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Legal Environment for Philanthropy in Europe

Montenegro

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?**

Montenegrin legislation has a basic legal definition of a foundation. The Law on Non-Governmental Organisations (Official Gazette 39/2011 and 37/2017) regulates Non-Governmental Foundations in Art. 3. A Non-Governmental Foundation is a voluntary non-profit organisation without membership, established by domestic and/or foreign individuals and/or legal entities with or without property, in order to achieve goals in the public interest.

The law does not prescribe any particular types for a foundation. Foundations are legal persons founded by individuals and/or legal entities. Foundations are legal persons and, as such, are permitted to engage in a broad range of activities, provided these are not specifically prohibited by law. Foundations must serve the public benefit.

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?**

In order to be recognised as a foundation and to receive the status of a legal person, a foundation must be registered by the competent ministry (Ministry of Public Administration). A foundation can be registered without capital as there is no minimum capital specified in the law required to establish foundation. A foundation can be established by domestic or foreign natural or legal persons under the same conditions. Foreign natural and legal persons may establish a foundation in Montenegro regardless of their residence status (Article 10, Law on Non-Governmental Organisations). The registration process is initiated by submitting an application for registration which is accompanied by other required documentation (founding document, the record of the Constituent Assembly and the statutes). The founding document must include:

- Information on the founders: Personal name(s) of the founder(s), personal identification number/tax identification number, signatures of founders
- Information on the foundation: Name, address and main office of the foundation, goals and activities
- Information on the person authorised to act as the proxy and representative of the foundation.

The foundation must have statutes covering the following points: The name of the foundation; the headquarters; the goals and activities; the assets (if the foundation has founding capital); and the bodies of management and control. If the foundation is founded by a testament, the testament must contain data necessary for founding and registration of the foundation in the Registry, or details of a person authorised to undertake all necessary activities. The state has no discretionary power: As soon as the legal requirements are fulfilled, the competent ministry must approve the registration 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.

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

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)

Foundations must register in the Register of Associations administered by the Ministry of Public Administration.

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

The Register of Non-Governmental Associations and the Register of Non-Governmental Foundations contain the following information: 1) ordinal number of the entry, 2) date of registration, 3) date of adoption of the founding act, 4) date of adoption of the statutes, 5) name (abbreviated name), 6) address and seat of the non-governmental association, i.e. non-governmental foundation, 7) personal name and address of the person authorised to represent the non-governmental association, i.e. non-governmental foundation, 8) purpose and the object of the foundation's activities, 8) notes

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

6. Is a minimum founding capital/endowment required?

- No
- Yes, amount:

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

N/A

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

The law specifies that a foundation must have a managing board as a decision-making body, as well as an executive body/person – i.e. the executive director. The managing board is appointed by the founder or by an authorised person. The specific rules for the election and functioning of these bodies must be stipulated in the foundation's statutes.

- 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?

There are no requirements set out in the law regarding the number of board members or rules concerning the appointment of the board members. Foundations are free to set all the requirements regarding their board members in their statutes.

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

The law sets forth in detail the powers of the managing board. However, the statutes may stipulate additional powers. The law makes a significant distinction between non-transferable and transferable powers of the managing board. The role of the board as defined by the law is to appoint and discharge the executive director; to issue the foundation's statutes and decide on any amendments; to approve the foundation's budget and approve the annual financial statements; and to take decisions on the transformation or dissolution of the organisation if the statute of the foundation does not stipulate that the founder decides on these issues.

The law explicitly forbids the delegation of the rights to amend and supplement the main act, or to make decisions for transformation or dissolution of the organisation, among other things.

- 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?

The founders may reserve some rights for themselves which must be stated in the statutes of the foundation. The most common rights that are reserved in practice include: vetoing of amendments to the statutes; deciding on termination or transformation of the organisation; and selecting the board members of the foundation.

- 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?

The statutes of the foundation regulate all the issues concerning: The rights of founders, board members, and other bodies of the foundation; and amendment of the statutes, including the purpose of the foundation. The statutes can stipulate that the right to amend the statutes belongs to the board or the founder of the foundation. The statutes of the foundation may also regulate the special rights of the founders towards the foundation, as well as issues related to the initial assets of the foundation, if the foundation has initial assets.

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

Generally speaking, the law prescribes that: The work of the foundation is public; publicity of the work will be realised in accordance with the statutes of the foundation; and foundations must prescribe in their statutes the ways that they will inform the general public about their work.

- 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?

There are no legal provisions in the Law on Non-Governmental Organisations which deal with this issue.

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

The law stipulates that board members cannot be a member of any other body of the foundation, so in general, the director and/or officers cannot be members of the highest decision-making board, but some kind of participation in decision-making by the staff can be stipulated in the statutes 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?**

With regard to the rights and obligations of foundation board members, there is no explicit regulation in the legislation on non-governmental organisations, but they may be freely detailed in the statutes.

Does your country differentiate between voluntary (unpaid) and paid board members?

There is no legal differentiation between voluntary and paid board members, but this may be freely detailed in the statutes.

Who can claim responsibility for breaches of such duties: the other members of the board, the founder/s, the public authorities. In which case who: administrative, tax-authority, only the judiciary power (Attorney General) or beneficiaries/general public?

N/A

- 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?**

It is specified in the law that the director represents the foundation (Article 25 and article 27, Law on Non-Governmental Organisations)

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

The law prescribes that a foundation may conduct economic activities as a means to generate income for the achievement of related purposes. The economic activities can be conducted directly within the legal structure of the foundation. However, the economic activity or activities must comply with the foundation's purpose and goals; must have been declared as one of the sources of income in the statutes of the foundation; must not be the main activity of the foundation; and must not exceed the annual limit of €4,000 or up to 20% of the total income.

- 12. Is there any legal/fiscal framework for grantmakers 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?**

There is no any legal/fiscal framework that regulates these issues.

- 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?**

There are no legal limitations for foundations to be a major shareholder or to have voting rights in a company. In accordance with Article 28 of the Law on Non-Governmental Organisations, a non-governmental organisation may acquire assets and generate income from dividends.

- 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?**

There are no legal rules regarding asset management of foundations.

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)

The Law on Non-Governmental Organisations has no provisions regarding this issue. When it comes to domestic funds (funds allocated on national level and by local self-government) this kind of allocation would not be permitted, but there are no limitations for foreign donors.

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

There are no legal provisions regarding this issue.

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

The power to make amendments to the statutes is reserved for the supreme body of the foundation and cannot be delegated to another body. The requirements and procedure for amendments or changes to the statutes are specified in the statutes.

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)?

An annual financial report should be submitted to the tax authority, and all the internal procedures of the foundation should be specified in the statutes of the foundation, including reporting procedures.

c) Are the reports checked/reviewed? By whom (supervisory/tax authorities)?

The reports are reviewed by 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)?

No.

e) Is external audit required by law for all foundations?

No, the law does not require an external audit for foundations.

f) By whom should audits be undertaken? Do requirements/guidelines exist regarding international and national auditing agencies and standards?

N/A

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:

Decisions that relate to information in the official register such as: address and seat of the non-governmental association, i.e. non-governmental foundation; personal name and address of the person authorised to represent the non-governmental association, i.e. non-governmental foundation; areas of activity/purpose/goals of the foundation.

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?

In accordance with Article 42 of the Law on Non-Governmental Organisations, a fine of €500 - €800 shall be imposed on a non-governmental organisation, if: (i) it does not within 30 days report to the competent authority changes of the facts and data to be entered in the register (Article 19 paragraph 1), or (ii) does not use the name under which it was registered in legal trade (Article 13), does not use property in accordance with this Law (Article 30), or does not make public annual financial statements approved by the competent authorities within ten days from the date of their adoption (Article 37).

For the offences referred to in this paragraph, the responsible person of the non-governmental organisation will be punished by a fine of €300 - €1000.

Additionally, Article 43 of this Law prescribes that a fine of €500 - €4000 shall be imposed on a non-governmental organisation if in the course of the current calendar year it continues to carry out direct economic activity after exceeding the allowed threshold of €4,000 or 20% of total annual revenue (Article 29 paragraph 2 and 3).

20. When and how does a foundation dissolve?

A foundation dissolves:

- Upon expiry of the term for which it was established.
- By a decision of its supreme body.
- By court decision: It has not been established in compliance with the legal procedure; it pursues activities contrary to the Constitution, the law, the public order or good morals; or it has been declared bankrupt.

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?

No.

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)?

There are no such legal requirements.

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?

Foreign foundations can run public activities as long as they are in compliance with Montenegrin law. Foreign foundations which have legal personality under the laws by which they were established shall be recognised as legal persons for all purposes of law (Art. 4, NGO Law).

The law does not recognise the concept of trusts.

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

There are no legal limitations or any provisions in Montenegrin law that prohibit foundations from conducting activities abroad, nor are there any limitations on such activities.

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

There are 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?

There are no specific legal provisions regarding this issue, but there are also no limitations for such activities.

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?)

Different tax regulations define different requirements and procedures to receive tax exemptions. When it comes to VAT exemptions, a monthly application for tax calculation has to be submitted. When it comes to income tax exemptions, *an annual tax return* has to be submitted.

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

In addition to the submission of financial reports, programme and financial reporting on implemented projects in previous calendar years funded by the state fund to which an applicant submits a project proposal is required in order to apply for the use of state funds.

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

This obligation is not stated in national legislation.

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?

The NGO Law defines only what is considered as activities in the public interest. These activities include activities which relate to encouraging and supporting: social welfare and health; protection of persons with disabilities; science; art; culture and technical culture; environmental protection; poverty reduction; 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; agricultural and rural development; sustainable development; consumer protection; gender equality; addressing corruption and organised crime; prevention of drug addiction; as well as other goals and activities deemed to be for public benefit (Article 32, NGO Law).

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.

No. There is no explicit definition of public-benefit purpose in the tax law of Montenegro.

However, Article 26 of the VAT law defines a certain number of services of public interest which are not subject to taxation, such as: health services; social insurance services; preschool education services; education and training for children, youth and adults; services in areas of culture; services in areas of sport; religious services as well as “services provided by non-governmental organisations established in accordance with the regulations governing activities of these organisations, if there is no likelihood that it will lead to distortion of competition”.

Additionally, Article 14 of Corporate Income Tax Law prescribes that “expenditure on health, educational, scientific, religious, cultural, sports and charity, as well as to protect the environment, are recognised as expenses where they exceed 3,5% of total revenue”.

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 at building bridges between nations)			X	
Health, well-being and medical care			X	
Consumer protection			X	
Assistance to, or protection of, vulnerable and		X		

disadvantaged persons				
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”?

Yes. In accordance with Article 3 of the Law on Non-Governmental Organisations, non-governmental foundations have to be registered in order to achieve “general goals and interests”.

- 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?

There are no such provisions that we are aware of, but most probably not.

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.?

In accordance with Article 30 of the Law on Non-Governmental organisations, “ the property of non-governmental organisations, including that acquired through economic activity, *can be used only for achieving the objectives for which the non-governmental organisation is established* and cannot be allocated to founders, members, members of non-governmental organisations and employees, as well as the relatives of these people in the direct line and lateral to the second degree, relatives by marriage up to the first degree, marital and common law spouses, guardians of the wards, foster parents, adoptees, legal agents or attorneys, unless regulated otherwise by particular law.

However, this shall not apply to reimbursement of reasonable expenses incurred by non-achievement of objectives of the non-governmental organisations, contractual obligations, payment of wages, salaries and other benefits to employees based on their work, granting of awards and other benefits in accordance with the statutes and project activities.”

- 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?

The NGO Law precludes organisations from returning contributions to founders and/or members upon dissolution. Under Montenegrin law, the remaining assets of a foundation must be distributed to another organisation or a public institution in Montenegro in accordance with the statutes of the foundation. If the competent body of a foundation fails to render a decision on property distribution before the organisation is removed from the NGO Registry, the remaining assets shall become the property of the local municipality of the territory where the NGO had a place of business, and the assets must only be used to advance the public-benefit goals for which the foundation was established (Article 40, NGO Law).

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**?

Remuneration is allowed. Board members can receive remuneration for the costs and expenses incurred by them in the course of performance of their tasks as a board member.

- 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)

There is no specific regulation in the law.

- 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”:

Special regulations concerning “administration costs” exist neither in civil nor in tax law.

- 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

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

- 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?

Special provisions concerning this issue do not exist either in civil or in tax law.

- 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?

Yes, in accordance with Article 8 of the Law on Non-Governmental Organisations, non-governmental organisations can be established for a limited or unlimited period. However, the Law does not prescribe a minimum length of time for which the foundation can operate, but since there are no specific provisions concerning foundations, the provision which refers to NGOs should also be applicable to foundations.

- 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)?

Special regulations concerning these issues exist neither in civil nor in tax law.

- 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 special regulations concerning these issues exist, neither in civil nor in tax law.

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

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

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

There is no specific regulation with respect to this matter. The tax-exempt status for public-benefit activities is related to specific activities of foundations carried out in Montenegro, but for the tax authorities it is irrelevant whether a public-benefit organisation, apart from activities that are carried out in Montenegro which are tax exempt, also carries out activities abroad. Therefore, it is not expected that a foundation's tax-exempt status is put at risk for activities carried out abroad.

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)?

Special regulations concerning these issues exist neither in civil nor in tax law, so there should not be any limitation.

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

a) Grants and donations

In accordance with Article 6 of the Corporate Income Tax Law, non-governmental organisations do not pay income tax if they are established for performing non-profit activities in accordance with a particular law.

b) Investment income (asset administration)

- Interest from fixed rate bonds
- Equities
- Income from leasing of a property that belongs to the foundation

In accordance with Article 8 of the Corporate Income Tax Law, NGOs' "income from dividends and profit shares of other legal entities are exempt from the tax base of the recipient".

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)

In accordance with Article 32 of the Corporate Income Tax Law, the tax base is reduced by the amount of €4,000 for a non-governmental organisation provided that the profit is used for the achievement of the goals for which it was founded.

d) Income deriving from grant expenditure towards public-benefit purpose/programme activities (such as loans, guarantees, equities)?

It is not clear in the Corporate Income Tax Law whether this kind of income is tax exempt.

- e) Is major shareholding in a business undertaking considered as an economic activity and taxed accordingly?

In accordance with Article 8 of the Corporate Income Tax Law, NGOs and foundations' "income from dividends and profit shares of other legal entities is exempt from the tax base of the recipient".

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

Yes, capital gains are subject to tax and they are taxed as income.

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

In accordance with Article 50 of the VAT Law, "If the amount of tax liability (output tax) in a tax period is less than the amount of input VAT that a taxpayer may deduct in the same tax period, the difference is recognised as a tax credit for the next tax period, or for a request to be returned within 60 days from the date of filing for VAT to be calculated."

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

No.

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

No, we are not aware that such taxes exist in current Montenegrin tax legislation.

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

In accordance with Article 10 of the Law on Property Tax, non-governmental organisations do not pay property tax in cases where the property owned is used for the functions for which the non-governmental organisations are established. Additionally, any legal entity, including a non-governmental organisation, with an annual turnover of less than €18,000 is exempt from paying VAT.

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

We are not aware of any differences between the status of foreign and locally based public-benefit foundations in terms of being eligible for tax benefits. Once a foreign foundation is registered in accordance with the Law on NGOs, they have the same rights and obligations as a domestic organisation.

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?

We are not aware of any such 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?

In accordance with Article 29 of the Corporate Income Tax Law, a taxpayer is obliged to calculate, withhold and pay withholding tax on income from: 1) dividends and profit shares paid to resident and non-resident legal entities and individuals, 2) interest and fees payable for copyrights and other intellectual property rights, capital gains, compensation for leasing of movable and immovable property, and the compensation for consulting services, market research and audit services paid to non-resident persons. The withholding tax is payable at the rate of 9% on the base, which is the amount of gross income.

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?

There is a system of tax deduction.

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?

In accordance with Article 24 of the Personal Income Tax Law, “expenditure on health, educational, scientific, religious, cultural, sports and charitable purposes, as well as to protect the environment, is deductible up to 3.5% of the gross income.”

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

It is not defined in the Personal Income Tax Law whether, except for money, donations in other forms (such as goods, rights and services) are qualified for tax deductibility.

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?

In accordance with Article 24 of the Personal Income Tax Law, “expenditures on health, educational, scientific, religious, cultural, sports and charitable purposes, as well as to protect environment, are recognised as expenses up to 3.5% of total revenue.”

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

It is not defined in the Corporate Income Tax Law whether, except for money, donations in goods, rights and services are qualified for tax deductibility.

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

Yes.

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?

There are no other frameworks.

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)?

What information do donors have to provide to their tax authority in order 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 e.g. that income was actually spent for public benefit purposes)?

In accordance with Article 40 of the Corporate Tax Income Law, an income taxpayer is required to submit a tax return in order to receive tax incentives for their donation, including information as to the total amount given for “overall good”.

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?

There are no tax incentives that we are aware of for these kinds of donations.

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?

Beneficiaries of foundations are exempt from income tax on grants received from foundations established and operating in accordance with the Law on Non-Governmental Organisations, such as scholarships and other benefits that are given to students by foundation activities in the fields of education, culture and science.

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?

There are no legal provisions regarding these issues. In general legal entities are exempt from tax on income received as grants.

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

No, there are no any different or additional requirements.

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)?**

This issue is not regulated by current legislation.

- 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?**

This issue is not regulated by current legislation.

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

This issue is not regulated by current legislation.

- 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?**

This issue is not regulated by current legislation.

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

This issue is not regulated by current legislation.

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?

No.

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:

In accordance with the current Law on Prevention of Money Laundering and Financing of Terrorism adopted in 2012, non-governmental organisations are also recognised as subjects under this Law and obliged to develop a risk analysis that determines the risk assessment of each client, client group, business relationship or transaction in relation to the possibility of misuse for money laundering or terrorist financing and to keep track of customer data, business relationships and transactions.

- 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

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

Yes.

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

No.

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?

N/A

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?

The amendments to the Law on NGOs in 2017 did not bring any changes regarding the legal and fiscal environment.

- 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?

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

There are no any specific regulations regarding this issue.

VII. Further information

Useful contacts

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Selected bibliography

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- Golubović, D. [Tax legislation of importance for development of philanthropy in countries of South-Eastern Europe](#) (extract from the report and recommendations for Montenegro),: Fund for Active Citizenship,

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- [Law on Non-Governmental organisations](#) (Official Gazette 39/11 and 37/17)
- [Law on State Auditing institution](#) (Official Gazette 07/17, 73/10, 40/11, 31/14 and 070/17)
- [Personal Income Tax Law](#) (Official Gazette 62/13, 60/14, 79/15, 83/16 and 67/19)
- Corporate Income Tax Law (Official Gazette 61/13 and 55/16)
- [Law on Value Added Tax \(VAT\)](#) (Official Gazette 29/13, 53/16 and 1/17)
- [Law on Property Tax](#)
- [Law on Inspection Control](#) (Official Gazette 39/03, 76/09, 57/11, 57/11, 18/14, 11/15 and 52/16)
- [Law on Prevention of Money Laundering and Financing of Terrorism](#) (Official Gazette 33/14 and 44/18)
- [Law on Accounting and Auditing](#) (Official Gazette 32/2011 and 52/16.)

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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