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Legal Environment for Philanthropy in Europe

Romania

COUNTRY PROFILE

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I. Legal framework for foundations

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

The typical forms for non-profit/non-governmental organisations in Romania are associations and foundations. Any legal person (company, church etc.) may set up its own foundation or be a member of an association, and, with few exceptions, in the case of religious associations and donation regimes for corporate foundations, all NGOs follow the same registration, functioning and dissolution rules.

Both associations and foundations are regulated by the same law – Government Ordinance 26/2000 – and function under the civil law. A foundation is a subject of law created by one or more persons who, on the basis of an act of will *inter vivos* or because of death, establish a patrimony designed permanently and irrevocably for achieving a purpose of general interest or, if such be the case, of collective¹ interest.

2. What purposes can foundations legally pursue?²

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

There is no distinction anywhere in the legislation between public and private benefit. There might be cases where individual founders or their family or close third parties benefit directly or indirectly from the existence of the foundation. This is rather a theoretical distinction as I am not aware of a specific case of a foundation set up exclusively for private benefit.

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

There is no minimum requirement for the number of founding members, but the minimum initial patrimony of a foundation must include in-kind or in cash assets whose total value should be at least 100 times the minimum gross salary in the national economy.

For foundations whose exclusive purpose is fundraising for other associations, or foundations to conduct their own programmes, the initial patrimony may have a total value of at least 20 times the minimum gross salary in the national economy.

The setting up procedure is judicial with an extrajudicial component when the founding member(s) agrees upon the provisions of the memorandum of association and the statutes, and expresses their constitutive will in front of a notary.

To establish a foundation, the members are required to draft:

- The constitutive act, which must include: name, address and ID references for the founders; the purpose of the foundation; the name of the foundation (which must include the word “Foundation”); address for the headquarters; anticipated duration of functioning; initial patrimony; the names of the first nominees for the board of directors; the name of the person

¹ The law refers to “the interest of a collectivity” where the collectivity may be understood as a group of people sharing some common features. Still, the “collectivity” in English seems to have a less concrete meaning so I would have preferred “community”: Still I left the “community” out because the former definition before 2005 used the term “of community interest” and changed it to “the interest of a collectivity”.

² This question focuses only on public-benefit foundations; see the definition in the Glossary developed for this project, which can be found on the Philanthropy Advocacy website.

empowered to represent the foundation during the setting up procedure; and the signatures of the founders.

- The statutes, which must include: the elements from the constitutive act (except for the names of the board members and the name of the person that is empowered to carry on the setting up procedure); details on the purpose and objectives of the foundation; the sources of future revenues; the process of designation and tasks of the governing structures; and the destination of remaining goods in case of dissolution.

The request for being awarded the legal status by the judge should be accompanied by the following documents:

- Notarised constitutive act and statutes
- Proof of the headquarters (property deeds or rent contract or equivalent)
- Certified copies of the identification documents of the founders and board members
- Fiscal record for each of the founders
- Notarised declaration on own responsibility with the identity of the beneficial owners of the foundation
- Proof of availability of the name of the foundation from the Ministry of Justice
- Proof of the initial patrimony

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

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

5. Are foundations required to register?

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

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

The associations and foundation register of the judicial court competent for awarding the legal status (the competent judicial court will then send the registration data to the National Registry of Nonprofit Persons under the authority of the Ministry of Justice).

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

The following information is recorded in the register of associations and foundations (both at the competent court level and the national registry at the Ministry of Justice): name of the foundation; contact details (phone and address); the purpose of the foundation; the name of the founders; the members of the board of directors; and information on existing branches, if any. Any subsequent modifications must be registered following a court procedure, and the information required is similar to the setting-up phase.

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

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

6. Is a minimum founding capital/endowment required?

- No
 Yes, amount:

The minimum initial patrimony of a foundation must include in-kind or in cash assets whose total value should be at least 100 times the minimum gross salary in the national economy. For foundations whose exclusive purpose is fundraising for other associations, or foundations to conduct their own programmes, the initial patrimony may have a total value of at least 20 times the minimum gross salary in the national economy.

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

There are no requirements in this respect.

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

a) Is it mandatory to have a:

- Supervisory board
 Governing board

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

The foundation board should have at least three members. The first members of the board are nominated by the founders in the constitutive act. During the lifetime of the foundation, the appointment of the board members is made according to the rules in the statutes. In case the statute provisions cannot be applied, it will be the court's role to appoint the board members, at the request of any interested party.

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

The board of directors fulfils the roles of both decision-making (ruling) and administration and ensures the pursuit of the purpose and objective of the foundation. According to the law, the board must:

- Define the general strategy and the programmes of the foundation
- Approve the income and expenditures budget, its execution as well as the regular financial accounts, including the annual balance sheet
- Appoint and revoke the censor (internal supervisory and review organ/committee) or the members of the censors' committee, if one exists
- Decide upon the establishment of the foundation's subsidiaries
- Draw and conclude legal acts in the name and on behalf of the foundation
- Approve the organisational chart and the human resources strategy
- Decide upon the modifications to the statutes

The provisions of the law on board functioning may be detailed in the statutes.

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

The founder(s) may have special rights as regards the decisions during the lifetime of a foundation only if they are included in the statutes. Otherwise, the law does not give the founder extra privileges except for the situation of purpose changing. In this case, the change of purpose may be done only

by the founder or the majority of the founders alive. If none of the founders is still alive, changing the purpose of the foundation can be done only by a four-fifths vote of the board of directors.

In all cases, changing the purpose of the foundation may be initiated only if the original purpose has been totally or partially accomplished, or if it can no longer be accomplished.

- 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?

See point d above.

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

The access to information and right to oppose for a third party are ensured by the requirement to register the main data about the foundation into the Registry for Associations and Foundations under the authority of the Ministry of Justice. At the same time, information about annual revenues and expenditures of the foundation are available on the Ministry of Finance website (where all legal persons' annual balance sheets can be found).

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

A member of the board who has a personal interest in a matter that is subject to a board decision is forbidden either to participate in the discussion/debate on that matter or to vote. The personal interest extends to that of the spouse, descendants or ascendants, and collateral relatives, including relatives of the fourth degree.

It is forbidden for a person in a leading position in a public institution to become or remain a member of the board if the foundation's purpose is to support the activity of the institution s/he serves.

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

The board can delegate some of its duties to an executive: This is usual practice particularly for the ability to sign legal documents and any other duty established in the statutes in addition to those exclusive for the board as foreseen in the law (point c) above).

The law does not impose restrictions related to the participation, decision-making or membership of an executive in the board. Separation of functions between board and executive level is rather a matter of good practice than a law requirement.

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

There is no defined standard of diligence for the board members. As a general rule the fulfilment of obligations by the foundations and their boards is judged against the civil law. No significant case law on the duty of due diligence may be mentioned.

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

No, there is no such differentiation.

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?

Depending on the duty breached the competence to act lies with any of the subjects mentioned in the question.

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

Representation to the third party is ensured by the person/persons nominated in the statutes. This is usually the president of the board and, in the case of bigger organisations, the director or officers may be also empowered by the board to carry on some of the representation to third parties tasks.

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

Foundations may carry out direct economic activities, if these have an ancillary character and are closely connected to the main purpose of the organisation.

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

There are no such limitations as long as the source of the funds disbursed by the grantmakers is not public (special attention should be paid for the funds primarily set up from sponsorship sources since sponsorship in Romania is under the form of fiscal credit). In the case of public funding, the regulations on state aid should be considered.

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

There are no limitations regarding being a major shareholder in a company.

No, this is not considered economic activity since the income is taxed to the company.

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

No, there are no special legal provisions in this respect, foundations are treated as regular companies.

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

Yes, they can as long as they follow the state aid regulations in the case of those funds whose source is public. Still, loans with interests (no matter how low) can be disbursed only if the foundation is also authorised as a financial non-banking institution under the supervision of the National Bank.

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

No, there are no such limitations.

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

Amendment of statutes follows the same procedure as for setting up the foundation, but the decision lies now with the board and not with the founders. In the particular case of changing the purpose, see point 8.d above.

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

a) What type(s) of report must be produced?

- Annual financial report/financial accounts
- Annual activity report
- Public-benefit/activity report
- Tax report/tax return
- Other reports e.g. on 1% schemes
- Reports on governance changes (e.g. new board members) - *not reports as such, but the changes are effective only after being approved by the judge; further on they are published in the national register for non-profit entities
- 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)?

The frequency and type of reports vary depending on the turnover and type of operations of the organisation:

- All reporting, including monthly/ quarterly fiscal reporting related to incomes and expenditures are to be submitted to the tax authority.
- Reporting upon the beneficial owners is to be submitted to the Ministry of Justice.
- Labour contracts, including all subsequent changes, have to be declared in the Ministry of Labour employment data base.
- Additional reporting for social service providers is submitted to the Ministry of Labour.
- All credits/ loans from foreign sources must be declared to the National Bank.
- Through random checks, the National Bank requires quarterly reports to be submitted for all operations involving non-residents, regardless of whether they are physical or legal persons.
- For any type of foundation, separate reporting on expenditures and activities is submitted to the contracting authority in the case of grants awarded from public funds.

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

The reports are checked by the state agencies/authorities to which they are submitted.

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)?

A shorter form of the annual balance sheet is publicly available on the website of the Ministry of Finance.

The registration number in the National Registry for Nonprofit Persons, the name of the foundation, its address, founders, board members, purpose, the mention of being of public utility and the

reference number of the government decision awarding this as well as the current state of the foundation (e.g.in functional, dissolved etc.) are publicly available on the website of the Ministry of Justice.

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

Internal audit performed by a censor or a committee of censors is mandatory according to the law. External audit is made by choice of each foundation and is not required by the law.

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

In case a foundation decides to have an external audit performed, the auditor must be certified by the Chamber of Auditors and follow the standards described in the law.

19. Supervision: Which authority, what measures?

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

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

There is no general supervision on the foundation's activities. Still depending on the matter and the level of compliance with various legal provisions, different authorities may step in (e.g. on fiscal matters it is the fiscal authority that supervises the operations of a foundation).

b) Does the supervisory body review reports?

- Yes
- No

c) Are foundations subject to inspection?

- Yes
- No

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

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

If yes, please specify which type of decisions:

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

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

Only for those foundations established by law and not by judicial court (so-called quasi NGOs).

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

Usually they range from warnings to fines to dissolution.

20. When and how does a foundation dissolve?

A foundation is lawfully dissolved:

- a) When the period the organisation has been established for has come to an end.
- b) When the purpose for which it has been established has been accomplished or can no longer be accomplished, if within three months from reaching such conclusion the purpose is not modified.
- c) If it is impossible to constitute the board of directors according to the statutes of the foundation, and if this situation lasts for more than a year from the date when the board of directors should have been constituted, according to the statutes.

The foundation is dissolved by court decision, upon the request of the Public Ministry (prosecutors' office) or any interested person in the following cases:

- a) When the purpose or the activity of the organisation has become illicit or contrary to the public order.
- b) When the purpose is accomplished by means illicit or contrary to the public order.
- c) When the organisation seeks to accomplish another purpose than that for which it has been established.
- d) When the organisation is in a state of insolvency;
- e) Only in case of those foundations whose activities require prior administrative authorisation, when the authorisation was not obtained.

In case the foundation fails to comply with its reporting duties on beneficial owners, the prosecutor or the National Agency for Preventing and Combating Money Laundering may request its judicial dissolution.

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

There is no legal requirement in this respect.

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

There is no legal requirement in this respect.

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

A foreign foundation is recognised in Romania under the condition of reciprocity, by registering in the registry of associations and foundations held by the Bucharest Court (tribunal) – the only competent authority for the entire country. Registration requires the pre-approval of the Romanian Government. Foreign foundations could act in Romania through a representative or branch. In this case, the new entity maintains its foreign nationality.

Romanian law does not operate with the concept of a trust.

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

No, there are no such limitations/restrictions.

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

No, there are no such limitations/restrictions.

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

Yes, although no such cases are known yet.

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

All requirements above are in fact prerequisites for getting legal personality as a foundation in Romania, and not additional requirements.

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?)

There is not a fixed list of documents, it varies depending upon the type of tax the foundation requires exemption from. In general, such a dossier includes statutes, financial/fiscal records, performed activities description, various declarations on own responsibility etc.

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

Yes, they are detailed in the respective laws or secondary legislation (e.g. in the case of grants from the national budget, from the EU budget, for subsidies for social services, etc.).

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

There is a general obligation to report to the contracting/awarding authority both on financial and technical aspects. Still, the details are included in the contracts concluded with each authority/institution. It is the institution/authority's role to further disclose relevant information to the public, but it is not uncommon to find such information on the websites of the grantees. The practice of disclosure varies from having a similar obligation in the contract or just choosing to disclose it as a good practice.

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?

No, there is no such definition.

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

No, there is no such definition.

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

Public-benefit purpose	Accepted in tax law (for tax privileges)			
	Yes	Probably yes	Probably no	No
Arts, culture or historical preservation	x			
Environmental protection	x			
Civil or human rights		x		

Elimination of discrimination based on gender, race, ethnicity, religion, disability, sexual orientation or any other legally prescribed form of discrimination		X		
Social welfare, including prevention or relief of poverty	X			
Humanitarian or disaster relief	X			
Development aid and development cooperation	X			
Assistance to refugees or immigrants	X			
Protection of, and support for, children, youth or elderly	X			
Assistance to, or protection of, people with disabilities	X			
Protection of animals	X			
Science, research and innovation		X		
Education and training		X		
European and international understanding (e.g. exchange programmes/ other activities aimed at building bridges between nations)	X			
Health, well- being and medical care	X			
Consumer protection	X			
Assistance to, or protection of, vulnerable and disadvantaged persons	X			
Amateur sports		X		
Infrastructure support for public-benefit purpose organisations			X	
Party political activity				X
Advocacy			X	
Advancement of religion			X	
<i>Other – please list other purposes accepted in tax law for tax privileges in your country</i>				

8. Support of “the public at large”

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

Yes, if by “public at large” we refer to the accessibility to the foundation activities to anyone from the public or from the category the foundation intends to serve. No, if by “public at large” we refer to anyone in the public with no limitation related to having a special characteristic.

- 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?

Not the case.

9. Non-distribution constraint

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

A non-distribution constraint is legally binding for any Romanian NGO, including foundations. This refers mainly to the restriction to distribute any surplus in incomes, not to the salary payment or other benefits the staff may have.

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

In case of dissolution of the foundation, the remaining assets cannot be transmitted to physical persons. They may be transmitted to legal persons of private law or public law with an identical or similar purpose, following the procedure established in the statutes. If, within six months from the liquidation, the liquidators fail to succeed in following the statutory procedure for remaining assets, the statutes are silent in this regard, or the statutory procedure is contrary to the law or to the public order, the remaining assets shall be distributed by the competent court to a legal person with an identical or similar purpose.

In some particular cases, the remaining assets shall be taken over by the state, through the Ministry of Finance or, if such be the case, by the commune or city in whose territory the foundation has its headquarters.

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 Fiscal Code permits remuneration of the members of the board for their activity in the foundation. At the same time, members of the board could have contractual relations with the organisation (e.g. consultancy, project management, etc.).

- 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)

According to the Civil Code, a donation or sponsorship is categorised as an act of gratuity, which does not represent an exchange of goods or services for a donation.

- 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”:

No. Usually grant contracts signed with different donors or public institutions make references to a threshold of total costs to be spent for administration (known as indirect costs or administrative costs).

- Personnel costs (staff salaries/payroll costs)
- Board remuneration
- Costs of external audit

- Other legal/accounting costs
- General office overheads (rent/mortgage payments, utilities, office materials, computers, telecommunications, postage)
- Insurance
- Publicity and promotion of the foundation (e.g. website, printed promotional materials)
- Asset administration costs
- In the case of an operating foundation – costs related to programmes/institutions run by the foundation
- Costs related to fundraising

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

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

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

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

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

12. Distributions and timely disbursement

a) Are foundations allowed to spend down their endowment?

Yes.

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?

According to OG 26/2000 on associations or foundations, a foundation could be set up for a definite or indefinite period of time. There are no provisions regarding the minimum or maximum duration.

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)?

Not applicable.

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

No.

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

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

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

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

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

Yes.

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.

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

Non-governmental organisations may obtain non-taxable income and taxable income. The incomes obtained from occasional activities (the law does not give a definition of the character of the occasional activity, still it is generally accepted in practice as being an activity that is performed 2 to 3 times per year), and from events such as fundraising and selling tickets for different events held by

the foundation are exempted from the payment of the tax, regardless of the amount of the income. These occasional activities must be performed for social purposes or professional ones and must be expressly mentioned in the statutory act.

Non-governmental organisations may perform activities with economic character only if the actions have a subsidiary character and are closely linked to the purpose of the organisation. The law does not explain very explicitly what this means, and there is no sanction imposed on the organisation that performs economic activities which are not closely linked to the purpose of the organisation.

In the case of income obtained from economic activities, foundations are exempted from the payment of income tax for sums up to €15,000, and not more than 10% of the income can be exempted from tax.

Also income obtained from interest on deposits and income from dividends obtained from the companies where foundations are partners or associates are exempted from tax as well.

Only the testamentary foundations (constituted by a cause of death and based on the patrimony of the deceased) are exempted from the payment of all types of income taxes, regardless of the amount of these.

Foundations are not exempted from income tax on income obtained from the rental of assets but for those incomes obtained after the sale of these.

- a) Grants and donations - exempted
- b) Investment income (asset administration) - Investment income (asset administration) is treated like any other economic activity
 - Interest from fixed rate bonds
 - Equities
 - Income from leasing of a property that belongs to the foundation
- c) Economic activities (related/unrelated) – exempted up to a certain threshold
 - Income from running a hospital/museum/opera
 - Income from producing/selling books (e.g. art books sold by a cultural foundation)
 - Income from running a bookshop inside a museum/opera run by the foundation
 - Income from running a café in the hospital/museum run by the foundation
 - Income from selling merchandise (activity not related to the pursuance of the public-benefit purpose)
 - Income from intellectual property (e.g. royalties and licence fees)

Foundations may carry out direct economic activities if they have an ancillary character and are closely connected to the main purpose of the organisation. But if they make a profit of €15,000 or more, the tax liability will be similar to that applicable to a commercial business.

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

No.

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

Dividends obtained by a foundation from a company shared entirely or partially are tax exempt, but they must be used to achieve the purpose of the foundation.

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

16% of income.

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

24%

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

16%

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

16%

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

Yes, foundations are subject to real property tax (social services providers may be exempt upon request by the local authorities) and to tax on vehicles. VAT taxation is also applicable for direct economic activities that exceed a certain threshold.

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 can be recognised in Romania, under the condition of reciprocity, based on the prior approval of the Government, by registration in the Register of Associations and Foundations at the registry of the Bucharest Tribunal, if they are validly constituted in the state of their nationality and their statutes do not contradict the public order in Romania.

The representatives of foreign legal entities must attach to the application for registration the following documents, in certified copies and certified translations:

- a) The act of constitution in the state of registration.
- b) The statutes (insofar as they exists as an independent act).
- c) The decision of the decision-making body of the foundation, by which the recognition in Romania is requested.
- d) The status of the future representation in Romania of that legal person, including provisions regarding the registered office, the legal capacity and the persons representing the foreign legal person.
- e) The decision of the Romanian Government to approve the application for recognition in Romania of the applicant legal entity.

Once the registration has been made, it is communicated ex officio, for fiscal records, to the local financial body in whose territorial area the association's headquarters are located, mentioning the registration number in the Register of Associations and Foundations.

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

There are such bi-lateral tax treaties which provide for reciprocal tax treatment of public-benefit organisations.

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?

III. Tax treatment of donors of foundations

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

For individuals, there is a system of tax credit: 3,5% of total taxable income can be redirected towards non-profits (foundations and associations).

Tax deduction: 5% from total income for independent activities (lawyers, notary, juridical experts, etc.).

For companies: 20% of their owed income tax, or up to 0.75% of their annual turnover, whichever is lower, can be redirected towards non-profits (foundations and associations).

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?

Individual contributors have the possibility to have the benefit of a fiscal deduction only in the two following situations:

- Directing 3.5% of the income tax (salary) to non-governmental organisations (also to unions, religious groups, political parties, etc.) only once when submitting the fiscal annual declaration.
- Deducing the amount of sponsorship in the case of contributors who obtain incomes from independent activities (liberal professions), within the limit of 5% from the tax base amount.

The fiscal facilities are mentioned in the Civil Code and they do not establish a lower limit of the amounts granted but the 3.5% limit and the 5% limit.

The individual contributors who direct 3.5% of their income tax, cannot pay this sum by giving goods or services, only money corresponding to the 3.5% limit. The allocation is performed by the fiscal authority into the account of the organisation mentioned in the fiscal declaration, usually in the last trimester of the following year that the tax is calculated.

The contributors obtaining incomes from independent activities may deduct from the taxation base sums of money but also goods and services based on a sponsorship contract within the limit of the 5% from the taxation base.

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

Donations of cash, shares, securities, real estate and in-kind-donations are deductible.

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?

Legislation (Law 32/1994 on sponsorship) limits the maximum amount of donations and sponsorship.

Companies have only one single instrument for supporting non-governmental organisations, meaning the deduction of the sponsorships from the income tax within the limit of 20% from the income tax, but not more than 0.75% from the annual turnover.

The sponsorship may be done in cash (money), goods or services regardless of the existence of a lower limit.

- For those who obtain income from independent activities, membership fees to various non-profit organisations are deductible up to €4000, according to the Fiscal Code.

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

Donations of cash, shares, securities, real estate and in-kind donations are deductible.

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

Donations to non-resident public-benefit foundations are not deductible.

The sponsorship and the fiscal deductions of individual contributors to foreign organisations are not applied. The law on sponsorships defines as beneficiary of the sponsorships only Romanian non-profit organisations or those which are about to perform such activities in Romania.

The fiscal deductions stated in the Fiscal Code are to be applied only to the sponsorships of non-profit entities which are constituted and functional according to the Romanian law (OG no. 26/2000). According to the provisions of this law, a foreign organisation may perform such activities in Romania if it is recognised by the Romanian Government through a Government Decision. It then needs to register in the Registry of Associations and Foundations of the Tribunal of Bucharest. After being recognised it can perform activities on the territory of Romania and it will be given a fiscal registration number, similar to the one given to the branches of commercial societies.

Foreign legal entities recognised by the Romanian Government may be a beneficiary of a sponsorship contract and may also benefit from the 3.5% given by individual contributors.

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

N/A

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

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

All foundations are eligible to benefit from tax exemption by default. There are no limitations in terms of procedure or documents to be submitted to the fiscal authority. Still from 2019, NGOs have to register in a special register held by the national fiscal agency.

Individual donors have to submit a special form to the fiscal authority (form 230) that includes the name and identification data of the recipient foundation. Similarly to individuals, companies have to file a special form annually that includes information about the sponsorships deducted. The fiscal facility is admissible only if the recipient NGO is registered in the special registry above. If the recipient NGO is not registered, the sponsorship may still be valid but it does not fall under the fiscal facility regime.

7. Are there any different or additional requirements to be fulfilled when a donor is giving to a foreign-based foundation? What information must donors to foreign-based organisations provide in order to receive tax incentives for their donation (e.g. statutes, annual financial report, documents providing evidence for certain tax law requirements, for instance to show that income was actually spent for public-benefit purposes)? Are translations of documents required?

N/A

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

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

- Via sms
- Crowdfunding

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

There is no tax incentive for such tools.

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?**

No taxes are levied.

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 taxes are levied. Sponsorship for for-profit activities of NGOs or for private companies is forbidden excluding audio/TV broadcasts.

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

No. Depending on the origin of the donation, the beneficiary should conduct a form of due diligence to make sure that the money is not in any way linked to money laundering or financing of terrorism.

V. Gift and inheritance tax

Gifts or the transfer of property deriving from a testament are not recognised in Romania as being an exempted from taxes.

Each individual may give goods/money or transmit such goods/money through a testament to a non-governmental organisation, but in such cases the individual does not have any fiscal facility.

The donations granted by a company are not recognised as being eligible deductions but only the sponsorships done within the deductible limits as mentioned above.

Meanwhile, the non-governmental organisations that receive such financial resources/materials are exempted from the payment of any kind of taxes for these incomes.

Furthermore, the foundations constituted through a testament have a special fiscal regime, meaning that they are exempted from the payment of any type of tax for the incomes obtained during the performance of activities, including income from economic activity.

In the case of money or goods transfer through a testament, these are limited, meaning that the successors own a percentage (the percentage differs based on the number of successors), that cannot be given away.

- 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)?**

Gifts are not taxed. In the case of property, legislation provides for a 3% or 1% tax that is paid by the owner of the land or building.

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

N/A

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

N/A

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

N/A

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

N/A

VI. Trends and developments

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

N/A

- 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 - The new law has introduced the obligation to declare beneficial owners of associations and foundation through a notarized statement which then needs to be registered in the Registry of the Beneficial Owners managed by the Ministry of Justice. The lack of clarity of the definition of beneficial owner and the cost of a notarized statement create barriers for setting 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. Romania transposed the 4th Anti-Money Laundering Directive in 2019 and adopted a new law on preventing and combating money laundering – Law no. 129/2019. Foundations are no longer obliged entities, but they do have to report beneficial owners. The reporting needs to be done annually and every time there is a change with regards to beneficial owners of the foundation.

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

While the national law includes a definition of the concept of beneficial owner, this definition varies depending on the nature of the entity. The definition of a beneficial owner for foundations is unclear, meaning it is not clear who is considered the beneficial owner of a foundation – board members, founding members, or executive members.

- 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?**

According to Law no. 129/2019 and the amendments it brought to OG 26/2000 on associations and foundations, all foundations need to report beneficial owners to the Ministry of Justice which will manage the Beneficiary Registry for Associations and Foundations. The law entered into force in July 2019. The first reporting was due in July 2020 (now August 2020 because of the pandemic) so as to have time to make the registry functional. This registry is not yet functional.

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

There currently is an initiative in Parliament which seeks to simplify the procedure of reporting beneficial owners for associations and foundations in the sense that it will no longer require those whose beneficial owners are individuals to declare them in the Beneficial Owner Registry. The obligation will remain in force for those whose beneficial owners are legal persons. Nevertheless, the definition of beneficial owner remains unclear.

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?

In July 2020, the Government initiated a consultation regarding the amendment of OG 26/2000 regarding association and foundations.

c) Tendency towards more transparency requirements?

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

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

f) Other?

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

N/A

VII. Further information

Useful contacts

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Selected law texts online

- Government Ordinance no. 26/2000 on associations and foundations Law 246/2005 on associations and foundations.
- The Romanian Fiscal Code
- The Romanian Civil Code
- Law 32/1994 on sponsorship
- Law 129/2019 on for preventing and combating money laundering and terrorist financing

VIII.About

Philanthropy Advocacy

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

www.philanthropyadvocacy.eu

Donors and Foundations Networks in Europe (Dafne)

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

www.dafne-online.eu

European Foundation Centre (EFC)

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

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

www.efc.be

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



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