

# Portugal

## Legal Environment for Philanthropy in Europe 2024

By Rui Gonçalves and Madalena Potes, Calouste Gulbenkian  
Foundation

## Contents

I.	Legal framework for foundations .....	3
II.	Tax treatment of foundations.....	21
III.	Tax treatment of donors.....	31
IV.	Tax treatment of beneficiaries .....	33
V.	Gift and inheritance tax.....	34
VI.	Trends and developments.....	35
VII.	Further information .....	38
	Useful contacts.....	38
	Selected bibliography .....	38
	Selected law texts online .....	38
VIII.	About.....	40

## 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?

Portugal has a Framework Law for Foundations (FLF), approved by the Law no. 24/2012, of July 9, which defines the general principles and rules applicable to foundations and that prevail over other laws specifically addressing different types of foundations or other matters. Foundations are also recognised as being part of the social economy in Portugal according to the Basic Law of the Social Economy (Art. 4.d) of Law no. 30/2013, of 8 May).

#### Definition

The FLF provides a basic definition of a foundation as a non-profit legal person, endowed with assets which are both sufficient and irrevocably allocated to the realisation of a social-interest purpose (Art. 3.1). The FLF then presents a tentative list of social-interest purposes which are defined as those that benefit one person or a category of persons distinct from the founder, the founder's descendants and/or persons that are related to the founder by friendship or business ties (Art. 3.2).

#### Types of foundations

Foundations are always autonomous organisations with legal personality, and the FLF outlines three major types of foundations under the aforementioned basic definition (Art. 4.1 FLF), based on the founder's origin (private vs public) and the founder's influence in the foundation's endowment and management:

- Private foundations are those created exclusively by one or more private persons or created in partnership with private and public persons where the latter, individual or collectively, do not have a dominant position over the foundation (15.1). According to Article 14.1. of FLF, private foundations are private law legal persons endowed with the required assets and economic support to fulfil social-interest goals.
- Public foundations of public law are those created exclusively by public persons under public law.
- Public foundations of private law are those created in partnership between private and public persons when the latter, individual or collectively, have a dominant position over the foundation.

Dominant position exists whenever the initial endowment is exclusively or predominantly of public origin, or whenever the public legal entities have the right to appoint or remove the majority of the members of the foundation's governing bodies (Art. 4.2 FLF). Since 2022, the law allows for requalification of public foundations if public entities lose dominant influence. If public entities that initially held a dominant influence over a foundation lose that influence, the foundation may undergo a requalification process (Art. 4.4 FLF). This requalification involves a mandatory and binding opinion from the Consultative Council of the Presidency of the Council of Ministers. If the Council determines that the foundation no longer qualifies as public due to the loss of influence by public entities, the foundation can be reclassified as a private foundation. Likewise, if the private or public nature of a particular foundation is challenged, it is the qualification of the Consultative Council of the Presidency of the Council of Ministers that prevails, issued according to Article 13.6 c) (ex vi Art. 4.3 FLF).

The provision of these three types of foundations seeks to limit or condition the possibility of the state to create foundations, especially public foundations of private law: The FLF specifically and explicitly forbids the state to participate in public foundations of private law, or to create new ones, and subjects those that already exist to the public law rules (Art. 57). It should be acknowledged that the FLF was approved by the Portuguese Parliament in 2012 in an attempt to restrain a practice that is commonly described as “The Escape to Private Law by the Administrative Law”, i.e. a way for the state actors to avoid the constraints of administrative law using mechanisms of private law.

Religious foundations have an autonomous legal regime. Foundations with a Christian Catholic purpose are influenced both by an international agreement between Portugal and the Holy See for Catholic Church foundations, and Arts. 33 to 51 of Law 16/2001, of 22 June, on the freedom of religion. Generally, churches and other registered religious communities can autonomously establish or recognise local or regional churches, religious communities, entities of consecrated life, or other institutions, with the nature of associations or foundations.

Although not mentioned specifically, the FLF does not exclude the creation of corporate foundations using the general provisions for private foundations and without imposing additional legal constraints.

Since 2022, a new provision imposes fines on individuals and entities that misuse the term “foundation” without official recognition (except when in the process of applying for recognition). The fines range from €50 to €10,000, depending on the severity and intent of the infraction, with enforcement managed by the Secretariat-General of the Presidency of the Council of Ministers (Art. 13-A FLF).

**2. If your jurisdiction provides for different laws for different foundations/philanthropic organisations, please indicate this here and then specify under further relevant questions whether a different answer applies to these types of foundations/philanthropic organisations.**

Apart from the already mentioned religious foundations, there are different legal regulations for the different types of foundations within the FLF. As mentioned above, the main distinction is between private foundations and public foundations:

- **Private foundations** are subject to specific rules regarding their governance, transparency and financial management as set out mainly in the FLF and the Civil Code.
- **Public foundations** are also governed by the FLF, but with additional requirements and oversight since they are established by public entities or with significant public funding. They are subject to constitutional administrative principles, general principles of administrative activity, and rules regarding conflicts of interest and incompatibilities. They must adhere to public procurement rules and principles of transparency, competition and non-discrimination in personnel recruitment. (Arts. 48 and 52 FLF) Their statutes must define the foundation’s governance structure and oversight ministry (Art. 51 FLF). They are under the supervision of their founding entities and subject to inquiries by the Inspectorate-General of Finances (Art. 55 FLF).

Since 2022, public foundations are specifically required to follow the economic, financial, and asset management regulations applicable to public institutions, and they are subject to the jurisdiction of the Court of Auditors (Art. 54 FLF).

Other than this distinction, the FLF differentiates other types of foundations which have specific legal regimes based on their purpose and operational scope:

- **Foundations of social solidarity** (Arts. 39 to 41 FLF): These are private entities dedicated to achieving specific objectives outlined in the law, which primarily focus on social welfare activities. They are governed by the general framework law on foundations and by the Statute Private Social Welfare Institutions. Foundations of this type categorised under the social action scope of the Social Security System and the Ministry of Education are subject to respective registration regulations. Special provisions also apply to foundations focused exclusively on health promotion and protection. The responsible entity, along with the Ministry of Solidarity, Employment, and Social Security and the Inspectorate-General of Finance, has the authority to conduct inquiries, investigations, inspections and audits.
- **Foundations for cooperation and development** (Arts. 42 to 44 FLF): These are private entities that pursue objectives outlined in the Statute of Non-Governmental Development Organizations. The responsible authority, along with the Ministry of Foreign Affairs and the Inspectorate-General of Finances, has the power to conduct inquiries, investigations, inspections and audits.
- **Foundations for the creation of private higher education establishments** (Arts. 45 to 47 FLF): These are private entities aiming to fulfil objectives outlined in the Law of Higher Education Institutions. They are governed by this Law and the general FLF. The responsible recognition authority, along with the Ministry of Education and Science and the Inspectorate-General of Finances, has the authority to conduct inquiries, investigations, inspections and audits of the foundations involved in private higher education.

Bearing in mind that foundations can only pursue public purposes – meaning activities of social interest that benefit others beyond the founder, their descendants, friends, or business partners – we must also refer to the **public-utility status**. In Portugal, this is a specific status which can be granted to non-profit organisations under Law No. 36/2021, of June 14. This is not a mandatory status for foundations or other non-profit organisations, but rather an additional recognition granted by the government to those that significantly contribute to the public good. Foundations with this status must adhere to specific legal requirements to maintain it and benefit from certain advantages, such as tax exemptions and increased credibility. Failure to comply with these obligations may result in the loss of the status and associated benefits (see also answer to Section II question 5).

### 3. What purposes can foundations legally pursue?<sup>1</sup>

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

Only social-interest (public-benefit) foundations are permitted in Portugal (Arts. 3 and 14.2 of FLF). Social-interest purposes are defined by FLF as those that benefit one person or a category of persons that are different from the founder, the founder's descendants and/or persons that are related to the founder by friendship or business ties, in particular the following (Art. 3): assistance to persons with disabilities, to refugees, to migrants and to violence victims; cooperation for development; education and training; preservation of historical, artistic and cultural heritage; preventions and eradication of poverty; citizenship promotion and human rights protection; promotion of culture and the arts; community and social integration; scientific research and technological development; humanitarian intervention; sports and physical well-being; international and European dialogue promotion; entrepreneurship, innovation and economic, social and cultural development;

<sup>1</sup> This question focuses only on public-benefit foundations (see the definition in the [glossary](#) developed for this project).

employment protection; health promotion and disease prevention and control; climate and natural heritage protection; consumer protection; family support and protection; child and elderly protection; and housing.

Although social-interest activities must be the main activities of foundations in Portugal, the founder can use the foundation's assets for private purposes as long as their fulfilment does not excessively prevent or burden the foundation's ability to fulfil its social-interest mission (Art. 34 FLF). If the foundation's ability to fulfil its social-interest mission is affected in this way, the board of trustees can seek state approval to reduce, suppress or commute the aforementioned private interests (Art. 34.1 FLF).

#### **4. 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?**

Whereas private foundations are incorporated by an inter vivos act or by will of the founder (Art. 17 FLF or Art. 185.1 Civil Code), public foundations are set up by a legislative act (Art. 50 FLF) if incorporated by central or regional government, and by a deliberation of the Municipality assembly if incorporated by local authorities (since 2022, as per Article 50.4 FLF, the creation and management of municipal public foundations are governed by the same legal framework as municipal enterprises, with necessary adaptations).

##### **Private foundations:**

The incorporation of a foundation by a living founder can be performed through a notary deed or a notarised private document and becomes irrevocable once the state approval of its legal status is required (at request of the founder or officially) (Art. 17.2 FLF). In case of a foundation incorporated by will of the founder, their heirs can only cancel the incorporation if there are grounds to challenge the will according to the legal succession regime (Art. 17.3 FLF).

According to Article 18 of FLF, in the institution act, the founder shall state the foundation's goals and the necessary assets allocated to its fulfilment, as well as the official address for the headquarters, and the structure and governance of the foundation. The statutes shall regulate the terms of the foundation's modification or extinction and, in the case of the latter, fix the destiny of the assets as well.

Social Solidarity Foundations must include a specific declaration of intention to operate as a private social solidarity institution. For those types of foundations intending to operate in health or education sectors, compulsory opinions from respective ministries are required and are binding. The absence of these opinions can lead to the rejection of the recognition application (Art. 40 FLF).

The Ministry of Foreign Affairs assesses the application for the setting up of a foundation for cooperation and development and provides a mandatory and binding opinion, which must be submitted within 45 days. Lack of this opinion can lead to the rejection of the application (Art. 43 FLF).

For the foundations for the creation of private higher education establishments, the Ministry of Education and Science reviews the application and issues a mandatory and binding opinion within a maximum of 180 days. The absence of this opinion constitutes a basis for refusal of recognition.

#### **5. 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

Legal personality or status of the foundation is granted by state approval, currently a competence of the Prime Minister with the power to delegate (Arts. 6 and 20 FLF and Art. 158.2 Civil Code). The Prime Minister has delegated this responsibility to the Minister of the Presidency of the Council of Ministers (Order 8135/2024, 23 July, Art. 3). By law, considering the administrative autonomy of the special administrative regions of Azores and Madeira, these responsibilities are transferred to the respective regional authorities, such as the President of the Regional Government, and compliance is ensured with regional procedures overall adapting the legal process to their specific contexts (e.g. official acts, such as foundation recognition, are published in the regional gazette instead of the national gazette) (Art. 23 FLF).

The current legal framework has moved from a pure discretionary recognition to a more “normative” state approval, with a list of social-interest goals or model statutes, for instance, being provided by the administrative authority (Order no. 11648-A/2016). The rationale behind this change was to address the concerns regarding a possible “politicisation” of the state approval of foundations. Once the defined criteria are met, the state must grant legal personality to the foundation.

Since 2022, the law specifically states that each private foundation must undergo its own recognition process (rather than being recognised collectively or through a simplified procedure) by which it is ensured that private foundations adhere to a clear, standardised set of requirements and steps for obtaining legal recognition. This process includes detailed evaluation of the foundation’s purposes, governance and financial structure to ensure it meets the necessary legal and operational criteria.

The FLF describes the procedure for the state approval of a private foundation’s legal status which is conducted exclusively online with an application submitted in the Presidency of the Council of Ministers internet portal (Art. 22 FLF). The application form shall include the following documentation (Art. 22.2 FLF):

- Documents that give evidence of the foundation’s establishment and the founder’s identification, as well as the founder’s contribution to the foundation’s endowment or to the financing of its activities
- Evidence of a sufficient initial endowment
- Memo outlining the foundation’s aim or aims and its areas of activity
- Detailed description of the assets allocated to the foundation
- Letter of honour from the founder attesting that the assets allocated to the foundation are free of litigation
- Real estate evaluation
- Proof of bank transfer of the initial cash contribution
- Statutes and date of publication
- Nomination of the persons to the governing bodies of the foundation

According to Article 23 of the FLF, the recognition authority shall refuse the legal personality to a foundation in the following circumstances: when the aims of the foundation are not considered of social interest, namely if they benefit the founder or the founder’s family or a very limited group of beneficiaries related to them; the assets allocated to the foundation’s goals are insufficient and there are no reasonable expectations of this insufficiency being supplemented, in particular if the assets are encumbered or do not generate sufficient return to the realisation of the foundation’s goals; incompatibility of the statutes with the

law; defects or omissions in the founders intent; or existence of litigation with the foundation's assets. Stricter measures regarding the assets allocated to foundations were adopted, such as imposing criminal liability on individuals who make false declarations about these assets and establishing that disputes or doubts over the assets can be grounds for the revocation of the foundation's recognition.

Nonetheless, since 2022, foundations are presumed to have sufficient endowment if their assets meet the value specified by a government ordinance, which can be adjusted by the Ministers of Finance and the relevant authority. Foundations creating higher education institutions may be required to provide stronger financial guarantees. Ordinance 75/2013, 18 February, Article 2 states that the minimum endowment for a foundation is €250,000 with Article 3 of the same Ordinance requiring that the endowment composition shall include a contribution in cash, which in principle represents at least 30% of the endowment but is never less than €100,000.

## 6. 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)

For the moment, foundations in Portugal are registered in the National Registry of Legal Entities. In January 2020, the first phase of a single Registry of Foundations was implemented following the implementation of the provision of Art. 8 of FLF and the approval of Decree-Law no. 157/2019, of 22 October. This new registry has simplified procedures for updating and reporting, including formal government authority (Registry, Supervision and Tax) partnerships to facilitate cross-checking information. The first phase involved the automatic transfer of all foundations listed in the National Registry of Legal Entities (specifically those granted the status of public utility), excluding those registered under the Canonical Legal Persons and Religious Collective Persons and public higher education institutions of a foundational nature. Foundations that were not covered in the first phase, such as those registered under the Social Security General Directorate, under the Regional Government of Azores' oversight, or permanent representations of foreign foundations, will transition in a subsequent phase after specific case-by-case analysis and coordination with relevant bodies.

Registration under this National Registry can be requested by foundation representatives, their proxies, as well as lawyers, notaries and solicitors. Certain registration actions must be requested through the responsible authority (General Secretariat of the Presidency of the Council of Ministers), while others need to be directly addressed to the Commercial Registry Offices. Foundations not yet transitioned to the new foundation registry can still make registration requests via e-mail.

Financial support from the state, autonomous regions, local authorities and other public bodies depends on a foundation being registered in this system and having taken part in the 2012 Census.

Additionally, beneficial ownership registration is mandatory for all legal entities, including foundations, and best practices consider the members of the board the ultimate beneficial owners of the foundations for this purpose.



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

For the moment, the register keeps the founding documents, identification of the board members, and, if applicable, information on change of name or purpose, transfer of registered office, dissolution etc. For the new Registry of Foundations it is mandatory to register the following:

- The State Approval request application as well as the subsequent decision or refusal of recognition
- The decision of public-utility/benefit status
- Statutes modification, including the amplification or change of the foundation's goals
- The nomination, renovation and termination due to any reason other than time of the mandate of the members of all the foundation's governing bodies
- Merger of foundations
- Dissolution of the foundation
- Closing of the assets, liquidation
- The beginning and end dates of the mandate of the liquidators

**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

**7. Is a minimum founding capital/endowment required?**

- No
- Yes, amount: case by case

Although Portugal does not have a stipulated minimum, the administrative authority must refuse recognition if the assets are estimated to be insufficient for the pursuit of the foundation's purpose (Art. 23.1 FLF and Art. 188.2 Civil Code). The FLF states that an initial endowment of at least €250,000 would generally be considered "sufficient assets" (Art. 22.3 FLF and Art. 2 of Order 75/2013, 18 February).

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

No. Nonetheless, in the case of private foundations with public-utility status and public foundations, the sale of assets of the foundation which have been allocated by the founder(s), and specified as such in the founding act, and which have a special significance for the foundation's purpose, requires authorisation by the recognition authority: Otherwise, the sale will be void (Art. 11 FLF). Thus, "special significance" is understood in practice to include not only material assets, but also financial assets.

Since 2022, stricter rules have been in force for the management of assets of special significance within foundations. Assets are now defined as "significant" if they are crucial for the foundation's objectives, explicitly designated by the founder, or exceed 20% of the foundation's total assets. The sale of these assets by foundations with public-utility status can only be denied if it would irreversibly harm the foundation's mission or financial stability. The law also imposes a strict timeframe for decision-making, with a default approval

mechanism in place (if the competent authority does not make a decision within 45 days of receiving the request, the foundation's request is automatically approved).

Although spend-down foundations are not explicitly addressed, the FLF allows for a foundation to terminate if there have been insolvency proceedings, inactivity for three years, or if the pursuit of the foundation's goals has been exhausted or has become impossible (Art. 35 FLF). In this way, foundations may spend down endowments under the legal regime until the foundation is terminated. Furthermore, the law allows the founder to determine what can trigger the termination of a foundation, which in theory could be the legal basis for "spend-down foundations" in Portugal (Art. 35.1b FLF).

Although the FLF does not specify any asset level that a foundation must maintain throughout its lifetime, a particular foundation can have its mission changed by the state when its assets become insufficient to fulfil its initial mission (Art. 32 FLF) or, as an alternative, it can be merged with another foundation with a similar mission (Art. 33 FLF). This merger must be proposed by the management of both foundations.

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

### a) Is it mandatory to have a:

- Supervisory board
- Governing board

The FLF requires that a foundation has the following two-tier governance structure (Art. 26):

- A board of directors responsible for the ultimate management of the foundation's assets, as well as deciding on the amendment of the statutes, the modification of the foundation and dissolution of the foundation
- An executive commission, responsible for the day-to-day management
- A supervisory board responsible for supervising the foundation's management and accounts

The foundation's statutes have discretion to designate other facultative bodies, namely a board of founders or trustees with a fiduciary role of ensuring the compliance with the foundation's statutes and the respect of the founder's will. The mandates of the governing bodies' members shall be temporary, except for the lifetime roles specifically created by the founder.

### 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?

The law requires that the board of directors must have an uneven number of members and that one of these members is nominated as its president (Art. 27.2 FLF and Art. 162 Civil Code). The management commission can be part of the board of directors (Art. 27.2 FLF).

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

In Portugal, it is not the law but the foundation's statutes that determine the rights and duties of board members (Art. 29.1 FLF and Art. 164.1 Civil Code). Regarding negative rights and duties, Art. 29.2 FLF warns nevertheless that members of the foundation's bodies may not cease to cast their vote on decisions taken in meetings in which they are present as they

are directly and potentially responsible for any damage arising out of these decisions, unless their discord has been documented in the minutes of the meetings.

**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?**

In Portugal, foundations are autonomous legal entities and, in that regard, founders do not have any explicit “rights” during the lifetime of the organisations they incorporate, except of course if, in the case of living founders, they have any lifetime position in the management of the foundation (which is possible), the FLF forbids lifetime mandates for the members of the governing bodies except for the ones specifically created by the founder in the bylaws (Art. 26.3).

In addition, the founder’s will serves as a benchmark during the foundation’s lifetime, namely, when amending the statutes, changing the purpose of the foundation, or even when merging the foundation with another foundation (Arts. 19.3, 31, 32 and 33 FLF; and Arts. 187.3, 189, 190 and 190-A Civil Code).

Very important, if the founder is establishing the foundation, the founder can determine a specific cause that triggers the dissolution of the foundation [Art. 35.1.b) FLF] and the destiny of the foundation’s assets in case of dissolution (Art. 18.2 of FLF).

**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?**

Yes, statutes can essentially be amended, at any time, upon the request of the foundation’s board, as long as the purpose of the institution is not substantially changed, and the will of the founder is respected (Arts. 31 FLF and 189 Civil Code). More specifically, Article 32 of the FLF and Article 190 of the Civil Code state that after hearing the board of the foundation and the founder, if possible, the recognition authority can extend the foundation’s purpose if the profitability to society of the available means dictate it, and can change the purpose of the institution when the initial aim has been fulfilled, has become impossible to achieve, no longer has social interest, or when assets are insufficient for it.

However, changing the purpose is not allowed if the founding act itself explicitly prohibits it or if it dictates the dissolution of the foundation in lieu of changing its purpose. Thus, the relationship can ultimately be viewed as giving conditioned substantive amending power to the board, which is always relative to the more absolute power that the founder’s will and original statutes hold on to throughout the foundation’s evolution.

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

There are no specific rights granted to third parties, but foundations shall approve and publicise codes of conduct with self-regulation of good practices, including the participation of the beneficiaries in the life of the foundation (Art. 7.1. FLF).

Since 2022, foundations receiving public financial support are subject to enhanced oversight by the Ministry of Finance and the Court of Auditors (Art. 16. 3 FLF).

Since 2022, in order to declare the dissolution of a particular foundation (Art. 35 FLF), the recognition authority, upon reasoned decision, has the right to order audits or inquiries (Art. 36,2 FLF).

**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?**

Although the FLF does not have a definition of conflict of interest, it provides that foundations shall approve codes of conduct and good practices including conflict of interest. Furthermore, the Code of Public Contracts (CPC) has a definition of “conflict of interest” that can be understood as a guidance for private foundations: “any situation in which any employee or director of the contracting entity or any service provider acting on behalf of the contracting entity intervenes in the preparation or in the process of procurement of a public contract or can influence its outcomes, has a direct financial interest, economic or other personal interest capable of jeopardizing her/his impartiality or independence in the context of the aforementioned procurement”. (Art. 1.-A. 4 CPC).

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

The law does not address this issue.

**10. 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?**

***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?***

The FLF states that, in the absence of specific provisions in the foundations’ statutes, the obligations and liabilities of the members of the governing bodies of the foundations follow the rules on the mandate, adapted accordingly (Art. 29.1, which reproduces Art. 164.1 of the Civil Code). Moreover, Article 29.2 of the FLF (also in accordance with Art. 164.2 of the Civil Code) provides that the members of the foundations’ governing bodies cannot abstain from casting their vote in any meeting in which they participate and are therefore responsible for any losses and damages arising from all the decisions that have been taken by the boards in which they participate, unless they have expressly voted against that particular decision. In addition, Article 165 of the Civil Code provides that foundations shall be liable for the actions of its representatives in the same terms as the principal is liable for the actions of its agents. This said, according to Article 1161/(d) of the Civil Code ex vi Article 29.1 of the FLF and Article 164/1 of the Civil Code, board members of foundations are required to, among other acts, render accounts of their actions.

In addition, and despite no express reference by either the FLF or the Civil Code to the subsidiary applicability to foundations of the Companies Code, it is commonly accepted that the members of the management of foundations are also subject to the key duties imposed on companies’ directors, in particular those outlined in Article 64 of the Companies Code.

As such, and given the similarity between the role of board members and the role of agents in a mandate agreement, each based in a fiduciary jural relation as managers of assets of

which they are not the legal owners, it is possible to argue that the members of the management bodies of a foundation are also subject to the following duties:

- Duty of care or diligence, which requires that they must have the availability, the technical skills and the proper knowledge about the foundation's activities for the performance of their roles, deploying in this context the diligence of a judicious and organised officer; and,
- Duty of loyalty to the extent that they must perform their roles in the best interest of the foundation and its mission and, in the absence of shareholders, other relevant stakeholders that contribute to the foundation's sustainability, such as employees, grantees and partners.

On what concerns the supervisory boards, the Companies Code imposes the same duties of care and best interest of the foundations, deploying high standards of professional diligence and loyalty.

***Is there a solid case law, if any, regarding the duty of due diligence?***

While there is not yet a solid case law establishing standards for the duty of due diligence, the recent state decision of dissolution of a private foundation in Portugal offers a detailed narrative on how issues of governance and financial mismanagement were addressed legally and administratively. From the audit to regulatory responses, the actual dissolution declaration and to the preliminary court decision, which subsequently and provisionally reverted the dissolution, these events serve as critical references for potential legal interpretations in future cases and can contribute significantly to the jurisprudential understanding of what constitutes due diligence in the management of foundations. Notably, this also marks the first known case of an administrative dissolution of a private foundation under the Portuguese Framework Law for Foundations in its new regulatory framework adopted in 2019. Should this process extend further into the judicial system, the decision(s) rendered could establish foundational case law, setting legal benchmarks for management practices and the duty of due diligence within the foundations' governance.

In a nutshell, a private foundation was dissolved by the State Secretary of the Presidency of the Council of Ministers on the basis that its activities were not aligning with its statutory objectives. The Secretary of State considered that the foundation primarily engaged in high-risk financial transactions rather than pursuing its intended charitable, educational, artistic and scientific purposes. This action followed a detailed inspection by financial and legal authorities that exposed severe misalignments and potential breaches in the due diligence duty of the management team. An audit highlighted that only 0.1% of the foundation's assets in 2017 were used for its intended social purposes, with substantial funds diverted for personal benefits unrelated to the foundation's goals.

The foundation challenged the decision with a protective order case and, although the proceedings are not public, it was reported in several media outlets that the civil court considered that the government's decision was flawed due to a lack of competence by the administrative body responsible, a violation of the duty of prior hearing, and errors in the grounds for the dissolution. Apparently, the court's decision highlighted that the foundation had most of its assets invested in another legal person and that there was no systematic or permanent deviation from its social interest objectives over its 32 years of existence. It noted that the audit focused on only 12 years of the foundation's 32-year operation, which was insufficient to justify dissolution based on a deviation from its intended purposes. In addition the court supposedly challenged the competence of the Secretary of State to dissolve the foundation, and the illegality of not providing a prior hearing before making the decision.

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

Portuguese law does not differentiate between unpaid and paid board members.

**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?**

There is not a specific provision on the subject, therefore general rules of civil and criminal liability apply and most likely any authority may be able to make a claim.

There are no general rules providing that the directors of a foundation are liable towards entities other than the foundation itself. It is arguable therefore that the members of the management of foundations are only liable towards the foundation for wilful breach of their duties (Art. 513 Civil Code) and there is no joint liability between the various directors approving a resolution – they will be severally liable towards the foundation.

The foundation will, however, be liable towards third parties for the actions of its board members to the extent that such board members breached a third parties' right (Art. 165 Civil Code). And, as consequence, the foundation would be entitled to claim damages from such directors if it was found that they breached the rules of their mandate.

**11. 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?**

Representation is not specified in law. Rather, the FLF (Art. 28) and the Civil Code (Art.163) state that representation of a foundation, whether in or out of court, is left up to statutory design. In the absence of statutory provisions, yes, the administration or whoever is designated by it will be responsible for representation.

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

Foundations are allowed to pursue related economic activities (Art. 160.1 Civil Code). However, public-utility status and its tax benefits do prevent the foundation from carrying out this economic activity as its principal activity. This provision aims to avoid giving foundations an unfair competitive edge with other entities not benefiting from the public-benefit status. (Art. 24.1 c) FLF).

**13. 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?**

The Portuguese law does not detail or limit funding legal entities that are conducting economic activities in addition to their public-utility activities.

Nevertheless, the status of public utility can only be granted to entities who do not exclusively or primarily engage in the production and sale of goods or services for an active and competitive market, in such a way that the granting of this status prevents, distorts, or significantly restricts competition, in whole or in part, in the relevant market (Art. 8.4 of the Portuguese Framework Law on the Status of Public Utility). The entities must primarily pursue non-profit activities that serve the public interest (Art. 4 and Art. 6 of the Portuguese Framework Law on the Status of Public Utility).

Also, it is worth mentioning Art. 10 of CIVA (VAT) which defines "not-for-profit" institutions for VAT exemption purposes as organisations that simultaneously:



- a) Never distribute profits and whose managing bodies do not have, for themselves or through intermediaries, a direct or indirect interest in the results of its exploits.
- b) Prepare accounting that covers all activities and is available for tax services, namely to verify what is referenced in the previous paragraph.
- c) Practice pricing approved by the public authorities, or for those operations not under the public authorities' approval, pricing lower than is required for analogous operations by taxable commercial entities.
- d) Do not enter into direct competition with taxable persons.

**14. Are foundations permitted to be major shareholders in a company? Are there any limitations to voting rights? Is this considered as an economic activity? Are foundations allowed to engage in active ownership of companies that they own (for example through board representation, informal strategy discussions or the right to be consulted on key issues such as CEO succession)?**

Yes, they are permitted to be major shareholders in a company without limitation to voting rights, and being a major shareholder is considered an economic activity under the law.

Foundations are allowed to engage in active ownership of the companies they own, including participating in board representation, informal strategy discussions, and having the right to be consulted on key issues such as CEO succession.

**15. 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?**

No, there are no rules or limitations regarding asset management outside of the FLF provision referred to in the answer to Section I question 7 regarding recognition authority approval for the sale of assets with special significance to public and private foundations with public-utility status, nor outside of the FLF provision referred to in the answer to Section I question 9 (c) regarding the duties of the board members.

**16. 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 rules nor limitations regarding this matter. Without any specific legal framework, foundations have been able to already have some experiences in social bonds and impact investing so far.

Since 2018, financial influxes by social investors towards social impact bonds are 130% tax deductible (Art. 19-A of the Tax Benefits Statute). Social investors are private or public entities, or entities from the social economy, with philanthropic or business aims which contribute with financial resources to the development of social innovation and entrepreneurship initiatives with a social impact aim.

The Resolution of the Council of Ministers n. 157/2017, of October 19, defines social impact bonds as non-refundable grants with partner contractors which are granted to innovation and social entrepreneurship projects in priority areas of public policy contingent on measurable outcomes.

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

Political party related or general lobby/advocacy activities are not “social interest” activities and therefore should be excluded from the foundation’s activities.

**18. What are the requirements for an amendment of statutes/amendment of foundations’ purpose?**

See response to 9 (e) on requirements for amending statutes regarding the foundation’s purpose.

**19. 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)?**

Yes, all reports including governance changes should also be submitted to the supervisory authorities. Additionally, the Secretary-General of the Presidency of the Council of Ministers, acting as the foundations authority, must receive the annual financial report and the annual activity report (usually including the public-benefit/activity report) as well as new board members’ reports within 30 days of their appointment.

Since 2022, as per Article 9.1.c) of the FLF, foundations have been required to submit their financial statements for legal certification if, over two consecutive years, they exceed two of the following thresholds: a total balance sheet of €1,500,000; total net sales and other income of €3,000,000; or an average of 50 employees. These thresholds can be adjusted by ordinance from the Ministers of Finance and Justice.

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

The law does not have further provisions specifically on the checking or review of reports, but the implications of the requirements listed above in question 19 (b) are that the respective authorities check the submissions.

**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)?**

Yes, a Portuguese foundation and foreign foundations active in Portugal have a duty of transparency to the public, namely, to continually provide on its website reports and accounts with the official opinions of the supervisory bodies from the last three years, activity reports for the same period, and the annual external audit report when certain requirements are met (Art. 9.1 d FLF). This annual public information must appear 30 days after its annual approval which must be made by 30 April each year (Art. 9.5 FLF).



Furthermore, a private foundation with public-utility status and a public foundation must also provide on their websites at all times a description of their initial assets and an itemised list of the financial support received in the last three years from public legal persons if any (Art. 9.3 FLF).

Failure to comply with this duty prevents access to any public financial support during the financial year following the non-compliance or longer if non-compliance continues (Art. 9.8 FLF).

Since 2022, a new provision requires the government to annually disclose state budget allocations to foundations, with the list being published by the end of March and updated quarterly. (Art. 9 – A FLF).

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

Yes, external audits are required by law for all foundations in Portugal under certain conditions specified in the FLF. Specifically, a Portuguese foundation and foreign foundations operating in Portugal must undergo an external audit if their annual global income is equal to or greater than €2,000,000. This requirement is outlined in Article 3.1(b) of the Corporate Income Tax Code, as well as in Articles 9.1(c) and 9.3 of the FLF, and further specified in Article 1 of Ordinance 75/2013, dated February 18.

In addition to this financial threshold, the law allows external audits under different circumstances:

- The competent authority for recognition can order the performance of audits when some of the causes for dissolution are present, ensuring that financial and operational regularity is assessed up to the point of a foundation's closure (Art. 36.2 FLF).
- Audits and inspections are facilitated for social solidarity foundations by the competent recognition entity and other relevant authorities to enforce compliance with operational standards and legal obligations (Art. 41 FLF).
- Similar provisions apply to foundations of cooperation for development, where inquiries and audits ensure adherence to financial regulations and the achievement of developmental goals (Art. 44 FLF).
- Foundations created for establishing private higher education institutions may also be subject to audits to confirm that they fulfil their educational objectives responsibly (Art. 47 FLF).
- Public state foundations undergo audits to affirm compliance with public-interest requirements and financial stewardship dictated by the supervisory and tutelage powers of the founding entity (Art. 55 FLF).

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

Regarding the external audits of income, the law is silent on who would undertake the audit. In practice, a private firm or externally nominated audit commission entity conducts this audit. All others are undertaken by the competent authority.

## **20. 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:

Formal approval is required for the sale of assets with special significance. See answer to Section I question 7 for further information on this approval.

**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: Only in the case of public foundations as they must follow public regimes (Art. 52 FLF).

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

The law relies on two measures to enforce compliance. First, the foundation may have its public-utility status revoked. Second, in more serious situations, the foundation may be dissolved. The FLF links these consequences for non-compliance with the duty of transparency (Art. 9.8 FLF), including repeated noncompliance with limits on staff and administrative spending (Art. 10.2) and, in general, cessation of the prerequisites for public-utility status and serious or repeated breach of law applicable to the foundation [Art. 25.6 c) and d)].

**21. When and how does a foundation dissolve?**

A foundation may be dissolved by the recognition authority after being informed by the board of any of the following events happening: the lapse of a set term of a foundation, inactivity for three years, court declaration of insolvency, achievement of purpose, impossibility of purpose, or when the actual aim does not match the purpose defined in its statutes (Arts. 35 FLF and 192.1 and 193 Civil Code).

The foundation's statutes may define additional causes for dissolution. A court may also have the power to dissolve a foundation directly when it uses illicit or immoral means to pursue its purpose, or when the existence of the foundation becomes harmful to the public.

Since 2022, any decision to dissolve a foundation, whether for failing to meet legal obligations or because its operation is no longer viable or in the public interest, must first be reviewed by the Consultative Council of the Presidency of the Council of Minister: In these cases, the competent authority must order investigations and audits before making a final decision (Art. 36.2 FLF).

**22. 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?**

Yes, for some foundations. The FLF does not detail maximums for private foundations without public-utility status but private foundations with public-utility status and public foundations have the following maximums:

- A foundation whose activity mainly consists of financial grants or community support may not spend above 15% of its annual income on administrative costs and at least two-thirds of the spending must go directly to pursuing the statutory purpose (Art. 10 FLF).
- A foundation whose activity mainly consists of providing their own services to the community may not spend above 75% of its annual income on administrative costs (Art. 10 FLF).

For determining which category a foundation falls into, the major component of the foundation's activities reflected in its accounts should be considered. In cases of equal expenditure, the more favourable regime for the foundation applies. Persistent uncertainties regarding the classification of a foundation's activities are resolved by the opinion of the Consultative Council of the Presidency of the Council of Ministers as specified in the conditions of Article 13.6(c) of the FLF.

Non-compliance with these administrative spending limits, based on the average administrative expenses during the period the public-benefit status was granted or renewed, may lead to revocation of this status or denial of its renewal. However, exceptions can be made for foundations that demonstrate significant social impact and relevance, where a positive opinion from the Council can lead to the maintenance or renewal of their public-benefit status.

**23. 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)?**

Only for foundations with tax-exempt status: Article 10.3 b) of the Corporate Income Tax Code (CITC) states that a foundation must allocate at least 50% of overall net taxable income to its social purpose by the end of the 4th year after which it was obtained, unless there was just impediment to compliance within that period. By specifying taxable income, donations or contributions that qualify for tax deductibility according to the Tax Benefits Statute (TBS) and the Stamp Tax Code (STC) and administration costs seem excluded from the spending requirement total. The article (paragraph 5) also warns that this part of the income is retroactively subject to taxation if the foundation is non-compliant.

**24. 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?**

Article 5 of the FLF allows the recognition of a foundation created under foreign law that intends to steadily pursue its purposes in Portugal if it has a permanent and registered office there. However, opening such an office also first requires the recognition authority to verify the same information required by law for recognition of a Portuguese foundation (Arts. 22 and 5 of the FLF). Thus, yes, a foreign foundation must essentially register, and the conditions are ultimately very similar to those required for national foundations.

Notwithstanding the FLF, Portugal signed the European Convention on the Recognition of the Legal Personality of International Non-Governmental Organizations (Strasbourg, 24 April 1986). This Convention has primacy over Portugal's national law and it applies to associations, foundations and other private institutions (hereinafter referred to as "NGOs") that: i) have a non-profit aim of international utility; ii) were established by a body governed by the internal law of a Party; iii) carry out activities with effect in at least two states; and iv) have a statutory office in the territory of a Party, and central management and control in the territory of the same Party or another Party" (Art. 1). Other state parties to the Convention must automatically recognise the legal personality of such a foundation on their territory (Art. 2) upon verifying its statutes or other formation acts (Art. 3). Art. 4 further states that: "the application of this Convention may only be excluded if the NGO invoking this Convention, by its objective, its purpose or the activity which it actually exercises: a) contravenes national security, public safety, or is detrimental to the prevention of disorder or crime, the protection of health or morals, or the protection of the rights and freedoms of others; or b) jeopardises relations with another state or the maintenance of international peace and security".

On what concerns trusts, the Portuguese law does not recognise the concept of a legal person as a trust. Any foreign trust seeking to be recognised in Portugal might take alternate legal personhood i.e. a foundation. There is a possibility of establishing a contractual version of a trust and the tax law in Portugal taxes this trust as a financial structure.

**25. 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?**

Yes, the Portuguese law allows a foundation to conduct activities abroad without limitations.

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

No, the Portuguese law does not impose limitations on receiving donations from abroad.

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

There are neither limitations on transfer of the seat, nor on cross-border mergers of foundations.

## 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?)

Foundations incorporated as private institutions of public welfare are automatically tax exempt [10.1.b) Corporate Income Tax Code (CITC)]. Other private foundations must request the tax exemption from the Minister of Finance and shall have previously requested and be granted by the Prime Minister the public-utility status - 10.1c) and 10.2 CITC.

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

No, although private foundations with public-utility status and public foundations must report public funds received within the last three years on their websites in compliance with the duty of transparency, as specified in Art. 9.2 of FLF.

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

Yes, there is an obligation insofar as Article. 9.4 of the FLF requires that a foundation's annual report be submitted to the Secretary-General of the Presidency of the Council of Ministers on activities, and the accounts must contain clear and sufficient information on the types and global amounts of benefits granted to beneficiaries and on donations or subsidies received. Donors must also be reported to the Tax Authorities where the Tax Benefits Statute (TBS) applies.

Under the anti-money laundering and combating finance of terrorism regime, non-profit organisations such as foundations must immediately inform the DCIAP (Central Department of Investigation and Penal Action) and the Financial Intelligence Unit of any suspicions that funds may originate from criminal activities or relate to terrorism financing, while maintaining confidentiality regarding the communications made and the identity of the informant [Art. 146 g) of Law no. 83/2017, of August 18 in its latest amended version as of December 31, 2021].

### 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?

As mentioned above, the FLF states that foundations can only pursue public purposes, meaning activities of social interest that benefit others beyond the founder, their descendants, friends or business partners (see answer to Section 1 question 2). Notwithstanding, we must also refer to the public-utility status that can be granted to foundations and links to some tax benefits. However, we must bear in mind that this is not a

mandatory status, therefore not all foundations are under this regime but only the ones who were granted this status.

Since 2021, the Portuguese Framework Law on the Statute of Public Utility (Law no. 36/2021 of June 14) provides a definition of what constitutes a public-utility purpose. According to Article 4, the Statute of Public Utility can be granted to entities that pursue purposes of general interest, regional or local, and that cooperate in this context with the central, regional or local administration. These purposes are deemed beneficial for society in general or for specific categories of people other than their members, founders or contributors. Specifically, they must fall into one or more sectors such as historical, artistic, cultural, sports, social solidarity, education, and several others listed in the law. Activities that predominantly serve the private interests of members or are primarily aimed at generating profit are not considered public-benefit purposes. Specifically, the law excludes activities that are primarily political, trade union-related, or religious, or that directly compete in the market in a manner that could distort competition due to the benefits received.

The determination of a public-benefit purpose is linked to tax benefits, as entities recognised under this statute enjoy various tax exemptions and benefits, ensuring a direct link between the statutory definition and fiscal advantages. These tax benefits include exemptions from Corporate Income Tax (IRC) and Property Transfer Tax (IMT), as well as Property Tax (IMI) exemptions on properties used directly for statutory purposes; exemptions from Stamp Duty; and other fiscal benefits, reduced rates, and special tariffs in certain public services.

The exemption on Corporate Income Tax is automatically granted to foundations of social solidarity [Art. 10.1. b) of IRC]. However, to qualify for the Corporate Income Tax exemption, the foundations with public-benefit status must apply and receive official recognition from the Minister of Finance, who will determine the extent of the exemption based on the entity's goals and activities, with input from tax authorities and potentially other relevant bodies (Art. 10.2 of IRC).

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

No, the definitions come from the civil law (in these cases, either FLF or the Portuguese Framework Law on the Statute of Public Utility).

**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,	X			

religion, disability, sexual orientation or any other legally prescribed form of discrimination				
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-	x			

benefit purpose organisations				
Party political activity			X	
Advocacy		X		
Advancement of religion		X		
<i>Other – please list other purposes accepted in tax law for tax privileges in your country</i>				

## 8. Support of “the public at large”

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

Yes.

### 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, foundations can support a specific group of people, but the activities must not exclusively or primarily benefit a closed circle such as its members, founders or benefactors (Art. 3 FLF). Foundations which were granted the public-utility status are allowed by law to benefit specific categories of individuals under certain conditions, as long as the primary objective remains the benefit to the public or a broader community beyond legal or family affiliations (Art. 4 of the Public Utility Status Framework Law).

## 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.?

Yes, entities with public-benefit status must operate without a profit motive (Art 6 of the Public Utility Status Framework Law), and the benefits derived from their activities should not directly serve the interests of their founders, members or managers [Art. 4b) and Art. 7 of the Public Utility Status Framework Law]. This aligns with the general principle of non-distribution constraint, which forbids the distribution of profits or assets to the organisation’s management or staff.

Also, Article 10.3 c) of the CITC is effectively a “non-distribution constraint” in stating that the tax-exemption status requires that the board members lack any direct or indirect interest, by themselves or through an intermediary, in the outcomes of the economic activities pursued by the foundation either with or without public-benefit status.

### 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?

Theoretically, nothing in the FLF prohibits reversion of assets to private ownership or specific public benefit(s) through an express provision made by the founder in the founding act on



this matter (Art. 12.1 FLF). However, if no such express provision exists, the assets that remain after liquidation are handed over to an association or foundation with similar purposes, designated by the foundation's board or by the recognition authority, in that order. And in the event that the assets are rejected, they finally revert to the state (Art.12 FLF).

In the case of public foundations, the assets are typically transferred to public entities pursuing similar goals (Art. 56 FLF). This notwithstanding, in the case of public foundations of private law, remaining assets are distributed among public founders or returned to private founders based on initial contributions (Art. 60 FLF).

## 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?

The FLF does not specifically address the issue of remuneration of board members, nor does the Civil Code. However, this is addressed indirectly through restrictions on administrative expenses (see answer to Section I question 22).

This issue is also addressed in Decree-law 119/83, 25 February, concerning private social welfare institutions. Accordingly, concerning these type of institutions, remuneration is only expressly allowed when the statutes do not prohibit it and when the volume of financial transactions or the complexity of the administration of the institution requires a board member's extended presence (Art. 18.2).

### 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)

Yes, as an exception to the principle that donations should not have any type of benefits in return (Art. 61 of Tax Benefits Statute), it is allowed nevertheless for a donor/funder to receive benefits that do not exceed 25% of the donation, according to Article 64 of Tax Benefits Statute.

### 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":

Yes, the FLF details maximums although the tax code does not. See the answer to Section I question 22 for the maximum amounts.

- 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?

Not explicitly but effectively a foundation may spend down its endowment. See the response to I.7.

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

Yes, foundations can be set up for a limited period of time, and no minimum length of time exists [Art. 35.1 a) FLF and Art. 192.1 a) Civil Code].

### 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)?

Yes, tax law, not civil law, requires a certain percentage of income be spent within a set period of time (see answer to Section I question 23).

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

No, neither the civil nor tax law includes 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 <sup>th</sup> 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 <sup>th</sup> 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?

Abroad activities are likely to be compatible with the public-benefit tax status as long as they do not constitute the majority of the foundation’s activities as the tax exemption is linked to the public-benefit status, i.e. the latter is only granted to institutions that contribute to the “national” or “general” interest and therefore justify the waiving of the tax burden.

**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)?**

Yes, public-benefit organisations with a tax-exempt status may give grants to for-profit organisations in Portugal. However, this must align with the public-benefit purpose of the granting organisation, and the grant must further the public-benefit objectives as defined in their statutes.

The Statute of Public Utility specifies that the primary activities of the public-benefit entities should not primarily aim at economic gain and should not distort market competition (see answer to Section II question 13). Thus, while there is no direct prohibition, the primary focus of such entities should be on activities that align with their defined public-benefit purposes: Supporting for-profit entities, especially if they are small startups, might be permissible if such support aligns with the non-profit's purposes and does not constitute its primary activity.

**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**

Generally, tax-exempt status is dependent on the effective relation with the statutory aims (Arts. 54 and 3 of CITC).

**b) Investment income (asset administration)**

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

Generally, investment income is subject to tax exemption if the foundation has tax-exempt status specifically for this type of income.

**c) Economic activities (related/unrelated)**

- Income from running a hospital/museum/opera
- Income from producing/selling books (e.g. art books sold by a cultural foundation)
- Income from running a bookshop inside a museum/opera run by the foundation
- Income from running a café in the hospital/museum run by the foundation
- Income from selling merchandise (activity not related to the pursuance of the public-benefit purpose)
- Income from intellectual property (e.g. royalties and licence fees)

Generally, economic activities are subject to tax exemption.

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

Income deriving from grant expenditure towards public-benefit purpose activities is subject to tax except if the foundation is tax exempt.

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

Generally, major shareholding in a business undertaking would only be tax exempt if clearly within the scope of the pursuit of the statutory aims.

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

Some capital gains can be exempted from corporate income tax. Under Article 10 of the IRC, legal entities with public utility or social solidarity status are generally exempt from corporate income tax. The exemption requires that these entities predominantly pursue their exempt purposes, allocate at least 50% of their net taxable income to these purposes within four tax periods, and ensure no governing body members have personal interests in the economic activities. Failure to meet these conditions results in the loss of the exemption or taxation of the income. In addition, this exemption does not apply to capital gains from commercial or industrial activities outside their statutory purposes.

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

There is no VAT refund scheme for the irrecoverable VAT costs specific to public-benefit foundations. There are nevertheless some sales of goods and services that are exempted from VAT if performed by foundations.

For example, private social solidarity institutions can recover VAT under Decree-Law No. 84/2017 by electronically submitting a request for expenses related to their statutory activities, such as the construction, maintenance and conservation of buildings primarily used for their purposes; the acquisition of tangible fixed assets subject to depreciation (excluding vehicles); and the purchase of food and beverages for social activities, provided these expenses are eligible and not excluded from deduction under VAT rules [Art. 2.c)]. The request must be submitted via the Tax Authority's portal from the second month after the issuance of the supporting documents and within one year from that date. The Directorate-General of Social Security or another relevant supervising entity is responsible for verifying the eligibility of these requests [Art. 6.1.d)]. Additionally, higher education institutions and non-profit entities within the National Science and Technology System can also recover VAT on expenses related to research and development activities, such as the purchase of specific instruments, equipment, reagents, consumables and licenses, as well as the adaptation of buildings and facilities required for project implementation. These entities must also ensure that the expenses are eligible and not excluded under VAT rules [Art. 2.d)]. The requests, submitted electronically through the Tax Authority's portal within the specified timeframe are assessed by the Foundation for Science and Technology (FCT), with support from the National Innovation Agency (ANI) for R&D projects [Art. 6.1.f)].

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

Generally, the value of assets would be subject to capital tax unless specifically exempted.

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

Typically, a private law foundation of social solidarity and a private law foundation granted public-utility status are exempt from property sale and purchase tax on acquiring real estate that is directly and immediately intended for the realisation of its philanthropic purposes [Code on Property Sale and Purchase Tax - CPSPT – Art. 6.d) and e)], although the tax authority must specifically grant the exemption (Art. 10). Furthermore, if said property is subsequently transferred, or used for a different purpose, without the consent of the Ministry of Finance, the foundation must pay, as a penalty, the previously exempted tax (Art. 11.1).

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

Yes, typically private foundations of social solidarity and private foundations granted public utility status may be exempt from the municipality real estate tax on property used directly for the pursuit of their purpose [TBS – Art. 44.1 e) and f)] with recognition by the tax authority (Art. 44.8).

**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

Foreign foundations may request public-utility status under the general terms of the Portuguese law if they have a permanent office in Portugal (Art. 5 FLF and Art. 9 of the Portuguese Framework Law on the Statute of Public Utility).

**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?**

No.

**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?**

Yes, Portugal applies withholding tax to income from local investments held by foreign-based foundations in the terms provided by Articles 94.3b), 94.5 and 87.4 of IRC). Foreign-based foundations in countries with which Portugal has signed bilateral tax treaties can reclaim a total or partial refund.

### III. Tax treatment of donors

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

As for individual donors, the system of tax credit applies; meaning an amount can be deducted from the actual tax to be paid (reduction in amount of tax paid) – Article 63 of Tax Benefits Statute (TBS).

As for corporate donors, the system of tax deduction applies; meaning a reduction in the gross amount on which tax is calculated (reduction in taxable income/tax base) - Article 62 of Tax Benefits Statute.

#### 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?

The TBS provides tax incentives to individual donors whereby they may subtract 25% of the donation from their total income tax in the respective year. However, because this incentive mirrors that of the corporate donor, if there is a limit on deduction for a corporate donor, then the amount subtracted may not exceed 15% of their total income tax in the respective year (Art. 63.1).

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

Only donations in cash qualify for tax deductibility (Art. 63 of the TBS).

#### 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?

Corporate donations are only relieved from the ceiling on tax deduction when they benefit the state or foundations whose initial assets the state contributed to, or, in relation to donations to the initial endowment, when they benefit exclusively private foundations with predominantly social aims - TBS, Art. 62.1 c) and d) and 9 - if specifically recognised both by the Minister of Finance and by the Minister of the Council of the Presidency of Ministers and the statutes of the foundation provide that in case of dissolution the assets revert to the state or non-profit institutions in the sense of Article 10 of CITC. These donations are considered as costs in an amount corresponding to: 140% of the total when they are exclusively channelled to social aims; 120% of the total when they are exclusively channelled to environmental, sport or educational aims; or 130% when they are subject to multi-annual agreements signed for specific aims that fix the goals to be achieved by the beneficiaries and the amount to be granted by the corporate donors.

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

In-kind or cash donations qualify for tax relief.

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

Portuguese tax law does not mention donations to non-resident public-benefit foundations and therefore it is very unlikely that the tax authority would give the same tax incentive to foreign organisations, especially if we consider that these foundations are not registered in

Portugal and therefore do not have a Portuguese tax number. Some references made by the TBS to NGOs and other Portuguese beneficiary entities operating overseas [Art. 62.3 d), e) and f)], especially humanitarian and emergency aid organisations recognised both by the Ministry of Foreign Affairs and the Ministry of Finance, may indicate that philanthropic work conducted abroad does not exclude per se domestic tax incentives.

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

The donor may assign 0.5% of individual income tax due to any public-utility institution of charity, assistance or humanitarian purposes, private social welfare institution, or a religious institution listed by the Tax Authorities, as per Articles 152 and 153 of the Income Tax Code.

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

The donors themselves only have to ensure that their donations in cash greater than €200 are made via a payment method which allows them to be identified e.g. by bank transfer, nominative bank cheque or direct debit (Art. 66.3 TBS). Outside of this requirement, donors must rely on the entities receiving the donations to comply with obligations to declare the donation to the Tax Authorities. For this purpose, these entities must i) issue a document proving the amounts received from patrons; ii) keep an up-to-date register of patron entities with the name, tax number, date and amount of each donation that has been given; iii) by the end of February of each year, provide the Directorate-General for Taxes with an official declaration of the donations received in the previous year (Art. 66.1 TBS). Furthermore, the document of proof must list the legal status of the beneficiary entity, the legal grounds for that status, and either the amount of the donation in cash if the donation is monetary, or the identification of goods, when the donation is in kind (Art. 66.2 TBS).

**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?**

There are no different or additional requirements when a donor is giving to a foreign-based 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.



## 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?**

Tax exempt if the benefit is considered a scholarship or a prize.

As long as grants do not aim to provide their recipients with a net increase in assets but are solely intended to ensure the payment of a specific research project or similar activity, they would constitute non-taxable income. Furthermore, instead of being an explicit non-taxable situation (such as those resulting from Article 12 of the Income Tax Code), this type of exclusion or non-taxation arises from the lack of correspondence with any of the categories of the Income Tax Code itself.

Literary, artistic, or scientific prizes/awards are excluded from taxation under the Income Tax Code, provided that: (a) they do not involve the temporary or permanent transfer of the respective copyright; (b) they are awarded in a competition announced publicly, with defined conditions for their awarding, and participation cannot be restricted by conditions unrelated to the nature of the prize itself. Regarding the Stamp Duty, we believe that it would not apply either. However, if the awarding of a prize does not appear to have any element of randomness (i.e. particularly if the prize is awarded based on a decision made on merit criteria), probably it would also not be subject to Stamp Duty, as it does not constitute a prize resulting from a draw or a “game of chance” competition.

### **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. See answer to Section I question 13 and Section II question 14.

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

No, there are no different or additional requirements.

## V. Gift and inheritance tax

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

Yes, gift and inheritance tax exists. The national law governs the gratuitous transfer of property, and according to it, public-utility foundations are exempt from stamp duty (Arts. 6c and d).

**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?**

In Portugal, the gift and inheritance tax is governed by the Stamp Duty Code. Generally, the tax rate for gratuitous transfers (donations and inheritances) is 10% for goods and 0.8% for real estate. However, organisations who were granted public-utility status under Portuguese law are exempt from this tax [Art. 6.1.c) Stamp Duty Code]. This preferential treatment is consistent across the country and does not vary by region.

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

No.

**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. According to Articles 2156 to 2178 of the Civil Code, a part of the estate (up to 2/3) is reserved for the spouse, and descendants and ascendants.

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

See the response to III.4. Generally, donations made pursuant to the TBS are not subject to this tax.

## 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?**

There are no current discussions on cross-border activities of foundations and no changes have been made to Portugal's legislation regarding the ECJ judgements above.

- 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

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

No. In Portugal non-profit organisations are considered as "assimilated": They have some duties but not as obliged entities in the meaning of the Anti-Money Laundering Directive.

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

No, however, best practice considers the members of the board as the ultimate beneficial owners of a foundation as they are in charge of the activity of a foundation.

- 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?**

The former; Portugal has a specific register for BO of legal entities.

**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**

No recent law revisions specifically affecting foundations are currently 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?**

Over the last years, the legislature has adopted a few measures aiming to improve collaboration among authorities, such as the single Registry of Foundations (combining Civil Registry Authority and Supervising Authority on Foundations). Nevertheless, the issues of (de)centralisation or use of watchdog/rating agencies were not specifically addressed.

It must be noted that, in the meantime, the Law no. 93/2021 of December 20, was adopted following Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of European Union law. Indirectly, these regulations can potentially streamline, at least partially, the role traditionally played by watchdogs.

**c) Tendency towards more transparency requirements?**

Yes, there is a tendency towards increased transparency requirements for foundations, as observed in the implementation of beneficial ownership registers and other financial reporting requirements and procedures. We believe that compliance regulations applicable to foundations – such as data protection; anti-money-laundering and combatting terrorism finance; protection of persons who report breaches of EU law, etc. – will also certainly continue to contribute to, at least indirectly, enhancing transparency requirements.

**d) Tendency towards more self-regulation? Self-regulation replacing hard law regulation?**

Yes, there is a growing trend towards self-regulation, with some foundations adopting voluntary policies and best practice protocols.

**e) Tendency to use alternative forms to classic public-benefit foundations**

No. Even though some players in the ecosystem might explore alternative forms such as social enterprises and impact investing vehicles, I would not say there is a tendency. “Social enterprise” is not yet typified as a specific legal person. Nevertheless, the Code of Public Contracts states that social enterprises are considered to be those engaged in the production of goods and services with a strong component of social entrepreneurship or social innovation, and that promote integration into the labour market through the development of research, innovation, and social development programmes in Health, Education, Cultural or Social sectors (Art. 250. D – 7 Code of Public Contracts).

**f) Other?**

No other significant trends have been noted.

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

Yes. In Portugal, public fundraising, particularly through crowdfunding, is regulated by specific laws. The primary legal framework for crowdfunding in Portugal is set out in Law No. 102/2015 of 24 August, as amended by Law No. 3/2018 of 9 February, on Collaborative Finance. The law establishes 3 types of crowdfunding (Donation-based crowdfunding, Reward-based crowdfunding and Lending-based crowdfunding). Non-financial or social crowdfunding (donation or reward-based) is overseen by the same authority responsible for overseeing foundations regarding Anti-Money Laundering/Terrorist Financing, which is responsible for monitoring compliance, handling procedural instructions, and imposing fines and sanctions.

Foundations can use licenced crowdfunding platforms to raise funds for their projects. However, they must comply with the specific rules and obligations set out in the Law on Collaborative Finance, such as providing accurate information about the project, purpose of the funding, the amount to be raised, and the terms of the offer. Additionally, platforms hosting the campaigns must adhere to strict confidentiality, information, and conflict-of-interest rules.

Entities that promote public fundraising through appropriate platforms must ensure for each fundraising activity that they collect information about the identities of supporters and beneficiaries, along with the amount (by individual and by operation) donated and the method of payment (Art. 5 Law on Collaborative Finance). Whenever the entities suspect that funds have a criminal origin, they are obliged to report this to the central department of investigation of the Attorney General of the Republic (Art. 114. 4 of Law on Combating Money Laundering and Preventing Finance of Terrorism).

## VII. Further information

### Useful contacts

**Portuguese Foundation Centre**, Rua Rodrigo da Fonseca, n.º 178 – 6.º esq. 1070-239 Lisbon

Portugal, Tel.: +351.21.353 82.80, Fax: +351.21.353.82.85, [www.cpf.org.pt](http://www.cpf.org.pt)

### Selected bibliography

- CORDEIRO, A. M.; “As Fundações: um instituto jurídico-privado”; Direito das Fundações em Debate; Principia; 2020; pp. 23 – 29.
- CORDEIRO, A. M.; “Trusts e fundações”; Direito das Fundações em Debate; Principia; 2020; pp. 213 – 222.
- CUNHA, P. O.; “As «fundações-empresa» - liberalidade paradoxal ou paradoxo da Liberdade (de instituição)”; Direito das Fundações em Debate; Principia; 2020; pp. 169 – 181.
- GOMES, J. F.; “Administração das fundações”; Direito das Fundações em Debate; Principia; 2020; pp. 145 – 167.
- GONÇALVES, D. C.; “O reconhecimento das fundações privadas: personificação ou limitação da responsabilidade?”; Direito das Fundações em Debate; Principia; 2020; pp. 87 – 122.
- GONÇALVES, R. H.; “The New Portuguese Law on Private Foundations”; Developments in Foundation Law in Europe, *Ius Gentium: Comparative Perspectives on Law and Justice* 39; Springer Netherlands; 2014; pp. 227 – 251.
- MACHETE, R. C.; “O debate do Direito das fundações no seio da UE”; Direito das Fundações em Debate; Principia; 2020; pp. 207 – 212.
- PEREIRA, R. S.; “Sobre a proposta de implementação do sistema de reconhecimento normativo de fundações privadas em Portugal”; Direito das Fundações em Debate; Principia; 2020; pp. 123 – 142.
- SANTOS, L. M.; “O regime fiscal das fundações em Portugal: enquadramento e mecenato”; Direito das Fundações em Debate; Principia; 2020; pp. 185 – 203.
- VILAR E. R.; GONÇALVES R. H.; “Fundações e Direito da União Europeia: perspetivas de evolução”; Estudos comemorativos dos 10 anos da Faculdade de Direito da Universidade de Nova de Lisboa – vol. II; Almedina; 2008; pp. 151 – 184.
- VILAR, E. R.; “A Lei-Quadro das Fundações, 6 anos depois”; Direito das Fundações em Debate; Principia; 2020; pp. 15 – 22.

### Selected law texts online

- [Civil Code](#)
- [Code of Public Contracts](#)
- [Code on Property Sale and Purchase Tax](#)
- [Constitution of the Portuguese Republic](#)
- [Corporate Income Tax Code](#)
- [Decree-law on simplifying VAT refund](#)

- [European Convention on the Recognition of the Legal Personality of International Non-Governmental Organizations](#)
- [Framework Law for Foundations](#)
- [Framework Law on Social Economy](#)
- [Income Tax Code](#)
- [International Agreement between Portugal and the Holy See](#)
- [Law on Collaborative Financing](#)
- [Law on Combating Money Laundering and Preventing Finance of Terrorism](#)
- [Law on Freedom of Religion](#)
- [Law on Higher Education Institutions](#)
- [Law on the Protection of Persons Who Report Breaches of Union law](#)
- [Non-Governmental Development Organizations Statute](#)
- [Ordinance 75/2013, 18 February](#)
- [Private Social Welfare Institutions Statute](#)
- [Public Utility Statute Framework Law](#)
- [Registry of foundations](#)
- [Stamp Tax Code](#)
- [Tax Benefit Statute](#)
- [VAT Code](#)

## VIII. About

### About Philea

Our vision is for philanthropy to use its full potential to co-shape and support a pluralistic, just and resilient society that centres people and planet. To achieve this, our mission is to enable, encourage and empower the philanthropic community to build a better today and tomorrow.

We nurture a diverse and inclusive ecosystem of foundations, philanthropic organisations and networks in over 30 countries that work for the common good. With individual and national-level infrastructure organisations as members, we unite over 7,500 public-benefit foundations that seek to improve life for people and communities in Europe and around the world.

We galvanise collective action and amplify the voice of European philanthropy. Together we:

→ **Co-create knowledge and learn** from effective practices

→ **Collaborate** around current and emerging issues

→ **Promote enabling environments** for doing good

In all we do, we are committed to enhancing trust, collaboration, transparency, innovation, inclusion and diversity.

[philea.eu](https://philea.eu)

### Policy and advocacy at Philea

Philea champions the interests of its members vis-à-vis the EU and multilateral organisations. Through [our policy and advocacy work](#), we strive towards an enabling operating environment for European philanthropy by monitoring and analysing policy and regulatory trends at national, European, and international level, and engaging around this agenda with policymakers and other stakeholders. We position philanthropy as a key actor on societal issues and facilitate strategic engagement and collaboration opportunities, including public-private partnerships.

### About this project

This country profile is part of a [larger analysis project](#), ongoing since 2002, which includes regularly updated profiles on the legal and fiscal landscape for philanthropy in some 40 countries across the wider Europe; and a comparative overview of the profiles compiled in our “Comparative Highlights of Foundation Laws”.

### Legal Affairs Committee

Philea’s [Legal Affairs Committee](#) consists of legal and public affairs experts from Philea members, composed of both national associations and foundations, across Europe. The members of the LAC advise on Philea’s policy and advocacy work.

---

#### Philea 2024

This work is licensed under a Creative Commons Attribution – Non-Commercial No Derivatives 4.0 International License. Quotation is subject to full identification of this source. The views expressed in this report are those of the authors and should not be interpreted as official positions of Philea. Philea disclaims all liability for damages of any kind arising out of the use of the information given in this publication.

For further information, please contact:

Philea, Philanthropy House  
Rue Royale 94, 1000 Brussels, Belgium  
T +32 2 512 89 38 – [info@philea.eu](mailto:info@philea.eu) – [www.philea.eu](http://www.philea.eu)