scoring for these questions pertains to the donor and receiving entities.*

**Question 6: To what extent is the legal regulatory environment favorable to sending cross-border donations?**

<b>Score: 5.0</b>
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There are no taxes or similar costs related to cross border donations in cash or in kind. There is no governmental involvement in regard to making donations abroad or any other procedure pertaining thereto. Donations to foreign public benefit organizations are deductible on the same footing as donations to domestic ANBIs and (from Dutch perspective) free from gift tax. In order to be deductible, the foreign PO has to be recognized by the Dutch tax authorities as an ANBI.

Charitable organizations can apply for a refund of Value Added Tax (VAT) when exporting goods. This is relevant with respect to donations in-kind to support an initiative abroad in pursuit of the objectives of the organization. VAT administration is, however, a burden. Organizations that export goods on a regular basis (Médecins Sans Frontières for example) can make special arrangements with Customs to facilitate the process.

There is a requirement to report information to the Central Bureau of Statistics regarding the aforementioned VAT refunds (because it falls within the ambit of ‘foreign trading’) for statistical purposes concerning foreign trading by for-profits and not-for-profits.

With respect to foreign donations, national legislation based on the Financial Action Task Force’s commitments prohibits support to terrorist organizations and movements. Such support would also be considered against the public order and, therefore, could result in dissolution of the organization.

**Question 7: To what extent is the legal regulatory environment favorable to receiving cross-border donations?**

**Score: 5.0**

There is no governmental involvement with the acceptance of donations by ANBIs, nor any other procedure pertaining thereto. This is also true for donations from abroad, be it in cash or in-kind. Donations to ANBIs and SBBIs are free from gift taxes, including when they are received from abroad. ANBIs can make donations to a destination abroad. Provided that these donations occur in pursuit of its objectives, these donations are not taxed from a Dutch perspective. There is no prior governmental involvement with making donations abroad. Donations to foreign public benefit organizations are deductible on the same footing as donations to domestic ANBIs and (from Dutch perspective) are free from gift taxes. In order to be deductible, the foreign PO has to be recognized by the Dutch tax authorities as an ANBI.

#### **IV. Political and Governance Environment**

*The three indicator questions in the next two sections concern the political and governance context, socio-cultural characteristics, and economic conditions that influence the environment for philanthropy.*

**Question 8: To what extent is the political and governance environment favorable for philanthropy?**

**Score: 5.0**

There is a long standing tradition in the Netherlands where public services, such as health care, education, housing, are provided by the nonprofit sector. The Netherlands is famous for its 'polder model,' which stands for a society in which government, the for-profit sector, and the nonprofit sector cooperate to further social interests.

**Question 9: To what extent are public policies and practices favorable for philanthropy?**

**Score: 4.0**

See answers to Q8. The capacity of DIRS has increased. Information on funding opportunities (subsidies or grants) is well publicized.

#### **V. Socio-Cultural Environment**

**Question 10: To what extent are socio-cultural values and practices favorable for philanthropy?**

**Score: 5.0**

There certainly is a tradition of philanthropic activity in The Netherlands. Important facilities, such as schools, hospitals, elderly care, treatment of people with mental illness, etc., are primarily provided

by POs that receive government funding. Most scholars explain the positive relationship between the State and the nonprofit sector through the fact that The Netherlands in the past did not have a strong, dominant central government – not even during the feudal era – and that public safety could only be successful thanks to joint efforts by the government and the citizenry/landowners. Thus, a sense of mutual trust developed between the government and civil society. Introductory reading on this subject would be “Rethinking the balance, Government and nongovernmental organizations in the Netherlands,” Van der Ploeg/Sap, VU University Press 1995).

CSOs are involved in developing public policy at both a national and local level through consultation procedures or on their own initiative. Now that government funding is reduced, the government has strongly promoted private initiative as a matter of good citizenship.

## **VI. Future of Philanthropy**

*These questions are used to provide a general picture of the future of philanthropy in this country as well as recommendations to improve the philanthropic environment.*

### **Current state of the philanthropic sector**

Research by the Sociaal Cultureel Planbureau (Verenigd in Vergadering, 2014) indicates that the large institutionalized nonprofit sector has managed to consolidate their membership base, although it also reports that the sector experiences competition both from informal and institutionalized POs. The institutionalized POs are generally professionalized and supported by robust umbrella organizations. Umbrella organizations collaborate and in various sectors, e.g. sports, collaborate in institutionalized form.

### **Three major recent events affecting the philanthropic landscape between January 2014 and December 2016**

- The economic crisis; and
- In certain fields, subsidizing institutions that provide services has been changed to provide a budget to eligible individuals to enable them to 'buy' the service they require. This has opened new opportunities for for-profit services providers.

### **Future development trends in the philanthropic landscape**

- Individuals seem to be less-inclined to engage in a long term membership or other form of organizational commitment;
- New forms of fundraising requiring personal commitment with respect to short term projects (a bicycle tour, helping out, etc.), and
- Decrease in membership of institutionalized religious organization.



# Norway

**Expert:** Karl Henrik Sivesind

**Institutional Affiliation:** Research professor, Institute for Social Research, Oslo

With contributions from staff at the Indiana University Lilly Family School of Philanthropy

## QUICK FACTS

**Legal forms of philanthropic organizations included in the law:** Association, Foundation, Cooperative, Corporation, Limited Liability Company, Trust

**Five main social issues addressed by these organizations:** Arts and Culture, Health and Medical Research, Religion, International Causes, Social Service

**Average time established by law to register a philanthropic organization:** 0-30 Days

**Average cost for registering a philanthropic organization:** US \$0

There is no need to register a PO in Norway. However, many organizations choose to be included in the Central Coordinating Register for Legal Entities to get an organizational number, which is a requirement for getting a bank account in the name of the organization. Registration is free. However, organizations that are employers and pay Value Added Tax (VAT) are required to register in the Register of Business Enterprises. This costs about US \$270.

There is also a nonobligatory register for fundraising organizations operated by a private foundation called the Fundraising Control (*Innsamlingskontrollen*) established by the fundraising organizations themselves. It has established a code of conduct, monitors audited accounts and annual reports, keeps a public list, and awards an accreditation seal to approved organizations. One important criterion is that 65 percent of the donations should go to the designated purpose over a period of 5 years or less. Cost for registering a fundraising organization is US \$485. Registered fundraising organization has to submit audited accounts every year, and there is a membership fee of 0.1-0.2 percent of the organization's operational expenditures.

**Government levels primarily regulating the incorporation of philanthropic organizations:** State Government

### Philanthropic Environment Scores:

Year	Ease of Operating	Tax Incentives	Cross-Border Flows	Political Environment	Socio-Cultural Environment	OVERALL SCORE
2018	5.0	4.0	4.5	4.5	4.0	4.40

## I. Formation/Registration, Operations, Dissolution of a Philanthropic Organization (PO)

*The three questions in this section pertain to the laws and regulations governing philanthropic organizations (POs). The scoring questions for this category cover three aspects of regulations: (A) formation and registration, (B) operations, and (C) dissolution.*

### Question 1: To what extent can individuals form and incorporate the organizations defined?

<b>Score: 5.0</b>
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The Register of Non-Profit Organizations, established in 2009, is intended to simplify the interaction between voluntary associations and public authorities by providing systematic statistics and policy-relevant research and information; in doing so, it aims to strengthen the legitimacy of voluntary activity. Only voluntary associations, foundations, and non-commercial limited liability companies that only distribute funds to nonprofit activities are eligible for registration. Registration is free. While registration is optional, the number of registered organizations is steadily increasing as registration is a requirement for receiving the grass root share from gaming (Norsk Tipping), value added tax (VAT) compensation, and other benefits.

There is also a register for fundraising organizations operated by a private foundation called the Fundraising Control [*Innsamlingskontrollen*] established by the fundraising organizations themselves. The parliament abolished the Law of Registration of Fundraising in 2015 because this is an area that the organizations can take care of by themselves.

Whereas a 'nonprofit' or 'voluntary organization' is not a distinct legal category in Norway, and may take any form and can remain unregistered, a 'foundation' is defined by law. There is a central register for foundations in connection with the Norwegian Gaming and Foundation Authority, which checks if activities are in line with the Foundation Legislation Act and the foundation's statutes. All foundations in Norway have to be registered. The Norwegian Gaming and Foundation Authority also supervises and controls all private and state-operated lotteries, to make sure that the proceeds go the purpose.

The government regulations are intended to promote accountability and public trust in POs. The debates and hearings before the establishment of the Register for voluntary organizations show that there is broad political support for organizational freedom and for avoiding obligatory registration and unnecessary bureaucracy.

### Question 2: To what extent are POs free to operate without excessive government interference?

<b>Score: 5.0</b>
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In general, the government respects an organization's internal democracy and freedom to communicate through media. However, for organizations that receive support, there is a greater emphasis on economic accountability and transparency, in particular in regard to service provision. The state of trust between the State and organizations is to some extent reduced, and New Public Management (NPM) tools have been implemented here, as in other service sectors. Civil society

organizations that get public support for particular projects must write reports and submit accounts. In order to apply for general support, they must submit documentation of the number of members, type of activities, organization structure, statutes, etc.

On the other hand, many aspects of POs are left unregulated or scarcely regulated, which indicates that a substantial element of mutual trust remains. Additionally, organizations that do not receive support do not need to report to the government, except normal tax and business reporting. For example, certain larger organizations have to submit their annual accounts to the central register for business accounts because they have a statutory obligation to keep accounts.

### **Question 3: To what extent is there government discretion in shutting down POs?**

<b>Score: 5.0</b>
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As there is no legal regulation of voluntary organizations as such, there is no legal regulation of dissolution or banning of such organizations (except for organized crime). The Foundation Law specifies certain circumstances where the Foundation Authority may start a process of liquidation. However, this can only be done after the request of the founder or the Board, or if the purpose in the statutes can no longer be served, for example because of a lack of capital.

The Party Act (§ 5) determines that ‘when the party has not issued a list of election candidates in any constituency at two consecutive parliamentary elections,’ it will be deregistered.

In general, a PO cannot be terminated because of its activities, but a party or a foundation can be terminated because it fails to serve its purpose.

## **II. Domestic Tax and Fiscal Issues**

*The two questions in this section pertain to laws and regulations governing the fiscal constraints of giving and receiving donations domestically.*

### **Question 4: To what extent is the tax system favorable to making charitable donations?**

<b>Score: 4.0</b>
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The maximum sum of deductible donations from individuals and companies to voluntary associations was NOK 12,000 (US \$2,200) from 2005 to 2013, but it increased gradually to NOK 25,000 (US \$3,000) in 2016. The smallest deductible amount is 500 a year to each organization. The list of Norwegian organizations that qualify for deductible donations has gradually extended to more than 500 organizations in 2016. It includes a broad spectrum of activities—from culture and recreation to environment, religion, peace and human rights, development and disaster aid, as well as general social and welfare associations. To be deductible, the donated amount must be reported by the organization to the tax authorities, which means that the donor’s personal data must be registered. In 2015, the average deducted amount was NOK 4,300 (US \$520), and 683,324 taxpayers used the opportunity to deduct gifts (Statistics Norway, 2017).

The government supplements private donations of at least EUR €373,000 (NOK 3 million, US \$360,000) given to 'long-term, basic research' with 25 percent of the donated amount. Authorized recipients of state-supplemented donations are universities with doctoral rights, the Research Council, and the Norwegian Academy of Science and Letters. This arrangement was terminated in 2011, but reintroduced in 2014 by a conservative minority government. It also introduced gift reinforcement for the cultural field – first for museums, and in 2016 music, literature, scenic and visual arts, and cultural buildings were added. The total frame increased from NOK 10 million (US \$1.2 million) in 2014 to NOK 45 million (US \$5.4 million) in 2016, which is still quite modest. Most of the donations that are state-supplemented come from foundations, and only a smaller percentage from private persons and companies.

**Question 5: To what extent is the tax system favorable to POs in receiving charitable donations?**

**Score: 4.0**

There is no difference in income-taxation between donations received by POs and other income. However, voluntary organizations and foundations are, in general, exempt from tax on income related to nonprofit, idealistic purposes, such as sports, culture, recreation, religion, or social benefit. In addition, registered voluntary organizations also benefit from VAT exemptions. They do not have to pay VAT on many important types of income, including membership fees, sale of organizational goods, lotteries, gifts, flea markets, irregular advertisements, as well as cafe, kiosk, and food sales in connection with the organization's activities. These types of income are considered non-commercial by the tax authorities. Nonprofit organizations also have somewhat higher basic amounts exempt from VAT, employer's tax, and income tax than business enterprises. The law recognizes nonprofit organizations as business enterprises, but with limited modifications in certain areas of taxation.

In 2001, VAT on services was introduced in Norway and the Parliament granted voluntary associations a right to full compensation. In 2010, the compensation was extended to include all types of VAT. The amount allocated by the government only covered 49 percent of the VAT in 2012, but increased to 78.3 percent in 2014 and declined slightly to 76.3 percent in 2016. The plan is to gradually increase the budgeted amount until it covers full compensation for all VAT. In 2014, the amount was NOK 1.2 billion (US \$144 million), and in 2016, it reached NOK 1.3 billion (US \$156 million). Although this is still not enough to give full compensation, it represents substantial economic support for the nonprofit sector.

### III. Cross-Border Philanthropic Flows

*The two questions in this section concern laws and regulations governing the fiscal constraints of giving and receiving cross-border donations. The scoring for these questions pertains to the donor and receiving entities.*

**Question 6: To what extent is the legal regulatory environment favorable to sending cross-border donations?**

Score: 4.0

There are no additional costs, but only a few listed international organizations can get tax-exempt gifts from private persons and companies. There is little regulation in this area. However, the authorities try to stop donations from reaching terrorist organizations.

**Question 7: To what extent is the legal regulatory environment favorable to receiving cross-border donations?**

Score: 5.0

Norway does not receive many donations from abroad. There are no additional costs, and the regulation is of little consequence.

### IV. Political and Governance Environment

*The three indicator questions in the next two sections concern the political and governance context, socio-cultural characteristics, and economic conditions that influence the environment for philanthropy.*

**Question 8: To what extent is the political and governance environment favorable for philanthropy?**

Score: 5.0

The relationship between the Norwegian State and voluntary organizations and other POs has traditionally been based on mutual trust, rather than control. Norway has been labelled a 'state-friendly society,' where the population has a relatively high trust in state institutions and voluntary organizations work closely with governmental bodies. Even though the ideological distance can be considerable, adversary actors are accepted as legitimate participants in the policy discourse by the government (Kuhnle and Selle, 1992; Grendstad et al., 2006). They may even get public support for being "watchdogs" in areas like environmental protection, equal opportunities, human rights, development and disaster aid, and support for marginalized groups.

**Question 9: To what extent are public policies and practices favorable for philanthropy?**

Score: 4.0

The present government is trying to promote philanthropic values, and it encourages self-regulation by the POs. Examples are the abolishment law of a fundraising register, increased tax exemptions, and state-supplemented donations in the research and culture areas. There is also a lot of positive attention toward donors and volunteers from the government.

**V. Socio-Cultural Environment****Question 10: To what extent are socio-cultural values and practices favorable for philanthropy?**

Score: 4.0

People, in general, trust POs; however, philanthropy has had a slow start in Norway. In the post-war period, the labor movement considered philanthropy as a concealer for underlying social problems or as a cover operation for rich to help the rich. In the seventies, organizations for sick and people with disabilities argued that nobody should have to rely on other people's generosity to pay for his/her basic needs. State guarantees to meet these needs was a matter of dignity and basic human rights. Therefore, policymakers did little to promote private donations by tax deductions or institutional changes. Rather, philanthropy has been regarded as largely unnecessary, except for serving certain fields perceived as outside the public sector's core responsibility, such as missions, religious congregations, help to the homeless and substance abusers, medical research, and foreign development and disaster aid.

In the early 20th century, the popular movements grew strong by activating broad segments of the population in membership activities and volunteering. In relatively poor but equal local communities, many people could give a little of their time even if they were short of money. This was also appealing to people's sense of work ethic.

Consequently, philanthropy has only in recent years become a significant force in society in Norway. Still, volunteering and non-market transactions are the primary way for the population to support nonprofit organizations. However, the share of the population that donates money has increased from 51 percent in 1998 to more than 70 percent in 2014, probably as a result of increased prosperity, increasingly professional operations by fundraising organizations focusing on recruiting personal sponsors and regular donors, and the introduction of tax-deductions on donations in year 2000. In addition, a number of new, large foundations have changed the foundational landscape in the new millennium. This is, partly, a result of rich families and persons donating money to grant making foundations in science, medicine, culture and arts, and, partly, a result of conversion of mutual insurance companies and saving banks to limited companies. Some of the shares of converted companies are held by foundations representing the former mutual ownership, who have an obligation to support similar purposes as the saving banks and mutual banks used to.

## VI. Future of Philanthropy

*These questions are used to provide a general picture of the future of philanthropy in this country as well as recommendations to improve the philanthropic environment.*

### Current state of the philanthropic sector

The philanthropic sector is still growing, and it is catching up with the size in other rich, western countries. There are few legal and bureaucratic limitations on fundraising, but there are also relatively limited tax-incentives on donations, in particular from private companies. The government tries to emphasize the importance of donations in culture and other areas that previously had public sources of income. It has become more normal for households to give money to voluntary organizations, and people have more positive attitudes toward fundraising. Still, the fundraising organizations use limited resources on development and education.

### Three major recent events affecting the philanthropic landscape between January 2014 and December 2016

- The maximum sum of deductible donations from individuals and companies to voluntary associations was NOK 12,000 (US \$2,200) from 2005 to 2013. However, it increased gradually to NOK 25,000 (US \$3,000) in 2016 and in 2017 it will be NOK 30,000 (US \$3,600). Although the average tax-reported donations only increased from NOK 4,000 (US \$480) in 2014 to NOK 4,300 (US \$520) in 2015, there may be significant long-term effects of the strong increases in the maximum deductible amount. The voluntary organizations received more than NOK 3 billion (US \$360 million) in 2015 from tax-exempt gifts, which means that the total tax-cuts for donors were about NOK 735 million (US \$6.1 million). This is money that the government otherwise would have received in income-tax payments;
- Abolishment of the Law of Registration of Fundraising in 2015 shows that the government and the parliament have strong confidence in POs' ability to self-regulate registration and promote the sector's credibility; and
- The government reintroduced supplements to private donations of at least EUR €373,000 (NOK 3 million, US \$360,000) given to 'long-term, basic research' with 25 percent of the donated amount in research in 2014. It also introduced gift reinforcement for the cultural field—first for museums, and in 2016 for music, literature, scenic and visual arts, and cultural buildings. The total frame increased from NOK 10 million (US \$1.2 million) in 2014 to NOK 45 million (US \$5.4 million) in 2016, which is still quite modest. However, this signals a stronger recognition and support for donations in Norway.

### Future development trends in the philanthropic landscape

There is a strong increase in shares of households that give to voluntary organizations. The average amount has also increased more rapidly in recent years. In a population survey, the share of people that said that because they afford it, they feel a moral obligation to help voluntary organizations with money increased from 49 percent in 1998 to 59 percent in 2014. This probably reflects both a strong

increase in disposable household income and that more households are regular donors. Norway has been catching up with other rich, western countries. For organizations with a strong reputation and professional fundraising operations, the income from donations will probably increase further.

Directly and indirectly, as an effect of the booming oil-economy, more Norwegian individuals and families have established large fortunes, and some of them donate money to grant making foundations in science, medicine, culture, and arts. Before the year 2000, there was less private capital and, therefore, also a much smaller foundation landscape in Norway than in neighboring countries. Unless the economic situation deteriorates, this development will probably continue.

### **Three key recommendations to improve the environment for philanthropy**

- The tax incentives for donations from private companies are still quite weak in Norway compared with other rich western countries. The deductible amount from income tax of NOK 25,000 (US \$3,000) in 2016 to listed organizations applies to both individuals and private companies. However, sponsoring with an advertising deal is tax-deductible, as is other business-related spending. A more liberal approach could probably increase donations from private companies to POs;
- The government supplements to private donations for research and culture mostly apply to grants from foundations that probably would have happened anyway. This kind of support seems to attract few new donations from individuals and private companies; and
- Although the Law of Registration of Fundraising is abolished, it is important that the fundraising organizations keep using resources to promote responsible practices. There is increased competition from smaller fundraising operations that begins in social media, and some of them do not have legitimate purposes. It is an increasing challenge for donors to recognize the difference. The fundraising organizations could help by raising awareness about the Fundraising Control's accreditation seal, the register of approved organizations, and the warning list with fundraising operations that do not live up to the standard.



# Poland

**Expert:** Magdalena Arczewska

**Institutional Affiliation:** University of Warsaw, Applied Social Sciences Institute

With contributions from staff at the Indiana University Lilly Family School of Philanthropy

## QUICK FACTS

**Legal forms of philanthropic organizations included in the law:** Association, Foundation

**Five main social issues addressed by these organizations:** Primary and High School Education, Arts and Culture, Health and Medical Research, Basic Needs, Sports

**Average time established by law to register a philanthropic organization:** 61-90 days

The Court has 7 days from the day the document is submitted to examine the application, for both a foundation and an association. It is not possible to define precisely the time to register a PO. In practice, the duration of the registration process depends, above all, on whether the application is filed correctly. The absence of mistakes in the forms, well-prepared documents, signatures of the right persons, and payments made as required are fundamental elements of a correct application.

**Average cost for registering a philanthropic organization:** US \$0

The registration fee charged for a foundation is PLN 250 (approximately US \$63). As of 20 May 2016, the associations that have not been entered into the Register of Entrepreneurs do not pay court fees. The fee charged for removing both types of organizations from the Register of Entrepreneurs is PLN 150 (approximately US \$38), while the fee for placing an announcement in the Court and Commercial Gazette is PLN 250 (approximately US \$63).

**Government levels primarily regulating the incorporation of philanthropic organizations:** State Government, Local Government

Non-governmental organizations (NGOs) or other entities involved in public benefit activity obtain the status of a public benefit organization when they are registered in the State Court Register, and after fulfilling the statutory requirements referred to in Article 20 of the Act on Public Benefit and Volunteer Work of 24 April 2003. Associations and foundations must register with the regional Registry Court – also called the State Court Register. An ordinary association is registered at the Poviats Starost's Office or at City Hall. An ordinary association has no legal personality, as it is the so-called legal entity without a corporate status. It may assume obligations, sue, and be sued in court.

**Philanthropic Environment Scores:**

<b>Year</b>	<b>Ease of Operating</b>	<b>Tax Incentives</b>	<b>Cross-Border Flows</b>	<b>Political Environment</b>	<b>Socio-Cultural Environment</b>	<b>OVERALL SCORE</b>
<b>2018</b>	5.0	3.5	5.0	2.5	4.0	4.00

## I. Formation/Registration, Operations, Dissolution of a Philanthropic Organization (PO)

*The three questions in this section pertain to the laws and regulations governing philanthropic organizations (POs). The scoring questions for this category cover three aspects of regulations: (A) formation and registration, (B) operations, and (C) dissolution.*

### Question 1: To what extent can individuals form and incorporate the organizations defined?

**Score: 5.0**

Polish law permits individuals to act collectively through unregistered groups or organizations. Article 12 of the Constitution of the Republic of Poland from 1997 provides that “The Republic of Poland shall ensure freedom for the creation and functioning of trade unions, socio-occupational organizations of farmers, societies, citizens' movements, other voluntary associations and foundations.” POs are free from legal impediments from the state and from onerous registration requirements.

The primary forms for nonprofit, nongovernmental organizations are associations and foundations. Associations, as well as foundations, must register with the Regional Registry Court – an apolitical, independent, and transparent body of justice. The registration process is clear and consistent, requiring a reasonable amount of time and resources. Associations may be formed by Polish citizens or by foreigners who are domiciled in Poland. A special form, known as the “simplified association,” is somewhat easier to create than a regular association.

Polish citizens or foreigners who are of legal age, or domestic or foreign legal persons may form a foundation. Foundations may be established through a notarized document expressing the wish of a founder to form a foundation, or by a will.

Generally, the law does not determine a minimum or maximum value for the initial endowment; however, where a foundation plans to engage in economic activities, it is required to set aside at least PLN 1,000 (approximately US \$250) for those activities. A foundation may engage in business activity within the scope of its aims. The law requires a clear, closed list of reasonable documentation. The Court has seven days from the day of the document submission to examine the application, both for a foundation and an association. It is not possible to precisely define the time of registration.

### Question 2: To what extent are POs free to operate without excessive government interference?

**Score: 5.0**

Polish law allows for sufficient discretion as regards the process of setting up and governing a PO. According to Polish Law, it is forbidden to establish associations that require from its members absolute obedience to the governing bodies of an association. No person may be forced to become a member of an association or have his or her rights limited with regard to leaving an association. No one can be responsible for the negative consequences of membership or non-membership in an organization.

The highest governing body of an association is the general meeting of its members. An association must have a board and an internal audit body. Only the statute may define the way of representation for an organization. If the organization board includes more than one person, only the statute of the association may govern the way of representation. The statute also regulates the management of a foundation. It determines the way of appointing the board. The donor alone is not entitled to remove the members of the foundation body if the statute does not authorize him or her to it.

The statute also defines the obligations and rights of the board and its members. The foundation board manages its activity and represents the organization outside. If there is a flagrant contradiction between the resolution of the board and an aim of the foundation, the provisions of its statute or the law, the supervisory body may file a motion to the court for its repeal. The supervisory body may take similar actions if the organization's activity violates the law or the provisions of the statute.

Foundations submit annual reports on their activity, which are publicly available, to the supervisory body. Associations do not have this obligation, but they prepare these kinds of reports for their own needs, and in order to present them at the general meeting of members. In terms of financial reporting, all POs have an obligation to report to the tax office once a year.

**Question 3: To what extent is there government discretion in shutting down POs?**

<b>Score: 5.0</b>
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The issues related to the termination, dissolution, and liquidation of a PO are strictly regulated by the Polish law, which upholds the rights guaranteed by the Constitution. Clear and fair legal regulations exist to guide the involuntary dissolution of an organization. Pursuant to the provisions, an association may be dissolved on the basis of its own resolution, which is when the members of its board are the liquidators of the association. The court may dissolve an association at the request of the supervisory body or the prosecutor only when its activity demonstrates blatant or persistent violation of the law or the provisions of the statute, and there are no conditions to return to the activity compliant with the law or the statute. The liquidator's duty is to carry out liquidation in the shortest time possible in a way that secures the assets of the association in liquidation against unjustified depletion. When an association is dissolved, whether by its own resolution or by a court, the remaining assets are distributed pursuant to the association's statute or its liquidation resolution. In the absence of such a directive, the court appropriates the assets to a social purpose.

A foundation can be dissolved if its purposes have been achieved or if its financial assets have been exhausted. If the statute does not provide for the liquidation of the foundation or its decisions in this respect are not executed, the supervisory body files a motion to the court asking for the liquidation of the foundation. If its statute does not specify how assets are to be distributed upon dissolution, the court decides, taking into account the purposes served by the foundation. A PBO is dissolved according to the rules of the underlying form, whether association or foundation. If an association or a foundation loses its PBO status but continues operating, it must promptly spend all income it received through its earlier public fundraising as a PBO on public benefit activities.

## II. Domestic Tax and Fiscal Issues

*The two questions in this section pertain to laws and regulations governing the fiscal constraints of giving and receiving donations domestically.*

### Question 4: To what extent is the tax system favorable to making charitable donations?

Score: 3.0

Both individuals and corporations can deduct certain donations from their taxable basis. A donation is deductible if the recipient organization conducts public benefit activities. The limits on deductibility are 6 percent of taxable income for individuals and 10 percent for corporations – the ceilings on such incentives are moderately high. There are no strict limitations regarding the type of organization to which donations may be made. The only restriction is that, in order to qualify for tax exemption, a donation may not be made to natural persons, entities engaged in the production of alcoholic beverages, fuels, tobacco, electronic devices, precious metals, or entities engaged in the trade of precious metals. Organizations receiving donations from legal persons are obliged to make this information public if a single donation exceeds PLN 15,000 (approximately US \$3,700), or if the cumulative value of a donor's donations during a year exceeds of PLN 35,000 (approximately US \$8,600).

Entrepreneurs are able to classify the cost of manufacturing or acquiring food products that are offered to a public benefit organization as tax-deductible costs. Thus, food donations to charitable public benefit organizations are fully tax-deductible. Other (non-food) donations remain deductible at the current level, up to 10 percent of the income.

Another deductible mechanism in this area is the 1 percent mechanism, a special form of support for public benefit organizations. By means of this mechanism, a personal income taxpayer is able to allocate 1 percent of his/her tax payment to a public benefit organization in a fiscal year. POs enjoy the status of public benefit organizations that must have been continually involved in the public benefit activity for a minimum of two years before applying for the public benefit status. The areas of public benefit activity are listed in the Law on Public Benefit Activity. These areas include social and charity work, promotion of integration/reintegration, among others.

### Question 5: To what extent is the tax system favorable to POs in receiving charitable donations?

Score: 4.0

Just like all other entities, POs are subject to various legal obligations. POs do not enjoy an unconditional tax exemption; however, there are legal provisions that may exempt these organizations from the obligation to pay taxes. Such exemptions are related to specific situations and must be considered separately for each kind of tax due. A PO with public benefit status is exempt from corporate income tax (as well as real estate tax, civil actions tax, stamp duty, and court fees) on all income devoted to the public benefit objectives listed in the law. Because the law limits public benefit organizations to those activities, it appears that public benefit organizations are generally exempt from corporate tax altogether, with one possible exception: a public benefit organization that

unlawfully engaged in activities beyond those listed in the law might be liable for tax on those activities immediately, even before the initiation of proceedings to revoke the organization's public benefit status.

In addition, there is an exemption from the corporate income tax for income of organizations whose statutory objectives consist of activities in the fields of: science, technology and education, including tuition of students; culture; physical education and sports; environmental protection; supporting public projects in building roads and telecommunication networks and water supply systems in rural areas; charity; health care and social welfare; occupational and social rehabilitation of the disabled; and religious worship. A PO must pay corporate tax on all income, including grants, devoted to any objectives not listed above. In addition, foundations and associations (and legal entities in general) are not subject to the heritages and donations tax in Poland. The process of receiving the tax exemption status is clear and predictable.

### III. Cross-Border Philanthropic Flows

*The two questions in this section concern laws and regulations governing the fiscal constraints of giving and receiving cross-border donations. The scoring for these questions pertains to the donor and receiving entities.*

**Question 6: To what extent is the legal regulatory environment favorable to sending cross-border donations?**

<b>Score: 5.0</b>
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Tax regulations allow a reduction of the taxable basis by the amount of donations transferred for the so-called 'noble aims,' both for individual taxpayers and for legal persons. Cross-border charitable donations can be transferred without any additional costs. Similar tax incentives can be obtained for international charitable donations as for domestic donations.

The process of transferring charitable donations abroad is clear and consistent, requiring a reasonable amount of resources and time. Polish taxpayers who transfer donations to foreign NGOs may, having complied with several conditions, declare it in an annual tax form.

Pursuant to the regulations, a taxpayer may deduct a donation for an organization working for the benefit of the public in the area of public tasks in other EU or EEA member states, provided that this organization has been defined in the provisions in force regulating the activity of public benefit organizations. It is required to provide adequate documentation demonstrating that as of the day of the donation, the organization was equivalent to those referred to in the Public Benefit Organizations Act. In addition, there must be legal grounds, resulting from the Double Taxation Avoidance Agreement or other ratified international agreements to which Poland is a party, for the Polish tax body to obtain tax information from the tax body of the state where the organization is based. If both conditions are fulfilled, donations made to foreign organizations may be deducted on the tax forms filed in Poland. The maximum deductible amount may account for 6 percent of the total annual income of the donor who is a natural person. For legal persons, including NGOs, this proportion is 10 percent of the annual income in total.

**Question 7: To what extent is the legal regulatory environment favorable to receiving cross-border donations?**

Score: 5.0

Associations and foundations as legal persons do not pay an inheritance tax or donation tax. Cross-border charitable donations can be received without additional cost and without additional approval through government procedures. There are no restrictions on receiving cross-border charitable donations. Donations must be registered by a transfer into a bank account and evaluated. Cash is evaluated according to its nominal value, and funds obtained in a foreign currency are converted to the Polish Zloty.

The average exchange rate for a given currency announced by the National Bank of Poland on the day preceding the day of the donation is applied for the evaluation purposes. The value of a non-financial donation should be best defined in the agreement. Should it not be the case, the value of a given element of assets should be determined on the basis of a market price, i.e. the selling price of the relevant item (or one similar to it). When it is impossible to determine the net selling price of a given element, its value should be estimated using other methods (e.g. using the services of an appraiser).

Transnational Giving Europe (TGE) facilitates the process of giving and receiving foreign donations in Poland. It is a collaborating network of European foundations and associations from Belgium, Bulgaria, France, the Netherlands, Ireland, Luxembourg, Germany, Poland, Romania, Slovakia, Slovenia, Switzerland, Hungary, the United Kingdom, and Italy. They provide agency in transferring donations from foreign individuals and enterprises to NGOs and public and private institutions that carry out social projects. In Poland, TGE is represented by the Foundation for Poland.

**IV. Political and Governance Environment**

*The three indicator questions in the next two sections concern the political and governance context, socio-cultural characteristics, and economic conditions that influence the environment for philanthropy.*

**Question 8: To what extent is the political and governance environment favorable for philanthropy?**

Score: 2.0

After the change of the governing party in Poland, the direction of collaboration between public institutions and NGOs organizations as well as the entire philanthropic sector changed. In the 2015 general election in Poland, the Law and Justice (PiS) party won 37.58 percent of the vote. Also the President of Poland, Mr. Andrzej Duda, had been a Law and Justice member before he was elected. A shift in the policy and approach to organizations can be observed following the results of the general election. Both the Government Plenipotentiary for Civil Society and Equal Treatment in Poland and the politicians of Law and Justice support the cancellation of the Convention for preventing and combating violence against women, even after it was ratified by Poland in 2016.

Since there are few organizations in Poland that have their own assets to support the noble causes they wish to endorse, organizations are supported by public funds, which they spend on their statutory activities (as discussed above). Nowadays, organizations engaged in the area of human rights, equality, and combating violence have lower chances of obtaining resources to fund their activities. In addition, the efforts related to promoting important laws, such as the law on the National Center for the Development of Civil Society, have been and continue to be apparent in nature. Public media (Channel 1 of Polish Television) broadcast materials aiming to deprecate the work of the leaders of the sector imputing unlawful connections and unclear use of public funds.

**Question 9: To what extent are public policies and practices favorable for philanthropy?**

**Score: 3.0**

Although the government does not restrict the philanthropic activity of donors, it does not undertake activities aiming to promote philanthropy, or to emphasize the importance of the mission of philanthropic organizations for civil society. The government keeps what appears as a neutral position in this respect, but at the same time, does not provide equal support for POs. Public funding to support philanthropic initiatives is dependent on political influence, which has definitely increased in the past few years. For example, regardless of the high rating of the systemic projects in the Civic Initiatives Fund competition, the minister selected the projects that received subsidies as part of the so-called strategic evaluation.

Another example is the contract for the task “ZERO violence – Involvement, Education, Advocacy against gender-based violence” implemented by the Autonomy Foundation using the financial support of the Civic Initiatives Fund, a government program that was dissolved for no clear reason by the Ministry of the Family, Labor and Social Policy in December 2016. In addition, the Center for Women’s Rights, an organization combating violence against women, for the second time did not receive a subsidy from the Ministry of Justice. These issues are now extensively debated in the third sector.

## **V. Socio-Cultural Environment**

**Question 10: To what extent are socio-cultural values and practices favorable for philanthropy?**

**Score: 4.0**

Philanthropy in Poland has a long tradition dating back to medieval times. There are strong philanthropic traditions and societal values that encourage giving. Traditionally, people entirely trust POs and recognize their positive and important role in society. Although by the end of 2016 NGOs became a topical subject in Poland due to public media coverage of well-known foundations and associations that put them in a very unfavorable light, this did not seem to have hurt the image of the sector. Sixty percent of Poles declared that they trusted foundations, 53 percent had confidence in associations, and, in general, 55 percent of people trusted NGOs. This means that there has been a slight increase of confidence in the third sector since 2014 when 56 percent of people trusted foundations, 50 percent of people trusted associations, and 44 percent of Poles declared confidence in NGOs.

Just because Poles state in surveys that they trust foundations, associations, and NGOs, this does not mean that they are ready to donate money or time, or that they would choose them as service providers out of a group of other institutions. However, surveys have shown that NGOs seem to evoke more positive feelings among Poles than other organizations.

The opportunities to get involved in philanthropic causes are open. Individuals have equal opportunities to engage in philanthropic activities as donors and/or recipients. Accumulated social and human capital provide a very beneficial context for the sector development. One good example of the philanthropic involvement of Poles is the yearly results in terms of money raised by the organization of the Grand Finale of the Great Orchestra of Christmas Charity. The “Wielka Orkiestra Świątecznej Pomocy” (WOŚP) is a very popular NGO in Poland. The Grand Finale is one-day national and transnational public fundraising event organized by the Foundation of the Great Orchestra of Christmas Charity to fund medical equipment for pediatric wards and to provide medical assistance to seniors. Each Grand Finale has a different medical objective dealing with relevant medical issues (especially those dedicated to children).

## VI. Future of Philanthropy

*These questions are used to provide a general picture of the future of philanthropy in this country as well as recommendations to improve the philanthropic environment.*

### Current state of the philanthropic sector

Poland is a country of extensive tradition and deeply rooted values, such as working for the common good, social solidarity, and self-help. In crises, and when common good so requires, Poles become united and help one another. This is an important foundation for the development of philanthropy. Nevertheless, Polish society, in general, is still poor, and often referred to as “working its way up.” This is why Poles do not support organizations to a financially desirable extent, as they do not have the necessary means.

### Three major recent events affecting the philanthropic landscape between January 2014 and December 2016

- In the previous 24 Grand Finale events, the Great Orchestra of Christmas Charity raised and donated over PLN 720 million (approximately US \$180 million) to support Polish medicine;
- In 2014, the amount raised to purchase specialist equipment for pediatric emergency wards and to support decent senior care was US \$17,224,553.53. The amount raised to maintain high standards of the treatment of children in pediatric and oncological wards, and to keep decent medical care for seniors in 2015 was US \$13,277,424. The amount raised in 2016 to purchase medical equipment for pediatric wards and to ensure decent medical care for seniors was US \$18,135,587.26; and
- In 2014, the Polish Humanitarian Action collected PLN 130,000 (approximately US \$32,500) to provide humanitarian assistance to civilian victims of the conflict in Syria and Syrian refugees in neighboring countries (e.g. Turkey, Lebanon, and Jordan), Assistance includes

access to water and the necessary sanitary conditions, medical care, access to food, shelter and basic items necessary to survive. In 2015, the organization raised US \$13 million to fund its statutory activity.

### **Future development trends in the philanthropic landscape**

Public fundraising events are an effective fundraising mechanism in Poland. This is when Poles are willing to donate money to support the goals of NGOs. Another effective mechanism is a tax write-off of 1 percent (a tax deduction for physical persons). Although it is not strictly philanthropy, as taxpayers donate 1 percent of the tax due which they would have to pay the State Treasury anyway, they may determine which cause they wish to support. This mechanism makes it possible to promote the principle of sharing and the culture of giving.

### **Three key recommendations to improve the environment for philanthropy**

- No amendments to tax regulations or provisions on competition procedures should be made under political pressure;
- The centralization of funding to NGOs through the establishment of the National Center for the Development of Civil Society, which coordinates the expenditure of the state in its relations with the third sector, should stop; and
- The application of the subsidiarity principle should not be restricted. The nongovernmental sector in Poland has been admired for a number of years in Central Europe for its public benefit activity law that defines the principles of collaboration between public institutions and NGOs. Access to public funds is possible only through open calls for proposals that are transparent and clear. An effective system should not be changed – it may be improved but it should not be deconstructed.



# Portugal

**Expert:** Ricardo André Mendonça Marques

**Institutional Affiliation:** Universidade Aberta /Instituto Superior Politécnico Tundavala /LUSANGO NGO

With contributions from staff at the Indiana University Lilly Family School of Philanthropy

## QUICK FACTS

**Legal forms of philanthropic organizations included in the law:** Association (including Mutuals), Foundation, Cooperative, Benefit Corporation, Endowment, Society.

Note: Since the amendment of the Particular Institutions of Social Solidarity (Instituições Particulares de Solidariedade Social) Statute with Decree-Law no. 172-A / 2014 of 14 November, a new category of organizations was created, Institutes of Catholic Church Organizations or Institutions, including Parish Social Centers and Diocesan and Parish Caritas (Santos, 2015)

**Five main social issues addressed by these organizations:** Health and Medical Research, Basic Needs, Youth and Family, Religion, International Causes

**Average time established by law to register a philanthropic organization:** 31-60 days

**Average cost for registering a philanthropic organization:** US \$500

The process is simple when it comes to forming an association, since there is a proper and un-bureaucratized service, made available by the State - <http://www.associacaonahora.mj.pt/>. Through the Associação na Hora (Association on the Spot) it is easy to create an association at a minimum cost of EUR €300 (US \$360) or EUR €200 (US \$240) (in case of Student Associations created under this legal form). However, the process becomes more complex when it comes to intervening in specific areas, such as education or humanitarian intervention. From 2014 onwards, the constitution of Private Institutions of Social Solidarity was no longer possible through the Associação na Hora portal, and its constitution was now under Social Security, an institution of the Government.

**Government levels primarily regulating the incorporation of philanthropic organizations:** Central/Federal Government, State Government

### Philanthropic Environment Scores:

Year	Ease of Operating	Tax Incentives	Cross-Border Flows	Political Environment	Socio-Cultural Environment	OVERALL SCORE
2018	3.7	4.0	4.0	3.6	3.0	3.65

## I. Formation/Registration, Operations, Dissolution of a Philanthropic Organization (PO)

*The three questions in this section pertain to the laws and regulations governing philanthropic organizations (POs). The scoring questions for this category cover three aspects of regulations: (A) formation and registration, (B) operations, and (C) dissolution.*

### Question 1: To what extent can individuals form and incorporate the organizations defined?

Score: 3.0
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There is freedom granted by the Constitution of the Portuguese Republic that safeguards fundamental rights and freedoms. Freedom of Association is recognized in Article 46 of the Constitution provided such associations are not intended to promote violence and their objectives are not contrary to the criminal law. Currently, the Ministry of Labor and Social Security regulates the formation of POs. This responsibility varies depending on the ruling party. Portugal's legal framework provides a favorable environment to form associations. As explained earlier, the Association on the Spot (Associação na Hora – ANH) facilitates creating associations, which are the most common form of philanthropic organizations in Portugal. Private Foundations also require the approval of the government. Private Foundations are also required to request and receive the approval of the government. While there is no minimum founding capital required by law, a foundation can be denied a request for recognition if the assets are deemed insufficient (at least EUR €250,000 (US \$300,000)) (Article 22 of the Framework Law for Foundations).

Although there are no substantial legal impediments to the constitution of organizations in this area, not all constituted associations are from the philanthropic area, many represent corporate interests, although they do not directly aim for profit. In turn, the Third Sector – comprised in the social economy – has shown some growth, both in terms of employability and in terms of number of organizations (for altruistic purposes), particularly since 2012/13 during IMF economic assistance. However, its weight in the Gross Domestic Product is still not very expressive and the values recorded are below the European average. The main reason is that a large number of third sector organizations work in the area of social assistance where there are already a large number of services provided by the government, namely the Social Security. Although there are practically the same number of organizations in the field of culture, sport and recreation compared to those in the social area, the latter move more economic values and establish agreements with the government. As the social economy is heavily anchored in services and social assistance, professionals offer most social interventions and the number of volunteers is small. Moreover, it is a culture based on the role of the government as guarantor of social welfare. Therefore, although the number of organizations grows, this does not always coincide with a greater participation of civil society. However, associationism has grown in recent years.

### Question 2: To what extent are POs free to operate without excessive government interference?

Score: 4.0
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The “degree of freedom” is related to the nature of the organization, legal status, area of intervention, economic dimension, number of employees (or volunteers), etc. There is a whole set of rules, varying

according to the size and the capacity for intervention, namely because they can receive funds from the government. A philanthropic organization can integrate leading structures of the government, particularly as mandatory consultation partners. The Portuguese government provides some services and facilitates networking. However, there is a strong historical dependence on the government, particularly for funding.

In relation to the Cooperation Protocols between the State (Ministries) and the umbrella organizations representing the Third Sector to attend social needs in the areas of health, education and employment, organizations are required to prepare or revise their internal regulations and redefine their human resources structure to comply with the required technical requirements to act on these areas. The study conducted by Santos et al. (2015) about the social impact and economic crisis of the third sector in Portugal revealed concerns among third sector organizations about increasing state control and fear to lose autonomy in the way they manage their services. There are formal rules that must be fulfilled by all POs, although with some variations depending on the type of PO. For example, in the case of associations there is the imposition of minimum numbers of associates; definition of the corporate purpose, registration as a legal person, structure defined in terms of corporate bodies, as well as imperatives regarding the presentation of accounting. In the case of IPSS or Foundations in the area of social solidarity (where there is also the same obligation), there is still an obligation to be subject to the Basic Social Economy Law (Lei de Bases da Economia Social) (Law no. 30/2013 of May 8). It was also important the signing in 1996 of the Covenant for Social Solidarity (Pacto da Solidariedade Social) where the Government and the representatives of the partner institutions undertake to cooperate and create an integrated social support network. The government assumes a mandatory regulatory role, based on the principle of subsidiarity (funding). This regulation is more expressive when the PO action is related to activities in the area of social exclusion. Although some changes to the Law have been introduced in 2014 – the most expressive was the possibility that IPSSs may have their own companies and social businesses, all these activities should be aimed at the exclusive financing of their activities. This dependence on the government is one of the main characteristics of the reality of PO in Portugal, not only because of financial needs but also because of the regulatory role the State has.

It should be emphasized that the twentieth century in Portugal was marked by a strong influence of the government, especially between 1926/1974 when there was a right-wing dictatorship, or at the beginning of the democratic period, where the great influence was socialist, as was evident in the Constitution of the Republic of 1976. Thus, the State continues to be seen as the main regulating agent, despite the existence of short historical periods where the discourse evidenced the need for decentralization. However, economic liberalization was not reflected in terms of POs. For example, the transfer of social functions traditionally assumed by the government to private organizations (in education or health) is not accepted peacefully by various political groups and by a large part of civil society, mainly because private groups continue to receive funding of the government.

### **Question 3: To what extent is there government discretion in shutting down POs?**

<b>Score: 4.0</b>
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The Government is mandated to decree the dissolution of a philanthropic organization. According to the Portuguese Civil Code (Art 192), a judicial decision can dissolve an organization if its insolvency is declared. However, this has only been the case of some Foundations or some Private Institutions

of Social Solidarity (IPSS), particularly those that are dependent on government funds and have not fulfilled their purposes. The competent authority might also terminate foundations if its purpose is systematically pursued by unlawful or immoral means or its existence becomes contrary to public order. In the case of small organizations, the degree of intervention of the government is irrelevant, although there are fiscal obligations whose non-compliance may determine involuntary termination.

## II. Domestic Tax and Fiscal Issues

*The two questions in this section pertain to laws and regulations governing the fiscal constraints of giving and receiving donations domestically.*

### Question 4: To what extent is the tax system favorable to making charitable donations?

Score: 4.0

Both individuals and corporations can deduct taxes from their income when donating to charitable organizations. The process is complicated and there is lack of information regarding how organizations file their taxes or how companies and individuals donate. When it comes to companies, the main difficulty is whether it is patronage or whether it is advertising or sponsorship. The rules are different according to the typology, and there are more advantages when there are no economic advantages. In the case of individuals, they may assign 0.5 percent of their Personal Income Tax (IRS) to an IPSS and are considered costs or losses for the purpose of determining taxable income. Tax laws establish that 25 percent of individual donations made to accredited institutions pursuing charitable goals are deductible, provided that the donor did not treat the donations as business expenses. Income Tax Laws in Portugal also establish different categories of corporate tax deduction depending on whether there is a limit on deduction or not. In the case of unlimited donations, corporate donors can deduct between 130 and 140 percent of the donated amount. Limited donations, like the ones to charities and other private institutions of social solidarity allow deductions between 130 and 150 percent of the donated amount.

Although there are legal advantages, there is a lot of mistrust. Firms tend to consider donations as advertising rather than as social responsibility. In the case of individuals, there is some mistrust regarding the destiny of their donations. It would also be necessary for the PO to seek to be more transparent and to invest in more direct communication with society.

### Question 5: To what extent is the tax system favorable to POs in receiving charitable donations?

Score: 4.0

Article 10 of the Code of Taxation of Income and Gains of Collective Persons (Decree-Law No 442-B/88) establishes that private institutions of social solidarity are exempt from Corporate Income Tax (IRC). Also, “collective persons of mere public utility that pursue exclusively or predominantly objectives of a scientific or cultural, charitable, aid, benevolent, social solidarity and protection of the environment nature” are exempt provided that their activities do not cover business income from commercial activities. Additionally, philanthropic organizations and private social welfare institutions in certain fields are also exempt from VAT, while private foundations may be exempt from real estate

and vehicle tax if properties are directly used for accomplishing the organization's main purposes. To gain tax-exempt status, philanthropic organizations need to request and receive a formal recognition from the Ministry of Finance or the competent tax authority.

Since 2011 several IPSS have been subject to the Legal Review of Accounts (article 12 of Decree-Law no. 36 / A - 2011, of March 9). In the case of donations, the Law is not clear regarding tax benefits, especially because it is written in terms of the tax advantages of donors and not of those who receive. The Law has changed over the years. At the end of the 1980s, they were exempt from Corporate Income Tax, but from 2000 onwards, this benefit became dependent on certain requirements: effective exercise of activities to achieve ends, allocation of resources to ends, lack of interest. In 2006, they became automatically exempt when it came to public or private charitable institutions. From the period of financial assistance in 2011 to the present, Portuguese fiscal policy has been characterized by instability. Although the tax system appears to be advantageous for the PO, they complain of economic difficulties and lack of fiscal clarification.

### III. Cross-Border Philanthropic Flows

*The two questions in this section concern laws and regulations governing the fiscal constraints of giving and receiving cross-border donations. The scoring for these questions pertains to the donor and receiving entities.*

**Question 6: To what extent is the legal regulatory environment favorable to sending cross-border donations?**

<b>Score: 4.0</b>
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Portuguese tax laws provide tax incentives for charitable contributions to public-benefit foundations and according to Transnational Giving Europe (2016) public-benefit status seems to be available only to domestic foundations and domestically operated foundations. Therefore, the Portuguese tax law does not provide tax incentives to donors for cross-border donations. However, there are no restrictions for sending cross-border donations, although they are considered cross-border financial flows that might have additional costs and taxes.

Most of the donations are aimed at POs whose head office is in Portugal, although their main activity may be in third countries, as is the case of nongovernmental organizations working in the field of development in countries such as Mozambique or Guinea-Bissau. The law does not include international organizations that do not have a Portuguese tax number and do not consider them as donations in fiscal terms. Large organizations such as UNICEF or Amnesty International are registered in Portugal and have a tax number. The main difficulties are those listed previously: lack of knowledge of the Law and distrust on the part of those who donate.

**Question 7: To what extent is the legal regulatory environment favorable to receiving cross-border donations?**

Score: 4.0

It is the same situation as above, since cross-border philanthropic flows are considered financial flows. Although transnational organizations can receive funding from other organizations, particularly those that are "affiliates" of other larger organizations (e.g. Caritas, AMI, Red Cross), in concrete terms it is not customary and additional taxes and costs might emerge. In fact, the problem of funding organizations is complex, particularly when dealing with smaller organizations such as civil society associations. Furthermore, imported goods are subject to VAT, but several exemptions are in place due to the fact that Portugal is a member of the European Union. Overall, there are no restrictions or approval requirements to receive cross-border donations. PO can receive European Union funds or apply for European funding programs, although under rules agreed by the government with the European Union (i.e. the government is always the direct interlocutor). They can also apply for funding projects agreed between the Portuguese government and third countries (mainly Portuguese-speaking countries such as Angola, Timor-Leste, Mozambique, Cape Verde or Guinea-Bissau). If we consider this factor, we can say that the situation has positive aspects, although we are talking about funding, not donations. On the other hand, there is no practice of receiving direct donations from individuals or international companies, especially because there are no legal clarifications and regulation is very rigid. It should be noted that a large part of the PO receive funds from the government and that regulation is very high. Even in the case of small associations, their accounts are monitored. Many laws have been published whose intent is the need for greater economic transparency. The origin of funding is a sensitive issue.

**IV. Political and Governance Environment**

*The three indicator questions in the next two sections concern the political and governance context, socio-cultural characteristics, and economic conditions that influence the environment for philanthropy.*

**Question 8: To what extent is the political and governance environment favorable for philanthropy?**

Score: 3.6

It cannot be said that the political environment is hostile to the philanthropic sector; however, the levels of participation and engagement are low. According to Franco et al. (2005), while there are POs – such as cooperatives and Private Institutions for Social Solidarity - that are visible and highly supported, other actors have faced financial difficulties that have emerged with the economic crisis. Indeed, there is a great concentration of interest on social issues, sometimes to the detriment of other issues in the cultural, human rights, and other arenas. Based on the Survey on the NGO sector in Portugal conducted by Calouste Gulbenkian Foundation (2015), the majority of POs are aimed at providing services in social services and emergency situations.

Additionally, there is a historical framework that understands the Portuguese State as the main supporter of social welfare. This aspect, in part, blocks the development of new forms of social

organizations; particularly because people understand that, the government should be the main (or only) actor responsible for providing services for the public good. Therefore, in terms of governance there is a lack of participation and involvement.

Business involvement in philanthropy is not great either (although there are good examples, particularly in volunteering and supporting for social projects), and people tend to distrust the "good intentions" of companies, as in the case of Corporate Social Responsibility. However, a number of good associations have emerged (although not all are legally constituted) and for some time now, the government has promoted social entrepreneurship and developed several policies and activities improving Corporate Social Responsibility (European Commission, 2014).

**Question 9: To what extent are public policies and practices favorable for philanthropy?**

**Score: 3.6**

There is not a simple answer to this question. On one hand, the legal requirements have been simplified and the government offers some support to promote the philanthropic sector. Additionally, there are different levels of participation and many associations find greater support from local governments (and not from the central government), depending on their possibilities and capacities for cooperation. Indeed, one third of the philanthropic organizations in Portugal extend their activities to local territories, smaller than a municipality, as their work often responds to local needs.

On the other hand, there is no strong appeal to actively engage with civil society activities, in part because of the strong role of the Portuguese State as main provider of the public good. In terms of values, philanthropy and citizenship have been successively promoted (in theory) by different governments. However, in times of economic crisis (2011 to 2015) the discourse was always marked by conflicts, showing the differences between positions that defended the role of philanthropic organizations and the role of the government. In fact, the number of new foundations decreased, especially between those years of 2011 to 2015 (Franco 2015). Even though the philanthropic sector strives to have a relevant role in the field of social services.

## **V. Socio-Cultural Environment**

**Question 10: To what extent are socio-cultural values and practices favorable for philanthropy?**

**Score: 3.0**

Portugal has long-established philanthropic traditions. The Portuguese philanthropic values date back to the 12<sup>th</sup> century, when Catholic Church institutions already provided social services for people in need. In fact, the culture of giving is rooted in. It has been associated to the Church.

However, the level of civil society participation is considered low, whether in associative, philanthropic or voluntary activities. There is a strong dependence on government welfare, along with a great historical force of institutions linked to the Catholic Church. In the World Giving Index (2016), Portugal ranked 90 out of 140 countries, being better placed in terms of helping strangers (78), than volunteering in organizations (90) and donating money to charity (95). The last category

shows a decrease in the last three years (CAF 2016). It can be explained at the aftermath of the recent economic crisis. It is consistent with the fact that the public has a negative perception of foundations that might be caused by the census and evaluation process targeting foundations led by the Government in 2012 (Franco 2015). According to a study conducted by the Catholic University of Portugal (2015), public funding is the most important source of income for philanthropic organizations (almost 85 percent in some organizations), complemented with contributions from users and donations from private individuals, although corporate donations are still not very relevant.

## VI. Future of Philanthropy

*These questions are used to provide a general picture of the future of philanthropy in this country as well as recommendations to improve the philanthropic environment.*

### Current state of the philanthropic sector

In order to understand the current state of the Portuguese philanthropic sector, it is important to consider its four fundamental historical moments: Middle Ages; 19th Century; Fascist /Salazarist Period (1926-1974), and the Democratic Period (1974-now).

In the Middle Ages, a type of charity-driven social intervention subsisted, where the social action of organizations of the Catholic Church, such as the Holy Houses of Mercy, was notorious. During the industrial period in the 19th century the great influences originating from the Enlightenment Period, Laicism and Republicanism, influenced by the French Revolution led to the great divide between the role of the Church and the role of the government. The main disputes were about the role each entity should play, in relation to both education and social intervention. In response to the loss of influence, the Catholic Church created a document entitled Social Doctrine of the Church, or Encyclical *Rerum Novarum*, in the period of Pope Leo XIII. This document sets the principle of subsidiarity. This principle determines that “one cannot help the human person without paying attention to the society in which it is inserted”. It also says that the government should not interfere in various sectors of society, including social programs.

In the Fascist Period, most philanthropic organizations were extinguished and persecuted. The Portuguese State was seen as the main actor in the social field (although with a close relationship with the Catholic Church) and social programs became professionalized.

Finally, the democratic period is initially signaled by the emergence of diverse organizations of political, cooperative and associative profile, while opening new areas of social intervention: decolonization, education, health and housing. In general terms, the influence of the Catholic Church is decisive in the Third Sector, coexisting (in a professionalized way) with the services provided by the government. However, the level of participation of the Portuguese civil society is low as compared to the European average, with only few expressive philanthropic or associative organizations in arts and culture, for example.

These historic events partly explains the low involvement of society in philanthropic initiatives. Lack of funding and economic dependence on the government are other factors that explain the comparative low growth rate and sporadic appearance of formal and informal groups addressing philanthropic causes.

### **Three major recent events affecting the philanthropic landscape between January 2014 and December 2016**

- The Refugee Crisis has marked the international context in the last two years, with immediate repercussions in the majority of Western countries, particularly in Europe, due to the proximity of land borders. Especially the Syrian War and the difficulties to find a solution to end the war opened the door to a serious humanitarian crisis that will take decades to solve;
- Along with the humanitarian problem, I believe that the rise of more radical political ideologies (both right and left), driven by the increase of terrorism and by the inability to obtain social consensus on essential issues such as safety; social assistance and housing, has led to the appearance of critical social fractures. Finally, the increase of terrorism on a global scale unfortunately became a common and widespread phenomenon in all countries; and
- Another dimension that we have to consider is the crisis of the European social model and federalism, which is visible in the United Kingdom's ongoing exit of the European Union. We must consider that the sovereign debt crisis, together with immigration policies, as well as the question of the autonomy of states toward international institutions, such as the International Monetary Fund or the European Council, have created the current political and social framework.

### **Future development trends in the philanthropic landscape**

The aforementioned issues demonstrate that there are serious dualities in the current international landscape: on one hand, the question of solidarity is often understood as exclusion rather than inclusion. That is the debate about whether social services should be provided only for citizens, or should be extended to migrants, particularly refugees or those who practice other religions, particularly Islam.

On the other hand, government policies are often infused with a conflicting political and social debate that is giving way to the rebirth of nationalism and radicalism. In the international context, there is the failure of European federalism and its notorious rise of international politicians who tend to favor the economic and financial aspects of development to the detriment of international solidarity and philanthropy.

Likewise, the issue of multiculturalism must be brought into the debate, particularly because while it relates to solidarity, it is also attached to security issues that become important in the current international context signaled by war and conflict. The field of philanthropy and solidarity is increasingly important, and conditions must be created for civil society to organize and mobilize philanthropic resources around common goals.

### **Three key recommendations to improve the environment for philanthropy**

- The first recommendation concerns the urgent need for philanthropic organizations to be independent from the tutelage of government. It is necessary to create the legal conditions that contribute to strengthen philanthropic organizations while increasing access to external sources of funding;

- Second, it would be necessary for POs to have access to international cooperation platforms with information about projects in order to foster networking and build partnerships on a global scale;
- Social Responsibility of Organizations (particularly transnational corporations) should grow in order to achieve greater levels of transparency, particularly when they have economic and political interests in developing countries; and
- Finally, another essential aspect would be the mandatory inclusion of values of solidarity, citizenship and philanthropy in the school curricula, and make it obligatory to participate in social and / or community development projects to educate civic-minded students.



# Russia

**Expert:** Daria Miloslavskaya

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With contributions from staff at the Indiana University Lilly Family School of Philanthropy

## QUICK FACTS

**Legal forms of philanthropic organizations included in the law:** Association, Foundation, Institution (Art. 7 on the Law of Charities)

**Five main social issues addressed by these organizations:** Arts and Culture, Health and medical research, Basic Needs, Youth and Family, Human Rights

**Average time established by law to register a philanthropic organization:** 0-30 days

**Average cost for registering a philanthropic organization:** US \$90 + notary fee US \$50  
In comparison with previous years, the registration process has become less burdensome.

**Government levels primarily regulating the incorporation of philanthropic organizations:**  
Other

Federal Ministry of Justice (MoJ) has regional departments in every region of Russia. A regional department of MoJ is responsible for regional and interregional organizations, and the Federal MoJ is responsible for the registration of all Russian organizations.

### Philanthropic Environment Scores:

Year	Ease of Operating	Tax Incentives	Cross-Border Flows	Political Environment	Socio-Cultural Environment	OVERALL SCORE
2018	3.3	3.5	3.5	2.8	3.5	3.33

## I. Formation/Registration, Operations, Dissolution of a Philanthropic Organization (PO)

*The three questions in this section pertain to the laws and regulations governing philanthropic organizations (POs). The scoring questions for this category cover three aspects of regulations: (A) formation and registration, (B) operations, and (C) dissolution.*

**Question 1: To what extent can individuals form and incorporate the organizations defined?**

**Score: 3.5**

The Constitution of the Russian Federation recognizes the right of individuals to form organizations (Article 30). The Federal Law No. 7-FZ “On Non-Commercial Organizations,” determines the characteristics of the civil-legal status of non-commercial organizations (NCOs) and the procedures for the functioning of foreign NGOs.

There are some government restrictions on the permitted types of organizations, the purposes organizations can pursue, and on who can be a member or manage a non-commercial organization (i.e. individuals with dual US-Russian citizenship cannot be members or manage a NCO). The registration process is somewhat demanding, and it requires moderate time and resources. Additionally, registering officials’ attitude is sometimes discretionary. Nevertheless, in comparison with previous years, the process has become less burdensome, since changes made to laws and regulations in 2015 and 2016 gave clearer guidelines to founders. Now, it takes two weeks to register a charitable foundation and one month to register a charitable association. However, potential founders face burdensome restrictions due to severe legislations.

**Question 2: To what extent are POs free to operate without excessive government interference?**

**Score: 3.5**

Philanthropic organizations are somewhat inhibited in their internal governance due to rules and regulations, and have impediments on the purposes of their activities. Organizations are free to communicate through various media channels, but are somewhat restricted in their cooperation with domestic and international entities. There are some concerns about the political activity of charitable organizations, because of the possible status of foreign agent the organization may have (Federal Law No. 129-FZ On Amendments to Certain Legislative Acts of the Russian Federation, 2015), but from the legal point of view charitable activities are excluded. The reporting requirements are clear, but not well known by all organizations. Charitable organizations are not under state pressure in the current political situation. However, another problem has emerged in the last few years; there has been a surge in registered, fake charitable foundations that engage in aggressive, illegal fundraising activities. This fact influences the public image of the whole sector.

**Question 3: To what extent is there government discretion in shutting down POs?**

**Score: 3.0**

The governing body of a charitable organization is able to voluntarily terminate its activities (except in the case of charitable foundations) (Law on Charitable Activity and Charitable Organizations, Article 9); however, the process requires onerous reporting and can result in a state audit (more frequently tax audit).

Involuntary termination by a government entity can occur after a violation of the law. In such cases, the organization receives a warning in writing, which can be appealed in court (Article 20). In the case of repeated warnings, the organization is liquidated. Foundations can be liquidated only by court decision; voluntary liquidation is possible but the founder must appeal to court. If an organization has no money and had not reported during the year, the tax authorities can exclude it from the list of legal entities. If it is a public association, the organization is allowed to continue its activities as an unregistered association.

**II. Domestic Tax and Fiscal Issues**

*The two questions in this section pertain to laws and regulations governing the fiscal constraints of giving and receiving donations domestically.*

**Question 4: To what extent is the tax system favorable to making charitable donations?**

**Score: 3.5**

Individuals have access to income tax deductions. The ceilings on such incentives are moderately high (up to 25% of one's yearly income). The process of receiving tax benefits is clear and consistent, yet the amount of time and resources needed is not always reasonable, but is affordable. However, legal entities cannot claim a tax deduction or credit at the federal level for contributions made to NCOs, including charities.

Article 217 of the Tax Code establishes that one-time payments (including in-kind donations) made to taxpayers in the form of humanitarian aid (assistance) and in the form of charitable assistance provided by a duly registered Russian and foreign charitable organizations (funds, associations), are tax-exempt.

Legal entities, on the other hand, cannot claim tax deductions on donations to charity.

**Question 5: To what extent is the tax system favorable to POs in receiving charitable donations?**

**Score: 3.5**

Only charitable organizations are eligible to receive significant tax exemptions. The purposes of charitable activities are stated in the Law on Charitable Activity and Charitable Organizations (Article 2). Charitable organizations can carry out charitable activities aimed at achieving the objectives for

which it was created, as well as charitable activities aimed at achieving the objectives stipulated by the law. Charitable organizations can also engage in activities to attract resources and engage in entrepreneurial activities only for the purposes for which it was created, and relevant to these objectives (Article 12). The profit from these economic activities is generally taxed as commercial income.

Donations to charitable activities are always tax exempt (Tax Code, Article 149). The process to receive the tax exemption status is clear and consistent, and requires a reasonable amount of resources and time. A wide variety of organizations are eligible to receive such tax benefits. Organizations are able to raise a significant amount of funds from private sources.

### III. Cross-Border Philanthropic Flows

*The two questions in this section concern laws and regulations governing the fiscal constraints of giving and receiving cross-border donations. The scoring for these questions pertains to the donor and receiving entities.*

**Question 6: To what extent is the legal regulatory environment favorable to sending cross-border donations?**

Score: 3.5

Cross-border charitable donations can be sent without additional cost. Cross-border donations are not eligible for the same tax incentives as domestic donations. The process to send charitable donations abroad is clear and consistent, requiring a moderate amount of resources and time. There are some limitations on the type of activities supported through donated cross-border contributions, but cross-border contributions are not very regular in Russia.

**Question 7: To what extent is the legal regulatory environment favorable to receiving cross-border donations?**

Score: 3.5

Cross-border charitable donations can be received without significant and additional cost. Cross-border donations are not eligible for the same tax incentives as domestic donations. The process to receive charitable donations from abroad is clear and consistent, and requires a moderate amount of resources and time. The Federal Law No. 135-FZ, "On Charitable Activities and Charitable Organizations" requires that non-commercial organizations receiving monetary assets and other property from foreign sources keep separate records of incomes received from foreign sources and report to the authorized body (Article 32).

There are some limitations on the type of activities supported through cross-border contributions. Only charitable and public benefit activities can be supported by donations. There are some concerns about financing political activities overseas, which is determined in the NCO law very broadly leading to unintended categorization of NCOs as "foreign agents" and lose their legal status. Specifically, the Federal Law N 272-FZ "On measures for affecting persons implicated in violation of basic human rights and freedoms, rights and freedoms of the citizens of the Russian Federation"

establishes that a NCO can be suspended if it carries out political activities or other activities considered to be a threat to the interests of the Russian Federation, or receive funds from the US citizens or organizations (Section 3.1). Civil legislation determines donations as a kind of gift.

#### **IV. Political and Governance Environment**

*The three indicator questions in the next two sections concern the political and governance context, socio-cultural characteristics, and economic conditions that influence the environment for philanthropy.*

**Question 8: To what extent is the political and governance environment favorable for philanthropy?**

**Score: 2.8**

There is growing collaboration between the government and the philanthropic sector. The government is open to recognize the role of philanthropic organizations as change agents and, on certain occasions, has encouraged the participation of philanthropic organizations in implementing public programs. Nevertheless, there is no great government support toward charitable programs in terms of money allocated to charity. There have been talks to transfer some social duties to the non-governmental sector, and the government has promised to finance social services.

There is an acceptable level of political and economic stability in the country that is favorable to the success and growth of philanthropy, although this growth is not always in full compliance with the law.

**Question 9: To what extent are public policies and practices favorable for philanthropy?**

**Score: 2.8**

The government rarely promotes or systematically supports philanthropic values and/or facilitates access to national and international resources and opportunities. In recent years, President Vladimir Putin established the Decoration "For Beneficence," which is awarded to highlight significant charity efforts to support social causes and for assisting non-governmental organizations or religious organizations with socially significant activities. However, legal entities do not receive incentives for giving. On the other hand, government agencies still do not have enough capacity to support charities.

#### **V. Socio-Cultural Environment**

**Question 10: To what extent are socio-cultural values and practices favorable for philanthropy?**

**Score: 3.5**

Although Russia has strong religious traditions that support its philanthropic culture, social traditions and values have sometimes been an obstacle to philanthropic success. Before the communist

revolution in Russia (1917), the tradition of philanthropy was in the hands of the wealthy and aristocrats who gave to arts and made contributions to public and social needs (Spero, 2014). Under the communist regime, public well-being was in the hands of the State, and organized charity was not permitted. In the nineties, charitable giving and philanthropy started to grow in the form of corporate philanthropy and foundations. Because of its late development, philanthropy in Russia is in a relatively early stage of development, and the culture of giving to others is not well established among the general population. In fact, it could be said that the idea that social issues are the responsibility of the State still remains in the public. However, philanthropy among the wealthy is significant. The 2015 Coutts report found that 55 percent of donations were given by corporations, 28 percent by foundations, and only 16 percent were given by individuals.

Additionally, people tend to distrust POs sometimes not only due to issues with transparency and accountability, but also because many charitable NGOs are created to avoid taxation or just to publicly fundraise without any clear goals, which is not prohibited by law. People perceive that POs do not always function effectively because there is no strong and transparent criteria of efficiency.

## **VI. Future of Philanthropy**

*These questions are used to provide a general picture of the future of philanthropy in this country as well as recommendations to improve the philanthropic environment.*

### **Current state of the philanthropic sector**

The philanthropic sector can be separated into three groups: two of them are large, both almost of the same size, and the third group is smaller. One has strong government support, including state media and state advertisement, and most of these charitable organizations help children and people with disabilities. The second group acts independently and is, more or less, successful. This subsector has neither State support nor does it receive government pressure. The third portion is rather small, but currently growing. This represents the number of fake charitable organizations that take names similar to famous foundations and try to fundraise from the public with fake stories and without transparent reporting. The government does not pay attention to this situation, which has given this type of organizations the freedom to act.

### **Three major recent events affecting the philanthropic landscape between January 2014 and December 2016**

- Giving Tuesday November 29. It engaged with 900 partners in 124 cities and towns.
- Conferences “Charity in provincial Russia,” which take place every year and gathers potential business partners and regional NGOs to exchange experiences in the implementation of charity programs and discussion of new project ideas.
- Significant increase of private donations.

## **Future development trends in the philanthropic landscape**

The current situation will not change in the near future. We do not expect any new positive or negative legislation or political development in the sphere of philanthropy.

## **Three key recommendations to improve the environment for philanthropy**

1. Do not change any charity-related legislation;
2. Pay attention to growing fake philanthropy; and
3. Increase transparency of the charity activity taking place in this country.



# Serbia

**Expert:** Aleksandra Vesic Antic

**Institutional Affiliation:** Catalyst Balkans

With contributions from staff at the Indiana University Lilly Family School of Philanthropy

## QUICK FACTS

**Legal forms of philanthropic organizations included in the law:** Associations, Foundations, Endowment

**Five main social issues addressed by these organizations:** Arts and Culture, Environment, International Causes, Education and Research, Social Services

**Average time established by law to register a philanthropic organization:** 0-30 days

**Average cost for registering a philanthropic organization:** US \$50

**Government levels primarily regulating the incorporation of philanthropic organizations:** Central/Federal Government

### Philanthropic Environment Scores:

Year	Ease of Operating	Tax Incentives	Cross-Border Flows	Political Environment	Socio-Cultural Environment	OVERALL SCORE
2018	4.7	3.5	3.5	3.4	3.0	3.60

## I. Formation/Registration, Operations, Dissolution of a Philanthropic Organization (PO)

*The three questions in this section pertain to the laws and regulations governing philanthropic organizations (POs). The scoring questions for this category cover three aspects of regulations: (A) formation and registration, (B) operations, and (C) dissolution.*

### **Question 1: To what extent can individuals form and incorporate the organizations defined?**

**Score: 5.0**

The legal framework governing POs in Serbia is comprised of the Law on Associations and the Law on Endowments and Foundations. The Law on Associations permits the formation and operation of unregistered groups, but registration is required if associations wish to take part in legal or financial transactions, such as opening a bank account, having employees, etc. Foundations and endowments must be registered, as they are defined as legal entities by the law. Registration of an association requires a minimum of three founders; individuals or legal entities, domestic or foreign, and anyone over the age of 14 is permitted to be a founder. The Law on Endowments and Foundations requires only one individual or legal entity to be a founder, either domestic or foreign.

Associations and endowments/foundations are free to decide their goals, regulate their internal affairs, and operate in accordance with their statutes and by-laws. No minimum starting capital is required for registering an association or a foundation. However, registering an endowment requires starting capital of no less than 30,000 EUR (approximately US \$32,000). The body in charge for registration is the Serbian Business Registry Agency (SBRA). The list of required documentation is clear, and these documents are relatively easy to create or obtain; clear information on the procedure and required documentation for registration is available online. The registration process is efficient and is conducted with due process in a timely fashion with appropriate rights of appeal or resubmission of further documentation (in some cases, further documentation is requested before registration can be completed). The Registration body is required to process registration (respond) within 5 days; otherwise, it is considered that the request is approved. The registration fee is RSD 4,900 (approximately US \$45). Data from the SBRA registers are available online to the public, and online search is enabled by ID number or name of the organization.

### **Question 2: To what extent are POs free to operate without excessive government interference?**

**Score: 5.0**

Both the Law on Associations and the Law on Endowments and Foundations provide a simple framework of governance requirements; for the most part, requirements represent global best practices in POs. POs registered as associations should have a minimum of 3 founders, an assembly of members (with members defined in the statutes of the PO), and a named legal representative(s). POs registered as endowments or foundations should have a minimum of one founder, a board of trustees (with at least three members), a director, and a named legal representative. Basic responsibilities of the prescribed governance bodies are defined by the laws, but, in their statutes, POs can add other responsibilities and/or define other governance bodies. POs may not engage in activities that would work toward the violent overthrow of constitutional order, would violate the

territorial integrity of the Republic of Serbia violate guaranteed human or minority rights, or instigate or abet inequality, hatred, and intolerance neither with regard to racial, national, religious or other affiliations, nor with regard to gender, physical, mental or other features of an individual. Additionally, endowments and foundations are not allowed to have goals/activities directed to specific interests of political parties, such as election campaigning or financing a specific political party. POs are free to use any form of communication channels in their work. Cooperation between the business, the government, and civil society sectors is unrestricted, both within the country and across borders. Participation in country-level or multi-country networks is common. Reporting requirements apply only to registered POs, and are relatively simple to comply with. POs must submit an annual financial reporting form that allows the SBRA to verify the balance sheet and the nonprofit nature of the PO. POs are also asked to publicly publish annual reports.

### **Question 3: To what extent is there government discretion in shutting down POs?**

**Score: 4.0**

The governing body of a PO is permitted to voluntarily dissolve/terminate the PO. The conditions and procedures for such a step are required to be a part of the PO's statutes. The distribution of any property or assets from such a dissolution must be laid out in the statutes and the PO's governing bodies must make a formal decision. If they fail to make such a decision, the local government decides or, in the case of associations, takes over the property. In this case, the association's assets and properties shall become the property of the Republic of Serbia with the usufruct right going to the local self-government unit on whose territory the association had its head office (Law on Associations, Article 43).

In the case of voluntary termination of activities, POs must distribute the remaining property or assets to a nonprofit legal entity founded with a similar purpose. The registration authority does possess the authority to involuntarily terminate the registration of a PO in three situations: 1) the PO's activities are not in accordance with their declared registered goals; 2) the PO's activities are violating the conditions regulated by the laws (working toward the violent overthrow of constitutional order, violating the territorial integrity of the Republic of Serbia, violating the guaranteed human or minority rights, or instigating or abetting inequality, hatred, and intolerance); and, 3) the PO has become a member of a foreign or international organization whose goals or activities are in contravention on point 2. The revocation of registration does not allow for an administrative appeal process and is considered final, but the PO may start legal proceedings against such a decision. The language of the laws does provide the government with a fair amount of latitude in interpreting what activities might be working against the constitutional order or what might be considered as working against human or minority rights. In a worst-case scenario, this latitude, coupled with the lack of an administrative appeal process, could be cause for concern. However, for the time being, this latitude has been rarely used, and in only the most extreme circumstances.

## **II. Domestic Tax and Fiscal Issues**

*The two questions in this section pertain to laws and regulations governing the fiscal constraints of giving and receiving donations domestically.*

**Question 4: To what extent is the tax system favorable to making charitable donations?**

**Score: 3.0**

For-profit legal entities may deduct up to 5 percent of their gross income for healthcare, educational, scientific, humanitarian, religious, and sport-related purposes and environmental protection, paid to institutions and social care service providers registered in accordance with the law regulating social care provision. Deductions are recognized as tax deductible only if the contributions have been given to nonprofit legal entities registered as working in one of these thematic areas, and the donated funds were used directly for those goals and purposes. Legal entities may deduct up to 5 percent of their gross income for investments in cultural purposes and cinematography, with the Minister of Culture possessing the jurisdiction to determine which investments might be deemed as deductible. In reports to Tax Authorities, giving to public benefit purposes is recorded only if the amount given is over 5 percent of gross income. Organizations are not required to provide proof that these expenditures were used as stated, a list of beneficiaries, or the purposes or amounts given. Should the Tax Administration decide to conduct a random 'field check,' then the legal entity is obliged to provide documentation to prove that their report was correct. In practice, legal entities are often not certain what exactly falls into the categories described by the law, while local tax administration offices, when asked, often give an incorrect interpretation of the law. Companies, therefore, often choose not to ask for tax-deduction, lest they be fined for false reporting. Therefore, it is not possible to have records of giving by companies for the public good. The legal framework does not specifically reference in-kind donations and companies are not able to include such donations in tax-deductible costs. Companies donating goods or services are obliged to pay the value-added tax (VAT), which creates a disincentive to in-kind or pro bono donations. There is no tax benefit or incentive for giving for individuals in Serbia.

**Question 5: To what extent is the tax system favorable to POs in receiving charitable donations?**

**Score: 4.0**

All POs are generally exempt from income tax if they pursue public or mutual benefit activities, as defined in their statutes. Gifts less than RSD 100,000 (approximately US \$900) by a single donor in a calendar year are automatically exempt from income taxes. For gifts that exceed the prescribed threshold, the tax authorities require POs to apply for tax exemptions. In practice, the local tax authorities' departments decide if they will pursue this provision or not. Similarly, some POs have been required to pay income tax on income used for administrative or overhead purposes, as the local tax authority determined that such costs were not considered to be in the public benefit. The concept of public benefit status is not developed in tax law; the laws instead address the notion of public benefit activities. However, they are narrowly construed in the Legal Entity tax law, and there is discrepancy in the list of such activities between the Legal Entity Profit Tax Law (Law) and the laws regulating PO work. POs are obliged to pay the value-added tax on all goods and services they purchase—except in cases where the purchases are paid using donations that come from a foreign government as part of the international development assistance programming and fall under the bilateral agreements between the donor country and Serbia. POs are also often obliged to pay the VAT on the value of in-kind donations since in-kind donations are not recognized under the legal framework as having a tax benefit. In practice, while most POs do not have problems with tax

exemptions, the process is under the discretion of local tax authorities and can easily be misused. All POs are free to receive donations and raise funds from any public or private source, company or individual, within Serbia or abroad, without any fear of interference from the government. All donations (individual and corporate) must be documented through a donation agreement/contract between the donor and the recipient.

### III. Cross-Border Philanthropic Flows

*The two questions in this section concern laws and regulations governing the fiscal constraints of giving and receiving cross-border donations. The scoring for these questions pertains to the donor and receiving entities.*

#### **Question 6: To what extent is the legal regulatory environment favorable to sending cross-border donations?**

Score: 4.0

The corporate tax deduction applies only to domestic donations and cannot be applied to donations out of country. Cash donations across borders need to be documented via a donation contract/agreement. Such donations, if made by a PO, should be made for similar purposes as what the PO has registered as its area of work. There are no restrictions on the movement of capital across borders, except those that relate to anti-money laundering. This issue is mitigated through the presence of the donation agreement. No government approval or reporting is required for such cross-border cash donations. In-kind donations are treated just like any other export of goods. Depending on the size and content of the shipment, proper export documentation is required. As such, VAT and other fees are assessed on donations just as they would be with any other export.

#### **Question 7: To what extent is the legal regulatory environment favorable to receiving cross-border donations?**

Score: 3.0

There are few restrictions to receiving cross-border charitable donations, and documenting such donations is similar to receiving in-country donations. In general, the tax treatment for cross-border donations is the same as for in-country donations. In some cases, though POs are freed from paying VAT for purchases paid from donations that come from a foreign government as part of the international development assistance programming and falls under the bilateral agreements between the donor country and Serbia. Regarding in-kind cross-border donations, the procedures are more complex and the application of taxation and customs charges are inconsistent. In principle, most donations should be considered free of customs duties, but that is relevant to the decision-making of the individual customs office where the donation passes through. In these cases, there is an appeal process up through the Customs Authority, but this can be a time-consuming and byzantine process. To complicate matters, for items like medicines or second-hand clothing, there can be difficulty in demonstrating the declared value of the goods. Medicine coming from the United States, where it is much more expensive, will have a declared value many times higher than what the value of the same medicine is in Serbia. This discrepancy in value can result in long delays, even when the final decision is that no customs duty is charged.

#### IV. Political and Governance Environment

*The three indicator questions in the next two sections concern the political and governance context, socio-cultural characteristics, and economic conditions that influence the environment for philanthropy.*

**Question 8: To what extent is the political and governance environment favorable for philanthropy?**

Score: 3.0

In the last five years, Serbia has seen the rise of a right-oriented government, causing a gradual increase in political tensions between the government and POs engaged in human rights, civic activism, media freedom, and similar causes. However, POs focusing on what is generally considered 'humanitarian causes' or socio-economic rights of marginalized groups (children, women, persons with disability, economically disadvantaged etc.) meet less resistance from the side of government, which recognizes that their activities are sometimes lessening the potential of social unrest. POs are rarely publicly recognized as agents of change; even when the government benefits from their involvement, it tends to take credit for any change. While it sometimes pays lip service to POs activities and involvement, in practice the government does not actively support POs. The government only formally allows their involvement in policy development and implementation and often only when pressured by the requirements of the EU integration process or by international stakeholders. Nevertheless, due to persistent engagement and occasional allies in the government, POs have been able to influence some of the policies and their implementation. At this point, Serbia cannot be considered a politically stable country; the current regime has significantly diminished media freedom and has weakened the already fragile institutions and the independence of the judiciary. While this situation has, in some respects, impeded the development of philanthropy, in other cases, it has attracted philanthropic support to certain causes. With a decade-long economic crisis continuing, a similar scenario is seen. The crisis has lowered the contribution levels--especially from corporations-- while also catalyzing support to particular causes like healthcare, marginalized groups, and the economically disadvantaged.

**Question 9: To what extent are public policies and practices favorable for philanthropy?**

Score: 3.7

While the government publicly supports philanthropy, i.e. philanthropic contributions, which in effect subsidize the State (support to medical treatments, education, social services, economically disadvantaged), it generally refuses to support changes in the legal and fiscal framework that would improve conditions for its development. Thus, POs involved in philanthropic development have been, for years, unsuccessfully advocating to introduce tax benefits for in-kind donations, for exemption from paying VAT on in-kind donations for donors and recipients, for tax deductions for individuals, for widening the list of causes that are eligible for tax benefits, etc. POs engaged in philanthropy are, nevertheless continuing to advocate for improving the legal and fiscal environment; they are also developing various forms of support to other POs, especially smaller, community-based organizations, such as trainings, opportunities for networking, increasing access to potential sources

of funding, etc. At the same time, they are developing and offering services to potential donors, particularly corporations. However, while the government allows such engagement it does not actively promote or support it. Moreover, government often uses its power to access donors itself, while at the same time investing very little effort to implement laws or prevent increasing corruption. Until recently, donors and funders were free to support any philanthropic cause and/or organization. However, there were cases where politicians used their power to promote and initiate support from local companies/wealthy individuals to certain philanthropic causes (e.g. giving to the foundation founded by the wife of the President). Further, with political tensions rising, there are signs that support for media freedom, human and civil rights, an independent judiciary, monitoring the work of the government, preventing corruption and similar causes, are not welcome and even that they may be actively suppressed in the future.

## V. Socio-Cultural Environment

**Question 10: To what extent are socio-cultural values and practices favorable for philanthropy?**

Score: 3.0

Serbia has a cultural heritage of philanthropy and solidarity that reached its historical apex in the first half of the 20th century. While this heritage became somewhat muted during the socialist Yugoslavia period, over the past 10 years, a resurgence in giving has taken place. This process is slowed down by the widespread lack of trust among citizens, which, among other values, has been severely diminished during wars in former Yugoslavia. Still, some of the core values, such as solidarity and altruism, have survived. Philanthropy in Serbia is, however, still perceived as a way to help those in needs, rather than a tool/vehicle for solving important societal issues that demand a longer-term approach, such as the environment). Citizens most often support individuals (be those in need of economic support or medical treatments) by donating money, goods or supplies and consumables. This attitude is very slowly changing among citizens while the business sector invests its charitable contributions more strategically. There is still little understanding of POs and what they do, especially those engaged in causes that can be understood as 'political' (e.g. human rights). POs that engage in direct humanitarian activities or support marginalized groups enjoy greater understanding and support. POs bear part of the responsibility; while they respect the legal minimum in terms of transparency and accountability, they rarely invest additional efforts to increase transparency or communicate their results. They are not generally perceived as effective and confidence in POs among the public, while slowly increasing, is still low. There are no social barriers to participate in philanthropic activities on the donor side; however, prejudices make it more difficult for some groups to become recipients, such as Roma people. POs pursuing financial sustainability, businesses implementing CSR practices, and the failure of the State to provide basic needs are positive factors that encourage philanthropy, while a lack of trust remains an obstacle.

## VI. Future of Philanthropy

*These questions are used to provide a general picture of the future of philanthropy in this country as well as recommendations to improve the philanthropic environment.*

## **Current state of the philanthropic sector**

The philanthropic sector in the country is in the stage of maturing. The larger organizations are, for the most part, professionalized and, while still heavily dependent on foreign support, they are making efforts to widen local constituency and learn how to attract their support. At the same time, there is a rise in the number of community-based organizations, which are not professionalized, but are actively turned to attracting local support. There is an increasing number of local private or community foundations, which are acting as intermediaries. On one hand, they are supporting the development of smaller community-based organizations and encouraging them to attract local philanthropic contributions. On the other hand, they are offering services to local donors, particularly corporations. POs increasingly use various methods of fundraising to garner donations from the business sector, citizens, and, occasionally, wealthy individuals. Collaboration, both inter- and intra-sectoral, is also increasing, although effective and efficient networks are still relatively rare. Nevertheless, the range and number of actors and stakeholders is increasing. Media also plays important role; as opposed to other countries in the region, where media still mainly engage only in promoting/informing on philanthropy, in Serbia they often actively engage by acting as informal intermediaries or by founding their own foundations. Overall, while there is still significant work to be done in improving the legal and fiscal environment, in encouraging strategic philanthropy, in supporting POs to be more persistent and effective in attracting local donors, and in creating effective and efficient networks, it can be said that philanthropic sector is making slow, but steady progress in the development of the sector itself and of philanthropy in Serbia.

## **Three major recent events affecting the philanthropic landscape between January 2014 and December 2016**

- In May 2014, severe flooding in Serbia created one of the largest natural disasters in its history and mobilized hundreds of thousands of Serbian citizens to give. In only two months, more than 45 million EUR in giving was recorded, some of which came from more than 2 million SMS messages, each of which donated 1 EUR; this is significant considering the population is just under 7 million people.
- Failure of the State to provide resources for adequate healthcare, especially for persons/children that need medical treatment outside of the country, continuously mobilizes citizens and other actors. In the last three years, at least 12 million EUR (with the true amount likely significantly higher) has been donated to improve conditions in the healthcare system and to support the medical treatment of children and youth and adults abroad.
- The continuation of the withdrawal of foreign donors has influenced the increase in PO efforts to become financially sustainable. There is an increased understanding of the importance of building a constituency, as well as the need to learn to approach, attract, and nurture local donors. In the last three years, there is a continuous increase of support to POs, as they learn to better communicate to the public. In 2016 alone, four POs raised a combined nearly US \$2 million through public campaigns.

## **Future development trends in the philanthropic landscape**

**Donors:** Mass individual giving (through campaigns) will continue to increase, making citizens the most ‘active’ donor type, while the business sector will continue to strategically invest larger amounts.

**Purpose of giving:** Four primary purposes for which contributions are made will remain healthcare, support to marginalized groups, poverty reduction, and education. However, environment, economic development, culture and arts, as well as other less supported causes will slowly become more attractive to donors.

**Beneficiary institutions/primary recipients:** Philanthropic organizations will increase their ‘share’ both in the number of donations as well as amounts received. However, the State will, for some time in the future, remain the most prominent recipient (both State institutions—health, social, educational—and local/national governments).

**Final beneficiaries:** Key beneficiaries will remain persons with health issues, economically disadvantaged, people with disabilities, and local communities. However, the ‘share’ to other final beneficiary groups, such as children without parental care, elderly, youth at risk, gifted youth, etc., will slowly increase.

**What is donated:** While donors will continue to donate money in the majority of instances, in-kind donations, pro bono services, and donating time (volunteering) will see a slow increase. On-line giving is also likely to increase.

**Ways of donating/fundraising:** Campaigns, crowdfunding, and cause-related marketing will be increasingly used.

**Legal & fiscal environment:** No major improvements are likely to be achieved in the next year or two, although smaller steps might be made.

**Infrastructure:** Intermediary organizations will grow, both in number and in strength and capacity; more organizations (both nonprofit and for-profit) that offer services to POs to help them increase their income from local philanthropy will emerge. Existing networks will become stronger and some new ones might emerge.

## **Three key recommendations to improve the environment for philanthropy**

- Increase pressure on the government for improving the legal and fiscal framework, as well as for enabling the efficient use of already existing mechanisms (e.g. tax-deductions for business sector) and improving conditions for easier giving.
- Increase support to develop the infrastructure for philanthropy by supporting intermediaries that support POs in attracting local contributions and organizations that educate and support donors, by offering services to both POs and donors, and helping to strengthen networks with clear goals.

- Invest in efforts to increase the transparency and availability of data related to giving, increase the accessibility/availability of government and tax authority data, create better reporting by media, increase transparency of donors, beneficiaries, and amounts donated, as well as transparency of recipients, both in terms of amounts as well as the results achieved.



# Slovakia

**Expert:** Boris Strečanský

**Institutional Affiliation:** Centrum pre filantropiu n.o. (Center for Philanthropy)

With contributions from staff at the Indiana University Lilly Family School of Philanthropy

## QUICK FACTS

**Legal forms of philanthropic organizations included in the law:** Association, Benefit Corporation, Foundation, Society. Others: Non-Investment Fund, Interest Association of Legal Personalities

**Five main social issues addressed by these organizations:** Primary and High School Education, Basic Needs, Youth and Family, Housing and Economic Development, Religion

**Average time established by law to register a philanthropic organization:** 0-30 days

**Average cost for registering a philanthropic organization:** US \$60

**Government levels primarily regulating the incorporation of philanthropic organizations:** Central/Federal Government, Other: Regional Authorities of Central Government

Nonprofit organizations providing generally beneficial services are registered by Regional Authorities of State Administration (in 8 different regions and keep records and files in different offices).

### Philanthropic Environment Scores:

Year	Ease of Operating	Tax Incentives	Cross-Border Flows	Political Environment	Socio-Cultural Environment	OVERALL SCORE
2018	4.3	3.7	4.1	3.1	3.0	3.62

## I. Formation/Registration, Operations, Dissolution of a Philanthropic Organization (PO)

*The three questions in this section pertain to the laws and regulations governing philanthropic organizations (POs). The scoring questions for this category cover three aspects of regulations: (A) formation and registration, (B) operations, and (C) dissolution.*

### Question 1: To what extent can individuals form and incorporate the organizations defined?

<b>Score: 4.3</b>
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The Constitution of the Slovak Republic guarantees the “right to associate with others in clubs, societies, or other associations” Article 29 (1) of the Consitution of the Slovak Republic, and in general, individuals can form POs without any barriers. However, organizations are required to obtain legal personality.

The kinds of purposes a philanthropic organization can have are very broad. For example, in the case of associations, the 83/1990 Law on Associations (Law on Associations) defines their purpose based on what they can not be; meaning that the law does not enumerate eligible purposes, but defines ineligible purposes; such as establishing for military purposes or for purposes contrary to the constitution or laws (Section 4 of Law on Associations). The Law on Associations (Section 5) forbids purposes that overlap the purposes or functions of state agencies. Requirements for registration are not excessive - the paperwork is not onerous and the registration fee is affordable (typically around US \$60). Three citizens are required to establish an association, and least one of them must have reached the age of eighteen years (Section 6 (2) of the Law on Associations).

The 34/2002 Law on Foundations states that foundations can be established by a natural or legal person (Section 4 (1) of Law on Foundatiosn) to support a public benefit purpose (Section 2(1) of Law on Foundations). The founders need to submit a written proposal with the Foundation Deed to the Ministry of Interior of the Slovak Republic in order to register the foundation in the Registry of Foundation (Section 2 (2) and Section 6 of the Law on Foundations). There are requirements for minimum capital in case of foundations and these are not excessive either. The minimum required capital by any founder is EUR €663 (approximately US \$780). The minimum required capital for the establishment of a foundation is EUR €6,638 (approximately US \$7800) (Section 3 (2) of Law on Foundations).

The 213/1997 Law on Nonprofit Organizations Providing Generally Beneficial Services (NPO Law) states that nonprofit organizations can be founded by a natural or legal person for providing public benefit services as its primary activity, such as: health care, education, or science (Section 2 and Section 5 of the NPO Law). To establsih a nonprofit organization registration documents including the Founder’s Deed need to be submitted to the Regional Registration Office. Sometimes different regional state authorities show inconsistencies in assessing the by-laws submitted for registration (especially in the case of nonprofit organizations generally providing beneficial services).

**Question 2: To what extent are POs free to operate without excessive government interference?**

Score: 4.2

In general, there are very few restrictions in terms of the purposes an organization can pursue. As mentioned above, associations (which are the most popular type of legal form of PO) are only banned in cases when their purpose is aimed at violating and infringing personal, political or other rights of citizens due to their nationality, gender, race, origin, political or other convictions, religious beliefs and social standing or they instigate hatred (Section 4 (a) of the Law on Associations). Another restriction put on associations is that they can not form armed groups (Section 4 (c) of the Law on Associations) and can not perform functions assigned to state bodies (Section 5 of the Law on Association).

Purposes of other common legal forms - foundations, nonprofit organizations providing generally beneficial services and non-investment funds - are defined in the respective laws; however, the list is not comprehensive so it leaves room for certain flexibility.

In the case of non-profit organizations providing public benefit services, when the purpose for which they are registered is regulated by other laws or special regulations the nonprofit organization must comply with these other laws too (Section 3 of the NPO Law). That limits somewhat their choices. The Law on Foundation regulates the expenditures of the foundations: the assets need to be used for public benefit purposes (Section 28 (1) of the Law on Foundations), and the foundation can participate only in particular entrepreneurial activities, such as running a charitable lottery, renting real estate, or organizing cultural, educational, social or sporting activities that are in compliance with the public benefit purpose of the foundation (Section 29 of the Law of Foundations).

There are no formal restrictions on contacting or cooperating with actors from other sectors, however, the practice is often that public sector institutions lack interest in and understanding of how to build effective partnerships and collaborations with POs in challenging issues such as Roma inclusion or anti-corruption.

There are no formal or informal restrictions on the use of internet and social media. Reporting requirements depend on several factors; for instance, if the organization is tax-exempt, the amount of donations received; and the legal organizational form. In general, reporting requirements are more demanding for foundations and nonprofit organizations providing public benefit services than for associations (which have none). Foundations need to prepare an annual report. If annual income of a foundation from external sources (i.e. not from revenues from its own assets such as gifts, contributions etc.) exceeds the sum of EUR €200,000 (approximately US \$235,000), its annual balance sheet needs to be verified by a licensed auditor (Section 34 and Section 35 of the Law on Foundations.). Nonprofit organizations also need to prepare annual reports (Section 34 of NPO Law), and the Annual Accounts Report needs to be authorized by an auditor if the subsidies of the state budget are more than EUR €33,193 (approximately US \$39,000) or if their total income exceeds EUR €165,969 (approximately US \$195,000) (Section 33 (3) of NPO Law).

**Question 3: To what extent is there government discretion in shutting down POs?**

Score: 4.0

The termination of associations is simple and unrestricted: they can be terminated voluntarily specifying the distribution of assets in their registered bylaws or in the resolution adopted by the body paramount of the association; or they can be terminated upon a decision of the Ministry of Interior if the association operates contrary to the laws (Section 12 of the Law on Associations). The Ministry of Interior can terminate the organization only in specific cases such as acting against lawful purposes, or in the case of associations, when membership is involuntarily forced or harmed (Section 12 (3) of the Law on Associations). The Law on Associations provides the possibility of appeal and provides time for discontinuing the causes of termination (Section 12 of the Law on Associations).

These principles in some approximation apply also to foundations and nonprofit organizations providing publicly beneficial services. In the case of nonprofit organizations and foundations, it is the court that makes the ruling, not the registration authority – like the Ministry – in the event of involuntary dissolution (Section 15 of the NPO law, and Section 15 of the Law on Foundations). In the case of nonprofit organizations providing publicly beneficial services, there is a significant regressive condition in the dissolution regulation that makes this organization automatically shut down if it fails to submit its annual report to the (electronic) registry of financial statements (Section 14 (g) of the NPO Law). This does not provide the PO a possibility of correction, which is inadequate.

In the case of the nonprofit organization providing public benefit services, there is also an ambiguity in interpretation of what are the "inappropriately high expenditures in connection to the scope of provided generally beneficial services" (Section 15 (1) (c) of the NPO Law).

**II. Domestic Tax and Fiscal Issues**

*The two questions in this section pertain to laws and regulations governing the fiscal constraints of giving and receiving donations domestically.*

**Question 4: To what extent is the tax system favorable to making charitable donations?**

Score: 3.5

Tax deductions for charitable donations are limited for both individuals and corporations. Instead, there is a widely used system of the tax designation that allows any taxpayer – individual or corporate – to designate 1 percent or 2 percent (in the case of corporation) and 2 percent or 3 percent (in the case of individual) of its paid income tax towards one or more POs that are registered in a publicly available list.

This mechanism of tax designation can not be considered as private philanthropy. However, in the case of corporate taxpayers, it motivates them to donate to POs from their private resources because the system includes a condition that if they do make a private donation in the amount of at least 0.5 percent of their paid income tax, then they may designate 2 percent instead of 1 percent from their paid income tax (Section 50 (1) (b) of the 595/2003 Law on Income Tax). So if a corporation makes a donation in that level (at least 0.5 percent), the total contribution to PO consists of 0.5 percent of

charitable donation and 2 percent of tax designation. If the corporation does not make the donation in the minimum limit, it may designate only 1 percent from its paid tax. It should be noted that the corporation does not receive any tax deduction on the 0.5 percent private donation. The tax designation system is widely used (more than 50 percent of corporate and individual taxpayers use it and more than 30 percent of all POs register for it every year). In the tax deduction system, individual or corporate donors have two tax credit regimes for cash contributions that relate to 1) research and development, but not necessarily only to POs, also to other types of entities including private for-profit ones, and 2) sports. A taxpayer may use 25 percent of its investment into the R&D as tax deductible (Section 30b of the Law on Income Tax). The reporting practice for donors is unclear and ambiguous. It can be concluded that the tax system is only partly favorable to making charitable donations.

**Question 5: To what extent is the tax system favorable to POs in receiving charitable donations?**

**Score: 4.4**

All POs are eligible for full tax exemptions on donations received and on revenue derived from their main activity (Section 12 (7) (a)-(b) of the Law on Income Tax). Not all POs are exempt from property and road taxes as this depends on the taxation authority which in the case of property taxes is a responsibility of the municipal government. There is no specific process for obtaining tax-exempt status – so no barriers exist in this area. A POs qualify for this status automatically by being created as an association, foundation, nonprofit organization providing generally beneficial services, non-investment fund, etc. The system is simple and clear and consistent. Any PO can benefit from it. Theoretically, POs are able to raise funds from private resources, in practical life, this does not happen because it is easier for many POs to apply for grants from public sources than to make a tedious effort of approaching many private individuals or corporations. At the same time, the amounts raised from private sources have been increasing lately.

### III. Cross-Border Philanthropic Flows

*The two questions in this section concern laws and regulations governing the fiscal constraints of giving and receiving cross-border donations. The scoring for these questions pertains to the donor and receiving entities.*

**Question 6: To what extent is the legal regulatory environment favorable to sending cross-border donations?**

**Score: 4.0**

There are very limited tax credits or deductions in Slovakia – therefore cross-border charitable donations from Slovakia to recipients abroad have also no fiscal effect for donors – individuals or corporations. The existing tax benefits on investments to R&D apply only if the receiving entity conducts activity in Slovakia. Similarly, tax deductibility of the sponsorship gifts for sports activity applies only to tax entities of Slovakia.

Cross-border giving to recipients outside of Slovakia does not bear any tax benefit for donors. Therefore there are no impediments to it and if an individual or corporation decides to provide a

cross-border gift, there are no barriers to it and it does not require any specific procedure. There is very little information on this type of giving – if it exists at all. It can be assumed that it is not significant.

**Question 7: To what extent is the legal regulatory environment favorable to receiving cross-border donations?**

**Score: 4.1**

Cross-border financial charitable donations can be received (by POs) without any additional cost – i.e. VAT. PO recipients of cross-border financial charitable donations may be required in these cases to prove their charitable status and pertinent tax treaty (double taxation prevention treaty) articles apply. In these cases the tax relief is provided at the source, i.e. the donor does not have to pay income tax on the cross-border gift to such entity. The proof certificate is issued by the Tax Authority within 30 days upon request of the PO receiving cross-border donations. However, to ensure that the foreign donor can benefit from the tax-exempt status of the recipient entity in Slovakia, there are also entities that facilitate the process, as a part of the donor service in Europe – see <http://www.transnationalgiving.eu/en/>. In Slovakia, there are partner organizations as well, such as the Carpathian Foundation Slovakia (Transnational Giving Europe, 2017).

In-kind donations (goods or services) are more problematic, as the goods and services are considered subject to VAT tax and there are no tax exceptions for in-kind donations either.

#### **IV. Political and Governance Environment**

*The three indicator questions in the next two sections concern the political and governance context, socio-cultural characteristics, and economic conditions that influence the environment for philanthropy.*

**Question 8: To what extent is the political and governance environment favorable for philanthropy?**

**Score: 3.2**

There are some political tensions between the government and the philanthropic sector. For example, the prime minister has many times expressed criticism towards third sector organizations as “fifth column” undermining political stability, supporting opposition political groups, and acting mostly through foreign funding to influence the political process (ERSTE Stiftung, 2017). At the same time, government cabinet keeps the office of the Governmental Plenipotentiary for the Development of Civil Society which is an important institutional body that provides a point of contact and dialogue between POs and the government. There were several legal and fiscal improvements enacted in 2016 ensuing from that dialogue with the POs. For example, the Income Tax Law was modified so that it improved the Tax Designation system.

However, the political and economic system does not fully recognize the potential of independent groups as actors and agents of social change that can significantly contribute to address the many challenges Slovakia is facing: social inclusion, education quality or humanization of social services, human rights protection, and corruption. For example, the concept of community centers as an

effective local solution in disadvantaged areas has been formally recognized in documents and approved, but practical steps that would create the conditions and environment for their support and proliferation with local stakeholders buy-in have been taken only sporadically and existing efforts often suffer with inflexible regulations of public sector and excessive administrative and bureaucratic burdens. There have been attempts by the government to involve POs in policy development and implementation in anti-corruption efforts (European Commission, 2014), but these attempts have not been converted into practical results and the perception is that these are only a formality. The prevailing attitude of the government is that the public and commercial sectors are the key sectors in the country. Macroeconomic conditions have been improving in last two years and contributed to the autonomy and sustainability of the philanthropic sector at present.

**Question 9: To what extent are public policies and practices favorable for philanthropy?**

**Score: 3.0**

The government does not promote or support the philanthropic culture. There are no public efforts to promote philanthropic values. There is still a lot of old-school gravity in the thinking of state and local government bureaucrats that do not appreciate the potential of POs in contributing to welfare services and good policies and prefer centralized and institutionalized solutions in areas where decentralized, self-governing and private initiative can be used.

The POs have to compete for equal access to resources and opportunities. For example in the area of social service delivery, local governments trust organizations that they can control or have founded rather than independent and self-governed POs. The end result is that clients are first directed to local public institutions, and closer, more accessible and friendlier institutions run by independent POs are not given equal funding.

There is no direct governmental pressure on donors to support specific causes. There are problems in enforcing the law to prevent fraudulent charitable activity of some entities claiming falsely to collect funds for charitable purposes. Lack of capacity and capability, as well as the complicated legal framework, contribute to the ineffective enforcement of these cases. Government does not implement effective laws and programs to prevent corruption.

## **V. Socio-Cultural Environment**

**Question 10: To what extent are socio-cultural values and practices favorable for philanthropy?**

**Score: 3.0**

Philanthropy in Slovakia is a hybrid phenomenon with two faces: a traditional face and modern one (Strečanský, 2017). The traditional “philanthropic” attitude is driven by the commonalities of “us” and reflects the culture of the society that is based on the mutual relationships (Gemeinschaft) and not on impersonal rules and regulations (Gesellschaft).

An important cultural factor that informs the culture of the traditional expression of solidarity is the Christian ethics that creates moral pressure for offering help to those that are in need and also calls

for humbleness in these actions, so they do not become a source of formal recognition. These two are in a contradiction. On the top of that as a former Soviet satellite, Slovakia carries a historical burden of four decades of a social utopia experiment with the ambition to achieve common good through coercion and ideological obedience. The experience with a closed totalitarian welfare state destroyed the country's social fabric that had been built for centuries and was so important to the level of trust in society, as well as moral decision-making and charitable behavior. The process of ambivalent modernization in a paternalistic state taught generations of Slovakian citizens that individual initiative is punished and that passively waiting for the state to deliver is rewarded. POs are today slowly gaining trust. Intermediaries are less trusted. Individual donations are on the rise, also thanks to the emergence of new technologies and online spaces and tools for giving (European Fundraising Association, 2013).

## VI. Future of Philanthropy

*These questions are used to provide a general picture of the future of philanthropy in this country as well as recommendations to improve the philanthropic environment.*

### Current state of the philanthropic sector

The philanthropic sector in Slovakia is in a better place than it was 10-15 years ago; but it is far from meeting its real potential. Charitable behavior has become more common in part due to the improved socio-economic conditions, which increase the financial capacity for giving, and partly due to the intensified activity of POs approaching donors for support both off- and online. Public fundraising activities and online giving to nonprofit organizations show a steady increase in the number of donors, donations and amounts donated.

The segment of institutionalized philanthropy also shows uneven development. The biggest growth and development can be observed among corporate foundations that have grown a lot in the last 10-15 years thanks to the tax designation mechanism. However, corporations remain still too much entrenched in corporate communication and mainly attend to corporate-driven issues. A positive development is visible in the number of POs founded by high net worth individuals that invest in larger and riskier projects in education, anti-corruption or community services. There are also several infrastructure organizations that have a collective impact in the improvement of capacity and capability of the philanthropic sector in Slovakia, such as the Slovak Fundraising Center or the Center for Philanthropy, the Association of Corporate Foundations, Pontis Foundation, Association of Community Foundations, and Slovak Donors Forum. The cooperation between philanthropic organizations and the corporate sector is intense and developed (Pontis Foundation). There is also intra-sectoral cooperation in the form of coordination of policy initiatives towards the improvements in the legal and fiscal environment that include key PO actors.

However, Slovakia still has a long way to go in overcoming the challenges that the lingering and pervasive idea of “otherness” has on charitable behavior in the region. Despite the traditional Christian heritage that is important in Slovakia and emphasizes solidarity with those who are needy, many people struggle to overcome their mistrust of other cultures and religions — the “strangers”. There are encouraging examples, such as initiatives organizing material assistance and volunteer efforts to help refugees, but these do not get to the news.

Western neighbors including the Czech Republic's generosity and vibrancy of the civil society outperform Slovakia's in many aspects. But even with lower levels of generosity, philanthropy in Slovakia manifests more intensively today than it did 15-20 years ago. It is not yet a major social changing force, but it is contributing to addressing challenges in society — and, more importantly, in building broader participation of citizens and becoming less of an elitest activity.

### **Three major recent events affecting the philanthropic landscape between January 2014 and December 2016**

- Adoption of the Amendment on the Income Tax Law in December 2016 that increased the motivation of corporate taxpayers for making a donation worth of 0.5 percent of their paid income tax, which in turn allows them to designate 2 percent of their paid income tax to a PO. This stimulates corporate giving;
- Debate over the European refugee crisis. In 2015 while "extremist groups mobilized anti-immigrant sentiment and strengthened collaboration between right-wing groups from other countries, a loose coalition of citizens came together to form the Výchova k ľudskosti (Plea for Humanity) initiative in support of humane treatment for refugees, while other nonprofit groups began collecting donations and organizing volunteers" (Freedom House 2016); and
- Growing polarization in Slovak society. "One of the major polarizing themes, in which the CSO sector was also significantly involved, was the discourse on human rights, family values and LGBTI rights" (Erste Stiftung 2017, p. 95) where POs created coalitions to promote the so-called life partnership concepts.

### **Future development trends in the philanthropic landscape**

1. There will be a continued increase of online giving through existing charitable portals and crowdfunding platforms;
2. More POs will be using a combination of offline and online tools for building a community of supporters and sympathizers and making them regular donors;
3. It can be expected that with the growth of giving also potential frauds will be discovered and publicizing these cases may put more pressure on accountability and transparency and reporting requirements to POs; and
4. The rising challenges in the socio-economic disparities and tensions resulting from inefficient government policies will force the government (central and local) to cooperate more with non-state actors.

### **Three key recommendations to improve the environment for philanthropy**

- Establishment of independent charity/philanthropy watchdog to provide an impartial and qualitative assessment of the quality, reliability, and effectiveness of POs and orientation for donors;

- More publicity and public recognition for philanthropy. This includes effort in publicizing examples of various individuals who invested their resources for common good and what did this journey bring to them and to the society. More intensive efforts of POs to increase citizens' engagement, volunteering, and inclusion. Also, this includes investments into the fundraising positions and profession of fundraisers and fund developers; and
- Adoption of legislation that will allow individual taxpayers to increase their tax designation from 2 to 3 percent in case they make a gift from their other income that is at least 2 percent of their income tax. Basically, the similar mechanism – gift matching – as exists among the corporate taxpayers in the tax designation mechanism.



# Spain

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## QUICK FACTS

**Legal forms of philanthropic organizations included in the law:** Association, Foundation

All foundations are public benefit organizations. Private – not public benefit – foundations do not exist as a legal form in Spain.

**Five main social issues addressed by these organizations:** Higher Education, Arts and Culture, Basic Needs, Housing and Economic Development, International Causes

**Average time established by law to register a philanthropic organization:** 61-90 days

Registration varies considerably depending on the type of organization. For associations, according to Article 30.1 AA, registration may take a maximum of 90 days. For foundations, according to Article 29.3 Royal Decree 1611/2007 of 7 December registration could be a maximum of 180 days. For associations to be recognized as public benefit organizations, they may wait a maximum of 180 days, according to Article 3.9 of Royal Decree 1740/2003, of 19 December. Registration for associations is voluntary.

**Average cost for registering a philanthropic organization:** US \$34-\$300

This does not include the initial endowment for foundations, which is EUR €30,000 (US \$36,000), according to Article 12 of the Foundations Act, n. 50/2002, of 26 December, but only administrative and notarial costs.

**Government levels primarily regulating the incorporation of philanthropic organizations:** Central/Federal Government, State Government

It depends on the geographical area where the organization mainly operates. Spain is a decentralized country; regions (Comunidades Autónomas) have their own registries and, in some cases, their own laws on foundations or associations that always comply with the basic regulation approved by the National Congress (Cortes Generales).

**Philanthropic Environment Scores:**

<b>Year</b>	<b>Ease of Operating</b>	<b>Tax Incentives</b>	<b>Cross-Border Flows</b>	<b>Political Environment</b>	<b>Socio-Cultural Environment</b>	<b>OVERALL SCORE</b>
<b>2018</b>	4.3	4.0	4.5	3.5	3.5	3.97

## I. Formation/Registration, Operations, Dissolution of a Philanthropic Organization (PO)

*The three questions in this section pertain to the laws and regulations governing philanthropic organizations (POs). The scoring questions for this category cover three aspects of regulations: (A) formation and registration, (B) operations, and (C) dissolution.*

**Question 1: To what extent can individuals form and incorporate the organizations defined?**

**Score: 4.0**

Freedom of association is granted in the Constitution, Article 22. There are different requirements between the incorporation of foundations and associations. According to Article 8 of the Foundations Act (Ley de Fundaciones, 50/2002, December 26), both legal and natural persons, public or private, can form a foundation. In order to obtain legal personality, foundations must be registered in the national registry (Registro de Fundaciones de Competencia Estatal) under the Ministry of Justice, or under the corresponding regional registry. Only foundations registered in these registries can use the denomination of “foundation.” Some of the requirements for the constitution of a foundation include the certificate of denomination, statutes, and the endowment of €30,000 (US \$36,000) (Article 12).

The Associations Organic Act 1/2002, of March 22, regulates the incorporation of associations. The law does not include political parties, trade unions, business organizations, faith-based organizations, sports federations, or consumer and user associations, which are regulated by special laws. The law does not include cooperatives, partnership contracts, mutual societies, or other groups with economic interests. Associations are established by the agreement of three or more legally constituted natural or legal persons, public or private (Article 5-1). The agreement must include the approval of the bylaws, and must be formalized by means of a founding act through a public or private document. After obtaining legal personality, registration in the National Registry of Associations, which is under the Ministry of Interior, is required to obtain full capacity to act (Article 10).

**Question 2: To what extent are POs free to operate without excessive government interference?**

**Score: 4.0**

We have considered differences between associations and foundations when scoring. Associations must operate based on what is established in their own bylaws, provided they are not in contradiction with the guidelines provided in the Associations Act. Article 11 of the law requires that associations have a general assembly and an internal body in charge of representing the interests of the association. When the internal functioning procedures are not included in their bylaws, associations must follow the guidelines in Article 12 of the Associations Act. Foundations are also free to operate and establish their internal structure and functioning procedures. However, Articles 14 and 15 of the Foundations Act establish that they must have a Board of Trustees with a minimum of three members who shall elect the President among them, if it is not, otherwise, established in the bylaws.

POs are completely free to communicate through media channels and have no limitations. However, foundations are somewhat inhibited in their internal governance by supervising authorities, as some procedures require their approval, such as reforms of bylaws (Article 29) or some other management decisions (Articles 21 and 22 of the Foundations Act, 2002)

**Question 3: To what extent is there government discretion in shutting down POs?**

**Score: 5.0**

Philanthropic organizations can be voluntarily dissolved by its members, by causes determined in article 39 of the Civil Code. Alternatively, POs can be forced to dissolve by a court decision under certain circumstances. Although dissolution requires an administrative procedure and, therefore, some bureaucracy, legal regulations exist and are clear.

In principle, Articles 22 and 34 of the Constitution recognize that associations and foundations will only be involuntarily dissolved if there exists a judicial sentence. Specifically, foundations will be dissolved under the following circumstances: A) the term for which it was established expires; B) the foundational purpose has been fulfilled; C) it is impossible to carry out the founding purpose; D) in case of a merger; E) any other cause foreseen in the bylaws; or F) any other cause established in the laws (Article 31 of the Foundations Act). In the cases contemplated in paragraphs B), C) and E) the dissolution requires the agreement of the Board of Trustees ratified by the Protectorate of Foundations. If there is no agreement of the Board of Trustees, or if the dissolution is not ratified by the Protectorate, the termination of the foundation will require a reasoned judicial decision, which may be requested by the Protectorate or by the Board of Trustees. In the case of paragraph F) a reasoned judicial decision will be required (Article 32).

Article 17 of the Associations Act regulates the dissolution of associations. Associations can be dissolved by the causes provided for in the bylaws or by the will of the members expressed in a General Assembly. Causes for involuntary termination are those included in article 39 of the Civil Code, such as an expiration of their legal term, fulfilment of the purpose for which they were created, or an inability to fulfill its purposes, and a final judicial sentence.

## **II. Domestic Tax and Fiscal Issues**

*The two questions in this section pertain to laws and regulations governing the fiscal constraints of giving and receiving donations domestically.*

**Question 4: To what extent is the tax system favorable to making charitable donations?**

**Score: 4.0**

Individuals and corporations have access to tax incentives (credits) when donating to public benefit associations or foundations, other specific PO, such as Spanish Red Cross, National Organization for Blind People and Caritas, Public (Federal or State) Universities, or Sport Federations. Foundations established by churches and that have an agreement with the Spanish Government also qualify for tax deductions. Donations to the Catholic Church and to other churches or religious entities that have an agreement with the Spanish Government are also deductible. Individuals

receive 75 percent deduction for donations up to EUR €150 (US \$180) per year, 30 percent deduction for an amount/value exceeding EUR €150 (US \$180), or 35 percent for the amount/value exceeding EUR €150 (US \$180) if it is a regular donation (at least the same amount/value during 3 years donated to the same PO). Corporations receive a 35 percent deduction of the amount/value of donations and a 40 percent deduction for regular donations.

These percentages could be increased in 5 points depending of the activities of PO, according to the State Budget Annual Law. Regions are able to establish additional tax incentives for individuals, and some of them do. However, there is a ceiling of 10 percent of annual taxable base for individuals and corporations; the amount/value of the donation cannot exceed the 10 percent of the annual income, any exceeding amounts/values cannot be deducted. Corporations can deduct the excess in the next 10 years, but not individuals. Donations to non-public benefit associations are deductible for individuals at 10 percent of the amount/value (Act 49/2002, of 23 December, on tax status of nonprofit organizations and the fiscal incentives to philanthropy, Articles 19 and 20).

**Question 5: To what extent is the tax system favorable to POs in receiving charitable donations?**

Score: 4.0

Few types of organizations receive tax benefits. Two ranges do exist: i) public benefit associations and foundations, as well as organizations mentioned above in question 4; and ii) non-public benefit associations that serve only to their members or for other reasons have not been recognized as public benefit organizations, which, in some cases, is voluntarily. Social enterprises or cooperatives, for example, are not considered as nonprofit organizations.

Public benefit associations and foundations have to comply with some requirements, but tax incentives are automatically applied, providing their compliance and without prejudice to the inspection powers of tax authorities (Article 3 Act 49/2002).

Tax benefits apply to the following taxes: conveyance tax and stamp duty; economic activities tax; and corporation tax (Article 6, art. 7 and art. 15 Act 49/2002). Some of the income is taxable at 10 percent; for example, economic activities not related to the purpose of the organization (Article.10 Act 49/2002).

Regarding value added tax (VAT), POs can benefit from some exemptions independently of their public benefit status, if they provide educational, cultural, social, sport, or health services. Nevertheless, exemption from VAT is not necessarily a benefit, insofar as it limits the deduction of VAT when the CSO acquires goods and services (VAT Act n. 37/1992, of 28 December).

Donors giving donations to tax-exempt POs are eligible to receive tax deductions. Donations are, in all cases, tax-exempt for POs, except if they are used to fund economic activities that are not exempt. Donors do not pay taxes for donations and they receive deductions in the terms mentioned above. Non-public benefit associations receive a lower range of exemptions and some of their incomes are taxed;(for example, all economic activities, related or not related to the purpose of the organization are taxed at 25 percent. As mentioned above, only individuals receive deductions, and at 10 percent (Article 68.3, a, Act 35/2006 of 28 November).

### III. Cross-Border Philanthropic Flows

*The two questions in this section concern laws and regulations governing the fiscal constraints of giving and receiving cross-border donations. The scoring for these questions pertains to the donor and receiving entities.*

**Question 6: To what extent is the legal regulatory environment favorable to sending cross-border donations?**

**Score: 4.0**

Spain has been compelled by the European Commission to adapt its internal legislation to Persche and Stauffer cases (less red tape and non-discriminatory tax treatment for donors and philanthropic organizations throughout the European Member States), since cross-border, donations are not eligible for tax incentives as domestic donations are. At the same time, some foreign-based foundations have received unequal tax treatment regarding capital gains obtained in Spain, compared to Spanish POs that are exempt. However, some improvements have been introduced in particular cases by court decisions.

Aside from the existing tax limitations, there are no other restrictions to send cross-border charitable donations, provided they meet the Anti Money Laundering and Financing of Terrorism legislation. This legislation does not prohibit cross-border flows of money, but establishes some due diligence procedure for POs. There are no limitations on the types of activities that can be supported, if they are legal and related to the purposes of the PO, according to its bylaws. Some restrictions could arise when sending donations to individuals or entities located in certain prohibited countries.

**Question 7: To what extent is the legal regulatory environment favorable to receiving cross-border donations?**

**Score: 5.0**

Donations from abroad are treated as domestic donations. The costs incurred are financial ones imposed by the banks, similar to the costs of transferring donations abroad. As mentioned above, according to the AMLFT legislation, POs should comply with some requirements in order to identify donors and to assure that the origin of the funds is not illegal. The process will be more complex depending on the originating jurisdiction of donations.

#### IV. Political and Governance Environment

*The three indicator questions in the next two sections concern the political and governance context, socio-cultural characteristics, and economic conditions that influence the environment for philanthropy.*

**Question 8: To what extent is the political and governance environment favorable for philanthropy?**

**Score: 3.0**

In the last few decades, after the restoration of democracy in 1976, the philanthropic sector in Spain has grown considerably into a new framework of relationships between the State and the philanthropic sector. This framework is characterized by “progressive secularization, a new favorable legal and tax environment open to all NPOs, and the emergence of civil society in terms of a growing number of both nonprofits and individual and corporate donors” (Rey-Garcia and Alvarez-Gonzalez, 2015).

According to the statistics of the Ministry of Interior (Anuario Estadístico, 2015), in 2015 there were 46,620 associations in Spain, almost double the amount of existing associations in 2004. Rubio and Sosvilla (2016) estimate that in 2014 there were 14,120 registered active foundations in Spain, 71 percent of which were created by natural persons. Furthermore, the survey of the Third Social Sector Yearbook “*Anuario del Tercer Sector Social*” (2015), shows that more than half of the organizations in the sector are 20 or more years old, and one in five has between 15 and 19 years of experience, showing the strength the sector.

In recent years, the participation of civil society has increased and POs are recognized as representatives in the public policy decision-making process. According to the Third Social Sector Yearbook, 40 percent of participating organizations said that they had been consulted in the three last years to participate in developing public policies, and 39 percent think that their recommendations were well considered. However, there is still some public distrust toward private initiatives in areas of general interest. An example can be found in the recent donation by Amancio Ortega (founder of ZARA) of EUR €320 million (US \$384 million) to the Public Health System. It has been criticized by some sectors.

**Question 9: To what extent are public policies and practices favorable for philanthropy?**

**Score: 4.0**

In general, the government promotes access to public funds for nonprofit private initiatives, but, in the recent years, there have been several cuts. The government promotes funding to activities of public interest, but does not promote the value of philanthropy in and of itself.

## V. Socio-Cultural Environment

**Question 10: To what extent are socio-cultural values and practices favorable for philanthropy?**

<b>Score: 3.5</b>
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Historically, the philanthropic tradition of Spain is founded on the organization and values of the Catholic Church. However, Spain still lacks a giving tradition. In the Civic Engagement Index, which measures donations, volunteering, and helping others, Spain is ranked 32 out of 70. The reason for this, as explained by Majeska (2011), is the strong role that the State and the Church have in providing social services and healthcare, as well as support in areas such as education, social assistance, humanitarian aid, youth development, art and culture, preservation of historical monuments, and parks.

Currently, the average of individual donations to philanthropic organizations in Spain is EUR €180 (US \$220) per year. The greatest amount of donations to foundations – 70 percent – comes from companies, and 30 percent comes from individuals. According to a recent survey, the majority of the population relies on philanthropic organizations, but most desire more transparency within the philanthropic sector. Results of the 2015 Third Social Sector Yearbook show that 69 percent of the surveyed organizations think that they are well perceived and trusted by the population, and 53 percent think that the public knows their work.

## VI. Future of Philanthropy

*These questions are used to provide a general picture of the future of philanthropy in this country as well as recommendations to improve the philanthropic environment.*

### Current state of the philanthropic sector

Philanthropy in Spain has not yet reached sufficient maturity. However, different stakeholders are aware of the need to further develop the sector, and different initiatives have been promoted from different public and private sectors to strengthen the philanthropic sector in Spain.

### Three major recent events affecting the philanthropic landscape between January 2014 and December 2016

- The reform of tax incentives for individuals and corporate donors;
- Public cuts that have highlighted the importance of private initiatives for public benefit;
- Recent reactions, positive and negative, to one of the largest donations ever recorded (Amancio Ortega donation); and
- Enactment of the law to regulate the entities of the Third Sector of Social Action, which reinforces their capacity as interlocutors with the General State Administration regarding

social public policies and defines the promotion measures that the public powers can adopt to their benefit (43/2015, October 9).

### **Future development trends in the philanthropic landscape**

1. Improving the perception of philanthropists;
2. Measuring the impact of philanthropy;
3. Rediscovering the importance of capacity building for philanthropy;
4. Scaling philanthropic projects; and
5. Relations between “traditional” philanthropy and social entrepreneurship.

### **Three key recommendations to improve the environment for philanthropy**

- Long-term regulatory measures;
- Raise awareness about the importance of philanthropy for the maturity of the civil society; and
- Engage new generations of philanthropists.



# Sweden

**Expert:** Johan Vamstad

**Institutional Affiliation:** Ersta Skondal University College

With contributions from staff at the Indiana University Lilly Family School of Philanthropy

## QUICK FACTS

**Legal forms of philanthropic organizations included in the law:** Association, Foundation, Corporation, Benefit Corporation, Trust, Society, Economic Association

**Five main social issues addressed by these organizations:** Arts and Culture, Health and Medical Research, Environment, International Causes, Human Rights

**Average time established by law to register a philanthropic organization:** 0-30 days

**Average cost for registering a philanthropic organization:** US \$0

There is no cost for registering a PO with the tax authorities, but a small fee is required to register with the Swedish Companies Registration Office. All registration is voluntary (see narrative).

**Government levels primarily regulating the incorporation of philanthropic organizations:** Central/Federal Government

### Philanthropic Environment Scores:

Year	Ease of Operating	Tax Incentives	Cross-Border Flows	Political Environment	Socio-Cultural Environment	OVERALL SCORE
2018	5.0	3.0	5.0	4.5	4.0	4.30

## I. Formation/Registration, Operations, Dissolution of a Philanthropic Organization (PO)

*The three questions in this section pertain to the laws and regulations governing philanthropic organizations (POs). The scoring questions for this category cover three aspects of regulations: (A) formation and registration, (B) operations, and (C) dissolution.*

### Question 1: To what extent can individuals form and incorporate the organizations defined?

<b>Score: 5.0</b>
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There are no requirements to register POs in Sweden; anyone is free to start any kind of organization at any time. Organizations can choose to register with the tax authorities in order to receive an organization number that allows them to be recognized as a legal entity in relation to authorities, other organizations, and individuals. The application is performed on a one-page form found on the tax authority website or at their offices. A short written by-law and a protocol from the founding meeting should be attached to the application (Skatteverket, 2016). The registration process take, on average, two weeks from the day the form is mailed in. The PO can also choose to register with the Swedish Company Registration Office in order to get legal protection of their name. This costs SEK 1200 (US \$130), and the registration takes, on average, seven working days (March 2017). There are no limitations on legal purposes, on who the founder can be, and no minimum requirements on capital or other assets for either type of registration. All correct applications are approved, as they are a voluntary service to the organization.

Both the tax authorities and the company register are Swedish government bodies and, as such, they rank among the least corrupt and most transparent institutions in the world. The initiation and formation of POs are, on a more general note, actively encouraged by Swedish government and across the political spectrum. There are several ways in which social enterprises, cooperatives, and other POs can receive public funding and professional know-how in their startup phase (as well as later).

### Question 2: To what extent are POs free to operate without excessive government interference?

<b>Score: 5.0</b>
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There are no laws regulating the structure or internal affairs of organizations in Sweden. Commercial activities, employment of staff, and other professional work performed by the PO are regulated the same way as any type of organization or business.

There are extensive tax exemptions for POs on almost all sources of income, but to be eligible for the tax-exempt status they must meet some general criteria. They need to work for a cause in the public's interest, which is interpreted broadly from sports and culture to environment and social needs, etc. (Skatteverket, 2016). In addition, they must devote most of their income to that specified cause, and they need follow basic business ethics with regard to things like accounting (more about this further down).

There are no restrictions on what an organization can and cannot do in Sweden. An organization cannot be “illegal,” rather, only the actions of its individual members are. Criminal motorcycle gangs are, for example, not illegal, only the crimes of its members. Only if the organization seeks public funding do they need to be non-violent and democratic. Youth organizations are universally eligible for public funding in Sweden, and there are a handful of examples where an organization has been cut off from funding due to concerns about the conduct or values of the organization. All POs communicate freely within Sweden, as well as internationally, using any type of media.

**Question 3: To what extent is there government discretion in shutting down POs?**

**Score: 5.0**

The termination and dissolution of a PO is decided by its members at a general assembly, the decision to do so cannot be delegated to the board of the organization. The by-laws of all organizations should state what happens to the assets of the PO in case of termination. Organizations can, under special circumstances, be terminated by the Swedish Companies Registrations Office or by a court of law. These circumstances are 1) the number of members are fewer than three; 2) the by-law of the organization requires termination; 3) the organization has filed for bankruptcy but failed to dissolve voluntarily; or 4) the organization is clearly run in a manner different from what was stated at the registration with the company register. This type of forced termination is carried out by an appointed legal supervisor, normally a lawyer that could be suggested by the organization (Bolagsverket, 2017).

**II. Domestic Tax and Fiscal Issues**

*The two questions in this section pertain to laws and regulations governing the fiscal constraints of giving and receiving donations domestically.*

**Question 4: To what extent is the tax system favorable to making charitable donations?**

**Score: 1.0**

There are no tax incentives to give to charities, neither for individuals nor corporations in Sweden. Sweden introduced a system of tax deductions for charitable giving from private individuals in 2012, but the reform was revoked in 2015. The reason for abandoning the tax incentives was that they were “expensive and ineffective,” as stated by Minister of Finance Magdalena Andersson. The Social Democratic and Green Party government favored a return to their long-held principle that public and private money should not be mixed (Trägårdh and Vamstad, 2009).

Public money for public causes and private money for private causes seems to be the principle. Charitable giving is encouraged and it is generally considered an act of civility in Sweden, as in most countries, but it is also considered a private matter. Making charitable gifts is, in other words, in no way prohibited. It is, just not considered a relevant aspect of the tax system (Trägårdh and Vamstad, 2009). The Swedish tax system is also one of the most simplified in the world, as it has few and simple deductions; information about individual citizen’s income are collected by the tax authorities, and all taxes are pre-calculated. Swedish tax returns are standardized and, in part, already filled out when delivered; in most cases they are just signed – on paper or on the internet – and returned.

Keeping the tax system simple and predictable for all citizens is a serious and recurrent argument against tax deductions for charitable giving (Trägårdh and Vamstad, 2009).

**Question 5: To what extent is the tax system favorable to POs in receiving charitable donations?**

**Score: 5.0**

POs serving a very broad definition of “the public interest” (allmännyttig) are exempt of all taxes on income, except for some incomes from business and property, under specific circumstances. POs in the following areas can be considered to serve the public interest: sports, culture, environment, children and youth, politics, religion, health care, social aid, voluntary defense organizations associated with the Swedish Armed Forces, education, science and areas relating to any of the above (Skatteverket, 2016). A PO serving the public interest in any of these areas does not have to pay taxes on any kind of income that funds the main purpose of the organization. The rule of thumb is that about 90 percent of the income must serve that purpose in order for it to have full, tax-exempt status (Skatteverket, 2016).

There is no upper limit to the sums the POs can raise from the public, as long as the money fund states their main purpose (sports for sports organization, culture for culture organizations etc.). The POs are also exempt from all incomes from services provided for the members, so long as the services are associated with the main purpose of the organization (Skatteverket, 2016). The current Swedish government, which took office in 2014, modernized and clarified some of the tax laws of POs and, as a consequence, POs had to pay tax on incomes from second hand stores and flea markets.

The following outcry from civil society and the general public forced the government to backtrack and again make this source of income tax-exempt. POs that do not serve the public interest are also exempted from taxes on all incomes from membership fees, gifts, and contributions. Examples of such organizations are labor unions, business organizations, parent cooperatives, and different kinds of social clubs (Skatteverket, 2016). The income tax exemptions are applied broadly to a wide range of different types of organizations and they are, therefore, easy to obtain. POs are also exempt from property tax on properties serving any of the following purposes: national defense, health care, sport and swimming, culture (theaters, cinemas, and museums), worship, and some other public buildings like youth centers (Skatteverket, 2016).

### III. Cross-Border Philanthropic Flows

*The two questions in this section concern laws and regulations governing the fiscal constraints of giving and receiving cross-border donations. The scoring for these questions pertains to the donor and receiving entities.*

**Question 6: To what extent is the legal regulatory environment favorable to sending cross-border donations?**

Score: 5.0

Sweden is a small, open, and export-dependent economy integrated and interdependent with the European Union, as well as much of the rest of the world. There are no restrictions or fees associated with either receiving or sending international donations in Sweden. The tax incentives Sweden had between 2012 and 2015 applied equally to causes in Sweden and the 106 foreign countries with which Sweden has tax agreements (2017). Sweden, like all EU-countries, is prohibited from limiting tax incentives to domestic causes since it would go against the founding EU principle of free movement of capital within the union.

**Question 7: To what extent is the legal regulatory environment favorable to receiving cross-border donations?**

Score: 5.0

There are, as stated above, no restrictions or fees associated with either receiving or sending international donations in Sweden. There are very few philanthropic causes in Sweden receiving money from abroad. The lack of regulation may reflect this lack of beneficiaries in Sweden. On a related topic: there are also no formal restrictions on political organizations, parties, or candidates receiving money from abroad, except for extreme cases in which foreign powers attempt to corrupt or disturb the political process in Sweden. An individual accepting money in such a hypothetical case could risk two years imprisonment, but there has been no such cases in modern times.

### IV. Political and Governance Environment

*The three indicator questions in the next two sections concern the political and governance context, socio-cultural characteristics, and economic conditions that influence the environment for philanthropy.*

**Question 8: To what extent is the political and governance environment favorable for philanthropy?**

Score: 5.0

The Swedish government and the philanthropic sector (and civil society in general) are entwined in a long-standing relationship of institutional corporatism. Labor unions, business organizations, interest organizations, and other large civil society organizations – including philanthropic aid organizations – are an important part of the political policy process in Sweden. All major government

bills go through a process of public inquiry in which civil society organizations, as well as other public institutions, are invited to write an opinion of the suggested legislation. These opinions are public, as are the records of how they are integrated in the final proposal that is delivered for approval in parliament.

The public inquires have a long history in Sweden; much never is the compact between the state and the civil society from 2008. This compact is modelled after the British one, signed in 1998, and it draws up the division of responsibility between national, regional, and local government and civil society. Sweden has also recently introduced a new type of public-private partnership with the express purpose of making it easier for philanthropic organizations to compete with the already successful for-profit businesses in many welfare areas. There are some early examples of successful such partnerships in the wake of the 2015-2016 refugee crisis in Sweden. This temporary crisis strengthened the position of philanthropic organizations somewhat, as the power of voluntary mobilization became apparent in a country otherwise used to handling many social issues through the public sector. The political climate in Sweden is stable and the economy is sound, and there is not any threat to the autonomy or sustainability of the philanthropic sector.

**Question 9: To what extent are public policies and practices favorable for philanthropy?**

**Score: 4.0**

The government in Sweden has traditionally promoted a philanthropic tradition characterized by unpaid voluntary work, grassroots organizations, and social movements. The support for charitable giving has been more indirect. Leading politicians and, not least, members of the Royal Family have been important supporters of various charitable causes in Sweden.

Private philanthropic organizations have used the public broadcasting system to perform widely popular and successful national fundraising campaigns, dating back to the late 1940's (Vamstad and von Essen, 2013). However, the government has been reluctant to support private giving through tax incentives, often arguing that it is more rational to address social causes directly with public funding instead of indirectly by encouraging giving (Trägårdh and Vamstad, 2009). The government has a longstanding partnership with the largest philanthropic aid organizations, like the Swedish Red Cross and the City Missions. These are supported and integrated in the national infrastructure for social aid, and they have gained additional importance since the arrival of needy, non-citizens in Sweden, especially vulnerable EU-migrants not covered by the public welfare services. The government also supports local initiatives for this group and groups like refugees, both in the reception and further integration of foreign nationals and new Swedes.

**V. Socio-Cultural Environment**

**Question 10: To what extent are socio-cultural values and practices favorable for philanthropy?**

**Score: 4.0**

Philanthropy, in a broad sense of the word, is deeply rooted in Swedish society. There is a strong tradition of volunteering and mutual help, and charitable giving is widespread across class and other

divides in the population (Vamstad, 2015). The social democratic welfare state in Sweden is an important part of the sociocultural environment of philanthropy in Sweden. The Marshallian concept of social rights to basic welfare in Sweden has led to expectations on national, regional, and local government to provide services in some areas that could otherwise have been provided through philanthropic acts. Charitable giving has, for this reason, been directed to causes like international aid and medical research and less on social causes in Sweden (Vamstad and von Essen, 2013). There is, in other words, no crowding out of philanthropic activities by the social democratic welfare state, but it is fair to say that the large public sector has helped define both the actual need for philanthropy and the public perception of which issues philanthropy should address.

It should also be noted that many public welfare institutions once started as private, philanthropic initiatives with the expressed ambition of becoming part of the public welfare sector. Politically progressive philanthropists, in this way, played a significant part in shaping the early Swedish welfare state (one could even go as far as to consider the welfare state itself a philanthropic project) (Qvarsell, 1993; Trägårdh, 2013, Berg, 2009). Some researchers, like Morey (2013), have also pointed out the significance of American philanthropic institutions in the development of the Swedish welfare state.

## VI. Future of Philanthropy

*These questions are used to provide a general picture of the future of philanthropy in this country as well as recommendations to improve the philanthropic environment.*

### Current state of the philanthropic sector

The Philanthropic Sector in Sweden is in a historically strong position. There is talk of a return to private philanthropy, as the welfare needs are becoming more diverse. The welfare state may not have the resources or the know-how to address some new social issues, and POs are becoming a much more active collaborator in the efforts to address some of them. This development is rooted in the Swedish tradition of a strong and active civil society, but the forms in which the POs organize and work is becoming internationalized and professionalized.

Sweden has also seen the emergence of a more informal type of philanthropy beyond the traditional POs, especially through the use of social media. Examples of such initiatives include collections of food for needy families or social events or language trainings organized for refugees to find missing people. Traditional forms of engagement are, however, still important, Sweden – a country with 10 million inhabitants – has close to a quarter of a million associations with 32 million memberships.

### Three major recent events affecting the philanthropic landscape between January 2014 and December 2016

- New social issues (refugees and EU-migrants);
- Ongoing hybridization; and
- Removal of tax incentives.

## **Future development trends in the philanthropic landscape**

The Philanthropic sector in Sweden has gradually moved away from the traditional social movement model to a more international and professional model. The previous model was based on mass membership and unpaid grassroots volunteering. Now, POs in Sweden are adopting professional staff and management, modern fundraising techniques, new means of communication, and so on.

The Philanthropic sector is gaining importance in Sweden as both left and right-leaning governments recognize the importance of civil society in solving problems in society. Civil society has always been important but social democratic governments have, in the past, preferred to rely on the public sector first, which is now changing. This development has been going on for at least two decades, but recent events have sped up the process. The refugee crisis of 2015 and the arrival of vulnerable EU-migrants are important events, as they concern groups of individuals that are not Swedish citizens, and are thus not entitled to most of the welfare services provided by the public sector.

The importance of POs is mentioned in association with a wide range of different issues, such as gang-related crimes, youth unemployment, local democracy, and other domestic issues, which is a shift in Sweden where most philanthropic causes typically have been internationally-focused in the past. There is also a growing recognition of the importance of philanthropic causes in the Swedish business sector. Swedish industry has always contributed large sums of money to fund research, but now they are diversifying their causes. There is also an ongoing process of hybridization, where public, private for-profit, and private philanthropic actors are increasingly addressing domestic and international causes jointly.

## **Three key recommendations to improve the environment for philanthropy**

- Government should continue the process of including POs in addressing old and new social issues in Sweden;
- Tax incentives for charitable giving by private individuals should be re-introduced; and
- Corporate sponsorships of charitable causes should be made deductible at the same level as business expenses.



# Switzerland

**Expert:** Georg von Schnurbein

**Institutional Affiliation:** Center for Philanthropy Studies (CEPS), University of Basel  
With contributions from staff at the Indiana University Lilly Family School of Philanthropy

## QUICK FACTS

**Legal forms of philanthropic organizations included in the law:** Association, Foundation, Cooperative, Corporation, Limited Liability Company

**Five main social issues addressed by these organizations:** Higher Education, Arts and Culture, Health and Medical Research, Environment, Social Services

**Average time established by law to register a philanthropic organization:** 0-30 days

**Average cost for registering a philanthropic organization:** US \$500

The cost of registration is US \$500. It does not include additional costs, such as legal advice, etc.

**Government levels primarily regulating the incorporation of philanthropic organizations:** Central/Federal Government, State Government, Local Government.

Usually, registration is done on the cantonal (state) level. For foundations, the level of the supervisory authority depends on the radius of activity. Foundations with international and national purposes are supervised at a national level, foundations with regional and cantonal purposes at the state level, and foundations with local purpose at the local level.

### Philanthropic Environment Scores:

Year	Ease of Operating	Tax Incentives	Cross-Border Flows	Political Environment	Socio-Cultural Environment	OVERALL SCORE
2018	5.0	4.8	4.5	4.5	5.0	4.75

## I. Formation/Registration, Operations, Dissolution of a Philanthropic Organization (PO)

*The three questions in this section pertain to the laws and regulations governing philanthropic organizations (POs). The scoring questions for this category cover three aspects of regulations: (A) formation and registration, (B) operations, and (C) dissolution.*

### Question 1: To what extent can individuals form and incorporate the organizations defined?

Score: 5.0

Associations and foundations are the most common legal forms for nonprofits. Both can be set up by individuals without any government interference. For an association, registration is not mandatory and only two individuals are required to establish an association. Only if the revenue from its own activities (not including donations and member fees) exceeds US \$150,000, then registration is mandatory. A foundation has to be registered in the Register of Commerce and afterward it is under state supervision (as there are no internal control organs). By law, there is no minimum capital required to establish a foundation. However, in practice, a minimum of US \$30,000-\$50,000 is recommended.

### Question 2: To what extent are POs free to operate without excessive government interference?

Score: 5.0

Government interference is very limited. POs are free to organize internal governance structures based on their own needs. Only if a PO receives public funding will the government execute more influence and require more detailed reporting. Reporting requirements are based on general and transparent standards, such as the Swiss GAAP FER 21, which is an accounting standard published by a private foundation. Communications and international contacts are not regulated. Because of the liberal legal regulations, the nonprofit sector pushes for self-regulation. For instance, there are two certifications for fundraising organizations (Zewo seal, SEA seal) and the Swiss Foundation Code 2015, a code specifically for grant making foundations.

### Question 3: To what extent is there government discretion in shutting down POs?

Score: 5.0

For associations, only the governing body (i.e. general assembly) can terminate the organization. For foundations, only the supervisory authority can terminate the organization, based on a request by the foundation board. This is to protect the will of the founder against any changing perspectives among the foundation board. Involuntary termination by a government entity is only possible due to a severe violation and failure to correct said violation.

Note: The cantonal supervisory authorities are independent state entities and do not belong to the government itself. A comparable structure is in discussion for the federal supervisory authority, as well. Hence, only the supervisory authority, no other government entity, can terminate a foundation.

## II. Domestic Tax and Fiscal Issues

*The two questions in this section pertain to laws and regulations governing the fiscal constraints of giving and receiving donations domestically.*

**Question 4: To what extent is the tax system favorable to making charitable donations?**

**Score: 5.0**

Tax deductions for individuals and corporations exist on the federal and state level. On the federal level, and in most cantons, 20 percent of tax income (20 percent of net profit for corporations) is deductible. Only in two cantons is the rate lower (5% and 10%) and in one canton it is 100 percent. Usually, there is a minimum amount for a single donation to be deductible between US \$100-\$500 in the cantons. In some cantons, the government may grant a higher tax deduction for a very large donations in one year. The regulations for tax exemptions are clear, e.g. the regulation is the same for any kind of donation. Thus, differences that depend on the purposes or type of receiving PO do not exist.

**Question 5: To what extent is the tax system favorable to POs in receiving charitable donations?**

**Score: 4.5**

POs are eligible for significant tax exemptions, if their purpose is classified as charitable. The decision is done by the state tax authorities and is based on two cumulative requirements: on one hand, promotion of general public interest and on the other, disinterestedness. Due to these two requirements, some POs that may be tax-exempt in other countries are not in Switzerland. Particularly, member-serving organizations (i.e. sports clubs etc.) are not eligible for tax exemption. If tax exemption is granted, POs are exempt from profit and capital taxes, inheritance and gift taxes, and property gains tax (cantonal differences exist). POs can receive large amounts of private funding, up to 100 percent of their revenues.

## III. Cross-Border Philanthropic Flows

*The two questions in this section concern laws and regulations governing the fiscal constraints of giving and receiving cross-border donations. The scoring for these questions pertains to the donor and receiving entities.*

**Question 6: To what extent is the legal regulatory environment favorable to sending cross-border donations?**

**Score: 4.0**

Cross-border donations can be sent without any additional costs or taxes. However, cross-border donations are not eligible for tax incentives (unless they run through a Swiss nonprofit first, then they get the same tax exemptions).

There are no other government interferences for cross-border donations in terms of process or ruling.

**Question 7: To what extent is the legal regulatory environment favorable to receiving cross-border donations?**

**Score: 5.0**

In general, there are no regulatory differences for domestic or cross-border donations to a Swiss PO. There are no additional costs or taxes for receiving cross-border donations as a PO in Switzerland. The tax incentives for the POs are the same, and there is no limitation on the purpose. However, cross-border donations have to be compliant with the law on money laundry.

#### **IV. Political and Governance Environment**

*The three indicator questions in the next two sections concern the political and governance context, socio-cultural characteristics, and economic conditions that influence the environment for philanthropy.*

**Question 8: To what extent is the political and governance environment favorable for philanthropy?**

**Score: 5.0**

The basic-democratic political system of Switzerland on all governmental levels facilitates interactions between POs and the government. There are various opportunities for exchange and often the government commissions POs to fulfil a certain task. There is a constitutional right for associations to be included in the legislative process. Additionally, environmental and homeland associations have a general right of appeal against construction projects.

**Question 9: To what extent are public policies and practices favorable for philanthropy?**

**Score: 4.0**

Traditionally, the government does not interfere in the philanthropic sector. Thus, the State has no strategy for the philanthropic sector, but it offers very liberal regulations. However, there is a lack of transparency of the sector, and the State could do more about it.

#### **V. Socio-Cultural Environment**

**Question 10: To what extent are socio-cultural values and practices favorable for philanthropy?**

**Score: 5.0**

Switzerland has a long tradition of philanthropy, dating back to the middle ages. It is based on shared beliefs of personal responsibility for the society and the Calvinistic protestant religion that dominated Switzerland for several centuries. Donating and volunteering are widely spread in the society and are highly accepted. POs benefit from a high level of trust.

## VI. Future of Philanthropy

*These questions are used to provide a general picture of the future of philanthropy in this country as well as recommendations to improve the philanthropic environment.*

### Current state of the philanthropic sector

The Swiss philanthropic sector is highly institutionalized. There are several organizations and associations that offer infrastructure to philanthropy, including certifications, research, lobbying, executive trainings, consulting, etc.

Switzerland attracts many international organizations, and is the home of many international associations. Nowadays, many new organizations have emerged, supporting and executing new forms of philanthropy, such as venture philanthropy, impact investing, or pay-for-success models.

### Three major recent events affecting the philanthropic landscape between January 2014 and December 2016

- Swiss Foundation Symposium (annual conference by Swiss Foundations) involving 200-300 participants;
- Swiss Foundation Day (annual conference by pro-Funds) involving about 200 participants; and
- The presentation of the national Volunteering Survey 2016 in Zurich (February 19, 2016). The most important data source on volunteering in Switzerland.

### Future development trends in the philanthropic landscape

One major trend is the increase of philanthropic activities like impact investing and pay-for-success models. The necessary infrastructure will be developed in the coming years and will facilitate foundations and others to invest in such programs.

Another major trend is the increase of transparency. Because of international pressure and public interest, a public register for charitable foundations will be established.

A third trend is the increasing need for new board members in associations and foundations. As the current generation of board members grows older, and with increasing regulatory rulings, POs report difficulties in finding people willing to serve on boards.

Finally, professionalization will further increase, based on new forms of education and knowledge transfer.

### Three key recommendations to improve the environment for philanthropy

- Increase transparency through the creation of a public registry for charitable organizations;

- Develop new education and training programs to further professionalize the sector; and
- Increase public awareness of the sector through more communication and better presentation of the social impact of organizations in the philanthropic sector.



# Turkey

**Expert:** Tevfik Basak Ersen, Liana Varon, Hilal Tekmen

**Institutional Affiliation:** Third Sector Foundation of Turkey

With contributions from staff at the Indiana University Lilly Family School of Philanthropy

## QUICK FACTS

**Legal forms of philanthropic organizations included in the law:** Association, Foundation

**Five main social issues addressed by these organizations:** Higher Education, Primary and High School Education, Health and Medical Research, Basic Needs, Housing and Economic Development

**Average time established by law to register a philanthropic organization:** 31-60 days

**Average cost for registering a philanthropic organization:** For associations US \$0. For Foundations, the cost of registration is approximately US \$15,000

**Government levels primarily regulating the incorporation of philanthropic organizations:** Central/Federal Government

### Philanthropic Environment Score:

Year	Ease of Operating	Tax Incentives	Cross-Border Flows	Political Environment	Socio-Cultural Environment	OVERALL SCORE
2018	2.2	2.0	3.5	2.0	4.0	2.73

## I. Formation/Registration, Operations, Dissolution of a Philanthropic Organization (PO)

*The three questions in this section pertain to the laws and regulations governing philanthropic organizations (POs). The scoring questions for this category cover three aspects of regulations: (A) formation and registration, (B) operations, and (C) dissolution.*

### Question 1: To what extent can individuals form and incorporate the organizations defined?

**Score: 3.0**

The legal framework only recognizes the formation of associations and foundations as legal entities. Other forms of collective action (e.g. initiatives, nonprofit companies, groups, networks) are not recognized and are not provided legal entity status. In addition to associations and foundations, platforms/initiatives are also recognized by law but not accepted as legal entities. POs cannot participate in economic activities directly, and they need to establish separate economic entities for such purposes.

The registration process and the timeline for registration of associations and foundations are regulated differently by the Law on Associations and the Law on Foundations. No registration fee is required for associations and online registration is not possible. There are certain restrictions in special laws applicable to the members of the Turkish Armed Forces, the police force, and civil servants. Minors between 15-18 years of age who have the ability to discern may either found child associations or be a member of an association with the written permission given by their legal guardians. Minors between 12-15 years of age can become members of children's associations with the permission of their legal guardians, but cannot be association founders or serve on the board of directors or as auditors. The registration of foundations is a much more complicated process than that of associations. In order to establish a foundation, a minimum of approximately US \$2,000 in assets must be allocated. Foundations are set by a charter and it is verified by a notary and court. This charter contains information on the title, purpose, assets, and rights to attain its goals with organisms and applicable administrative procedures. The foundation is granted legal personality when it is approved by the court and registered by The General Directorate of Foundations. The timeline for founding a foundation varies depending on the workload of the courts.

### Question 2: To what extent are POs free to operate without excessive government interference?

**Score: 2.0**

The Associations Law and the Law on Foundations imposes certain constraints on the discretion and freedom to run the organization's internal affairs. The Constitution states that freedom of association may be restricted for national security, public order, prevention of crime, public health, public morality, and the protection of the freedom of others. Due to lack of clear definitions of morality, public order, and national security in the legislation, the administration holds vast discretionary powers. The Anti-Terror Law also imposes significant barriers to freedoms of association, expression, and assembly. In recent years, several PO members and human rights activists have been persecuted, and imprisoned based on the Anti-Terror Law.

Both the Law on Foundations and the Law on Associations allow authorities to inspect an organization's activities and assess if they are in line with the original statute. Associations and foundations are not prohibited from directly engaging in political activities, but oppositional and/or rights-based POs are reportedly facing more government interference in practice than others. There are examples of State interference in internal matters of associations/foundations in practice. With respect to inspections of rights-based POs, disproportionate administrative and judicial practices that lead to unequal treatment (e.g. frequency, duration, and scope of inspections being different between rights-based POs and others). POs are permitted to contact and cooperate with colleagues in civil organizations, business, and government both within and outside the country. POs are permitted to participate in networks, and use the Internet and all forms of social media. Internet censorship by the government is common and it has increased in the last couple of years. However, the Internet Law had a significant negative impact on political freedom of expression, allowing government to block websites without court authorizations and make users' browsing history available to government.

**Question 3: To what extent is there government discretion in shutting down POs?**

Score: 1.5

The governing body of an organization is able to voluntarily terminate a PO within the limits set by the laws. Associations can decide to dissolve themselves via the decision of their general assembly. Involuntary termination is subject to court trial, and a prior notice has to be provided by the authorities to the PO. Although involuntary termination is subject to judicial supervision, the process is neither apolitical nor transparent. Relevant laws state that this authority can be used at any time.

According to the law, the dissolution of foundations may occur when the original objective of the PO is impossible to fulfill and amending the original objective is also not possible. Foundations may dissolve in such circumstances or upon obtaining court decision that removes the foundation's name from the official records. Clearly, foundations can only be dissolved on grounds relating to their founding objectives or activities. However, another article of the same law describes the grounds for restricting the formation of a foundation as "[being] contrary to the characteristics of the Republic defined by the Constitution, Constitutional rules, laws, morality, national integrity, and national interest, or [aiming to] support a distinctive race or community." These prohibitions on the founding objectives of foundations are rather vague and, therefore, provide broad discretionary power to the authority to dissolve any foundation. Another problem is the provision for the sanction of dissolution where there is a prohibited objective or activity. Such a sanction may pave the way for an absolute intervention on the freedom of association. After the Military Coup attempt of 2016, with several decree laws, more than 2,000 POs were closed down without a court order under the pretext of having helped the coup attempt or being actively involved. According to the decrees, the closures cannot be appealed, and the reaction of the Court of Human Rights is still unknown.

## II. Domestic Tax and Fiscal Issues

*The two questions in this section pertain to laws and regulations governing the fiscal constraints of giving and receiving donations domestically.*

### Question 4: To what extent is the tax system favorable to making charitable donations?

Score: 2.0

Individuals and legal persons receive a 5 percent tax deduction when they donate to tax-exempt foundations and associations with public benefit status; however, individuals and legal persons may receive a 10 percent deduction if the donation is given to priority development regions. There is no tax deduction applicable to individuals who are permanent employees who do not submit annual tax returns (payroll giving). Tax benefits are not strong enough to encourage corporations to make generous donations to philanthropic activities, but the process is clear and consistent.

In order to receive tax benefits, foundations and associations need to receive a special status (tax-exempt status for foundations and public benefit status for associations). These statuses are provided by the Council of Ministers upon recommendation/proposal of the relevant Ministry (Ministry for Finance for foundations and Ministry for Interior for associations). The process is clearly and explicitly written in the relevant legal framework, yet it is also highly political, bureaucratic, and vague. Accordingly, the number of POs that receive these statuses is low. Only 262 foundations (5%) and 390 associations (0.035%) have this privileged status.

### Question 5: To what extent is the tax system favorable to POs in receiving charitable donations?

Score: 2.0

Tax exemptions for POs are very limited. POs are only exempt from corporate income tax (profit tax) and are subject to all other taxes, such as Value Added Tax (VAT), stamp tax, real estate tax, and profit tax if they engage in economic activities. For foundations, tax exemption may be granted by the Council of Ministers (upon the proposal of the Ministry for Finance) if they were established with the purpose of performing a public service. Although there is a special regulation for tax-exempt foundations in the tax laws, these only confer a general exemption from corporate tax.

Foundations, tax-exempt or not, are subject to all other taxes. Those taxes include income tax applicable to their earnings, including rent, interest and dividends. Tax-exempt status of foundations grants donors the opportunity to deduct – to a certain extent – their donations from their taxable income. In order to receive tax exemption, the PO's purpose must fall within the areas of health, social aid, education, scientific research and development, cultural and environmental protection, and/or forestation.

Foundations serving only specific regions or groups cannot receive tax-exempt status. In other words, tax exemptions are only given to those foundations that serve the whole country. For associations, the tax exemption comes with the public benefit status. Similar to foundations, associations can only receive this status through the decision of the Council of Ministers. The

process is highly political and vague, which is why the number of tax-exempt POs is limited – only 5 percent of foundations have tax-exempt status, and only 0.035 percent of associations have public benefit status. Furthermore, both statuses bring limited financial benefits. Although POs in Turkey can raise funds from private donors, the range of POs that receive such support is narrow.

### III. Cross-Border Philanthropic Flows

*The two questions in this section concern laws and regulations governing the fiscal constraints of giving and receiving cross-border donations. The scoring for these questions pertains to the donor and receiving entities.*

**Question 6: To what extent is the legal regulatory environment favorable to sending cross-border donations?**

Score: 3.5

There are no legal barriers to cross-border philanthropic activity as long as it is related with the POs' purpose and it is written in its deed. The PO will be subject to the legislation of the country where the cross-border donation has been sent. However, the PO has to notify the Turkish government about this transaction, and all transfers have to be done through a bank. There are no costs/taxes, such as customs, duties, or VAT, attached to cross-border philanthropic cash and/or in-kind donations. However, cross-border donations are not subject to any tax incentives.

**Question 7: To what extent is the legal regulatory environment favorable to receiving cross-border donations?**

Score: 3.5

POs can receive in-kind and cash endowments and grants from natural or legal persons abroad. It is mandatory that cash donations or grants are sent and received through bank transfers. There are no extra costs for making or receiving cross-border donations. There are no costs/taxes, such as customs, duties, or VAT, attached to cross-border philanthropic cash and/or in-kind donations. POs do not need to get permission from government to receive funds from abroad; however, a notification is necessary. POs are required to notify the government when receiving and prior to using foreign funding. However, there is no restriction on the types of activities that could be supported with foreign funding or on the source country.

#### IV. Political and Governance Environment

*The three indicator questions in the next two sections concern the political and governance context, socio-cultural characteristics, and economic conditions that influence the environment for philanthropy.*

**Question 8: To what extent is the political and governance environment favorable for philanthropy?**

**Score: 1.5**

Turkey is signaling a trend toward restricting the civic space, especially after the Military Coup attempt of July 2016. In fact, while problems observed in legislation and practice explained in the other sections persist, very rapid, intensive, and challenging developments have occurred during the State of Emergency declared on July 21, 2016.

The shutdown of POs are disproportionate under the State of Emergency and violate the right to freedom of association. The statutory decrees passed under the State of Emergency included restricting measures affecting the civil society sector, in general. A total of 1401 associations, 122 foundations, and 19 unions were shut down and their assets were transferred to public institutions without any right to object. The political polarization also affects POs directly. POs that criticize and/or are accused by the government of having done so may face direct intervention in the form of closures, government audits, or penalties. The political environment directly feeds techno-economic instability, which affects POs significantly. The amount of donations from individuals and corporations is clearly decreasing, whereas public funding is harder to receive due to its political nature.

**Question 9: To what extent are public policies and practices favorable for philanthropy?**

**Score: 2.5**

There is neither a binding legislative framework nor a national level institution/mechanism that governs the relationships between POs and public institutions. There is no designated body, institution, or contact point for maintaining and coordinating dialogue between POs and the government. In general, traditional philanthropy may be seen as promoted and supported by the government. However, due to the internal political climate, and the polarization within society, the priority of the government is perceived to be limiting, due to security reasons, rather than supporting philanthropic organizations. The same situation is also true for government funding. It is perceived that pro-government POs or government-oriented POs (GONGOs) have more access to government funds. This government's position is likely to influence donor behavior. Most donors either have stopped donating to POs or have begun supporting pro-government organizations, even sometimes against their will.

## V. Socio-Cultural Environment

**Question 10: To what extent are socio-cultural values and practices favorable for philanthropy?**

Score: 4.0

Philanthropy in Turkey, both as a concept and as a practice, is perceived as doing charity and doing good. There is a cultural and religious heritage of individual giving that dates back to the Ottoman period, on which modern philanthropy is grounded in Turkey. People in Turkey are religious and practice religious tradition of giving. According to a Pew Research survey 72 percent people in Turkey pay zakat; there are have been foundations (as well as waqf) providing education and health services without much social or political restrictions. Socio-cultural values and practices have shaped the understanding of philanthropy as helping the poor and those in need. Traditional charitable POs – mostly foundations and associations – have been present in Turkey for a long time but their mission has transformed from meeting basic needs to taking a more active role in supporting social change.

Philanthropic giving mostly involves awarding scholarships, establishing schools, building hospitals, and providing social services. Most work of POs is concentrated in social solidarity and delivering social services. There is a general understanding of civil society on what POs do; however, there remains a certain lack of knowledge on the notion and the role of philanthropy. The desired conditions for the development of philanthropy are not fully met, as there is low level of trust between individuals and toward organizations. In line with philanthropy, giving traditions, and socio-cultural values and practices in Turkey, 20.5 percent of the individuals prefer POs that help the poor and the needy.

The fact, that POs are not understood as influential actors for social change, is part of the social and cultural heritage that acts as a restriction to foster philanthropic development and philanthropic freedom in Turkey. Thus, socio-cultural values and practices are only favorable for philanthropic freedom to a limited extent. Although core societal and religious values implicate an altruistic heritage of a traditional understanding of doing good and a mistrust toward POs, modern approaches toward philanthropic development are rising. The philanthropic sector is developing new practices and policies that offer a favorable environment for philanthropic freedom.

## VI. Future of Philanthropy

*These questions are used to provide a general picture of the future of philanthropy in this country as well as recommendations to improve the philanthropic environment.*

### Current state of the philanthropic sector

The philanthropic sector plays an important role in Turkey's democratization process. In 2016, there are more than 109,000 associations and 5,075 new foundations, which were established after the Republic, operating along with many informal organizations such as platforms, initiatives, and groups. The philanthropic sector has experienced growth in terms of both the number of POs that operate and the level of participation. Therefore, philanthropy is mainly an institutionalized and professionalized sector. The activities of these POs in Turkey are significant in terms of designing

immediate and long-term social change programs addressing a number of issues, such as education, environment, health services, human rights, empowering disadvantaged individuals, natural disaster response, and so on.

The private sector shows interest in forming a collaborative relationship with POs via different models of cooperation. Public sector organizations recognize the major role played by POs, and they show support through implementing grant making programs and providing sponsorship. However, in terms of legal regulations, there are no strong state mechanisms involving POs or their representatives in the policymaking processes. POs mostly operate in their own sphere of influence, either by themselves or via sectoral collaborations. Funding opportunities are still limited since grant making is a comparatively new phenomenon. Most POs are dependent on external and foreign funding, and the European Union is by far the largest donor of the sector. Individual giving in the country is mostly, determined by religious motivations. The recent TUSEV report shows that only 13 percent of the voting population donated to a PO in 2015 (Türkiye Üçüncü Sektör Vakfı -TUSEV, 2016).

### **Three major recent events affecting the philanthropic landscape between January 2014 and December 2016**

- Civil Society in Turkey is going through a repressive stage. Turkey's commitment to civil rights has been diminishing within the highly fragile context that the country is in. The restrictions toward rights to free speech and free press have contributed to the rising crisis situation in the country. The major events related to the shrinking civic space in the country in the past two years can be summarized as the dismissals of journalists, writers, media figures, members of the military, and academics, as well as multiple arrests, detentions, and imprisonments. The philanthropic landscape of the country is, therefore, influenced by the deterioration of the social and political climate in Turkey;
- The influx of Syrian refugees into Turkey since the start of the Syrian Civil War has rendered Turkey the largest host country in the world. According to the data collected by UNHCR, within Turkey, as of the end of March 2017, there are 2,969,669 Syrian people registered under the title of "temporary protection." Considering that not all Syrian refugees are registered under this title, the number may be even higher. The situation of Syrian refugees in Turkey has remained of high importance to POs in Turkey, especially in terms of providing both short-term and long-term solutions to major problems that require immediate response related to employment, education, health, and access to aid. Although the philanthropic landscape in Turkey provides a space for a sustainable dialogue and relationship building between the philanthropic sector, in particular, and civil society organizations, in general, working in the field over the issue, the lack of a comprehensive state policy addressing the basic needs and integration of refugees still remains unresolved; and
- The political turbulence within the domestic and foreign affairs of Turkey, as a whole, has been challenging for the philanthropic sector and civil society actors. Turkey has long been in a period of high tension, politically and militarily backed turmoil, and security threats posed by extremist terrorist actors. Multiple deadly bombings and gun attacks have occurred in the past few years. This state of political and military chaos was further intensified through the failed coup attempt on July 15, 2016. In the wake of the attempted coup d'état in 2016, Amnesty International estimated that 10,000 individuals, who were alleged to have been

involved in the coup attempt, were detained and subjected to beatings and torture. In an environment in which the fundamental human and civil rights of people are ignored, POs cannot operate freely. The philanthropic landscape of Turkey is very much related to the enjoyment of the rights to free speech, peaceful assembly, and association; therefore, it shrinks under the above circumstances and points to political uncertainty.

### **Future development trends in the philanthropic landscape**

Future development trends in the philanthropic landscape are seen in both positive developments and various challenges. The philanthropic sector in Turkey has the means and the capacity to develop new practices and policies, promote multi-sectoral partnerships, and take an active role in influencing policymaking in the country. The institutional and professional profile of POs in Turkey opens up spaces for future developments and innovative ways of advocating for philanthropy. The size of POs and the level of participation in the philanthropic sector seem promising for the future. However, the development trajectory of the philanthropic landscape in Turkey is being derailed by the unfavorable legal and fiscal regulations binding POs and their fundraising practices, and the political turmoil in the country poses a severe threat to the openness of the civic space.

The philanthropic sector's challenges for the future remain within the conflicting social and political climate of the country, but there are emerging forms of philanthropy to take into account. New ways of engagement and participation are emerging, such as the strengthening of individual giving practice in the country through the use of various innovative online and offline models. The effective use of social media channels in order to reach larger masses, the widespread use of storytelling as a mode of engagement, the rise of social impact assessment within POs, and so on, are emerging. The philanthropic landscape in Turkey is, therefore, promising, but this promising future requires improvements in the social and political climate of the country and in the perception of the society toward philanthropy.

### **Three key recommendations to improve the environment for philanthropy**

- The unfavorable tax regulations in the country should be reformed in order to create a more welcoming environment for the philanthropic sector and to facilitate fundraising. In order to qualify for tax exemptions today, POs need to fulfill several criteria followed by a long bureaucratic process. It is of critical importance to ensure POs' financial viability, to make a difference in society, and to contribute to social change through their activities and work;
- A recommendation for the POs in Turkey would be to strengthen their relationships with donors and society in general. Building trust is of critical importance in order to enhance the society's support, and to foster the impact of POs on social change. Therefore, stronger communication would be effective for POs to better explain themselves and their causes to society so that the perception of the philanthropic sector improves; and
- In order to improve the environment for philanthropy in Turkey, there is a need to revive the enjoyment of fundamental freedoms and civic rights of society. Actors in the philanthropic sector should further promote advocacy activities for the fulfillment of civic rights in the country.



# Ukraine

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## QUICK FACTS

**Legal forms of philanthropic organizations included in the law:** Association, Foundation, Cooperative, Endowment, Institution

**Five main social issues addressed by these organizations:** Primary and High School Education, Arts and Culture, Health and Medical Research, Basic Needs, Youth and Family

**Average time established by law to register a philanthropic organization:** 0-30 days

Foundations and other POs shall be registered within 24 working hours or, in practical terms, within two working days; associations within three working days; representative offices of foreign POs within 20 working days, and religious organizations within 30 days (up to three months, if legal expertise of their articles or purposes' compliance with the Ukrainian law is required). Delays up to 15 working days are common for associations, as regional offices of the Ministry of Justice are in charge of their registration after closing local offices in mid-2015.

**Average cost for registering a philanthropic organization:** US \$75

No registration fee is required for incorporation of national POs; representative offices of foreign POs shall pay a fee of US \$20. Fee for amending POs' articles of incorporation or register data is between US \$5-\$20; but in some cases it is also free. Notarization of applications, articles or other papers or notary fees for filing the papers to the omnibus company register are the largest share of the registration cost in Ukraine. Notarization for associations and foundations is voluntary, unless their articles of incorporations require otherwise.

**Government levels primarily regulating the incorporation of philanthropic organizations:** Central/Federal Government (representative offices of foreign POs), Regional (oblasts and Kyiv City) government (associations and religious organizations); Local Government, notary (other types of POs)

**Philanthropic Environment Scores:**

<b>Year</b>	<b>Ease of Operating</b>	<b>Tax Incentives</b>	<b>Cross-Border Flows</b>	<b>Political Environment</b>	<b>Socio-Cultural Environment</b>	<b>OVERALL SCORE</b>
<b>2018</b>	4.6	3.9	3.9	3.9	3.7	3.97

## I. Formation/Registration, Operations, Dissolution of a Philanthropic Organization (PO)

*The three questions in this section pertain to the laws and regulations governing philanthropic organizations (POs). The scoring questions for this category cover three aspects of regulations: (A) formation and registration, (B) operations, and (C) dissolution.*

### Question 1: To what extent can individuals form and incorporate the organizations defined?

Score: 4.5

Ukraine is a unitary republic, and the legal procedures for POs incorporation are the same in all its jurisdictions. Associations, religious organizations and endowments that are not legal entities are allowed in Ukraine. No court decisions against informal or unregistered POs were made in 2014-2016. Moreover, even informal associations may file their data in the omnibus company register now. Any persons can be founders of POs. Foundations and institutions may have one or more founders; institutions may be founded by will. Associations shall have two founders; and minors who are 14 years or older are eligible to become founders too. The minimum number of cooperative's founders is three persons. Religious organizations shall have 10 or more founders.

POs may pursue any purposes for public benefit and/or benefit of their membership, and only a few exceptions are established in the Ukrainian constitution (e.g., national security, human rights or hate crimes). No minimum capital or permanent assets are required for POs, including foundations and endowments. Registration for national POs is free; maximum registration fee is approximately US \$20. Notarization of registration papers is optional for associations and foundations, and submitting applications via registered mail or online is allowed. Notaries also have the right to file the papers into the omnibus company register. Requirements for registration papers of associations and religious organizations, particularly personal data of members, are somewhat onerous. Registration of POs, except religious organizations, shall take two or three working days, but delays are still common. Ukrainian laws provide a finite list of causes for delays or refusals in POs registration. Registration agencies shall sum up these causes in writing, and usually they are apolitical, but somewhat inconsistent. Delays and refusals are subject to administrative court appeals, but this practice is uncommon now because of relatively high court fees (US \$25-\$75 per each specific claim in administrative proceedings). Some streamlining registration procedures is still actual for associations and religious organizations.

### Question 2: To what extent are POs free to operate without excessive government interference?

Score: 4.7

POs' articles of incorporation, which can be changed without any prior state approval, predominantly regulate internal governance structure and procedures. The Ukrainian civil code requires that all associations have general meetings and one or more directors; and institutions have their own boards. The data on final beneficiaries (25 percent or more voting rights) and directors of POs shall be disclosed in the register, except religious organizations and some associations. Changes of directors (CEO) are subject to state registration, but do not require any prior state approval. Internal disputes in POs are not subject to court review, unlike corporate ones. POs articles' shall regulate procedures of decision-making and internal disputes review. Tax-exempt POs shall submit their tax,

financial and statistical reports online once a year. Reporting requirements are clear and not onerous. Eventual exception may be the latest amendments on extensive reporting requirements for associations and other POs involved in anti-corruption activities.

Only foundations and other charities have a ceiling for their administrative costs (20 percent of their annual income) and statutory rules for conflicts of interest, though all tax-exempt POs shall comply with the non-distribution constraint, including their members, staff, directors and affiliated persons. Ukrainian POs may set up or join any national or cross-border networks or other cooperating institutions without any restrictions, except those organizations, which are under international sanctions for terrorist activities and money laundering. There are no legal impediments to use social media or the Internet; libel claims by Ukrainian government officials have become uncommon in 2014-2016. There is no national law on peaceful assemblies, but local regulations are often onerous or somewhat restrictive. However, except for entertainment (e.g., concerts or exhibitions) or outdoors mass events, no prior notices of assembly must be submitted to local governments; special administrative appeals are possible in case of refusals or other restrictions.

### **Question 3: To what extent is there government discretion in shutting down POs?**

<b>Score: 4.5</b>
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Ukrainian law allows setting up POs for a limited time, but this practice is still fairly uncommon. There are no legal sanctions against inactive POs, unless they fail to submit their annual reports for two or more consequent years. POs' members may decide on voluntary termination of their organizations anytime without prior government notices or approvals. The institutions may be terminated by court decisions only. Decisions of POs voluntary termination shall provide reasonable time for their creditor claims, if any, and it usually takes 6-12 months. Shorter procedure of liquidation is eligible for POs after getting certificates of no debts in their tax and social insurance contributions. Thus, one-time checks by the State Fiscal Service are obligatory until excluding POs from the omnibus company register.

POs shall transfer their residual assets to other tax-exempt organizations only, or if prescribed by law, to national or local governments (e.g., if administrative court bans an association, or there are no successors for PO's real estate). Currently, POs may merge, split or reorganize into other tax-exempt organizations (e.g., an association having single member left may apply to court for reorganizing into a foundation). Unless otherwise required by the special law, any decisions on termination or reorganization of POs require 75 percent of member votes. The grounds for involuntary termination of POs include the activities proscribed by the Constitution or other law (e.g., promotion of totalitarian symbols or human rights restrictions), paramilitary activities, and failure to submit tax reports for two consecutive years or longer. Each year 100 to 120 POs (of approximately 100,000 total amount) are dissolved by courts, mostly for paramilitary activities or for failure to submit tax reports. Also, any PO may be subject to regular bankruptcy procedure in commercial courts, but no cases have been yet reported.

## II. Domestic Tax and Fiscal Issues

*The two questions in this section pertain to laws and regulations governing the fiscal constraints of giving and receiving donations domestically.*

### Question 4: To what extent is the tax system favorable to making charitable donations?

Score: 3.3
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Any individuals or companies in Ukraine may make donations without minimum threshold for any legal purposes or statutory activities of POs. There are no legal regulations on net value of donations and/or deductible membership fees. Both individuals and companies have access to limited tax deductions for their donations to any tax-exempt POs, without minimum or maximum caps for separate donations.

Individual donors may deduct up to 4 percent of their annual taxable income, both for cash and in-kind donations. However, the actual deductible amount is limited to the donor's income received as wages. Thus, donations from investment income or individual businesses are not deductible, and only 361 individual donors claimed for tax deduction in their 2016 fiscal year tax returns. The Law of Ukraine on Volunteering made free services offered to POs much easier in 2015; and philanthropic beneficiaries can also go through the procedure of the State Register of Volunteers for Anti-terrorist Activities to receive additional tax deduction. No carryforward is allowed for individual tax deductions, unlike corporate donors.

Companies may deduct up to 4 percent of their taxable income in the previous fiscal year, including in-kind donations or free services (up to 8 percent are deductible for donations to some sports associations). If they buy products or services from a PO not in compliance with "arm's length principle", and the total amount is more than 25 times the minimum wage (US \$3,000) per year, the surplus is taxable or may be deductible only up to the 4 percent ceiling (Ukrainian Tax Code, Article 140.5.4). Besides, these deductions are eligible for companies with annual income up to US \$800,000, only if they choose to fulfill special tax regulations on financial transactions and transfer pricing. Thus, only few individual donors and companies claim tax deductions in Ukraine, while all refunds are commonly made after extensive and unpredictable checks by the State Fiscal Service, and well beyond the legal 30-day deadline. Therefore, actual tax deductions are negligible. Both parliament and national government are strongly opposing larger tax deductions for POs donors. They argue that donors do not claim for existing deductions, and larger ones would result in tax evasion, violations of agreements with IMF, and distortions in philanthropy and civil society. 90 banks were closed or suspended in Ukraine in 2014-2016, and many POs failed to use their donations and even technical assistance grants in those banks in 2014-2016. [Ukrainian Forum of Benefactors](#) reported that, at least, US \$3 million of donations and grants for 10 Kyiv-based charities had been lost in the failed banks as of November 2016. However, neither the National Bank nor Ukrainian government compensated these losses or changed the rules for bank bankruptcy, even though international treaties oblige them to refund the losses.

In 2016, SMS and some other online donations for charities and other POs became exempt from VAT and other taxes in amidst of anti-fraud campaigning in cash donations collection.

**Question 5: To what extent is the tax system favorable to POs in receiving charitable donations?**

Score: 4.4

In 2015, Ukrainian POs managed to advocate key amendments to the Tax Code of Ukraine and the regulations on the State register of tax-exempt organizations. Generally, all tax-exempt POs shall not pay standard corporate income tax (18%) from any type of their income, including their statutory business activities or investment income. Subsidiaries of associations of people with disabilities are also exempt from corporate income tax under special regulations, though there is no law on social enterprise yet. All types of POs are eligible and may apply for tax-exempt status simultaneously with incorporation now, and no additional fee is required. Legal requirements are quite formal, mostly concerning the compliance of the POs articles with the Tax Code and non-distribution constraint. There are no legal regulations on periodic confirmation of POs' tax-exempt status; POs may lose it on the basis of fiscal checks only. The State Fiscal Service shall make decisions on granting or depriving tax-exempt status within 30 days, in a somewhat inconsistent manner. POs registered before 2015, had until June 30, 2017 to alter their articles in compliance. Refusals or exclusions from the register are subject to appeals in administrative courts; even if appeals are rejected, refusals or exclusions do not prevent further applications. The State register is in free online access on the official site of State fiscal service.

Representative offices of foreign POs are not eligible for tax-exempt status, but they shall not pay corporate income tax for their revenues from abroad. Humanitarian and technical assistance is exempt from Ukrainian taxes, including customs duties and value added tax (VAT), on case-to-case basis. Reduced VAT rate (7% versus 20% standard rate) is applicable to some medicines and medical equipment since 2014. Endowments, foundations and charities are exempt from VAT in case of input and output in-kind or security-related donations; licensed educational institutions are also VAT exempt. Not all POs may pay VAT, if their taxable sales and/or output in-kind donations are up to US \$40,000 per year. Local governments may exempt POs from real estate taxes. Fiscal statistics of POs and their donations is not available easily, even in aggregated form yet.

Besides, Ukrainian tax legislation does not distinguish donations to public institutions, which are also tax-exempt entities, and private owned POs.

**III. Cross-Border Philanthropic Flows**

*The two questions in this section concern laws and regulations governing the fiscal constraints of giving and receiving cross-border donations. The scoring for these questions pertains to the donor and receiving entities.*

**Question 6: To what extent is the legal regulatory environment favorable to sending cross-border donations?**

Score: 3.0

Ukrainian law and regulatory policies are not supportive to giving cross-border donations. Donations to representative offices of foreign POs or to non-resident beneficiaries are not deductible for

Ukrainian donors. Unless international tax conventions require otherwise, Ukrainian POs or other corporate donors shall withhold 15 percent tax from their cash donations, but service contracts are deductible (e.g. in health care). Financial transactions of POs with non-residents usually do not require permits from the National Bank, except for a few purposes (e.g. membership fees for cross-border network, conference fees, or health care donations). Donations to persons or entities affiliated with international terrorism or appearing on sanction lists are prohibited. All financial transactions that exceed US \$5,000 are subject to financial monitoring, and Ukrainian banks and notaries give 1 to 1.5 million reports on those quarterly. Donors are also constrained by the fact that humanitarian assistance to other countries and health care for some diseases requires routing through government channels. Ukrainian POs may not buy foreign currency for cross-border donations under provisional regulations by the National Bank, which have been in effect since mid-2014 with some amendments.

**Question 7: To what extent is the legal regulatory environment favorable to receiving cross-border donations?**

**Score: 4.8**

Ukrainian law is fairly supportive to receiving cross-border donations by POs. Donations to POs in cash are fully tax-exempt from corporate income tax and from obligatory exchange under the National Bank's official exchange rate (currently 50 percent of revenues in foreign currency, and 65-75 percent earlier in 2014-2016). No special limitations for purposes of foreign donations to POs are imposed. There are no legal regulations on foreign agents either. Donations from entities or countries under sanctions are subject to financial monitoring.

Foreign donations in cash to individuals shall not be exchanged under National Bank exchange rate, but are taxable at standard rate of individual income tax (18%) and subject to FATF-based regulations. However, there are court decisions on taxation of cross-border donations from relatives or to some groups of individuals (e.g., orphans or people with disabilities) at reduced rates of individual income tax (0% or 5%). Besides, from 2017 National Bank permits are not required for Ukrainian citizens to open their bank accounts abroad for receiving and managing money from other jurisdictions. Thus, as National Bank reported, while in-border donations are stable (US \$4.4 billion in 2017 vs. US \$4.2 billion in 2014), cross-border ones steadily decreased, both in receiving (US \$2.37 billion in 2017 vs. US \$3.88 billion in 2014) and in giving from Ukraine (US \$0.28 billion in 2017 vs. US \$0.43 billion in 2014). Western Union is still the leading pay system in cross-border donations, both in receiving (51.2%) and in giving from Ukraine (74.2%), but banking has become more competitive.

The law on humanitarian assistance provides exemptions from custom duties, VAT and even excises (e.g., for some vehicles for people with disabilities, or ambulances and other special transport vehicles) for in-kind donations. These exemptions are available on the basis of decisions by the Ministry of Social Policy for individual beneficiaries and the POs that filed into the State register of humanitarian assistance receivers. Religious and charitable organizations, associations of people with disabilities and some other POs are eligible to register and benefit from relevant tax exemptions. Moreover, this law stipulates that foreigners who accompany humanitarian assistance items have the right to free Ukrainian visas, priority in custom formalities, booking tickets and accommodation in Ukrainian hotels for minimum prices. Numerous procedures for control, oversight and writing off

humanitarian assistance are somewhat onerous, but clear. More than 300 international technical assistance projects were implemented in Ukraine in 2014-2016, and their grants to Ukrainian POs are exempt from corporate income tax and, under special applications, also from VAT.

#### IV. Political and Governance Environment

*The three indicator questions in the next two sections concern the political and governance context, socio-cultural characteristics, and economic conditions that influence the environment for philanthropy.*

**Question 8: To what extent is the political and governance environment favorable for philanthropy?**

**Score: 4.2**

According to the 2016 CSO Sustainability Index for Central and Eastern Europe and Eurasia, Ukrainian POs have the highest capacity for advocacy, while also having the lowest capacity is for financial sustainability. These conclusions are applicable to collaborations with government, too. In early 2016, the National Strategy for Enabling Civil Society was approved, and the government action plans for its implementation include a number of activities to promote philanthropy, public advocacy, social enterprise and similar issues. As for political declarations, the government does recognize POs to be social change agents, and the involvement of POs in advisory bodies and public consultations is quite common at national and local levels. Online petitions became instrumental, and many law-making initiatives by POs were successful.

Practical collaboration between POs and the government is also regular, but somewhat inconsistent, as many important social projects or social services are impeded by underfinancing from national and local budgets, or by disputes concerning the use of public real estate. Again, government tends to minimize POs' access to public resources and even public grants to associations of people with disabilities dropped from US \$15 million in 2014 to US \$3 million in 2016, while public procurement of POs' services was only US \$1 million in 2016. On the other hand, the government is willing to delegate funding and oversee some important programs to POs, for instance, in the framework of Global Fund to fight AIDS, TB and malaria. Political and economic instability in Ukraine actually constrain successes of philanthropy, but they make government and POs seek for more effective instruments of cooperation, such as social procurement and participatory budgets for POs projects in some local governments (e.g., US \$4 million in Kyiv City).

**Question 9: To what extent are public policies and practices favorable for philanthropy?**

**Score: 3.5**

In Ukraine, the government rarely makes intentional obstacles to philanthropy, but its promotion of philanthropic values and campaigns is weak and inconsistent. The outburst of private philanthropy and POs in 2014-2015 caused by the aftermath of the Maidan revolution, military conflicts and the influx of displaced persons did not change the general Ukrainian government attitude and policies toward philanthropy: it is neutral or slightly positive, as always. In the World Giving Index, Ukraine dropped from 89th position in 2015 to 106th in 2016, which is even lower than the 102nd position in

2013. Government agencies are relatively inactive in supporting and overseeing POs, except the State Fiscal Service of Ukraine that severely lacks qualified staff now. National and, to less extent, local government rarely impose restrictions or pressure on private donors, except for supporting some warfare/antiterrorist efforts. Generally, government policies and attitudes for philanthropic causes are inconsistent, they mostly seek for gaining short-term objectives, and public grants or social project contests rarely provide more than US \$10,000 to US \$20,000, while only qualified associations are eligible.

## V. Socio-Cultural Environment

**Question 10: To what extent are socio-cultural values and practices favorable for philanthropy?**

**Score: 3.7**

Ukrainian society faced dramatic changes in philanthropic practices in 2014-2016 due to the warfare and numerous displacements. The national poll by Democratic Initiatives Fund in December 2016 shown that 14 percent adults were involved in volunteering (10% in 2012), mostly to support the military, displaced and disabled people, and 37 percent made philanthropic donations (21% in 2012). However, societal values are still ambivalent or somewhat restrictive for philanthropic progress in Ukraine; 35 percent just do not consider themselves philanthropists. Cash donations (in boxes, churches, or hand-to-hand) still heavily prevail, and only 12 percent adults made donations via banking, text message or online. The general public still tends to rely on governmental or quasi-governmental social services, while media coverage tends to focus on the “dark side” of cash donations. Lack of transparency in many POs supports this trend, even though Ukraine has some well-established and accountable POs (e.g., top 100 foundations spent US \$250 million in 2016, while 5,500 foundations submitted blank or no tax reports). Average individual donations are between US \$5 and US \$10 (77% less than US \$10). On the other hand, there are no religious, gender or cultural barriers for giving or volunteering in Ukraine; neither employers nor the government impose any limitations on such activities. General trust in POs and, especially, volunteers is still higher on average, than for any government institutions except the army (37% non-government organizations; and 53% armed forces, and 53.5% volunteers) (Kiev International Institute of Sociology respectively, December 2016).

Ageing population and the needs of numerous veterans and displaced populations, as well as structural problems with public health care and social services are general factors for higher demand of philanthropic activities. Ukrainians are relatively well educated, have access to the Internet and other communications, and they traditionally support civic activism in smaller communities. Human capital for philanthropy seems to be quite adequate now. On the other hand, economic conditions for middle class donors and non-effective tax incentives for big businesses are not favorable in Ukraine now. Therefore, cross-border donations, technical assistance and migrants’ wires are vital for keeping the philanthropic sector sustainable in the next years.

## VI. Future of Philanthropy

*These questions are used to provide a general picture of the future of philanthropy in this country as well as recommendations to improve the philanthropic environment.*

### Current state of the philanthropic sector

In 2014-2016, both informal and institutional philanthropy in Ukraine were growing due to a variety of social challenges caused by post-revolutionary conflicts, warfare, extensive displacement, health care crisis and general economic deterioration (near -15.6% GDP). Simultaneously, cross-border donations to POs and technical assistance increased dramatically. Estimated POs' expenditures for public benefit purposes grew up to US \$1 billion, but government support has been insufficient. A number of service providers and PO networks provide professional services – including organizational capacity, fundraising techniques, legal and tax advocacy – to individual and institutional philanthropists. Advocacy groups have successfully advocated important amendments to legal and tax regulations. The National Strategy for Enabling Civil Society (2016-2020) sets forth a number of activities for promoting philanthropy, including social enterprise as one of the most promising instruments for the Ukrainian philanthropy.

### Three major recent events affecting the philanthropic landscape between January 2014 and December 2016

- Post-revolutionary military conflicts and influx of displaced persons in 2014-2015, which involved up to 77 percent of Ukrainians in volunteering and joining philanthropic activities for some period;
- Extensive tax reform in 2015, which provides tax exemptions for all revenues of POs and allows them to perform regular economic activities, including social enterprises; and
- Development of crowdfunding and soliciting donations via telecommunication (exempt these donations from VAT and setting up the joint platform of mobile communication providers for charity in December 2016).

### Future development trends in the philanthropic landscape

1. Quick growth of informal philanthropy via crowdfunding instruments, online donations and social networks;
2. Steady growth of registered foundations and charitable organizations (from 15,000 in 2014 to 18,500 in 2017), which are getting more efficient, accountable and professional;
3. Extensive training for POs in financial management, fundraising skills and transparency/accountability;
4. Non-favorable economic and political conditions for earning investment income and/or endowments of POs because of financial instability and restrictive banking regulations; and

5. Seeking effective alternatives to tax deductions for donors, including corporate volunteering.

**Three key recommendations to improve the environment for philanthropy**

- Provide effective tax designations for public benefit purposes (e.g., health care, education, culture) up to 2-3 percent of individual and corporate income tax contributions (tax designations) as alternatives to non-effective tax deductions;
- Provide an official website or information portal for publicizing operational and financial reports of POs (at least, for those that collected or spent more than the threshold for financial monitoring, which is US \$5,000 per month); and
- Make the list of VAT exempt goods and services for POs and/or goods and services subject to reduced VAT rates in compliance with EU Directive 112/2006/EC, as required by the Association Agreement between European Union and Ukraine by 2019.



# United Kingdom

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## QUICK FACTS

**Legal forms of philanthropic organizations included in the law:** Association, Foundation, Cooperative, Corporation, Limited Liability Company, Company Limited by Guarantee, Trust, Endowment, Society, Charitable Incorporated Organization

**Five main social issues addressed by these organizations:** Higher Education, Arts and Culture, Health and Medical Research, Basic Needs, Religion

**Average time established by law to register a philanthropic organization:** 31-60 days

**Average cost for registering a philanthropic organization:** US \$0

There are currently no charges to register with the Charity Commission. It does not cost anything to register with Companies House in the case of charitable companies, though there might be some cost if a charitable trust is liable to pay stamp duty. There might be other costs, for instance, legal fees if the organization seeks legal advice in relation to registration.

**Government levels primarily regulating the incorporation of philanthropic organizations:** Central/Federal Government, State Government

Charity law and regulation is now devolved (for purposes other than taxation) in Scotland and Northern Ireland. Scotland and Northern Ireland now have their own regulators, which operate in a similar manner to the Charity Commission for England and Wales.

### Philanthropic Environment Scores:

Year	Ease of Operating	Tax Incentives	Cross-Border Flows	Political Environment	Socio-Cultural Environment	OVERALL SCORE
2018	4.7	4.0	4.0	3.8	4.5	4.18

## I. Formation/Registration, Operations, Dissolution of a Philanthropic Organization (PO)

*The three questions in this section pertain to the laws and regulations governing philanthropic organizations (POs). The scoring questions for this category cover three aspects of regulations: (A) formation and registration, (B) operations, and (C) dissolution.*

### Question 1: To what extent can individuals form and incorporate the organizations defined?

Score: 5.0
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Individuals may act collectively through unregistered groups and may pursue any legal purposes. Charities (a defined sub-set of POs) can only pursue a charitable purpose, which does not include political purposes. They are generally free from legal impediments from the State. Charity law and regulation is now devolved (for purposes other than taxation) in Scotland and Northern Ireland, so there are different (but similar) legal and administrative regimes. This section will discuss England and Wales. Registration requirements are not onerous, and charities in England and Wales must register with the Charity Commission unless their annual income is below £5,000. Documentary requirements are clear and reasonable, with model documents available for adoption. There is currently no registration fee, although this may change. The process is reasonably efficient and is conducted with due process in a timely fashion with appropriate rights of review and appeal, including a recently set up Tribunal that hears appeals from certain defined decisions and actions of the Charity Commission.

There are minimum age limits on becoming a charity trustee, which are 18 or 16 depending on the legal structure of the organization. Additionally, some people are disqualified by law from acting as trustees, such as undischarged bankrupts (individuals in the process of bankruptcy). The list of disqualifying features has recently been extended.

The Charity Commission's regulatory performance has attracted considerable public and parliamentary interest recently. This has occurred against a background of significant budget cuts through government spending reductions aimed at tackling the UK's budget deficit. Following criticism from, among others, the House of Commons Public Accounts Committee and the National Audit Office in 2013–14, the Charity Commission began to focus on its regulatory role and to become more proactive in this regard. Recent assessments of its performance are more favorable.

### Question 2: To what extent are POs free to operate without excessive government interference?

Score: 4.0
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The structure and governance of POs are flexible and do not overly constrain the internal affairs of organizations. The four traditional primary forms of POs are companies limited by guarantee; unincorporated associations; trusts; and industrial and provident societies. A PO in any of these categories can qualify as a charity if it pursues exclusively charitable purposes. While none of these structures are specific to charities, a new legal form has been created that is the first structure specifically designed for charities—the Charitable Incorporated Organization (CIO). Whilst the majority of registered charities are currently unincorporated bodies, the new CIO form is proving

popular with new charities. Within 3 years of its introduction in 2013, it accounted for 25 percent of new registrations; this is because it gives incorporated status and limited liability but is not subject to company law. There are model governing documents for each legal structure that charities may, but are not required to, adopt.

While POs may carry out any lawful activities, charities cannot serve political purposes. POs may freely collaborate and communicate with other entities through networks, collaborations, and may use the Internet and all forms of social media. Legislation enacted in 2014 that affects non-party campaigners (those that campaign at elections but are not standing as political parties or candidates) has impeded charities' ability to engage in campaigning in the run up to an election, and there are calls for changes to this law.

While reporting requirements are clear and predictable, there is some duplication of reporting for certain forms of POS that may be subject to more than one regulatory body. For example, charitable companies must file with both the Charity Commission and Companies House. In addition, charities that operate across borders may have to register in more than one jurisdiction. Reporting requirements are graduated, depending on the size of income.

### **Question 3: To what extent is there government discretion in shutting down POs?**

<b>Score: 5.0</b>
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The governing bodies of charities are able to voluntarily terminate their charity. This is regulated by law and the procedure to be followed will depend upon the legal structure of the charity. The procedure, which is generally supervised by the Charity Commission, requires that any remaining funds must be applied toward charitable purposes. Charities with a permanent endowment may need to change their objects to cover new areas of work, change their constitution to allow the endowment to be spent, or merge with another charity.

The Charity Commission is not allowed to become directly involved in the running or administration of a charity, although it can, under certain circumstances, give directions to charity trustees, appoint interim managers to displace the trustees, and make remedial schemes. The legal framework is designed to protect assets and envisages a charity continuing after the Commission has dealt with misconduct or mismanagement, albeit perhaps with different trustees in control of the charity. Ordinarily, the Charity Commission will only remove a charity from the Register of Charities if it ceases to operate or exist, which is relatively common, or, more rarely, if it can be proven to be a sham and never was a charity in the first place. Legislation introduced in 2016, aimed at extending the Charity Commission's powers to tackle abuse in charities, gives greater ability to effectively force a charity's dissolution in instances where the charity does not operate or its purposes can be promoted more effectively if it ceased to operate. Prior to directing a charity to dissolve, the Commission must give public notice of its intention to do so, specifying a period in which resolutions may be made and which, in turn, the Commission must take into account.

## II. Domestic Tax and Fiscal Issues

*The two questions in this section pertain to laws and regulations governing the fiscal constraints of giving and receiving donations domestically.*

### Question 4: To what extent is the tax system favorable to making charitable donations?

Score: 4.0

Single charitable donations of money can give rise to a tax repayment for the charity and income tax or corporation tax relief for the donor via Gift Aid. For basic-rate taxpayers, charities receive the (after tax) donation and then reclaim basic-rate tax (20%) on its gross equivalent (the amount before the tax was deducted). Therefore, with a gift to charity of £100, the charity can claim back £25. For a charity to receive £100, a basic-rate taxpayer need only make a donation of £80, with the basic-rate tax of £20 being reclaimed. Donors taxed at the higher rate can claim an additional 20 percent tax relief (the difference between the higher rate of 40% and the basic rate of 20%) on the grossed-up donation. Gift Aid payments require a donor declaration, which may now be in writing, by phone or via the Internet. Donors may also now complete a single declaration to cover a series of donations. However, and despite improvements, the Gift Aid procedure is complex and many individual donors do not understand how it works. As a result, many higher-rate taxpayers do not claim via their self-assessment tax return the relief to which they are entitled. This may be through ignorance, complexity, or because they consider that it is not worth doing. In addition, there are complex ‘tainted charity donations’ rules aimed at denying tax relief in instances where the main purpose of the donor is to receive directly or indirectly from the charity, an advantage for the donor, or a connected person. An alternative form of tax relief, Payroll Giving, allows employees to make regular and one-off payments to charity directly from their pay before tax is deducted, ensuring that employees are given tax relief on their donation immediately. Relief is also available for individuals making gifts or transferring discount shares, securities, and real property to charities. Lastly, companies may benefit from corporation tax relief if they give or transfer at a discount land, property, or qualifying shares to a charity.

### Question 5: To what extent is the tax system favorable to POs in receiving charitable donations?

Score: 4.0

Charities are exempt from most forms of direct taxation. Their main exemptions from income or corporation tax are on income from: Gift Aid payments; payments of money from other charities; income from profits of a trade; investment income; profits from fund-raising events; lottery income; and, property income. Charities are also exempt from paying stamp duty, land tax, inheritance tax, and capital gains tax. Generally, to be exempt, the relevant income and gains must be applied to charitable purposes only.

There are a number of VAT reliefs and exemptions available specifically for charities, subject to certain conditions and restrictions. Charities are entitled to an 80 percent reduction of business rates. Whilst other POs do not generally enjoy tax benefits, sports clubs registered as Community Amateur

Sports Clubs (CASCs) can benefit from various tax advantages that are ordinarily reserved for charities.

Previously, tax legislation containing charity reliefs relied on the common law definition of ‘charity’, or latterly, the definition contained in charities statutes and not in tax legislation. In 2010, however, a new definition of ‘charity’ was introduced, one which applies to all UK charity tax reliefs and exemptions. As a result, charities must be recognized and registered as charities, where appropriate, and be located in the UK, a European Union member state, or, Iceland, Norway, or Liechtenstein. In addition, all persons in the charity having control and management responsibilities must be ‘fit and proper persons,’ a restriction designed to prevent charities from claiming unlawful tax exemptions and from abusing the charities’ tax status. This new, stricter definition of charity for tax purposes could potentially lead to a body being recognized as a charity by the Charity Commission but being denied tax reliefs for both the charity itself and its donors.

### III. Cross-Border Philanthropic Flows

*The two questions in this section concern laws and regulations governing the fiscal constraints of giving and receiving cross-border donations. The scoring for these questions pertains to the donor and receiving entities.*

**Question 6: To what extent is the legal regulatory environment favorable to sending cross-border donations?**

Score: 4.0
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Actual instances of terrorist abuse of charities are extremely small in number, but the Charity Commission has become increasingly concerned about charities operating abroad or supporting overseas charities. If trustees simply pass funds to another organization without controlling the way that funds are spent, such transactions are not regarded as charitable by law.

Additionally, expenditures overseas may be considered non-charitable, and, therefore, are liable for tax, if domestic charities do not take the steps that HM Revenue & Customs (HMRC) considers sufficient to ensure that the funds are used for charitable purposes. If a charity cannot provide evidence that it took the necessary steps (set out in detailed HMRC guidance) to establish that donations to offshore recipients would be, or have been, spent charitably to the satisfaction of an officer of HMRC, the expenditure may be deemed non-charitable and tax exemptions may be restricted accordingly.

Previously, donors wishing to give to European Union (EU) charities and to claim UK tax reliefs were obliged to make the gift to a UK registered charity. This led to some larger EU charities establishing ‘sister’ organizations in the UK to receive donations from UK taxpayers. As a corollary, donations to other smaller EU charities had to be channeled through donor-advised funds. However, there has been a recent extension of UK tax reliefs to bodies equivalent to charities in the EU and in the European Economic Area (EEA) countries of Iceland, Norway, and Liechtenstein. This was necessitated by a decision of the European Court of Justice, which held that to deny tax exemptions for cross-border gifts made to EU charities is contrary to the principle of free movement of capital.

Donations made directly, rather than being routed through a UK intermediary charity, to charities in countries outside the EU or EEA do not qualify for tax relief.

**Question 7: To what extent is the legal regulatory environment favorable to receiving cross-border donations?**

**Score: 4.0**

The Charity Commission recommends that, after having applied a charity's risk management processes, trustees need to carefully evaluate incoming donations and may need to take extra steps in identifying, verifying, and handling donations received from sources outside the UK. Whilst trustees can accept anonymous donations, trustees must be able to identify and be assured of the legality of substantial donations. Good due diligence helps to assess and mitigate risks, legitimizes the process of accepting money and assures recipients that the donation is not from any illegal or inappropriate source.

Gift Aid relief for donors do not ordinarily apply to gifts from individuals or from companies headquartered overseas. For individuals, the donor must be charged income tax and/or capital gains tax for the year of donation at least equal to the tax treated as deducted from all their Gift Aid donations. For companies, Gift Aid donations are only deductible against UK Corporation Tax profits. HMRC guidance states that, in addition to permitting charities to receive tax exemptions for all interest, Gift Aid donations and other annual payments, these exemptions apply to any non-UK equivalents of such income, which would otherwise be assessed as foreign income. The guidance also notes that, occasionally, charities seeking to claim exemption from foreign tax from an overseas tax authority may request confirmation that they are subject to UK tax. Certain Double Taxation Agreements provide that a resident of the UK will be entitled to exemption or relief from the foreign tax on certain types of income only if he or she is subject to tax on that income in the UK. HMRC advises that charities should be aware that a person is not regarded as subject to tax in the UK if the income in question is statutorily exempt from tax.

**IV. Political and Governance Environment**

*The three indicator questions in the next two sections concern the political and governance context, socio-cultural characteristics, and economic conditions that influence the environment for philanthropy.*

**Question 8: To what extent is the political and governance environment favorable for philanthropy?**

**Score: 3.5**

Profound economic, social, and technological changes have posed new challenges for charities and have resulted in some high-profile failures, leading to intense scrutiny of the sector. However, the overwhelming majority of charities continue to do excellent work and trust in the sector fundamentally remains strong. Recently, charities' funding has changed significantly with public sector grants largely replaced by contracts, often with complex commissioning processes. These have disadvantaged smaller charities, which struggle to bid for services at scale, and have constrained

the valuable innovation that charities can bring to service delivery. For all charities, contract funding is tightly defined, creating additional challenges in funding charities' core costs. There has also been pressure on charities to reduce back office costs and an increasing expectation that all money donated should go to the frontline. The result has been further pressure on charities' viability and sustainability.

The Charity Commission is considering whether to charge charities in order to fund part of its operation. Concerns have been raised about the impact of a charge, both for the charity sector and for the Commission itself. Recently, charities' ability to advocate for change has been threatened. Legislation enacted in 2014 that affects non-party campaigners (those that campaign at elections but are not standing as political parties or candidates) have impeded charities' ability to engage in campaigning in the run up to an election, and there are calls for changes to this law. In addition, in 2016, the government attracted controversy by proposing (but then withdrawing the idea) that an 'anti-advocacy clause' would be included in all future government grants, forbidding any use of public money for advocacy work on the part of charities. Withdrawal from the European Union will affect the charity sector, with estimates that the sector receives around £200 million a year from the EU.

**Question 9: To what extent are public policies and practices favorable for philanthropy?**

<b>Score: 4.0</b>
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The government actively and strategically promotes philanthropic values and facilitates equal access to national and international resources and opportunities. Donors are generally free to support any philanthropic cause without government pressure. However, the "Big Society" as a model for engaging charities and delivering social policy goals, which seemed to hold great promise for the third sector both in terms of delivering services and helping communities to empower themselves, has not come to fruition. The government seeks to improve on the fiscal benefits of charitable giving, with recent changes to the Gift Aid scheme as an example. Government agencies demonstrate adequate capacity to support and oversee POs, but there are concerns that support is diminishing.

In response to significant resource constraints and widespread criticism of its performance, the Charity Commission's renewed regulatory focus may have come at the expense of its other role as an advisor and enabler to the charity sector. The government has strengthened the Charity Commission's regulatory powers through legislation enacted in 2016. Compacts exist between the government and voluntary sector bodies at both national and local levels. These are voluntary agreements that are intended to promote partnerships between public bodies and voluntary organizations. Nevertheless, compact principles are not always adhered to and charities do not always feel fully consulted about proposed new laws and regulations, increasing the risk of unintended consequences. This particularly applies to smaller charities, which do not have the resources to devote to additional legal and regulatory compliance. For example, some charities are struggling to safeguard against data security lapses when faced with a tougher data protection enforcement regime.

## V. Socio-Cultural Environment

**Question 10: To what extent are socio-cultural values and practices favorable for philanthropy?**

<b>Score: 4.5</b>
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There is a strong tradition of highly respected and widely practiced philanthropic activity. Frank Prochaska, a historian and noted authority on the matter, claimed that “no country on earth can lay claim to a greater philanthropic tradition than Britain.” The UK is the 8th most generous nation, according to the Charities Aid Foundation (CAF) World Giving Index 2016. The CAF 2015 UK Giving Report found that two in three people (67%) had given to charity in the last year, and two in five people (42%) had given in the last month. Volunteers are also a vital part of the work of POs, and the National Council for Voluntary Organizations (NCVO) Almanac for 2016 noted that 27 percent of the population formally volunteers at least once a month.

The role of POs has recently become the focus of more direct policy engagement, largely focused on the involvement of the sector in welfare provision and how this relates to the role of the State. This has led to debate about what the relationship between the State and POs should be, how this relationship should be managed and supported by the government, and how to maintain the independence of the sector. This is against a backdrop of recession, austerity, and unprecedented cuts in public funding for POs, many of whom are struggling to survive. Charities are restructuring, downsizing, and joining forces as they struggle to raise enough money to meet growing demands. In 2016, the Charity Commission reported that public trust and confidence in charities fell to the lowest recorded level since its monitoring began in 2005. This decline was attributed to critical media coverage of charity practices, distrust about how charities spend donations, and perceptions of aggressive fundraising tactics. Nevertheless, charities continue to enjoy a positive public reputation and are a highly valued part of public life. Positive, recent signs to win back trust include the establishment of a new fundraising regulator, an enhanced regulatory environment, and a renewed interest in the voluntary sector Code of Governance.

## VI. Future of Philanthropy

*These questions are used to provide a general picture of the future of philanthropy in this country as well as recommendations to improve the philanthropic environment.*

### Current state of the philanthropic sector

A recent report of a Select Committee of cross-party members of the House of Lords noted that charities form a vital part of civil society in the UK. From small local organizations run entirely by volunteers to major global organizations with turnover in the hundreds of millions, their work touches almost every facet of British society. The environment in which charities work has changed dramatically in recent years. Shifts in funding, budget cuts, and charity scandals have all taken their toll. At the same time, the support available to the sector has been under considerable pressure. Many of the infrastructure bodies and umbrella organizations in the charity sector have faced funding challenges of their own, and their capacity to support charities has been stretched. In addition, the Charity Commission budget has reduced, and they have had to focus primarily on their regulatory

role and do less aimed at supporting and enabling work. The report concluded that charities have always helped society through periods of upheaval and would do so again.

More positively, recent research on large (£1 million plus) donations talks confidently about this being a “boom time” for UK philanthropy. There are substantial increases in the number of million-pound donations and their collective value, together with more “first time” £1 million donors. In addition, a bigger pool of charities is able to attract multiple mega-donations. These findings suggest that efforts to build a stronger culture of philanthropy in the UK have been successful.

### **Three major recent events affecting the philanthropic landscape between January 2014 and December 2016**

- Charity fundraising scandals of 2015;
- Transparency of Lobbying, Non-Party Campaigning, and Trade Union Administration Act 2014; and
- The outcome of the United Kingdom European Union membership referendum, held in June 2016.

### **Future development trends in the philanthropic landscape**

Like the rest of society, charities are challenged by enormous flux in the external environment. For example, in terms of digital innovation, while some charities are at the cutting edge of new technology, others have yet to realize its potential or overcome its challenges with regard to fundraising, volunteering, and communications. UK charities’ fundraising activities may be controlled by law in the future unless the establishment in 2016 of a new independent regulator of charitable fundraising succeeds in strengthening charity regulation and restoring public trust in fundraising. Following the inappropriate use of donors’ data, and some high profile cases in which unscrupulous fundraisers were accused of targeting old and vulnerable givers, this is the “last chance” for self-regulation of charity fundraising.

The boundaries between the third sector and the private and public sectors have become increasingly blurred by both the rise of social enterprise and contracting out of public services. The emergence of new commissioning models, such as the growth of payment by results, including social impact bonds (SIBs), is also challenging. Social investment has been heavily promoted by the government as a new form of income for charities.

However, alongside the potential advantages, there are also barriers, particularly for smaller charities that may not have the capacity. A recent House of Lord Select Committee Report on Charities recommended that the government and sector leaders should do more to address the reasons for high transaction costs and work to bring them down.

The potential impact of the UK’s withdrawal from the EU on the philanthropic landscape in the UK is hard to estimate, but is likely to be significant. In any event, negotiating the withdrawal will certainly dominate the political agenda, to the exclusion of all else, for some time to come. Traditional models of charity and their governance and leadership may well be questioned in the future.

**Three key recommendations to improve the environment for philanthropy**

1. All limits (legal, practical and even perceived) on charities in relation to legitimate campaigning removed.
2. The Charity Commission should be properly resourced and should use the powers that it has to more effectively and robustly regulate the sector.
3. Increased promotion of commissioning of public services based on impact and social value, rather than simply on the lowest cost.

# Methodology

The *Global Philanthropy Environment Index* seeks to answer the following question: *What are the regulatory, socio-cultural, and political barriers and incentives to philanthropy in developing, emerging, and developed economies?*

In responding to this question, the index:

- Identifies the incentives and barriers to philanthropy in the 79 economies included in the 2018 *Global Philanthropy Environment Index* including 30 European countries included in this special edition; and
- Fosters the exchange of knowledge and ideas among nonprofit experts, scholars, and leaders about enabling philanthropic practices and regulations, and significant global trends through dissemination of results.

Ultimately, the index serves to inform the development of philanthropic environments across economies by providing rigorous, comparative international data that can raise the awareness and understanding of the best strategies to create a more enabling environment for philanthropy globally.

To achieve these objectives, a standard expert questionnaire was used to collect each country expert's assessment of the environment for philanthropy in a given economy. One or more experts for each of the 79 economies included in the study responded to the questionnaire. Following this country-level data collection, 11 regional reviewers discussed scores and narratives with the country experts for their regions. The Indiana University Lilly Family School of Philanthropy research staff then calculated the average values for each indicator and factor at the country, regional, and global levels and identified the key trends that emerged across regions since 2015. The highlights of the narratives collected were included in the report.

## Methodological Improvements

The 2018 report provides new baseline data for future research, and includes several methodological improvements as explained below.

### 1. Changes in the Conceptualization of the Index

- a. The index is built on a theoretical framework that clarifies the concept of philanthropy, defines the notion of the environment for philanthropy, and uses indicators supported by this definition to measure enabling conditions.
- b. The number of indicators measured in the index has been expanded from seven fiscal and regulatory environment indicators to ten, including three new indicators that assess political and socio-cultural environments.
- c. The research focuses on philanthropic organizations, therefore centering the study specifically on organizations dedicated to philanthropic causes around the world.

### 2. Changes in the Methodology

- a. In addition to the three new indicator questions, the new country expert questionnaire requests information that provides context to help understand the environment for

- philanthropy in each country. Specifically, the questionnaire captures information in the following areas:
- i. Legal forms of philanthropy
  - ii. Important social causes supported by philanthropic organizations
  - iii. Average time for registration
  - iv. Average registration costs
  - v. Current state of the philanthropic sector
  - vi. Major recent events affecting the philanthropic landscape in the country
  - vii. Future observable trends
  - viii. Recommendations for improvement
- b. The questionnaire was distributed online to facilitate the data collection process. The use of an online survey streamlined the process and interactions with country experts during and after completion of the questionnaire. It also facilitated the analysis of emerging patterns and trends in the data, both regionally and globally.
  - c. Experts and reviewers included individuals with different backgrounds and experience: academics, legal experts, nonprofit leaders, and researchers in regional or national research organizations.
  - d. Scoring was a multi-step process involving country experts, research staff at the Lilly Family School of Philanthropy, regional reviewers who discussed scores with country experts in each region to reach consensus, and the final validation of the scores by the Advisory Board members.

### 3. Changes in the Publication Package

In addition to the current special edition, the publication includes a global report and two additional sets of reports: 79 country reports and 11 regional reports. Each country report offers background information on the enabling environment for philanthropy in a specific economy, and a detailed update on relevant changes that occurred after January 2014. Each regional report presents an overview of the region and key findings about the current state of philanthropy in the region in terms of ease of operating, tax incentives, cross-border flows, political environment, socio-cultural environment, and future regional trends.

## The Expert Questionnaire

The index collects data through an expert questionnaire that contains ten indicator questions to measure the environment for philanthropy in each economy. Results are grouped into five factors that measure: 1) Ease of operating philanthropic organizations; 2) Tax incentives; 3) Cross-border flows; 4) Political environment; and 5) Socio-cultural environment.

These five factors were evaluated through the following ten indicator questions.

### ***I. Ease of Operating Philanthropic Organizations***

***Indicator Question 1:*** To what extent can individuals form and incorporate the organizations defined?

***Indicator Question 2:*** To what extent are philanthropic organizations free to operate without excessive government interference?



**Indicator Question 3:** To what extent is there government discretion in shutting down philanthropic organizations?

**II. Tax Incentives**

**Indicator Question 4:** To what extent is the tax system favorable to making charitable donations?

**Indicator Question 5:** To what extent is the tax system favorable to philanthropic organizations in receiving charitable donations?

**III. Cross-Border Flows**

**Indicator Question 6:** To what extent is the legal regulatory environment favorable to sending cross-border donations?

**Indicator Question 7:** To what extent is the legal regulatory environment favorable to receiving cross-border donations?

**IV. Political Environment**

**Indicator Question 8:** Is there a favorable political and governance environment for the operation of philanthropic organizations?

**Indicator Question 9:** To what extent are public policies and practices favorable for philanthropy?

**V. Socio-Cultural Environment**

**Indicator Question 10:** To what extent are socio-cultural values and practices favorable for philanthropy?

## Future of Philanthropy

Four new questions were included at the end of the questionnaire. These four final questions were open-ended and not scored. They were used to gain information on the current status and future of philanthropy in each economy, as well as key recommendations to improve the philanthropic environment. These questions were:

1. In general, how would you describe the state of the philanthropic sector in this country?
2. List three major events affecting the philanthropic landscape in this country between January 2014 and December 2016.
3. Identify future development trends in the philanthropic landscape in this country.
4. Provide three key recommendations to improve the environment for philanthropy in this country.

## Scoring

The index relies largely on the information provided by country experts in explaining the enabling environment for philanthropy in their countries and economies. Country-level experts—one or more per economy, most of them country-based—responded to all questions included in the expert questionnaire with rich information. The research team at the Indiana University Lilly Family School of Philanthropy coded the data and conducted supplementary research as needed.

For each of the ten indicator questions, country experts provided a score (to a single decimal place) using a 1–5 scale. A score of 5 represents the most favorable environment for philanthropy, and 1 represents the least favorable environment. To guide the scoring process, the questionnaire includes an ideal scenario, score parameters to explain the meaning of each score, and a set of guiding questions for each indicator question. In addition to the specific score, experts further provided a concise narrative (in approximately 300 words) to offer additional information explaining the score. The narratives considered the practical impact of the laws regulating the operation of philanthropic organizations and their implementation in practice, and the practical description of the political and socio-cultural factors influencing philanthropy in each economy.

The evaluated timeframe covered the most recent state of the philanthropic and civil society environment since January 2014 and covered events that occurred until March 2018 when they were recorded in the regional review process.

## Score Validation and Review Process

In order to increase the validity of the scores, each questionnaire was first reviewed by members of the Lilly Family School of Philanthropy research staff and additional information was collected from experts as needed. Where the experts provided information on economies that are also included in the 2015 report, the 2015 results were used as a benchmark for the most recent data to identify changes that occurred in the economy's regulatory environment in the last three years. No changes in the scores were expected where experts reported no significant changes in their regulatory framework since 2015. The country reports share the information provided by experts.

Based on the country reports and the supplemental information collected through secondary research, research staff drafted regional reports. Both the drafts of regional reports and completed country reports were then sent to regional reviewers for the validation of country scores and the content of the draft regional reports. Regional reviewers discussed the scores with country experts, and added relevant content to the regional reports. Interactions between regional reviewers and country experts also led to updating the content in many of the country reports to include changes that occurred in 2017 and 2018. Regional reviewers wrote the summary description of the environment of philanthropy for the region, which is included in this report.

Lastly, the Advisory Board reviewed and discussed scores from a global perspective, and suggested adjustments for some economies. The research staff then calculated the average values for each indicator and factor at the country, regional, and global levels and developed the index.



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## DID YOU KNOW?

### Public-benefit foundations

There are more than 147,000 registered public-benefit foundations in Europe. Germany has the highest number of active public benefit foundations (20,700 as of 2016) and the highest level of charitable expenditures (EUR 19.4 billion) in Europe.

### 1-percent rule

Individuals can designate between 1 and 3 percent of their personal income tax to support the work of registered philanthropic organizations in Hungary, Italy, Poland, and Slovakia.

### High-net-worth individuals

Individuals from Germany, Norway, Russia, Slovenia, Turkey, Ukraine, and the United Kingdom have joined in the Giving Pledge and committed to giving more than half of their wealth to philanthropy or charitable causes.

### Volunteering

In 2016, more than 10,000 young people aged 18–30 participated in cross-border volunteering in 55 countries through the European Voluntary Service.

### Giving Tuesday

#GivingTuesday, a global day of giving fueled by the power of social media and collaboration, has gained momentum in the majority of European countries. Five new European countries will also be joining the movement in 2018: Finland, France, Poland, Portugal, and Ukraine.

**Please find the full report on our website: [bit.ly/GPEIEurope](http://bit.ly/GPEIEurope)**

The Donors and Foundations Networks in Europe, DAFNE, is proud to support the distribution of the European edition of the 2018 Global Philanthropy Environment Index produced by the Indiana University Lilly Family School of Philanthropy. It is a unique source of in-depth information that helps in understanding the size and scope of the philanthropic sector in Europe and how nations' environments and policies enable or constrain philanthropy, which is essential to maximizing its impact.



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The Indiana University Lilly Family School of Philanthropy at IUPUI is dedicated to improving philanthropy to improve the world by training and empowering students and professionals to be innovators and leaders who create positive and lasting change in the world. The school offers a comprehensive approach to philanthropy through its academic, research, and international programs and through The Fund Raising School, Lake Institute on Faith & Giving, the Women's Philanthropy Institute, and the Mays Family Institute on Diverse Philanthropy. Follow us on Twitter @IUPPhilanthropy, "Like" us on Facebook, and find more information at [philanthropy.iupui.edu](http://philanthropy.iupui.edu).

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