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Legal Environment for Philanthropy in Europe

Denmark

COUNTRY PROFILE

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I. Legal framework for foundations

- 1. Does the jurisdiction recognise a basic legal definition of a foundation? (please describe) What different legal types of foundations exist (autonomous organisations with legal personality, non-autonomous without legal personality, civil law, public law, church law, corporate foundations, enterprise foundations, party political foundations, family foundations, foundations of banking origin as a specific type, companies limited by liability, trusts)? Does your jurisdiction recognise other types of philanthropic organisations?**

Danish law allows for two types of foundations: enterprise foundations and (non-enterprise) foundations, regulated by the Enterprise Foundation Act (erhvervsfondsloven, EFL) and the Foundation Act (fondsloven, FL). In 2014, a statutory legal definition introduced in the Foundation Act and the Enterprise Foundation Act codified the existing customary legal definition:

Under section 1(2) in both the Foundation Act and the Enterprise Foundation Act, a Danish foundation is defined as a 1) self-governing legal entity with legal personality; 2) with its own dedicated assets; 3) irrevocably separated from the founder; 4) to support one or more specified purposes; 5) for a number years, typically at least 10 years; 6) with the foundation governed by the governing board independently from the founder 7) and with no physical or legal person outside the foundation holding the property rights of the foundation. Enterprise foundations are foundations that either perform economic activity themselves or that hold controlling commercial ownership of a company and thus indirectly perform economic activities such as trade or the sale of goods/services (EFL section 2).

As such, under Danish law as self-governing institutions the foundation has no owner or owners, although because of implementation of the AMLD, the two foundations acts now contain a definition of beneficial owners.

Certain foundations are exempt from the two foundation acts. Among others, self-owning church institutions and certain government controlled foundations are exempt, but since the statutory legal definition is a codification of customary foundation law, the definition applies to all foundations. Thus, to a limited extent, customary foundation law regulates the exempt foundations.

Foundations with a family purpose are accepted, but since 1985 not the establishment of new foundations with the eternal, sole purpose of supporting members of the founder's family. Danish law does not allow for trusts (FL section 7, EFL section 28). According to the prevailing view, legal personality is not awarded to self-owning institutions that are not foundations or associations. Thus, philanthropic organisations in Denmark are constituted as either foundations, associations or companies. Organisations without separate legal personality are accepted for gathering assets to a specific purpose.

- 2. What purposes can foundations legally pursue?¹**

- Only public-benefit
 Both public- and private-benefit

- 3. What are the requirements for the setting up of a foundation (procedure, registration, approval)? What application documents are required? Are there any other specific criteria for registration?**

A foundation (see definition under question 1) is established by deed or will. A non-enterprise foundation obtains legal personality at the decision of establishment, according to customary foundation law. Both endowment value of at least 1,000,000 DKK (~€135,000) and assets/purpose-proportionality are required but the authorities have discretionary dispensation powers (FL section 8). Within three months of establishment, the foundation must notify the foundation authority, the Department of Civil Affairs (DCA) and the tax authorities, both of whom must receive the statutes of the foundation; however, there is no statutory approval requirement. The statutes of the foundation

¹ This question focuses only on public-benefit foundations; see the definition in the Glossary developed for this project, which can be found on the Philanthropy Advocacy website.

must cover the name of the foundation, its domicile, its purpose, value of assets, any special rights of the founder and third parties, the number of board members (at least three), accountability requirements, and the distribution of the foundation's return from investments or the operational fulfilment of the purpose enshrined in the foundation statutes (section 7).

The Danish Business Authority (DBA) reviews the registration of enterprise foundations (EFL chapter 3). Within two weeks of decision of establishment of the foundation, the governing board must notify the DBA and supply the DBA with information relevant for registration of the foundation in the Business Register administered by the DBA (EFL section 12). A 300,000 DKK (~€40,000) minimum asset value requirement for the enterprise foundations applies (section 31). The DBA performs an extensive compatibility review of the provided material and a number of registration requirements in the EFL (section 15). The DBA carries out a legality review of the foundation statute and, inter alia, the requirements in EFL regarding a specified purpose (section 27). Only subjects with legal capacity may establish an enterprise foundation (section 26). Thus, both physical persons and municipalities, companies, associations, foundations etc. with separate legal personality may establish a foundation. With establishment assets based on non-cash contributions, the EFL requires an external auditor's value examination (section 34). The Business Register contains information on the foundation name, purpose, and the relevant information on directors, auditors, and members of the governing board and other considered beneficial owners (section 21 A-21 D).

4. Is state approval required? (approval by a state supervisory authority with/without discretion)

- Approval by a state authority with discretion
- Approval by a state authority without discretion
- Approval by a court
- Notarisation by a notary public

No. However, enterprise foundations obtain legal personality at the time of the DBA-registration. Until that point, the enterprise foundation is under establishment.

5. Are foundations required to register?

a) If foundations must register, in what kind of register?

- Company register
- Foundation register at national level
- Foundation register at the regional/county level
- Beneficial ownership register
- Any other public register (other than a foundation/charity one)

b) If foundations are registered, what information is kept in the register?

c) If foundations are registered, is the register publicly available?

- Yes, all information publicly accessible
- Yes, some information publicly accessible
- Yes, accessible upon request
- No

See question 3 for information on enterprise foundations' registration in the Central Business Register and for information on the non-enterprise foundation notification requirement and registration in the internal, non-public DCA database, accessible only on request.

However, as foundations are obliged to update information on beneficial ownership in the Central Business Register, in fact, all foundations are since 2017 registered in the Central Business Register. In addition, all foundations are registered in the tax authorities' internal database.

According to executive order no. 1377/2019 on registration in the DBA database, the documents regarding the establishment of an enterprise foundation are kept at the register and are publicly accessible, with some exemptions (section 14). Thus, the register contains, inter alia the address,

the purpose of the foundation, the statutes of the foundation, the date of the last amendment of the statutes of the foundation, the annual reports, the size of the endowment, the full name, position and residence of all board members, executive directors, and auditors. A fee may apply for some information. The Enterprise Foundation Act allows for the description of distributions to be non-accessible for the public, under certain circumstances (section 80).

For non-enterprise foundations, the received information is stored in the DCA internal database. The rules in the Danish Access to Information Act apply, which means that only trade secrets and other sensitive or similar information are exempt from public access to information. Other information is accessible on request.

6. Is a minimum founding capital/endowment required?

- No
- Yes, amount:

Required foundation capital: Enterprise foundations 300,000 DKK (~€40,000) and non-enterprise foundations 1,000,000 DKK (~€135,000). See question 3.

7. Is the foundation required to maintain these assets or any other specified asset level throughout its lifetime? Are spend-down foundations allowed?

Foundations are allowed to spend down the endowment if this is provided for by the founder at the establishment of the foundation (FL section 9 and EFL section 81). The foundation acts requires no specified asset level throughout the foundations lifetime, but if there is no assets left after a spend-down of the endowment, the (non-enterprise) foundation ceased to exist. Enterprise foundations with asset value/endowment falling below 300,000 DKK (~€40,000) will fall within the Foundation Act (EFL section 31).

8. What governance requirements are set out in the law? Is it a one-tier or two-tier foundation governance model?

a) Is it mandatory to have a:

- Supervisory board
- Governing board

b) What are the requirements concerning board members? Is a minimum/maximum number of board members specified? Does the law regulate the appointment of board members and their resignation/removal or can this be addressed in the statutes/bylaws?

c) What are the duties and what are the rights of board members, as specified by national legislation or case law?

d) What are the rights of founders during the lifetime of the foundation? Can fundamental decisions, such as change of purpose, be made at the discretion of the founder? What are the legal requirements in such circumstances?

e) Can the board or the founder amend the statutes including the purpose of the foundation? If yes, please indicate any particularities. What is the relationship between the powers of the founders, the statutes of the foundation and the power of the board members?

f) What are the rights of third parties (e.g. right of information)?

g) What rules are in place to ensure against conflict of interest? What is the legal definition of a conflict of interest under your legislation? How is self-dealing prohibited?

h) Can staff (director and/or officers) participate in decision-making? How and to what extent?

Both types of foundations are run by a governing board of at least three members, which represents the foundation (FL section 11 and EFL section 37). The governing board is by definition the supreme

governing body of the foundation. In all actions on behalf of the foundation, the members are obliged to ensure the proper administration and pursuance of the foundation's purpose. As such, only actions in the sole interest of the foundation – in accordance with the statutes of the foundation – are allowed (EFL section 38). If the rules in the two foundation acts are not complied with, the members may be liable and removed by the foundation authorities (FL section 14 and EFL section 45). Members of the governing board are appointed in accordance with the statutes of the foundation, but the foundation authority may appoint a new member if appointment according to the statutes fails (FL section 15). Any member may choose to quit the board (FL section 13 and EFL 44).

Both the founder and family members may be on the board, but together they may not hold a majority (FL section 16 and EFL section 40). The board can appoint one or more directors (FL section 11 and EFL section 37). The Enterprise Foundation Act generally contains much more detailed governance regulation. The act provides that the governing board be in charge of the strategic management and the proper organisation of the foundation. The act provides for the possibility that the day-to-day management is carried out by one or more directors instead of the governing board (EFL section 38).

It follows from both acts that the ultimate responsibility for disbursement and for other important decisions cannot be delegated. The acts allow for a director or third parties to prepare and recommend disbursement decisions. The decision is ultimately with the board, although in practice many foundations boards receive comprehensive assistance in the preparation and evaluation process on disbursements. The relevant foundation authority must approve any decisions of the board that may potentially put the existence of the foundation at risk or pose a risk to the compliance of the statutes of the foundation (FL section 21 and EFL section 61).

As a consequence of the high significance of the principle of irrevocable separation from the founder enshrined in both acts (see question 1) there are limits to which competences the founder may reserve for themselves at the establishment. A founder cannot veto amendments to the purpose in the statutes of the foundation (FL section 32 and EFL section 89) but the founder may reserve the right to allow certain decisions such as the sale of a certain asset. However, if necessary under the circumstances, such right may potentially be revoked with the consent of the foundation authority.

The rules on conflict of interest in the two acts are aligned (FL section 19 and EFL section 51). Governing board members are not allowed to participate in the handling of questions or agreements between the foundation and that board member. This prohibition is absolute. However, the remaining members of the board may ask that member to explain the topic and the circumstances. In terms of handling questions or agreements between the foundation and third parties, a board member may not participate if the specific member holds a significant interest in the subject matter and that specific interest is in conflict with the interest of the foundation.

9. What is the liability of the foundation and its organs? What is the general standard of diligence for board members? (e. g. duty of obedience, duty of care/prudence, duty of loyalty)? In what type of rule are these criteria established: fiscal, administrative, civil, commercial? Is there a solid case law, if any, regarding the duty of due diligence? Does your country differentiate between voluntary (unpaid) and paid board members? Who is allowed to bring a complaint about breaches of such duties: the other members of the board, the founder/s, the public authorities? If a complaint is brought, which authority has competence in such cases: administrative, tax authority, only the judiciary power (attorney general) or beneficiaries/general public?

The general principle of tort liability is the “culpa standard” which follows from long-standing case law. According to case law and theory, it must be established that the board member acted negligently in order for that member to become liable. This test of negligence or irresponsible behaviour is made on an individual basis. The criminal liability for legal persons applies to foundations (Danish Criminal Code section 25-27) and foundations may be subject to a fine. Non-enterprise foundation board members may be subject to fines if certain sections of the Foundation Act are violated (FL section 43-44). As a rule, board members in non-enterprise foundations are not fined for disbursements incompliant with the statutes of the foundation, while members of the governing board in enterprise foundations may be fined for such disbursements (EFL chapter 16). In practice, the foundation authorities initiate removal and refrain from initiation of criminal charges.

In terms of liability, the two acts do not differentiate between voluntary (unpaid) and paid board members.

Concerning tort liability, the governing board has standing as well as the foundation authority. The founder or anyone with a special interest enshrined in the statutes of the foundation will have standing in court, according to customary law. However, as a starting point, beneficiaries do have standing. The prosecution service decides on criminal charges in accordance with the Danish Administration of Justice Act.

10. Who can represent a foundation towards third parties? Is this specified in law or is it up to the statutes of the organisation? Do the director and officers have powers of representation based on legislation?

Only the Enterprise Foundation Act contains specific rules on representation (EFL section 68). Both board members and directors may represent the foundation. The general contract rules on officers' powers of representation also apply.

11. Are purpose-related/unrelated economic activities allowed? If so, are there other types of limitations on economic activities (related/unrelated)?

Purpose related activities are accepted in practice. Unrelated economic activities are only accepted in enterprise foundations and in other foundations if there are specific provisions on economic activities laid down in the statutes of the foundation.

12. Is there any legal/fiscal framework for grant-makers to be able to fund legal entities that are conducting economic activities in addition to their public utility activities? If any, what are the limitations for funding those kinds of legal entities?

No legal framework.

13. Are foundations permitted to be major shareholders in a company? Are there any limitations to voting rights? Is this considered as an economic activity?

Yes, such foundations would usually be qualified as enterprise foundations (EFL section 1-2).

14. Are there any rules/limitations in civil and/or tax law regarding foundations' asset management (only secure investments/bonds/investments with a certain return)? What, if any, types of investment are prohibited? Are there any limitations on mission-related investments?

The non-enterprise foundations are regulated by the Executive Order on Foundations' Asset Management (Anbringelsesbekendtgørelsen, executive order no. 957/2013). Unless the statutes of the foundations provide for a specific and clear derogation from the executive order, all non-enterprise foundations have to follow the quite conservative rules set forth in the order, requiring that at least 50% of the assets be invested in bonds or similarly low risk, low yield investments. The non-enterprise foundations are not allowed to invest in real estate, unless provided for in the statutes of the foundation. However, the authorities (DCA) are in the process of evaluating the rules (see trends and developments below). Mission-related investments are not explicitly regulated in the Foundation Act, but might require a specific legal basis in the statutes of the foundation.

The enterprise foundations are broadly speaking free to invest in any way that complies with the purpose of the foundation, but the investments must generally be in the interest of the foundation (EFL section 38). Mission-related investments are not explicitly regulated in the Enterprise Foundation Act, but such investments are tolerated in practice.

15. Are foundations legally allowed to allocate grant funds towards furthering their public-benefit purpose/programmes which (can) also generate income – impact investing? (recoverable grants; low interest loans; equities)

Yes, but the law is unclear, and a specified basis in the statutes of the non-enterprise foundation is likely to be viewed as necessary by the DCA. Impact investment is not explicitly regulated in the Enterprise Foundation Act; however, such investments are tolerated in practice.

16. Are there any limitations (in civil law/tax law) to political party related or general lobby/advocacy activities?

No civil law limitations in this regard.

17. What are the requirements for an amendment of statutes/amendment of foundations' purpose?

If the governing board seeks approval from the foundation authority, the authority reviews the amendment application and the reasoning behind it. The criteria for amendment are not stipulated in the text of the foundation acts, but follow from an (disputed) interpretation of the preparatory works to FL section 32 and EFL section 89. According to the prevailing view in the scholarly literature, because of the respect of the founder's intentions, either impossibility or qualified inappropriateness (compelling reasons) are required for amendment of purpose in both enterprise foundations and other foundations. Others advance a "good-reasons test". Most other amendments of the statutes are subject to a less strict appropriateness test. Under very special circumstances and procedures, the DCA may amend the foundation's statutes without initiative and consent from the governing board (FL section 33 and EFL section 90).

18. What are requirements with regard to reporting, accountability, auditing?

- a) What type(s) of report must be produced?
 - Annual financial report/financial accounts
 - Annual activity report
 - Public-benefit/activity report
 - Tax report/tax return
 - Other reports e.g. on 1% schemes
 - Reports on governance changes (e.g. new board members)
 - Report on conflict of interest (self-dealing and conflict of interest breach cases)
- b) Must all/any of the reports produced by the foundation be submitted to supervisory authorities? If so, to which authorities (e.g. foundation authority, tax authority)?
- c) Are the reports checked/reviewed? By whom (supervisory/tax authorities)?
- d) Do any or all of the reports and/or accounts of foundations need to be made publicly available? If so, which reports and where (website, upon request)?
- e) Is external audit required by law for all foundations?
- f) By whom should audits be undertaken? Do requirements/guidelines exist regarding international and national auditing agencies and standards?

The two foundation acts contain very different rules on reporting, accountability and auditing. In short, the enterprise foundations must meet a number of disclosure requirements in the annual report (section 69-114 in ARL, årsregnskabsloven), inter alia, information on salaries to management and administrators (section 69), transactions with related parties, connections to other foundations or companies (section 70), the board's report on good foundation management (section

77 A), report on the foundation's policies for disbursements (section 77 A), beneficiaries (EFL section 80) etc. The annual report must fulfil the same standard requirements as non-listed companies with limited liability (ARL section 2-3) and external audit by an approved auditor is mandatory (EFL section 69). The DBA publishes the annual report and performs random sample checks of the reports.

Less strict requirements apply for non-enterprise foundations. These foundations shall only send the annual report to the DCA upon request from the DCA. External auditing by an approved auditor is only required for foundations with endowments over 3,000,000 DKK (~€400,000). The auditor must review the annual report and notify the DCA about any matters incompliant with the Foundation Act or the foundation statutes, inter alia disbursement outside the scope of the purpose (FL section 23-25). Customary foundation law regulates the low capital non-enterprise foundations not covered by the Foundation Act (FL section 1: endowment value lower than 1,000,000 DKK (~€135,000)). For these low capital foundations, an annual report and a governing board are required, and the usual liability rules apply. However, auditing is not required.

19. Supervision: Which authority, what measures?

a) What type of body is the supervisory authority? (multiple answers possible)

- A public administrative body
- A public independent body
- A combination of a governmental body and a court
- A court
- A public administrative body and an independent body
- A tax authority
- Other

b) Does the supervisory body review reports?

- Yes
- No

c) Are foundations subject to inspection?

- Yes
- No

d) Is approval from the authority required for certain decisions of the governing board?

- Yes, formal approval is needed
- Yes, needs just to be informed
- No

If yes, please specify which type of decisions:

e) Is it mandatory to have a state supervisory official on the governing board?

- Yes
- No
- Can a government official be appointed to the governing board by a state authority, if so please mention:

f) What enforcement measures are in place (including compliance measures and sanctions for non-compliance) concerning registrations, governance, reporting, and public-benefit status?

The foundation authorities may recommend or demand certain legal actions provided for in the foundation acts. The authorities have standing in courts. They may remove members of the governing board and appoint new members. Certain important decisions and amendment of the foundation statutes must be approved by the foundation authorities (see question 8).

20. When and how does a foundation dissolve?

Liquidation approval from the foundation authorities (DCA or DCB) is required (FL section 32 and EFL section 89 and 107). The remaining assets are disbursed in accordance with the purpose of the foundation, and, if necessary, a purpose as close as possible to the original purpose.

With the foundation assets spent down or lost, the approval is essentially a formality. The prerequisite for liquidation approval in other cases is disproportionality between assets/endowment and the foundation purpose (FL section 32). However, if specifically provided for in the foundation statutes, specified circumstances may trigger liquidation even if disproportionality is not established. In practice, the DCA usually allows a foundation to dissolve if the asset value is below 2,000,000 DKK (~€270,000).

21. Is there a maximum that can be spent on office/administration costs in civil law and/or tax law? If yes, what is the amount?

Governing boards enjoy a significant level of discretion. There is no fixed amount, but both the DCA and DCB will intervene if the governing board is incompliant with the fundamental duty to disburse (or the duty of operational fulfilment of the purpose enshrined in the foundation statutes).

22. Does civil and/or tax law require a foundation to spend a certain percentage of its overall assets within a certain period of time (e.g. within the next financial year)? In particular, can a foundation accumulate these expenses over a period of time (and if so, what kind of authorisation is required to do so)?

The fundamental duty to disburse the yearly return – or the duty of operational fulfilment of the purpose enshrined in the foundation statutes – is embodied in both the Enterprise Foundation Act and the Foundation Act (FL section 29 and EFL section 77), but there is no spending requirement related to the overall assets in the foundation acts.

23. Under what conditions does the civil law in your country recognise a foreign foundation? Do they have to register? Does your law recognise the concept of trusts?

In general, under Danish civil law, foreign legal entities are recognised if they are formed in accordance with the law of another state. The trust concept is not accepted in Danish civil law.

24. Does the law in your country allow a foundation to conduct (some or all) activities (grant-making, operating, asset administration, fundraising) abroad? Is there any limitation?

No limitations.

25. Does the law in your country impose any restrictions on ability to receive donations from abroad? If so, please describe.

No limitations.

26. Does the civil law in your country allow the transfer of the seat of a foundation (in the EU) and/or cross-border mergers?

While not prohibited by the foundation acts, it would require an amendment to the foundation statutes (FL section 32 and EFL section 89). In practice, the foundation authorities have never allowed transfer of the seat of a Danish foundation. Theoretically, however, if provided for in the foundation statutes, the authorities could allow for such transfer.

II. Tax treatment of foundations

1. What are the requirements to receive tax exemptions?

- Pursuing public-benefit purposes
- Non-distribution constraint
- Being resident in the country
- Other

2. What are reporting/proof requirements to claim tax exemptions? What does the foundation have to submit to the authorities (statutes, financial reports, activity reports, other?)

3. Is specific reporting required for the use of public funds (grants received from public bodies/state/municipality/etc.)?

4. Is there an obligation to report to public authorities on donors and beneficiaries? If so, to which authority and what type of information?

5. Is there a statutory definition of what a public-benefit purpose (charitable purpose) is in the civil law (foundation law, trust law) of your country? If yes, please give us the definition. If so, is the determining definition that subsequently links to tax benefits?

There is no definition in Danish civil law of the term “public-benefit purpose” (“almennyttig”). The purpose of the foundation is of relevance for tax law purposes and for determining whether a foundation is considered to be an enterprise foundation (“erhvervsdrivende fond”).

6. Is there a statutory definition of what a public-benefit purpose is in the tax law of your country? If yes, please give us the definition.

There is no statutory definition of the term “public-benefit purpose” in Danish tax law. However, it is a general requirement for donations to be considered as given to a public-benefit purpose, that the beneficiaries are described in the statutes of the foundation by objective criteria, and that the beneficiaries are not limited to a specific group of persons, institutions or companies.

Any foundation can apply to the Danish national tax authorities to be approved as having a public-benefit purpose for certain tax purposes (deductibility of donations made to foundations and other public-benefit organisations). Every year [a list](#) is published with the names of all foundations approved as public benefit. Applications to be approved for the coming calendar year must be made to the authorities no later than 1 October. Note that this approval as public benefit does not have any effect on the ability of a foundation to deduct its donations from its taxable income under Danish tax law. A foundation which is not approved may thus be able to deduct its donations made for public-benefit purposes. Since 2008 foreign foundations have been able to apply for approval under the same conditions as Danish foundations.

In executive order no. 1656/2018, The Ministry of Taxation has set up some guidelines for the approval of foundations whose donors may deduct their donations from their taxable income in Denmark:

- The foundation must be approved by the Ministry for Taxation.
- The donations from the foundation must fall under one or more public-benefit purposes.
- The foundation must be formed in accordance with one of the Danish foundation acts, or have a governing board with at least one member who is independent in relation to the founder.
- The foundation must have its principal office and the majority of its management organs located within the EU or EEA.
- The foundation must have a public-benefit purpose (public benefit could be translated as “almenvælgørende” or “almennyttig”) Beneficiaries must be objectively defined as a broad group of the population, which is not geographically or otherwise limited to less than 35,000 persons.

- The activities of the foundation may be carried out in Denmark or abroad.
- The foundation must have an average of at least 100 donors from the EU/EEA per year.
- The individual donor must have given a gift of at least 200 DKK (~€1,500) during the year to the relevant charitable and non-profit association, fund, foundation or institution, etc.
- The yearly income of the foundation or the equity shall be no less than 150,000 DKK (~€20,000).

7. Please indicate whether the following purposes would or would not be accepted for tax privileges in your country (noting that the tax status often depends on additional requirements):

Public-benefit purpose	Accepted in tax law (for tax privileges)			
	Yes	Probably yes	Probably no	No
Arts, culture or historical preservation	x			
Environmental protection	x			
Civil or human rights	x			
Elimination of discrimination based on gender, race, ethnicity, religion, disability, sexual orientation or any other legally prescribed form of discrimination	x			
Social welfare, including prevention or relief of poverty	x			
Humanitarian or disaster relief	x			
Development aid and development cooperation	x			
Assistance to refugees or immigrants	x			
Protection of, and support for, children, youth or elderly	x			
Assistance to, or protection of, people with disabilities	x			
Protection of animals	x			
Science, research and innovation	x			
Education and training	x			
European and international understanding (e.g. exchange programmes/ other activities aimed	x			

at building bridges between nations)				
Health, well- being and medical care	x			
Consumer protection	x			
Assistance to, or protection of, vulnerable and disadvantaged persons	x			
Amateur sports	x			
Infrastructure support for public-benefit purpose organisations	x			
Party political activity	x			
Advocacy	x			
Advancement of religion	x			
<i>Other – please list other purposes accepted in tax law for tax privileges in your country</i>				

8. Support of “the public at large”

- a) Do the activities of a foundation with public-benefit status for tax purposes generally have to benefit “the public at large”?

As mentioned above, it follows from the tax agency guidelines that beneficiaries must be objectively defined as a broad group of the population, which is not geographically or otherwise limited to less than 35,000 persons.

- b) If yes, can a foundation with public-benefit status for tax purposes support a closed circle in a sense that beneficiaries can be identified based on legal or family affiliations?

No.

9. Non-distribution constraint

- a) Does a foundation with public-benefit status for tax purposes generally have to follow a “non-distribution constraint” which forbids any financial support of the foundation board, staff, etc.?

A public-benefit foundation may remunerate its board members, but except from that, financial assistance is not allowed.

- b) What happens with the foundation’s assets in case of dissolution - can the assets revert to private ownership or do they have to stay in the public-benefit sphere?

In order for a foundation to be considered a public-benefit foundation, its statutes must provide that in case of dissolution of the foundation, any remaining assets have to be transferred to another public-benefit foundation or used to advance a public-benefit purpose.

10. “Altruistic” element

- a) Is remuneration of board members allowed in **civil law** and in **tax law**? If remuneration is allowed, are there any limits in **civil law** and/or in **tax law**?

Board members may be remunerated for their work. However, the remuneration must not exceed a reasonable amount with regard to the nature of the job and the workload involved. The foundation supervisory authority may recover any remuneration that exceeds this limit.

- b) Does **tax law** allow a donor/funder to receive some type of benefit in return for a donation? (e.g. postcards, free tickets for a concert)
- c) Is there a maximum amount that can be spent on office/administration costs in **civil law** and in **tax law**? If yes, how are “administration costs” defined? Please indicate which of the following types of expenditures would/would not be considered as “administration costs”:
- Personnel costs (staff salaries/payroll costs)
 - Board remuneration
 - Costs of external audit
 - Other legal/accounting costs
 - General office overheads (rent/mortgage payments, utilities, office materials, computers, telecommunications, postage)
 - Insurance
 - Publicity and promotion of the foundation (e.g. website, printed promotional materials)
 - Asset administration costs
 - In the case of an operating foundation – costs related to programmes/institutions run by the foundation
 - Costs related to fundraising

See question I.21. There is no statutory definition of administration costs.

11. Hybrid structures (elements of private benefit in public-benefit foundations)

- a) Does the **civil law** of your country accept the following provisions/activities of a public-benefit foundation?

	Yes	Probably yes	Unclear	Probably no	No
The founder restricts the use of the endowment by specifying that the foundation is required to maintain the founder, their spouse and descendants.	x*				
The founder retains a beneficial reversionary interest in the capital of a property or other asset for their own continuing use.	x**				
The gift consists only of the <i>freehold reversion</i> (residuary interest) in a residence that is subject to an existing lease (for a term of years, or even for life) in favour of the founder (or another member of their family) as tenant.	x*				
A foundation distributes a (small) part of its income to the founder or their family.	x				

* Under Danish law, a family foundation is allowed. However, after 1985, in a new foundation the statute may specify family members as beneficiaries, provided that they are alive at the time when the foundation is set up plus one unborn generation.

** Only a limited part of the foundation, e.g. a right to use a home now owned by the foundation, if the value of the home only constitutes a smaller proportion of the total capital owned by the foundation.

- b) Does the **tax law** of your country accept the following provisions/activities of a tax-exempt foundation?

	Yes	Probably yes	Unclear	Probably no	No
The founder restricts the use of the endowment by specifying that the foundation is required to maintain the founder, their spouse and descendants.					x
The founder retains a beneficial <i>reversionary</i> interest in the capital of a property or other asset to retain for their own continuing use.					x
The gift consists only of the <i>freehold reversion</i> (residuary interest) in a residence that is subject to an existing lease (for a term of years, or even for life) in favour of the founder (or another member of their family) as tenant.					x
A foundation distributes a (small) part of its income to the founder or their family.	x				

12. Distributions and timely disbursement

- a) Are foundations allowed to spend down their endowment?

Yes, if provided for in the foundation's statutes, see question I.7.

- b) Are they allowed to be set up for a limited period of time only? If so, is there a minimum length of time for which the foundation must exist?

While a foundation in principle exists for an unlimited period, it is accepted that a foundation's existence may be limited to a specified period (in practice at least 10 years).

- c) Does the **civil law** and/or **tax law** of your country require a foundation to spend its income (or a certain amount of the income) within a certain period of time, e.g. within the next financial year? If yes, is there a specific amount/percentage of the income that must be spent within this time? Which resources would be considered as income? E.g. would donations/contributions designated for building up the endowment be included in/excluded from the income to be spent? What expenditures would count towards the disbursement of income (e.g. would administration costs be included/excluded)?

According to civil law, as a starting point the board of a foundation must spend the foundation's entire income for activities related to its purpose. However, to a certain extent the board may decide to consolidate the endowment or to save income during a few years if this is necessary to ensure that the purpose is fulfilled over time. There is not a specific percentage that needs to be spent every year, but the foundation supervisory authorities may – based on an overall assessment – intervene if the duty to distribute is not sufficiently fulfilled.

If so, is there a specific amount/percentage of the income that must be spent within this time? Which resources would be considered as income? E.g. would donations/contributions designated as being for building up the endowment be included in /excluded from the income to be spent? What expenditures would count towards the disbursement of income (e.g. would administration costs be included/excluded)?

Everything is considered income, but income from donations etc. are only taxed if they exceed 25,000 DKK (~€3,400) per year. All income from business activities is taxed, but, in general, all relevant costs may be deducted.

- d) Does the **civil law** and/or **tax law** of your country require a foundation to spend a percentage of its overall assets in the form of a "pay-out rule"?

No.

Example: Does the **civil law** of your country require the following of a public-benefit foundation?

	Yes	Probably yes	Unclear	Probably no	No
A foundation accumulates its income for 5 years, only in the 6 th year are there distributions for the public-benefit purpose of the foundation.	x*				

* Provided that the accumulation of income is necessary to fulfil the purpose, e.g. a distribution of extraordinary size. If not, the usual duty to distribute the income each year applies.

Example: Does the **tax law** of your country require the following of a public-benefit foundation?

	Yes	Probably yes	Unclear	Probably no	No
A foundation accumulates its income for 5 years, only in the 6 th year are there distributions for the public-benefit purpose of the foundation.	x				

A foundation may for tax purposes deduct from its taxable income an amount for consolidation of up to 4% of the distributions made by the foundation for public-benefit purposes in addition to deductions derived from distributions. This deduction can only be made if distributions have actually been made during the fiscal year. If during a fiscal year there have been no distributions, this deduction is lost. The percentage was lowered from 25 to 4 in 2016.

13. Are activities abroad in another country compatible with the public-benefit tax status?

Activities can be conducted outside Denmark and assets can be transferred outside the country.

14. Can public-benefit organisations with a tax-exempt status also support/give grants to for-profit organisations (such as a small green start-up)?

No.

15. Corporate income tax treatment. How are the following types of income treated for corporate income tax purposes? Are they taxable or exempt?

Foundations are for tax purposes generally treated as joint-stock companies according to section 3 of the special Taxation Act for Foundations (Fondsbeskatningsloven, FBL). They are taxed on the income derived from economic activities. Other income is also taxed at a rate of 22%, but only if it exceeds 25,000 DKK (~€3,400). Gifts and donations received by foundations are treated as other income, according to FBL section 3(3). (Tax deductions for foundations are possible - see below). Gifts and donations given to a foundation in order to build up its endowment are not taxed (FBL section 3(3)).

Dividends received from companies in which the foundation holds at least 10% of the shares are exempt from tax (FBL section 10 referring to section 13 of the Corporate Income Tax Law (Selskabsskatteloven, SEL)). If a foundation holds at least 75% of the shares of a limited liability company, which for tax purposes is considered resident in Denmark, the income of that company is for tax purposes considered to be earned by the foundation (SEL section 3(4)).

Foundations can receive tax deductions in various ways. Most importantly, they can deduct the amounts they spend on donations made during the fiscal year for the charitable or public-benefit purposes specified in their statutes (FBL section 4). According to FBL section 4, a foundation may deduct from its taxable income an amount for consolidation of up to 4% of the amount spent on donations for public-benefit purposes during the fiscal year. The foundation may also deduct a reserve for consolidation if the amount is donated for public-benefit purposes within the next five years (FBL section 4(4) and 4(5)). It can deduct other grants as well if their recipients are taxed. Donations from one foundation to another are also tax-deductible.

Foundations that do not fall under the FBL can be taxed according to the Corporate Income Tax Law.

- a) Grants and donations
- b) Investment income (asset administration)
 - Interest from fixed rate bonds
 - Equities
 - Income from leasing of a property that belongs to the foundation
- c) Economic activities (related/unrelated)
 - Income from running a hospital/museum/opera
 - Income from producing/selling books (e.g. art books sold by a cultural foundation)
 - Income from running a bookshop inside a museum/opera run by the foundation
 - Income from running a café in the hospital/museum run by the foundation
 - Income from selling merchandise (activity not related to the pursuance of the public-benefit purpose)
 - Income from intellectual property (e.g. royalties and licence fees)
- d) Income deriving from grant expenditure towards public-benefit purpose/programme activities (such as loans, guarantees, equities)?
- e) Is major shareholding in a business undertaking considered as an economic activity and taxed accordingly?

16. Are capital gains subject to tax? If so, are they liable to corporate income tax or to a separate tax?

Yes, corporate income tax.

17. Does any kind of value added tax (VAT) refund scheme for the irrecoverable VAT costs of public-benefit foundations exist in your country?

18. Is capital tax levied on the value of assets, where applicable?

19. Are there taxes on the transfer/ sale of assets by foundations?

20. Are there any other taxes to which public-benefit foundations are subject to (e.g. real property tax)?

21. Can a foreign foundation (EU and other) get the same tax benefits as a national foundation according to the wording of the tax law in your country? If yes, under what conditions? If they have to fulfil exactly the same requirements as locally-based public-benefit foundations, please refer to above but indicate which documents need to be provided and translated:

- Statutes (translation required?)
- Last annual financial report (translation required?)
- Documents providing evidence for certain tax law requirements e.g. that income was actually spent for public-benefit purposes, which may not be required by the organisation's country of seat but are required according to the legislation of the country from which tax benefits are sought?
- Other

Yes, see above.

22. Does your country have signed bi-lateral tax treaties, which provide for reciprocal tax treatment of public-benefit organisations? If so, with which countries?

Denmark has signed [164 different bi-lateral tax treaties](#).

23. Does your country apply withholding tax to the income from local investments held by domestic and/or foreign-based foundations? If so, can domestic or foreign-based foundations reclaim all or part of the withholding tax under domestic law?

No.

III. Tax treatment of donors of foundations

1. Is there a system of tax credit or tax deduction or other mechanisms such as tax allocation systems or matching grants?

Only donations to recognised public-benefit foundations are tax-deductible for the donor. The special approval of the Ministry of Taxation is needed before a Danish foundation can receive tax-deductible donations. By 1 October each year, the foundation has to ask for this approval by sending its statutes and annual accounts to a special department of the tax authority. The list of qualifying institutions is published annually. Foundations that wish to be included have to spend their income on a public-benefit purpose.

2. Tax treatment of individual donors

a) What tax relief is provided for individual donors? Is there a minimum and/or a ceiling to a contribution on which tax incentives can be claimed?

b) Which assets qualify for tax deductibility (e.g. cash, real estate, in kind or other)

Both individual and corporate donors receive limited tax benefits when donating to qualifying charitable organisations. Gifts exceeding 500 DKK (~€70) up to 16,600 DKK (~€2,200) are deductible each year. Cash donations and in-kind donations are deductible. The limit of 16,600 DKK (~€2,200) is for the fiscal year 2020. The limit is adjusted annually.

If the donation is given through a covenant or an annuity for a fixed period of at least 10 years (written statement between donor and beneficiary), corporations and individuals cannot deduct more than 15% of their taxable income.

3. Tax treatment of corporate donors

a) What tax relief is provided for corporate donors? Is there a minimum and/or a ceiling to a contribution on which tax incentives can be claimed?

b) Which assets qualify for tax deductibility? (e.g. cash, real estate, in kind, or other)

See above.

4. Tax treatment of donations to non-resident public-benefit foundations: Do donors get the same tax incentive?

Deductions are possible also for non-resident public-benefit foundations, if they register as charitable in Denmark.

5. Other frameworks such as percentage law systems, whereby the donating tax payer may assign part of the tax due to a public-benefit organisation?

No.

6. What are the requirements that the donor must fulfil and/or what is the information they must provide in order to claim tax benefits? What information must donors provide to their tax authority in order to receive tax incentives for their donation (e.g. submitting details on the organisation they support: statutes, annual financial report, documents providing evidence for certain tax law requirements, for instance to show that income was actually spent for public-benefit purposes)?

The approved association must report the donor's contribution to the Tax Agency. The donor must provide their social security number to the foundation to get tax benefits.

7. Are there any different or additional requirements to be fulfilled when a donor is giving to a foreign-based foundation? What information must donors to foreign-based organisations

provide in order to receive tax incentives for their donation (e.g. statutes, annual financial report, documents providing evidence for certain tax law requirements, for instance to show that income was actually spent for public-benefit purposes)? Are translations of documents required?

No.

8. Do donors get tax incentives when donations are done via specific tools such as:

- Requesting money in public (street, door-to-door)
- Via TV and radio campaigns
- Via sms
- Crowdfunding

Do they have to follow any kind of particular process? If so, which one?

No restrictions on the form. See above.

IV. Tax treatment of beneficiaries

(i.e. those receiving a grant or other benefit from a foundation)

- 1. Individuals: Are individual beneficiaries of grants required to pay taxes or are the grants tax exempt?**

Gifts or grants by foundations are regarded as income for the recipient and taxed at the normal income tax rate.

- 2. Legal entities: Is there any legal/fiscal framework for beneficiaries conducting economic activities so that they can be eligible for foundation funding? Are there any limitations on the economic activities of the beneficiaries?**

See above.

- 3. Are there any different or additional requirements that must be fulfilled by a beneficiary receiving funding from abroad?**

No.

V. Gift and inheritance tax

- 1. Does gift and inheritance tax/transfer tax exist in your country and, if yes, who has to pay the tax in the case of a donation/legacy to a public-benefit organisation (the donor or the recipient organisation)?**

The Inheritance and Gift Tax Act (BAL, boafgiftsloven), as consolidated in act no. 47/2015, stipulates a tax on inheritance and gifts. However, foundations may be exempt if their purpose is considered to be of public benefit (BAL section 3(2-3)). Thus, tax exemption for the (recipient) foundation may be granted. A mere enterprise purpose is usually not considered to be of public benefit, but some institutions may receive tax exemption, e.g. large, disease-fighting associations, various educational and sporting organisations, youth crime-fighting institutions, social institutions, hospitals, international aid organisations, and a number of cultural organisations and animal welfare organisations. See more under question V.5.

- 2. What are the tax rates? Is there a preferential system for public-benefit organisations (PBOs)? Which PBOs qualify? Is there a difference according to the region or the legal status of the PBO?**

- 3. Is there a threshold (non-taxable amount) from gift and inheritance tax for donations/legacies to public-benefit organisations?**

- 4. Is there a legal part of the estate that is reserved for certain protected heirs and which a donor cannot give to third parties?**

- 5. What is the tax treatment (inheritance and gift tax) of legacies to non-resident public-benefit foundations?**

In general, foundations are subject to inheritance tax up to 40%. The Ministry of Taxation annually publishes a list of foundations that have a charitable or public-benefit purpose. The foundations on this list are exempt from inheritance tax; other foundations may apply for exemption from inheritance, if their purpose is considered to be of public benefit. A purpose is considered "public benefit" if an unrestricted range and number of persons can benefit from the public-benefit purpose. There is no specific amount that needs to be distributed annually.

VI. Trends and developments

- 1. Are there current discussions about the question of whether cross-border activities of foundations or other non-profit organisations and their donors are protected by the fundamental freedoms of the EC Treaty? Have there been any changes to your country's legislation, resulting from the [Persche](#), [Stauffer](#), [Missionswerk](#) or other relevant ECJ judgments, or are changes being discussed? Any changes being discussed with regard to the free movement of trust structures resulting from the [Panayi Trust](#) and [Olsen and Others](#) cases?**

The fact that foreign foundations with a PE (permanent establishment) located in Denmark are taxed according to the rules for limited liability companies have given rise to some debate. See:

- Michael Kirkegaard Nielsen, "Stauffer-dommen – begrænset skattepligtige almennyttige institutioner" Skat Udland 2006/11, p. 399 ff.
- Søren Friis Hansen; "EU-rettens betydning for udenlandske samvirker og institutioner, der er begrænsende skattepligtige til Danmark", Skattepolitisk Oversigt 2006, p. 399-411.

- 2. Has the fight against terrorism and financial crime led to the introduction in recent years of new laws/rules affecting the foundation sector (e.g. implementation of EU Anti Money Laundering Directive, or reactions to recommendations of the Financial Action Task Force)? Has it for example become more difficult to:**

- Set up a public-benefit foundation
- Obtain permission to transfer funds across borders
- If able to transfer of funds across borders, has the process become more burdensome administratively
- Open a new bank account
- Maintain a bank account
- Fund certain activities
- Fund certain regions/countries
- Fund certain organisations (please explain the reason - foreign funding restriction?)
- Report to authorities/deal with administration
- Other

The foundation laws have been amended in order to implement the new AMLD and in order to comply with recommendations of the Financial Action Task Force.

- 3. Does the national law consider foundations as obliged entities as defined by the Anti-Money Laundering Directive?**

Yes (FL section 4-5 and EFL section 21 A-D).

- 4. Does the national law define/specify who is considered as a Beneficial Owner (BO) of a foundation?**

Yes (FL section 4-5 and EFL section 21 A-D).

- 5. Does your country have a specific register for BO of legal entities/foundations or does the foundation/company/association register serve as a BO register?**

Information about beneficial ownership is publicly available on www.virk.dk in the [central business register](#).

6. Are there any other recent trends or developments affecting the legal and fiscal environment for public-benefit foundations in your country such as one or more of the following?

- a) Law revision in the pipeline
- b) Discussion about the role of supervisory authorities (civil law, charity regulator, tax authority) and collaboration among them? Decentralisation or centralisation of supervisory structures? Use of watchdog/rating agencies?
- c) Tendency towards more transparency requirements?
- d) Tendency towards more self-regulation? Self-regulation replacing hard law regulation?
- e) Tendency to use alternative forms to classic public-benefit foundations
- f) Other?

The Department of Justice (DCA) is considering less strict asset management rules. A proposal on amendment of executive order no. 957/2013 on (non-enterprise) foundations' asset management (Anbringelsesbekendtgørelsen) is expected in 2020.

In [bill no. L 156](#) (2019/2020), the government proposed a rather complicated change of the tax on establishment of new enterprise foundations, but the bill has been postponed until the next parliamentary session in 2020/2021. In brief, the tax for establishment of new enterprise foundations with charitable or public-benefit purpose (and thus not family purpose) may be postponed and paid gradually by the foundation with a part of yearly income that normally would have been used for disbursements, until the so-called "founder's tax" is paid. The proposed change aims to create a stronger incentive for founders to use the enterprise foundation as a tool for succession planning.

7. Public fundraising: Are there any specific laws that regulate fundraising and do they affect foundations?

There is no statutory regulation on fundraising affecting foundations.

VII. Further information

Useful contacts

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Selected law texts online

- [Foundation Act as consolidated in act no. 938 of September 20th 2012](#) (FL, *Fondsloven*):
- [Enterprise Foundation Act as consolidated in act no. 984 of September 20th 2019](#) (EFL, *Erhvervsfondsloven*):
- [Executive order no. 957 of July 10th 2013 on \(non-enterprise\) foundations' asset management](#) (*Anbringelsesbekendtgørelsen*)
- [The Annual Report Act as consolidated in act no. 838 of August 8th 2019](#) (ARL, *Årsregnskabsloven*)
- [Executive order no. 1377 of December 12th 2019 on registration in the Danish Business Authority's database](#) (*Anmeldelsesbekendtgørelsen*)
- [The Inheritance and Gift Tax act](#) (BAL, *boafgiftsloven*), consolidated in act no. 47 of January 12th, 2015
- [The Tax Law on Foundations as consolidated in act no. 961 August 17th 2015](#) (FBL, *fondsbeskatningsloven*)
- [The Tax Assessment Act as consolidated in act no. 806 August 8th 2019](#) (*Ligningsloven*)
- [Guidelines \(non-binding\) from the tax authorities on taxation related to foundations](#) (*Skats juridiske vejledning 2020-1 CD9*)

VIII.About

Philanthropy Advocacy

The Dafne and EFC joint advocacy project “Philanthropy Advocacy” acts as a monitoring, legal analysis and policy engagement hub for European philanthropy. Its main objective is to shape the national, European and international legislative environment by implementing the European advocacy roadmap for a Single Market for Philanthropy.

www.philanthropyadvocacy.eu

Donors and Foundations Networks in Europe (Dafne)

Dafne brings together 30 national associations from 28 countries across Europe, representing over 10,000 public-benefit foundations, big and small, who want to make a difference in society. We have created an alliance for collaboration across philanthropy networks in Europe to address big philanthropy questions of our time in a coordinated and effective manner. We lead, strengthen and build the field for the common good in Europe. We are involved in four key areas: advocacy, peer exchange, communications and research. Our work is needs-based and future-oriented. We value ideas over hierarchy and believe in a truly collaborative approach.

www.dafne-online.eu

European Foundation Centre (EFC)

As a leading platform for philanthropy in Europe, the EFC works to strengthen the sector and make the case for institutional philanthropy as a formidable means of effecting change. We believe institutional philanthropy has a unique, crucial and timely role to play in meeting the critical challenges societies face. Working closely with our members, a dynamic network of strategically-minded philanthropic organisations from more than 30 countries, we:

- Foster peer-learning by surfacing the expertise and experience within the sector
- Enhance collaboration by connecting people for exchange and joint action
- Advocate for favourable policy and regulatory environments for philanthropy
- Build a solid evidence base through knowledge and intelligence
- Raise the visibility of philanthropy’s value and impact

www.efc.be

**Donors and Foundations Networks in Europe AISBL (Dafne) and
European Foundation Centre AISBL (EFC)
2020**



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