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Legal Environment for Philanthropy in Europe

Turkey

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?**

Foundations in Turkey are divided into two general categories: old foundations and new foundations. Old foundations are those which were established during the Ottoman Empire period, and new foundations are those which have been formed after the establishment of the Turkish Republic in 1923. Old foundations have three main types:

- Fused Foundations are those foundations, as per the Law on Foundations No. 2762, which were established before the effective date of the now-abolished Turkish Civil Code No. 743 and are administered by the General Directorate of Foundations as per the Law on Foundations No. 2762. The General Directorate of Foundations is an autonomous public body affiliated with the Ministry of Culture and Tourism.
- Annexed Foundations are those foundations, as per the Law on Foundations No. 5737, which were established before the effective date of the now-abolished Turkish Civil Code No. 743 and are administered by the founders.
- Community Foundations are those foundations, as per the Law on Foundations No. 5737, which have a legal entity as per the Law on Foundations No. 2762 and belong to Non-Muslim communities in Turkey whose members are citizens of the Republic of Turkey regardless of whether they have a foundation certificate charter or not.

New foundations have two main types:

- Public foundations are those foundations which are established by the state and/or operate as an organ of the state, such as Foundations for the Strengthening of Armed Forces, Environmental Preservation Foundations and Foundations for Social Solidarity and Assistance.
- Private foundations/new foundations are those foundations which are established according to the provisions of the current Turkish Civil Code No. 4721. In general, “a foundation” commonly refers to private/new foundation in Turkey. A foundation is described in the Turkish Civil Code No. 4721, Article 101 as follows:

“The foundations are the charity groups in the status of a legal entity formed by real persons or legal entities dedicating their private property and rights for public use. The entire property or all kinds of income received or to be received from the activities, or economic values of any real person or legal entity may be endowed to a foundation.”

The Article indicates that the foundations are recognised as asset-based entities, established with a minimum of one person (individual or legal entity), with an endowment, and a purpose to advance the common or public good (health, education, environment, etc) by the legal framework.

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

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

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.

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 set up a foundation, the founders need to prepare the foundation statutes which must outline the foundation's mission, activities, organs and other procedures, such as the terms for dissolution. The statutes need to be notarised before a public notary then taken to the courts for registration.

TL 80,000 (~ €8,500) is required for the founding capital as the establishment asset, before the application to the court. The minimum amount of registration endowment is determined by the Council of Foundations² on a yearly basis.

Application to the court is made by the founder if the statutes are constituted. If the dedication is made by a will after death, then the application is made ex officio upon notification of the concerned persons, or the judge of the common court who opens the testament, or by the General Directorate of Foundations. The court, to which the applications are made, is entitled to take ex officio all necessary measures for the protection of the property and rights.

The foundation registered in the court registry becomes a legal entity and the registration should be in the Official Gazette. The announcement consists of information such as the names of the founders, name of the foundation, headquarters, purpose of the foundation, its managerial bodies, assets and rights devoted thereto, and information regarding the court that will render the registration decision.

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)

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

A new page is allocated to the foundation in the central registry book to be kept by the General Directorate of Foundations. The name, governance, representation method, settlement of the foundation, list of the assets, addresses of the immovable properties, dates and numbers of the deeds of immovable properties, the purpose and conditions, organs and the amendments of the foundation, the date and number of the foundation statutes, the name of the court that approved the registration, and date and number of the court decision required to be kept in the registry.

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

² A Council of Foundations composed of representatives of foundations as well as public officials was established as the highest decision-making body of General Directorate of Foundations (GDF) after the adoption of a new Law on Foundations in 2008.

6. Is a minimum founding capital/endowment required?

- No
- Yes, amount: TL 80,000 (~ €8,500)

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

In case the founding capital needs to be spent the spending should comply with the purpose of the foundation. It is expected from the foundations that they maintain their assets and increase their income. If the assets of the foundation become insufficient the foundation may face termination and/or deletion from the registry.

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?

According to the Article 9 of the Law on Foundations, those who are convicted on the grounds of larceny, qualified larceny, sacking, looting, organised looting, fraud, organised fraud, fraudulent bankruptcy, rigging a competitive bidding process, breach of trust, smuggling or for any crime committed against the security of the state are not eligible to be a board member. Any person who is convicted of those crimes after having been appointed to the board is automatically deprived of this position.

There is no limitation on the number of board members in the law, but it is encouraged to have more than 3 members for the sake of effective decision-making procedures. Board members' appointment and resignation procedures are defined in the foundation's statutes.

The majority of the Board members is required to reside in Turkey.

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

Board members are obliged to comply with the applicable law and the conditions laid down in the law and the statutes of the foundation.

According to Article 10 of the Law on Foundations, board members are obliged to act in line with the foundation's purpose and to comply with the applicable law.

A board member may be dismissed under a judgement rendered by the court of first instance where the foundation is situated if one of the following cases occurs:

- Failing to act in accordance with the purpose of the foundation.
- Failing to use the assets and income of the foundation in accordance with its purposes.
- Causing the foundation to suffer a loss due to negligence and deliberate acts.
- Failing to complete or amend in the permitted term the errors and missing points identified by the Supervision Authority.
- Having lost the legal competence to exercise civil rights; or having a disease or disability which prevents the board member from fulfilling his/her task on a permanent basis.
- Having had to pay an administrative fine.

Any board member dismissed from office shall not be eligible for a membership to the Council of Foundations and cannot be eligible to hold office in the same foundation's board and auditing bodies for a period of five years.

Any person involved in the foundation's board and foundation employees are liable for any loss or damage to the foundation due to their respective gross negligence and wilful abuses.

- 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 rights of the founders are not mentioned in the legislation. All changes to the statutes of a foundation require a court decision. However, courts always take into account the adherence to the will of the founder(s) and allow very few changes. By and large, fundamental changes to the statutes of a foundation are not permitted.

- 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?

Changing the method of the administration based on the statutes: According to Article 25 of the Regulation on Foundations Established By Civil Law, in cases where it is necessary for the maintenance of the assets and to sustain the purpose of the foundation, the management organ, generally called the board of directors, is entitled to apply to the civil court of first instance in order to change the method of the administration in the statutes.

Changing the purpose of the foundation: In case the purpose of the foundation is not explicitly consistent anymore regarding the will of the founders, the board or the General Directorate of Foundations are entitled to apply to the civil court of first instance in order to change the purpose of the foundation.

The civil code provides a free space for the founders of the foundation to structure the board. The authorities and liabilities of the organs of the foundation are identified in the statutes of the foundation.

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

There are no rights particularly identified for third parties. Right of information is within the context of application to the governmental institutions.

- 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 is no clear definition of conflict of interest under the current Law on Foundations. However, some articles include regulations related to conflict of interest. An example is Article 46 of the Law on Foundations and concerns the Council of Foundations, which is the highest decision-making body of the General Directorate of Foundations: The Council members shall not be entitled to make direct or indirect commitments, or act as representative or broker for the General Directorate or related institutions during their term of duty and after 2 years of expiration of their term of duty. The Council of Foundations, composed of representatives of foundations as well as public officials, was established after the adoption of a new Law on Foundations in 2008. The Council has 15 members of which 3 are elected by new foundations.

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

No. They can only act with a limited authorisation given to them by the statutes and the board of the foundation to execute the daily operation 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?

Board members are obliged to comply with the applicable law and the conditions laid down in the law and the statutes of the foundation.

As stated in the Regulation on Foundations, individuals desiring to be appointed as board members are required to apply to the regional directorate with their petition accompanied by the documents set forth below:

- A finalised court decision issued by the competent basic civil court for qualification for a board member according to the conditions of the charter
- Certificate of education
- Written statement showing that there is no criminal record
- Written statement showing that there is no obstacle to perform duty continuously due to the health status

The regional directorate sends the application and the enclosures to the Directorate General, which makes the necessary examination and creates the dossier, which is submitted to the Council for appointment. If there are multiple requests, the Council makes its decision by taking into consideration firstly the conditions of charter and then the order of generations, the foundation's capacity for operations, the level of education and settlement of candidates.

Once a person is appointed as a board member, she/he notifies the Directorate General of the immovable properties they have acquired or replaced within one month from their registration with the property registry.

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

There is no differentiation between voluntary or paid board members in terms of responsibility or standards of diligence.

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?

In case the board members of the foundation violate the provisions listed in Article 10 of the Law on Foundations such as causing a loss on purpose, or not properly utilising the assets or income of the foundation regarding the purpose of the foundation, they can be dismissed via the decision of the civil court of first instance. Foundation board members cannot be dismissed or suspended from the office without court order.

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 governing body is responsible for representing the foundation. It is up to the statutes of the foundation how to organise the governing body.

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

According to Article 26 of the Law on Foundations, a foundation may establish and incorporate an economic enterprise or company so as to promote its goals and to generate income, by giving prior notice to the Directorate General. The income generated from economic enterprises cannot be allocated for any purpose other than the purposes of the foundation. Regarding companies which have been established by foundations where the majority of the founders are foreign nationals or where more than half of the shares are owned by such foundations, the acquisition of property by

such companies will be subject to the property acquisition provisions applicable to the same foundations.

The General Directorate is authorised to establish economic enterprises or companies by using the incomes and real properties of the General Directorate and fused foundations pursuant to the decision of the President of the Republic.

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 particular legal or fiscal framework for funding the legal entities conducting economic activities.

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?

According to Article 26 of the Law on Foundations, foundations are allowed to establish economic enterprises or companies, or become a shareholder of companies, provided that these go toward achieving the purposes of the foundation. They are required to notify the General Directorate of Foundations in order to carry out commercial activities. These activities are considered as mostly commercial activity. There are no particular limitations to voting rights related to shareholding.

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?

As a general rule, foundations may acquire goods, and have full discretion over their use in line with the purpose. Goods and rights allocated to the foundation at its establishment may be replaced with more useful ones or converted to cash with a court decision if there are justified reasons, following an application by the foundation's board and consultation with the Supervision Authority. Goods and rights acquired at a later stage may be replaced with more useful ones or converted to cash upon the decision of the responsible body of the foundation and on the basis of a report to be prepared by independent expert institutions. Foundations cannot allocate grant funds as low interest loans or recoverable grants. However, they can donate to other foundations if their statutes allow it.

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)

Foundations are allowed to allocate grant funds if this is clearly mentioned in the statutes. However, establishing a pure grantmaking foundation is not possible according to the legislation. If a public-benefit purpose programme is conducted by a foundation as its own project and provided that it is not considered as a taxable economic activity, foundations can allocate some funds to the project and funds can be returned to the foundation if the project generates funds/income from other sources. If the activities require establishment of an economic entity, the foundation can provide loans with interest but the interest should be modest.

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

Foundations are allowed to make donations to political parties according to the Law on Political Parties. There is no specific ruling related to lobby/advocacy activities of foundations.

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

If the fulfilment of the purpose becomes – *de jure* or *de facto* – impossible, the foundation applies to the court to make the necessary changes.

Since the will of the founder is significant for the statutes of the foundation, amendment of the statutes is strictly formal. Additionally, a decision of the court is required to amend the statutes.

The foundation is required to obtain permission from the Ministry of Treasury and Finance to be able to amend the statutes for foundations with tax-exempt status.

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 report is submitted to the General Directorate of Foundations which includes information about the foundation's governing bodies, its activities and financial statements. In addition, if the foundation has public-benefit status (tax-exempt status), it must submit another report to the Ministry of Finance, which contains information on the financial situation and activities of the foundation.

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

The General Directorate of Foundations is the major supervision authority for foundations. However foundations with tax-exempt status are also subject to the supervision of the Ministry of Finance.

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. Information submitted is not public, and therefore is not published by the authorities. However, some foundations share their information on their web pages to promote transparency.

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

Each year, foundations submit their operational results and activities as an annual report to the General Directorate of Foundations. The annual report includes the internal audit report which can be performed by independent audit firms as well as the foundations' statutory auditors. Internal auditing is a requirement for all foundations. Although it is called an internal audit it includes the requirement that financial information be submitted to the General Directorate of Foundations in the form of a report within two months of the audit date. The GDF is the major external supervisory body and audits foundations and their affiliates to ascertain whether they are consistent with the law and to check the appropriateness of their purpose. Foundations with tax-exempt status are required to submit a Sworn-in-Certified Public Accountant's Tax Exempt Compliance Report to the Ministry of Finance.

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

Internal auditing is mandatory for all foundations. Auditing of foundations is undertaken by the organs of foundations or by independent auditing firms. There are no specific requirements/guidelines for the independent audits. However independent auditing firms may perform the audits of foundations'

accounts prepared in accordance with the International Financial Accounting Standards in addition to local accounting standards at the request of the foundation.

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:

The decision to replace or dispose of real estate and rights allocated to the foundation at its establishment requires a court decision, as do all changes to the statutes. Also, in order to open branches/liaison offices or establish economic enterprises, the foundation board must notify the General Directorate of Foundations after the execution of the decision if it has not sought prior permission.

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?

As mentioned in the Law on Foundations, despite the notification of the General Directorate of Foundations, if the foundation does not submit the required documents such as reports, it is possible for the foundation to pay an administrative fine. Additionally, if any meeting violates the procedures of the statutes, an administrative fine may be imposed.

20. When and how does a foundation dissolve?

The foundation may dissolve ipso facto if the realisation of its mission or objectives becomes impossible to achieve or to amend, or the object of the foundation becomes contrary to the legislation. A foundation is dissolved upon a request of the foundation board, the General Directorate of Foundations or the Public Prosecutor.

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?

Foundations with tax-exempt status are required to spend at least 2/3 of their annual income on expenses directly serving its purpose. There is no such requirement for foundations without tax-exempt status.

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?

Foreign foundations may operate, open branches, or incorporate high-level organisations with the permission of the Ministry of the Interior and advice of the Ministry of Foreign Affairs. Reciprocity principles are considered during establishment of foreign foundations.

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?

Foundations may establish branches and representative offices abroad, or carry out international business operations and cooperation, and set up governing councils, or they may be members of foreign organisations/councils provided that such will be allowed in their statutes.

Foundations can receive in-kind and cash endowments and grants from natural or legal persons abroad. Foundations may make donations to those foundations and organisations based abroad that are established with similar purposes. It is mandatory that cash donations or grants be sent and received through bank transfer.

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

It is necessary to notify the Regional Directorate of Foundations when foundations send/receive aid or funds to/from abroad within 1 month at the latest after the transfer. Foundations that send/receive aid or funds need to fill in 2 kinds of written forms and provide these to the Directorate of Foundations. Foundations exceeding the time limit may face an administrative monetary fine.

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?

Permission from the Ministry of Interior and advice of the Ministry of Foreign Affairs are required to operate abroad.

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?)

- Activity period: The foundation must have been operational for at least 1 year.
- For foundations whose assets and income exceed twice the level of the minimum amounts required, valid in the year of application, the minimum activity period is 6 months instead of 1 year.
- Subject of activity: The foundation needs to be reducing the burden on the state for public services, undertaking at least one or more of the following activities: health, social assistance, education, scientific research and development, culture and environmental protection and afforestation, as their scope of activity.

Furthermore, foundations that are not operating nationwide but only serving a particular location or a particular community are precluded from obtaining tax-exempt status.

An activity report including one or more of these subjects of the last five years needs to be submitted for application of tax exemption.

- Assets and income: For foundations operating for at least 1 year, having a minimum of TL 1,717,000 (~ €185,000) worth of income-generating assets and at least TL 155,000 (~ €16,600) of annual income as of 2020.
- Bookkeeping: The foundation is required to keep books according to the balance sheet method.
- Obtaining opinions of related government agencies: After the first assessment of the tax exemption request by the Ministry of Finance, the opinions of the General Directorate of Foundations and other related government agencies that work in an area related to the purposes listed above are obtained. These opinions need to be based on an audit which measures the contributions of the foundation towards sharing the government's burden of public service undertakings. For example, if a foundation is working in the field of education, the opinion of the Ministry of Education may also be required. Opinions that are not based on any audit shall not be taken into consideration in recognising the qualification for tax exemption of a foundation working in a related area.

If a foundation with tax exemption status loses its exemption, the foundation will not be able to apply to obtain tax exemption for 5 years.

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

As a general rule, the use of state properties and operating inside of a state building are forbidden for foundations. Additionally, many foundations do receive state funding or conduct joint projects with state institutions. Since there is no general regulation on state funding for foundations, special reporting is not mentioned in any regulation.

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

No.

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

There are two different statuses that enable CSOs to benefit from tax exemptions or exceptions for CSOs in Turkey: Public Benefit Association or Tax-Exempt Foundation. Public Benefit Status is regulated by the Law on Associations and Regulation on Associations Article 49. Tax Exemption status for foundations is regulated by Law No. 4962 on Amendments to Certain Laws and the Law on Granting Tax Exemption to Foundations.

According to the Law on Associations, associations are regarded as public-benefit associations when their purposes, and the activities they carry out for these purposes, are of a quality and measure to provide beneficial results to the society; and of a quality that will contribute to social development and solve issues and needs at local and national levels, beyond the needs of their members. As the accepted definition of public benefit regarding associations is not clear, public officials authorised to decide on this status have been given broad discretionary powers. This ambiguous definition may be insufficient to guide the administration, and it carries the risk of involving subjective practices. It is necessary to make a definition that is linked to clear and objective criteria.

According to the Law No. 4962, it is necessary for foundations to be active in the fields of health, social welfare, education, scientific research and development, culture and environmental protection and afforestation to qualify for tax exemption, and these activities should be open to the public and should have an impact to decrease the public service burden of the state. In the case of foundations, the scope of activities is stated in the regulation. Many areas considered public benefit internationally, such as: • Prevention of other discriminatory activities determined by race, ethnicity, religion or law • supporting amateur sports and athletes • helping refugees • civil rights or human rights • consumer protection • and democracy have not been included in the scope in Turkey. There are also geographical limitations to obtain Tax Exemption Status. Foundations wishing to acquire this status need to conduct activities for public benefit throughout the country.

In a large country like Turkey, carrying out activities across the country may bring undue burdens and it may not always be possible and necessary to do so. For example, the acquisition of public-benefit status by an environmental organisation that participated in the cleaning activity of a polluted river or a humanitarian not-for-profit organisation established after an earthquake in a specific city or region is hindered due to these limitations.

The tax deduction rate applied to real and legal persons in their donations to associations with Public Benefit Status and foundations with Tax Exemption Status is 5% (10% in priority regions for development).

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.

N/A.

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> | Donations allocated to food banks are exempt from VAT | | | |

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. Foundations wishing to acquire Tax Exemption Status need to conduct activities for public benefit throughout the country.

- 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.?

There is no regulation concerning a non-distribution constraint with regard to board members. Distributions can be made to board members according to the provisions of the foundation’s statutes, however it is not a common practice. Some foundations distribute “honorariums” on an irregular basis.

- 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?

Any estate and rights remaining after the settlement of the debts of a dissolved or terminated foundation shall be reverted to the entity that is designated in the foundation’s statutes. If there is no provision in the statutes, the court shall make a decision by obtaining the opinion of the General Directorate of Foundations and allocate the foundation’s assets to another foundation with a similar purpose.

10. “Altruistic” element

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

There is no regulation regarding remuneration of board members. Board members can be remunerated according to the provisions of the foundation’s statutes. It is a widespread practice that the board members of foundations receive either no remuneration or considerably lower remuneration than their peers in the private sector.

- 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”:

- 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

Foundations are required to spend at least two-thirds of their annual income for their purpose and maximum one-third on office/administration costs to maintain tax-exempt status.

Amounts that have been allocated to be spent for the purposes of a foundation cannot be used for any other purpose. However, the expenditures allocated for administration and overhead, as well as reserves and investments that increase the assets of the foundation can be spent wholly or partially on services related to the purposes of the foundation.

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 are no specific regulations on this in the legislation, but it is not encouraged for foundations to spend their capital. On the contrary, the general expectation is to increase the amount of capital annually.

- 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?

There is no specific regulation in the legislation concerning establishment for a limited time period.

- 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)?

The general requirement is to spend two-thirds of the yearly income within the same year for the foundation's purpose, particularly for the foundations with tax-exempt status. Surplus funds can be deferred to be spent within a maximum of three years for foundations with tax-exempt status, with the approval of the Ministry of Finance.

- 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"?

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?

Regardless of having tax-exempt status, as a general rule, foundations may establish branches and representative offices abroad, or carry out international business operations and cooperation, and set up governing councils, or they may be members of foreign organisations/councils provided that such will be allowed in their statutes.

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

No.

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

- a) Grants and donations

All foundations are exempt from corporate tax. If a foundation has an economic enterprise, corporate tax is applicable through the economic enterprise.

The amount of donations and aid that can be deductible as expense is limited to 5% of a given year's income (10% in priority regions for development).

Investment income (asset administration)

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

The taxation of foundations and associations is largely the same as the taxation of real persons. Foundations and associations that are not subject to Corporate Tax do not pay Corporate Tax for the income they earn from the operation of their assets; for example, conversion of their cash assets to securities and renting their real estate. However, if such income requires tax withholding as per Income Tax Law, according to the 96th and provisional 67th article of the Income Tax Law, they shall withhold Income Tax. Since foundations and associations do not submit a Corporate Tax Return, they do not pay additional Income Tax; and they do not pay taxes on income with zero withholding tax rate.

Foundations may obtain rental income from their real properties, dividends from their shares and stocks, and interest income from their bills and investments in Turkish Lira and foreign currencies. In accordance with the Income Tax Law, income tax should be withheld by those paying this income. The after-tax amount of income is paid to the foundation and tax withheld is paid to the tax office by the payee. Foundations and associations make their own income tax stoppage for the profit share they obtain from their commercial enterprises. If the tenant is a legal person (company), 20% of the rental income tax is deducted for the foundations that have Tax Exemption Status.

b) 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)

Foundations need to operate an economic enterprise to carry out economic activities. Foundations are not subject to corporate tax, however economic enterprises are subject to corporate tax. In case of sale of intellectual property of a book which has not been published, the income will not be subject to corporate tax in an economic enterprise.

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

No tax exemption.

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

Yes.

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

No.

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

Generally, purchasing of goods or services made by foundations with tax exemptions is not exempt from Value Added Tax (VAT). VAT exemption is only applicable to foundations with tax-exempt status which operate in specific fields. Some examples of specific fields are listed below:

- Expanding, encouraging and improving science and technology; fine arts; and agriculture
- Cultural and educational activities performed by running and managing theatres, concert halls, libraries, exhibition halls, conference halls and sport facilities

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

N/A

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

No exemption.

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

Only foundations with tax-exempt status are exempt from Real Property Tax limited to the immovable property directly used by the foundation.

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:

No. Foreign foundations and associations do not have any tax exemptions in Turkey.

- 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

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?

Turkey has concluded many treaties for the avoidance of double taxation and to attract foreign investment. However, there is no particular tax treatment of public-benefit organisations in this regard.

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?

Foundations are subject to withholding tax, but they are not able to reclaim this tax.

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?

No.

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?

According to Income Tax Law, donations and aids made by real persons to organisations in the following four groups can be deducted as expenses: • Public Administrations with General and Special Budgets, Special Provincial Administrations, Municipalities and Villages • Associations with Public Benefit Status, foundations with Tax Exemption Status • Institutions and organisations involved in scientific research activities • and associations and foundations engaged in food banking for the benefit of the poor. The amount of donations that can be deductible as expenses is limited to 5% of a given year's income (10% in priority regions for development) or may be deducted as a whole; depending on the purposes of the donation and aid as well as the organisation making the donation. In this case, the upper limit is limited by the income stated. If loss is declared, there would be no deduction.

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

Any kind of assets can qualify for donors who can contribute tax-exempt donations to tax-exempt foundations. The value of the non-cash assets must be determined.

For tax deduction, when donations and aids are in kind, the cost value or registered value of goods or rights that constitutes the donations or aid shall be taken into account; if this value is not available, the value that shall be determined by valuation commissions as per the Tax Procedural Law shall be taken as the basis.

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?

There is no differentiation among individuals and corporate donors in terms of tax relief. The regulation explained in 2a applies to the corporate donors as well.

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

There is no differentiation among individuals and corporate donors in terms of tax deductibility for in-kind donations. The regulation explained in 2b applies to corporate donors as well.

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

Public-benefit status is not granted for non-resident foundations in Turkey.

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)?

Regarding information donors must provide to the tax authority, donors should submit the donation receipt showing the amount of the donation with the tax return.

- 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?**

N/A

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

N/A

- 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?

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

N/A

N/A

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)?**

According to Article 77 of the Law on Foundations, immovable and movable properties endowed to a foundation upon its establishment or after shall be exempted from Inheritance and Succession 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?**

According to the Turkish Civil Code the reserved part for the protected heirs is to be considered by the legator.

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

N/A

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:

The Law on Preventing Financing of Proliferation of Weapons of Mass Destruction adopted in Turkey entered into force on 31 December 2020. As stated in the rationale of the draft law, the main reasoning behind the law is "to catch up with international standards in the fight against the financing of terrorism and laundering offenses in light of the 2019 report of the FATF and the UN Security Council (UNSC) resolutions". Eleven out of 43 articles amend two important civil society laws, 4 articles amend the Law on Collection of Aid, and 7 amend the Law on Associations in Turkey. The law prescribes that procedures and principles regarding aids provided domestically and abroad will be regulated with a by-law, which is expected to be published in February 2021. The amendments bring restrictive measures and contribute to creating an unfriendly climate for civil society in terms of freedom of association and the right to free access to resources.

- 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?

No.

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?

Along with the transition to the Presidential Government System, in July 2018 necessary legislative amendments were made which authorised the President to grant tax-exempt and public-benefit status to foundations and associations, respectively. The first opinion on whether an association has public benefit or not will continue to be given by the Governor's Office. The opinion from the Governor's Office will be sent to the Ministry of Interior and the President will decide whether the association will be granted public-benefit status. Regarding foundations, the first evaluation of tax exemption application is made by the Ministry of Finance. Afterwards, foundations are granted tax exemption by the President. As of January 2021, there are only 360 associations which have public-benefit status, while only 290 foundations have tax-exemption status in Turkey.

Obtaining these statutes is highly cumbersome and involves a lengthy process which leads to a smaller number of organisations being granted the status due to issues of hard accessibility and of a political nature. Despite such stringent application and approval processes, the privileges offered by the public-benefit statuses are rather limited, hindering CSOs from raising necessary funds to ensure their financial sustainability.

As the country transitioned to a Presidential Government System, with the Presidential Decree No 17, published on September 13, 2018, the Department of Associations was abolished and the Directorate General for Relations with Civil Society (DGRCS) under the Ministry of Interior was established as a supervisory audit authority.

- 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?

Turkey uses two different notions – aid and donation. Because the difference between the two is not clearly specified in the applicable legislation, problems occur in practice. Any income generating activity (activities in public space, campaigns, collection of donations via SMS) conducted by CSOs in a place other than the headquarters is defined as a fundraising activity, and thus becomes subject to permission under the provisions of the Law on Aid Collection. The barriers and procedures introduced by the Law on Aid Collection make it difficult for CSOs to carry out income-generating activities. This leads to serious interference in the freedom of association as well as the right of ownership. As of January 2021, out of all the associations, institutions and foundations with public-benefit status, only 29 are entitled to collect aid without obtaining permission.

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

Yes. All foundations are subject to the Law on the Collection of Aid for their fundraising campaigns. This law is very restrictive and burdensome for foundations.

VII. Further information

Useful contacts

Rana Kotan, Secretary General of [TUSEV](#) (rana@tusev.org.tr)

Selected law texts online

- <https://www.mevzuat.gov.tr/>

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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