

2020

Legal Environment for Philanthropy in Europe

Serbia

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?**

The Law on Endowments and Foundations (LEF) recognises endowments and foundations as two distinct voluntary, non-membership and not-for-profit institutional forms. An endowment is a non-membership legal entity to whom a founder has endowed certain assets, to pursue charitable achievement of public or private benefit purposes which are not prohibited by the Constitution or law (Art. 2, par. 1, LEF). A foundation is a non-membership legal entity which can be established without any assets, to pursue charitable achievement of public-benefit purposes only (Art. 2, par. 2, LEF). Other types of foundations are not recognised by law.

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

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

As already noted, an endowment can also pursue private-benefit purposes, which fall out of the scope of this questionnaire.

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?**

Both an endowment and a foundation can be established by one or more legal or natural person(s), foreign or domestic, having full legal capacity. For the establishment of an organisation a founding act is required in written form, signed by a founder in the notarial form, the mandatory content of which is set out in the LEF. In order for a newly established organisation to be entered into the Register of Endowments and Foundations (Register) and thus acquire a legal personality, in addition to the founding act, the statutes of an organisation and a decision on the appointment of its legal representative must also be submitted to the Register (Art. 10-11, 25, 29, LEF). Endowments and foundations may not engage in activities set out in their statutes before they are entered into the Register. Monetary fines are levied on organisations and their legal representatives for the breach of the mandatory registration requirement (Art. 63, LEF).

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

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.

- 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?

The following data is entered into the Register:

The name, the place of business and address of the organisation; the goals for which it has been established, and in case of an endowment, whether it has been established to pursue private- or public-benefit purposes; economic activities in which the organisation is envisaged to engage directly as its auxiliary activity; identification data of a founder, members of the governing board and the legal representative of the organisation; period for which the organisation has been established; statistical and tax number of the organisation; any changes in the statutes of the organisation; information on transformation of the organisation into another permissible legal form; information on the endowed assets of an endowment; information on the prohibition of activities of the organisation; information on the winding up or bankruptcy of the organisation; and the date of entry into the Register. The following data, if available, shall also be entered in the Registry: the abbreviated name of an organisation; its name in a foreign language; and, information pertinent to the legal transactions between third parties and the organisation (Art. 30, LEF, Art. 3, Regulation on a Detailed Content of the Register of Endowments and Foundations).

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

- Yes, all information publicly accessible (www.apr.gov.rs)
- Yes, some information publicly accessible
- Yes, accessible upon request
- No

6. Is a minimum founding capital/endowment required?

- No
- Yes, amount: minimum value of €30,000 in money, tangible or intangible assets; no statutory capital requirement for a foundation as well as endowments whose property was nationalised after WW II (Art. 12, LEF).

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

The minimum statutory requirement for the endowed assets must be maintained throughout the life-cycle of an endowment. In case the value of the endowed assets falls below the prescribed statutory threshold, the governing board shall instigate the process of winding up of the endowment, or decide to transform it into a foundation (Art. 53, LEF).

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?

Endowments and foundations are managed by the governing board consisting of at least three members; no maximum number of board members is prescribed by law. A member of the governing board may not be a minor, a person lacking legal capacity, an employee of the organisation, a member of supervisory and other bodies of the organisation, a person supervising the organisation or a person whose pecuniary interests conflict with the interests of the organisation (Article 36, LEF).

Membership in the governing board shall be terminated upon expiration of the term of office, in case of dismissal, resignation, loss of business capacity and death, as well as in other cases envisaged by the statutes (Article 40, LEF). Unless otherwise prescribed by the statutes, members of the governing board shall be appointed for a four-year term, with the possibility of being re-elected. (Article 38, LEF).

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

The governing board appoints and dismisses the legal representative (director, manager) and adopts the statutes of an endowment or foundation – unless otherwise prescribed by the founding act of the organisation; approves annual financial plans; decides on the use of the organisation's assets; adopts its rules of procedure; and performs other tasks pursuant to the law, the founding act and the statutes. The governing board also decides on changes of the goals of the organisation – if this is stipulated in the founding act of the organisation, as well as on its dissolution and distribution of the remaining assets – unless the founding act provides that a founder decides on these issues. (Article 37, LEF).

- 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?

Pursuant to the LEF there are two ways for a founder to retain a decisive influence on the management of a foundation or endowment during its life time, by virtue of the founding act and the statutes of the organisation. First, the founder can be president or a member of the governing board having a deciding vote or veto power on the following matters: the enactment of the statutes; the appointment and dismissal of the director; the transformation of an organisation or changes of its stated goals; and, the dissolution and distribution of the remaining assets of the organisation. Alternatively, the founding act and the statutes may provide that a founder shall retain the power of prior approval of decisions to be rendered by the governing board on the foregoing issues, without necessarily having a seat on the board. If so, decisions of the governing board on those issues without the founder's prior consent are generally deemed null and void (Art. 37-38, LEF).

- 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?

N/A

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

The LEF prescribes that the statutes of an endowment pursuing public-benefit goals or a foundation shall *inter alia* contain information on the manner in which the organisation shall inform the public about its activities (Art, 34, LEF). It is thus up to the organisation to decide as to what would be the appropriate way of reaching out to the public. There is no legally guaranteed right of third parties to seek information from the organisation, given its private legal entity status, and accessibility of data being entered into the Register. A specific contract between a donor and an organisation can set out rules governing publicity and visibility of information related to activities funded under the auspices of the donor contract.

- 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?

A member of the governing board may not participate in rendering decisions on proprietary issues if either the member or their spouse or civil relationship partner, lineal relatives by blood or collateral relatives by blood up to the third degree of kinship, or in-law kinship up to the second degree of kinship, regardless of whether the marriage has been dissolved or not, are deemed an interested party, as well as on proprietary issues related to a legal entity which the board member controls or in which they have an economic interest. A conflict of interest is not deemed to exist, however, if a spouse or lineal relative by blood or collateral relative up to the third degree of kinship of the beneficiary is a member of the governing board of an endowment or a foundation established for the purpose of ensuring the independent living of persons with disabilities who use day care centres, assisted living and personal assistance services (Article 39, LEF).

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

In addition to being a legal representative of the organisation and carrying out other specific duties set out in the law, a director may also participate in meetings of the governing board, under conditions set out in the statutes. However, he or she cannot under any condition participate in the board's decision-making deliberations. Other officers and employees of the organisation may also participate in the meetings of the governing board if so provided by the statutes or other acts of internal governance of the organisation, but they too cannot participate in the board's decision-making deliberations.

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?

Members of the governing board, as well as the director/manager of the organisation, are generally subject to the duty of loyalty to the organisation (as exhibited by the rules governing conflict of interest, Art 39, LEF). They are obliged to exercise the diligence of a prudent, common sense person.

With respect to decisions related to the use of the endowed assets and the organisation's direct economic activities, members of the governing board and the director are required to exercise the diligence of a prudent business person, which is a stricter standard of diligence (Art. 42, LEF). Due diligence standards are governed by the civil and commercial law, and there is applicable case law on these issues.

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

The LEF generally presumes that membership in the governing board is voluntary and thus there are not different due diligence standards set for the two (Art, 47, LEF).

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?

Any third party having a perceived legitimate interest can sue the governing board and its members for the alleged breach of due diligence duties, under the civil law rules governing compensation for damage. This includes public authorities insofar as public funds received by the organisation have been adversely impacted by the breach of due diligence duty.

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?

Pursuant to the LEF, a director/manager has the general power of representation, which cannot be limited by virtue of the founding act or the statutes of an organisation. The law does not have specific rules governing the appointment of procurator and his/her power of representation.

However, these issues seem to fall under the general responsibility of the governing board. If the organisation appoints a procurator, in order for that appointment to take legal effect towards third parties, the information on the appointment, including the scope of the procurator's power of representation, must be entered into the Register.

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

Pursuant to the LEF, endowments and foundations may directly engage in economic activities under the following cumulative conditions:

- 1) The activity is related to the underlying goals of the organisation.
- 2) The activity is envisaged by the statutes of the organisation.
- 3) The activity is of ancillary nature, relative to the underlying goals of the organisation.
- 4) The activity is entered into the Register.

The legal transactions in which the organisation engages with third parties in pursuing its economic activities that violate the foregoing transactions are nevertheless deemed valid, unless the third party to the transaction knew or should have known about the non-compliance with the foregoing conditions at the time the transaction was concluded (Art. 45, LEF).

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 are no limits set out in this respect.

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?

Both endowments and foundations are permitted to be major shareholders in a company, with no limitations set out in exercising their voting rights. Majority shareholding *per se* is not deemed an economic activity.

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 limitations set out in the law, other than the requirement for the governing board to exercise the diligence of a prudent common sense person, rather than a prudent business person, given that passive investment *per se* is not deemed an economic activity. However, depending on the circumstances, this may entail seeking professional advice before the board makes a decision on passive investment.

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)

There are no statutory restrictions in this respect.

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

Endowments or foundations cannot be established to pursue “special interests” of political parties, which include the establishment of the organisation for the purpose of participating in elections, and the financing of and fund-raising for a political party (Art. 6, LEF). Other than that, there are no specific limits set out for lobbying/advocacy activities, including those related to a political party.

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

The only specific requirement prescribed by the law is that a body responsible for, and the procedure for incorporating amendments to, the statutes, including provisions governing the organisation's purpose, are specifically addressed in the statutes of an organisation (Art. 34, LEF).

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 (*but no sanctions levied for the breach of the annual activity report duty*).
- Public-benefit/activity report
- Tax report/tax return
- Other reports e.g. on 1% schemes
- Reports on governance changes (e.g. new board members) (e.g. new board members); *information on governance changes must be entered in the Register, in order to take effect.*
- 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)?

Only the annual financial report must be filed with the Tax Office.

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

The annual financial report may be checked by the Tax Office.

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)?

The annual tax and activity report must be made available. The former is entered into the Register, and the latter must be made available on the website of the organisation.

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

No.

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

The Law on Accounting and the Law on Auditing are the controlling instruments on those issues, and are compliant with international standards governing accounting and auditing.

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?

Administrative monetary fines are generally prescribed for violations relating to the foregoing issues.

20. When and how does a foundation dissolve?

An endowment or a foundation may be dissolved voluntarily, following a decision of the governing board/ founder, or involuntarily, and in the case of bankruptcy or prohibition of its activities (Art. 51, 53, LEF).

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?

There is no limit set out in law.

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)?

No.

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?

If a foreign foundation wants to pursue activities in the country, it has to establish a branch office first (56-60, LEF); this obligation does not pertain to its one-off activities in the country (e.g. participation in seminars, conferences and other events, short-term technical or capacity-building assistance, etc.). The concept of a trust is not recognised in law.

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 any limitations prescribed by law in this respect.

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

There are no restrictions prescribed by law in this respect.

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?

The LEF is based on the principle of territorial jurisdiction and therefore an endowment or a foundation must have its seat in the Republic of Serbia. Likewise, the LEF allows the organisation to be merged only with another organisation having a seat in Serbia (Art. 54, LEF). However, there are no legal barriers for a foreign foundation to be merged with a foundation having a seat in Serbia.

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 has to be a legal person with a seat of business 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?)

According to the opinion of the Ministry of Finance (which is otherwise binding for the Tax Office), In order for any donation/gift exceeding RSD 100,000 (~ €840) to be exempted from property tax, a request for tax exemption must be filed with the Tax Office, along with a copy of a donation agreement or other proof of a donation being made.

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

No, unless provided in a grant contract.

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

There is no any statutory obligation to that effect.

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 LEF deems the following purposes for public benefit : the promotion and protection of human, civil and minority rights; promotion of democratic values; European integration and mutual understanding; sustainable development; regional development; gender equality; improvement of social and health protection; promotion and advancement of culture and public information; promotion and popularisation of science; education; arts and amateur sport; advancement of the status of persons with disabilities; child and youth care; assistance to the elderly; environmental protection; combating corruption; consumer protection; animal protection; and humanitarian and other activities that organisations undertake with the aim of achieving public-benefit purposes. Endowments and foundations shall be deemed to also engage in public-benefit activities if their activities target only individuals that belong to a designated professional, national, language, cultural, religious or gender group, or individuals living within a designated geographic area.

Note that this definition pertains only to the organisation's eligibility to apply for public grants: Tax law provides for a much narrower definition of public-benefit purposes (see below).

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.

Under the Corporate Profit Tax Law the following purposes are deemed for public benefit: medical, educational, scientific, humanitarian, cultural, religious, sport, environmental protection, as well as social protection purposes, insofar as these services are provided by accredited institutions.

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 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>	See answer to question 6			

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 already noted, an endowment or a foundation shall nevertheless be deemed to engage in public-benefit activities if those activities target only individuals that belong to a designated professional, national, language, cultural, religious or gender group, or individuals living within a designated geographic area (Art.3, LEF).

- 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.?

Distribution of the organisation’s assets among the founders, members of the governing bodies, employees and persons affiliated with them is prohibited. The non-distribution constraint does not apply to appropriate awards granted to employees and board members for their services, the reimbursement of justified costs incurred in connection with the achievement of the organisation’s purpose (travel and accommodation costs, per diems, etc.), nor to commitments arising from contracts and employees’ salaries (Art, 47, LEF).

- 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 case of voluntary dissolution, the remaining assets of an endowment or a foundation may only be distributed to other endowments, foundations or associations established for the achievement of the same or similar public-benefit purposes, as envisaged by the statutes of the organisation (Art. 55, LEF).

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 in civil law and is also recognised in tax law, insofar as it is deemed justified and is related to costs incurred in connection with the achievement of the stated purposes of the organisation (Art. 47, LEF).

- 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)

Tax law does not address this issue, however, in order for a donation to be recognised as a gift, this kind of gift must be symbolic and should not amount to reciprocity.

- 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”:

There is no statutory definition of administrative 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

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?

There is no statutory requirement for a foundation to have an endowment: To the extent it has the founding capital/assets, the controlling instrument for its use is the statutes of the organisation. The endowment must keep the value of its endowed assets and can only use the proceeds from the endowment to pursue its public-benefit purposes (Art. 44, 47, LEF).

- 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?

Endowments and foundations are allowed to be established for a limited time only, if so provided by the statutes of the organisation (Art. 9, LEF).

- 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?)?

No.

- 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”?

N/A

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?

Tax law is based on territorial jurisdiction, and therefore activities abroad are not compatible with the public-benefit tax status.

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)?

There are no specific statutory limitations in this respect. However, due to the practice of tax authorities requiring that a donor seeking tax exemption not only submit a donation agreement or other credible proof that a donation is being made, but also proof that a donation is being spent by the recipient for stated public-benefit purposes, there is the perceived risk that a donation used for such purposes may not qualify for tax exemptions.

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

Endowments and foundations are generally exempt from the Corporate Profit Tax Law, with the exception of income generated from direct economic activities exceeding RSD 400,000 (~ €3400). Note that the Corporate Income Tax Law does not differentiate between related and unrelated economic activities of the organisation: However, the LEF provides that the organisation may only engage in related economic activities.

- a) Grants and donations – N/A
- b) Investment income (asset administration) – N/A
 - Interest from fixed rate bonds
 - Equities
 - Income from leasing of a property that belongs to the foundation
- c) Economic activities (related/unrelated) – N/A
 - 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)? N/A
- e) Is major shareholding in a business undertaking considered as an economic activity and taxed accordingly?
No.

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

They are subject to tax, under the same conditions set out for corporations.

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

No.

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?

Yes, general VAT rules apply on such a transfer.

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

No, in addition to generally not being subject to corporate profit taxes, endowments and foundations are exempt from property taxes on the real estate which they own, insofar as they use it for stated public-benefit goals.

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

Tax law does not envisage any benefits for foreign foundations.

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?

None, to the best of our knowledge.

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?

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?

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

There are no tax benefits provided for individual donors.

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?

Tax deduction of up to 5% of annual income of a corporation is provided for giving to qualifying public-benefit purposes; no minimum contribution is set in law.

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

Donations are recognised in the form of money (foreign and local currency), or in the form of tangible and intangible assets. However, according to the opinion of the Ministry of Finance, the notion of tangible asset does not entail real estate.

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

No tax incentives.

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)?

As already noted, in addition to having to submit proof of a given donation (contract, information on bank transfer, donation receipt, etc.), a donor must also submit proof that a donation was spent by a recipient for legitimate purposes. This practice has resulted in donors often times not entering this expense as donations into their books, but rather entering them as "other expenses" which are otherwise not tax-deductible.

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 tax benefits are envisaged for giving to a foreign foundation.

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 specific tax incentives are provided for the foregoing situations.

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?**
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?**

No statutory limitations in this respect, insofar as giving to those beneficiaries are deemed for public-benefit purposes.

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)?**

Endowments and foundations are generally exempt from property taxes, including gift tax.

- 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?**

N/A

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

N/A

- 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?**

Yes, for spouses and blood relatives in the first degree.

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

No tax benefits provided.

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:

- 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

Yes, as a result of the Moneyval recommendations, the Law on the Central Register of the Ultimate Beneficial Owners was enacted in 2018. For the purpose of the Law, the legal representative of an endowment or a foundation is deemed the ultimate beneficial owner, and the information to that effect is entered into the Central Register of the Ultimate Beneficial Owners. Note that this information is already available in the Register of Endowments and Foundations.

3. Does the national law consider foundations as obliged entities as defined by the Anti-Money Laundering Directive?
4. Does the national law define/specify who is considered as a Beneficial Owner (BO) of a foundation?

N/A

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?

- 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?

No.

VII. Further information

Useful contacts

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Selected bibliography

- [Philanthropic Agenda, Belgrade, 2019](#) (in Serbian)

Selected law texts online

- [Law on Endowments and Foundations](#)
- [Corporate Profit Tax Law](#)
- [Property Tax Law](#)
- [Law on the Central Registry of the Ultimate Beneficial Owners](#) (in Serbian)

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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