

**2020**

Legal Environment for Philanthropy in Europe

# Ukraine

COUNTRY PROFILE

By Oleksandr Vinnikov

European Law Advancement Network

Polina Nyukhina

Ukrainian Philanthropists Forum

# Contents

- I. Legal framework for foundations ..... 3
- II. Tax treatment of foundations..... 10
- III. Tax treatment of donors of foundations..... 17
- IV. Tax treatment of beneficiaries ..... 19
- V. Gift and inheritance tax ..... 20
- VI. Trends and developments ..... 21
- VII. Further information ..... 24
  - Useful contacts..... 24
  - Selected bibliography ..... 24
  - Selected law texts online ..... 24
- VIII. About ..... 25
  - Philanthropy Advocacy..... 25
  - Donors and Foundations Networks in Europe (Dafne) ..... 25
  - European Foundation Centre (EFC)..... 25

## 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?**

There is no basic legal definition of a foundation in Ukrainian law. Separate laws regulate public law foundations (e.g., Culture Fund) and private law foundations, for both business activities (e.g., investment funds, non-government pension funds), and for private or public benefit. The civil code regulates private-benefit foundations; while the Charitable Activities and Charities Act (CACA, N 5073 of July 4, 2012) is in effect for public-benefit foundations. Endowments without legal personality may operate under both civil and tax law (art. 9 of CACA; art. 170.7.5 of Tax Code).

- 2. What purposes can foundations legally pursue?<sup>1</sup>**

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

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

Any legal entity of private law or individuals may be a founder(s) of a foundation in Ukraine (art. 1 of CACA). The registration procedures are set by the Legal Entities and Individual Businesses Registration Act (LEIBRA, N 755 of May 15, 2003). Founder(s) shall submit an application form, a copy of the decision of the founder(s), a copy of the statutes, and, optionally, an application form for tax-exempt status: Non-resident founder(s) shall submit also an excerpt from their company register and/or notarised copies of their passports. Founder(s) may submit documents to municipal centres for administrative services or to notaries. The law allows submitting papers online, but this can also be done through personal visits or registered mail (in these procedures, an application form shall be notarised, even though the statutes are notarised only if the founder(s) decides to do so). Initial registration and filing in the company register is free, while fees for further procedures (e.g., amending the statutes or changes of directors) are up to €7 in 2020. The standard term of registration is the next working day; excerpts from the national company register can be obtained online.

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

No.

- 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

---

<sup>1</sup> This question focuses only on public-benefit foundations; see the definition in the Glossary developed for this project, which can be found on the Philanthropy Advocacy website.

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

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

Name(s), ID number, seat, contact data, founder(s) and beneficial owners, the statutes, statutory activities, governance structure, director(s) and proxies, territorial branches and their directors, annual financial reports, data on sanctions and procedures for bankruptcy or dissolution. Also, data on any public licenses or special permits shall be filed in the register. The Company register shall keep any changes of the above-mentioned data (art. 9 of LEIBRA).

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

- Yes, all information publicly accessible (see <https://usr.minjust.gov.ua/ua/freesearch>)
- Yes, some information publicly accessible
- Yes, accessible upon request
- No

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

- No
- Yes, amount:

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

No legal requirements on maintaining foundations' assets or spending ratios are in effect in Ukraine. The founder(s) shall authorise spending down the endowment capital, if any (art. 170.7.5 of Tax Code).

**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:

Two-tier governance model requirements are set forth in arts. 19-22 of CACA.

- 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?

Members of the supervisory board shall not be members of the governing board or director(s) (art. 22 of CACA). Any other provisions regarding board members can be designed in the foundation's statutes or bylaws. Otherwise board members can be removed or forced to resign at any moment (art. 99 of Civil Code).

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

Board members shall act prudently in a foundation's best interest and keep to the concept of ultra vires. They bear joint liabilities for infringements committed by a foundation (art. 92 of Civil Code).

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?

Founder(s) may decide on amending the statutes, winding up the foundation, and appoint and dismiss members of the supervisory board and the governing board (art. 20 of CACA). They also may make decisions on other issues as specified in the statutes.

- 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, the founder(s) may amend the statutes, including the foundation's purpose, by qualified majority of  $\frac{3}{4}$  votes (art. 98 of Civil Code). The statutes shall specify other powers of the founder(s) and the board members.

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

Information on structure and amounts of foundation's revenues (e.g., from public fundraising) and expenditures shall be available to the public (art. 18 of CACA). Beneficiaries may sue for tort caused by non-disclosure of relevant information by foundations or for transfer of donations with suspensive conditions, if beneficiaries fulfilled the contractual conditions (arts. 721, 723 of Civil Code). If grants or other assigned donations are not spent by a foundation for the purposes set by donors within a specified period, they may demand grants or other assigned donations back as interest-free loans (art. 6 of CACA; art. 727 of Civil Code).

- 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?

Under art. 23 of CACA, board members shall not vote on transactions or disputes between a foundation and themselves and/or their affiliated persons, and on relieving their liabilities for a foundation. Board members shall not be beneficiaries of the foundation's charitable programmes or endowments. The statutes may specify other grounds for conflict of interest and its solutions. Tax law prohibits self-dealing and makes all such revenues taxable (art. 14.1.59, 133.4 and 165.1.4 of Tax Code), and infringing foundations shall lose their tax-exempt status (art. 133.4.3 of Tax Code).

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

There are no explicit provisions in civil or tax law, but the foundation's statutes may specify these procedures.

- 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?**

As mentioned above, civil law requires that board members shall act prudently in a foundation's best interest and keep to the ultra vires concept. In 2013-2020, over 500 cases in appeal courts were reviewed concerning due diligence in foundations, but Ukrainian court practice is not generalised in a case law manner.

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

No, only the foundations' statutes or bylaws can regulate paid and/or unpaid 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?*

As a rule, founder(s), donors and tax authorities. The Attorney General's powers were limited to criminal proceedings and representation of national and local governments in courts from January 2020.

**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?**

The director has powers by law, but they can be limited by the statutes (e.g., approvals for specific transactions by the supervisory board). Other officers may have powers to be specified in the statutes and filed in the Company register.

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

Since 2016, Ukrainian law has allowed both related and unrelated economic activities for tax-exempt organisations. A foundation's economic activities shall be specified in its statutes and filed in the Company register, as well as any state licenses/permits that it possesses.

**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?**

No legal limitations are in effect in Ukraine. However, business companies can procure assets and services from non-profits up to the value of 25 minimum annual wages per year (€4,000 in 2020), but 30% of these procured assets and services are taxable (art. 140.5.4 of Tax Code).

**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?**

Yes, foundations may be major shareholders without any specific limitations, except for ones set by the Anti-Trust Committee.

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

There are no legal limitations regarding foundations' asset management in Ukraine.

**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, all these activities are legally allowed for foundations in Ukraine, but they are rarely implemented.

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

Civil law imposes limitations on funding political parties and candidates for public office by foundations (art. 3 of CACA). General advocacy activities face no legal limitations and are quite common. There are no specific legal regulations on lobbying in Ukraine.

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

75% of voting is required under art. 98 of the Civil Code for amendment of foundations' statutes or purposes, as CACA does not now provide for otherwise. Actions against decisions by the general meeting or the founder, including ones on amendment of statutes or the foundation's purpose, must be carried out within one year (art. 258 of Civil Code).

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

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

- Annual financial report/financial accounts
- Annual activity report
- Public-benefit/activity report
- Tax report/tax return
- Other reports e.g. on 1% schemes
- Reports on governance changes (e.g. new board members)
- Report on conflict of interest (self-dealing and conflict of interest breach cases)

b) Must all/any of the reports produced by the foundation be submitted to supervisory authorities? If so, to which authorities (e.g. foundation authority, tax authority)?

Tax Authority, Public Registrar.

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

The Tax Authority and Public Registrar shall check the reports in question.

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)?

Data on structure and amounts of revenues and expenditures of foundations shall be publicly available, at least upon request (art. 17 of CACA).

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

Annual external audits are required by law for all foundations that meet at least one of the criteria for medium-size companies ( $\geq$ €4 million in total assets value;  $\geq$ 50 employees; or  $\geq$ €8 million of annual income from economic activities) (arts. 2, 14 of Accounting and Financial Reporting Act, N 996-XIV of July 16, 1999).

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

The Audit of Financial Reporting and Audit Profession Act N 2258 of December 21, 2017, sets forth requirements for auditors or audit companies to be registered by the Auditors' Chamber of Ukraine, which undertakes external audits, in line with national standards or IFRS (which are compulsory for banks and some other types of companies) under Ministry of Finance's guidelines.

## 19. Supervision: Which authority, what measures?

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

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

b) Does the supervisory body review reports?

- Yes
- No

c) Are foundations subject to inspection?

- Yes  
 No

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

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

If yes, please specify which type of decisions:

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

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

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

The Tax Authority may force a foundation to pay corporate income tax in the fiscal year when the violation of tax law requirements are disclosed, and terminate the tax-exempt status for the next year (art. 133.4.3 of Tax Code). Non-reporting is not penalised if a foundation has no revenues.

## 20. When and how does a foundation dissolve?

A foundation can be dissolved by decision of its founder(s) or another governance body authorised in the statutes (including termination of the period for the foundation's operations or achieving its purpose); or by court decision, if the foundation's registration was unlawful; or on other grounds prescribed by law (art. 110 of Civil Code). Thus, public registrars, creditors, or other stakeholders can sue for misuses of a foundation's assets or other violations regarding charitable activities (e.g., in public fundraising) that last for 12 months or longer, or if a foundation can't be dissolved in cases prescribed by its statutes or by law (art. 27 of CACA). Besides this, any foundation can be dissolved under bankruptcy procedures.

## 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?

Civil law limits administration costs for public-benefit foundations to 20% of their annual income (art. 16 of CACA). Funds from online donations shall not be spent on any administration costs (art. 7-1 of CACA), though this regulation is does not include costs incurred for online communications providers.

## 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)?

Currently, neither civil law nor tax law sets forth such requirements.

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

Ukrainian law actually does not recognise the concept of trusts for residents, and it does not make a distinction between domestic and foreign foundations. The Ministry of Justice is in charge of registration of foreign foundations' representative offices or branches with non-resident tax status. The registration fee is €20 in 2020, and the registration process can take up to 20 working days



(arts. 1, 9, 22, 26 and 36 of LEIBRA). Directors of representative offices or branches shall have Ukrainian tax ID numbers and act under powers of attorney apostilled by the foreign foundations.

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

Ukrainian law imposes no limitations on conducting some or all of the foundations' activities abroad, except ones set by laws regarding anti-money laundering, and illicit and terrorism financing.

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

Donations from some jurisdictions and foreign actors are proscribed under FATF regulations. This data is publicly available at: <http://www.fiu.gov.ua>

**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?**

In both cases, Ukrainian foundations shall be dissolved.

## 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- spending assets for foundations' maintenance and statutory activities only

### 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 may apply for tax-exempt status even at their initial registration procedure; tax authorities shall check their statutes' compliance with Tax Code requirements as listed in the previous question.

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

Yes, but public-benefit foundations usually are non-eligible for public funding in Ukraine, unlike associations.

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

Tax authorities shall receive special reporting forms monthly on beneficiaries' taxable income and tax-exempt income.

### 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?

Yes, arts. 1 and 3 of CACA provide for a statutory definition of public-benefit purpose as voluntary transfers of assets and/or services for beneficiaries and public interests in 15 areas defined by this law. There are specific links to tax benefits on VAT and real property tax.

### 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, Ukrainian tax law provides for no statutory definitions of public-benefit purposes.

### 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	x			

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-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>	Territorial communities development; local, national and international programmes of economic development; assistance to national defense capacity (art. 3 of CACA)			

## 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”?

No, beneficiaries can be individuals, non-profits, and territorial communities. Other companies and the public at large can be beneficiaries, if the foundation’s statutes provide for this explicitly (art. 1 of CACA).

- 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, support of affiliated persons, including family members, violates the non-constraint requirement under art. 133.4 of the Tax Code.

## 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, Tax law explicitly provides for a non-distribution constraint for the foundation founders, board, staff, and their affiliated persons; breaching would lead to losing tax-exempt status under art. 133.4 of the Tax Code. All such financial support shall be taxable also, even if it is tax exempt for third parties (art. 165.1.4 of Tax Code).

- 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?

No, support of affiliated persons, including family members, violates the non-constraint requirement under art. 133.4 of the Tax Code.

## 10. “Altruistic” element

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

Remuneration of board members is allowed in both civil and tax law, and no specific limits are set forth in the law.

- 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)

Ukrainian tax law does not recognise the “net value of donation” concept. In 2020, such benefits in kind are taxable, if their value is more than €40 per month (art. 165.1.39 of Tax Code).

- c) Is there a maximum amount that can be spent on office/administration costs in **civil law** and in **tax law**? If yes, how are “administration costs” defined? Please indicate which of the following types of expenditures would/would not be considered as “administration costs”:

- Personnel costs (staff salaries/payroll costs) - (administrative staff salaries/payroll costs only)
- 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 (including administration costs of endowments)
- In the case of an operating foundation – costs related to programmes/institutions run by the foundation
- Costs related to fundraising

Civil law limits administrative costs, as indicated above, to 20% of a foundation's annual income (art. 16 of CACA), and defines the administrative costs according to the national accounting standard #16. No, tax law does not specify administrative costs.

## 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?

Yes, this issue shall be regulated with the foundation's statutes and, if applicable, contracts with endowment settlor(s).

- 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, a limited period is allowed. No minimum length is set by the law, but endowments shall exist for 12 months, at least, and 24 months for health care.

- c) Does the **civil law** and/or **tax law** of your country require a foundation to spend its income (or a certain amount of the income) within a certain period of time, e.g. within the next financial year? If yes, is there a specific amount/percentage of the income that must be spent within this time? Which resources would be considered as income? E.g. would donations/contributions designated for building up the endowment be included in/excluded from the income to be spent? What expenditures would count towards the disbursement of income (e.g. would administration costs be included/excluded?)?

No.

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

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 <sup>th</sup> year are there distributions for the public-benefit purpose of the foundation.					

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.					

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

Yes, if provided for in the foundation's statutes.

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

Yes, if such support is provided for the public-benefit purposes and specified in the foundation's statutes (art. 1 of CACA).

### 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
- b) Investment income (asset administration)
- Interest from fixed rate bonds
  - Equities
  - Income from leasing of a property that belongs to the foundation
- 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)
- d) Income deriving from grant expenditure towards public-benefit purpose/programme activities (such as loans, guarantees, equities)?
- e) Is major shareholding in a business undertaking considered as an economic activity and taxed accordingly?

Legally, all types of income mentioned in a), b), c), and d) above are exempt from corporate income tax, if mentioned in the foundation's statutes. Shareholding in business companies is taxable, but withholding corporate income tax is a liability of business companies (art. 57.1 of Tax Code).

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

Capital gains are subject to corporate income tax. Capital gains taxes paid abroad do not count towards adjusting corporate income tax contributions in Ukraine (par. 141.4.9 of Tax Code).

**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 are no VAT refund schemes for public-benefit foundations yet, unless they are VAT payers. If foundations import services by non-residents, they shall pay VAT even if they are not VAT payers.

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

No capital tax is applicable.

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

Foundations are VAT exempt if they receive or give assets without any compensations (art. 197.1.15 of Tax Code). Foundations shall be registered as VAT payers, if their sales amount to UAH 1,000,000 (€34,000 in 2020) for any period of 12 months (art. 181.1 of Tax Code). The standard VAT rate is 20%, while the reduced rate (for medicines and medical equipment) is 7% (art. 193 of Tax Code). Printed and digital publications are exempt.

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

In Ukraine, decisions on property taxes are made by municipal councils. They shall apply reduced rates or exempt foundations from real property tax (art. 266.4.2 of Tax Code) and land tax (art. 284.1 of Tax Code). Foundations shall pay tax on their new (up to five years old) passenger cars in the amount of UAH 25,000 (€850 in 2020) for each car per year (art. 267.4 of Tax Code).

**21. Can a foreign foundation (EU and other) get the same tax benefits as a national foundation according to the wording of the tax law in your country? If yes, under what conditions? If they have to fulfil exactly the same requirements as locally-based public-benefit foundations, please refer to above but indicate which documents need to be provided and translated:**

No.

- Statutes (translation required?)
- Last annual financial report (translation required?)

- Documents providing evidence for certain tax law requirements e.g. that income was actually spent for public-benefit purposes, which may not be required by the organisation's country of seat but are required according to the legislation of the country from which tax benefits are sought?
- Other

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

As of 2020, Ukraine had signed tax treaties with 76 countries (see <https://www.contactukraine.com/taxation/ukraine-double-tax-treaties>). These treaties rarely refer to public-benefit foundations (except for the treaties with Saudi Arabia, the Netherlands, and, for educational and research purposes, Germany, Poland, UAE and the US), but other income from non-business activities usually shall be taxable in the tax country of residence only (e.g., if a representative office of a UK-based foundation receives donations in Ukraine, they shall be taxable in the UK only).

**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, withholding tax at a 15% rate is applicable to dividends and other investment income paid to non-residents, unless lower rates are set with bi-lateral tax treaties (e.g., 5%/10% for Germany, or 5%/0% for major shareholders from the Netherlands). Residents may reclaim withholding tax from foreign income (except for capital gains tax and indirect taxes) up to the tax contribution amounts payable in Ukraine, if Ukraine has signed a bi-lateral treaty with the country in question (art. 141.9 of Tax Code). But this right is not eligible for foundations that are tax exempt and, therefore, and not subject to corporate income tax.



### III. Tax treatment of donors of foundations

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

Tax deductions only are applicable in Ukraine currently.

**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 donors may deduct their donations to any non-profits registered in Ukraine up to 4% of their annual taxable income (art. 166.3.2 of Tax Code). No minimum contributions are required, but the total amount of this deduction shall not be more than donors' income received as wages after social insurance taxes and standard tax deduction, if applicable (art. 166.4.2 of Tax Code). Thus, if donations amount to €400 per year, this is deductible if this donor received at least €10,000 as his/her wages. Provisionally, this rule is not effective in 2020 regarding donations to foundations in cash or in kind for combating COVID-19. Also, tax deductions are not carried forward (art. 166.4.3 of Tax Code).

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

Cash and other tangible assets are qualified for tax deductibility. Volunteering and other services are not deductible for individual donors yet.

**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 donors may deduct their donations to any non-profits registered in Ukraine up to 4% of their taxable income in the previous fiscal year (art. 140.5.9 of Tax Code). This rule is not effective in 2020 regarding donations in cash or in kind to foundations for combating COVID-19. No minimum contributions or ceilings exist. Tax deductions for corporate donations are not carried forward.

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

Cash and tangible assets are qualified for deductibility, as well as services, works and other performances by corporate donors. There are no tax deductions for corporate volunteering yet.

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

No, donations to non-residents (including representative offices of foreign foundations in Ukraine) are taxable; donors shall withhold corporate income tax at a 15% rate, unless international tax treaties provide otherwise (art. 141.4.1 of Tax Code), as mentioned above.

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

There is no other framework or tax incentives for donors such as a percentage law in effect in Ukraine yet.

**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)?**

Any individual donor shall keep original receipts and other documents on donations for three years, at least, and add a copy of his/her annual tax return by May 1 (by June 30 in 2020) of the next fiscal year (art. 166.2 of Tax Code).

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

No tax incentives in Ukraine are applicable to local donors of foreign-based foundations currently.

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

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

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

No specific requirements are applicable for donors, except for obtaining original receipts or other documents as evidence of their donations.

## IV. Tax treatment of beneficiaries

(i.e. those receiving a grant or other benefit from a foundation)

**1. Individuals: Are individual beneficiaries of grants required to pay taxes or are the grants tax exempt?**

In 2020, individual beneficiaries may receive non-taxable funds from a foundation up to €100 per year (art. 170.7.3 of Tax Code). Foundations can reimburse expenditures for health care and medical services to individuals (art. 165.1.9 of Tax Code) or, with some restrictions, to clinics (art. 170.7.4 of Tax Code). Grants for education in Ukrainian colleges and universities are not taxable up to €480 per month in 2020 (art. 165.1.21 of Tax Code). As mentioned above, benefits in kind are non-taxable up to €40 per month. Compensations to displaced persons from Crimea and Eastern Ukraine from local donors and foreign foundations are tax exempt (arts. 165.1.54, 165.1.56 and 170.7.8 of Tax Code).

**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?**

While support of economic development is one of the legal purposes for public-benefit foundations in Ukraine, only the foundations' statutes shall define eligible beneficiaries.

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

Individual beneficiaries receiving funding from abroad shall submit tax returns and pay individual income tax at an 18% rate by 1 August of the following year (arts. 170.11 and 171.2 of Tax Code). Donations are not subject to compulsory currency exchange.

## 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)?**

Gift and inheritance tax is included in individual income tax in Ukraine, while legal entities may be recipients or heirs (art. 1222 of Civil Code).

- 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?**

The tax rate for all resident recipients or heirs is 5% of the estimated value of donations/legacies. Close relatives, orphans and some disabled persons are exempt from taxation. There are no court decisions or administrative practices on taxation of gifts or inheritances to non-profits in Ukraine, including PBOs.

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

No, except for savings instruments and state bonds deposited until 1994, which are tax exempt in full for any resident recipients or heirs (art. 174.2.1 of Tax Code).

- 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, children (including disabled adult ones), disabled parents and/or spouses shall get 50% of their legal part protected from third parties' claims, unless court decisions reduce this legal part (art. 1241 of Civil Code).

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

Donations or legacies to foreign-based non-profits are subject to withholding corporate income tax at 15% or, if non-incorporated ones, 18% of the donation/legacy's estimated value (art. 174.6 of Tax Code), unless bi-lateral tax conventions provide otherwise.

## VI. Trends and developments

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

No, as Ukraine is not party to the EC Treaty.

- 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 (compliance with banks' internal policies and standards that can derogate from the National Bank regulations in question)

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

No, but they are subject to financial monitoring.

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

Yes, any person having 25% or more of votes in a foundation, directly or via affiliated person(s), including trusts, or via agents and other intermediaries. Some indirect powers (e.g., right to change directors or to veto the board decisions) may result in being considered as a BO (art. 1 of Anti money laundering, illicit and terrorism financing act N 361 of December 6, 2019).

- 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 Company register serves as a BO register: It shall receive and keep the data on BO and their changes (filing this data is free of charge).

- 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 are no serious revisions in civil law. Amendments to the Tax Code regarding deductibility of all donations to foundations for combating COVID-19 gave opportunities to deduct donations by self-employed individuals. Also, bills on a percentage system are being discussed.

- 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?

No data on supervisory or ratings agencies are available currently.

- c) Tendency towards more transparency requirements?

Foundations do not usually release public reports, though this is sometimes the case. Annual tax reports are not subject to public access, thus, figures for government agencies and for the public can deviate largely. There are some discussions on eventual legal requirements for foundations' public reporting. The risk of government intrusion in non-profits' activities correlates with lower public trust (in 2019, research by the Zagoriy Foundation showed that 41% of Ukrainians did not donate because of suspicions of fraudulent fundraisers). Transparency standards and voluntary disclosure are promoted by both Ukrainian foundations' platforms and international grantmakers.

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

Ukrainian law regulation is not hard on the whole, and the foundation community tends to implement best practices for self-regulation rather than seek stronger government supervision. Ukraine lacks sustainable inter-sectoral dialogue involving government and foundations as well as corporate or individual donors, and beneficiaries. Actually, no government agencies have clear tasks and responsibilities in cooperation with the foundation community, which, in turn, has weak institutional leadership. At the same time, the media and leaders of public opinion rarely pay attention to the positive impacts of institutional charity.

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

Corporate donors tend to mingle their corporate social responsibility programmes and charitable activities. E.g., a few national taxi providers gave free rides programmes to medical staff and patients in the pandemic phase. Warfare in Eastern Ukraine and the needs of displaced persons have resulted in an official register of the individuals authorised to raise donations in special accounts (more active in 2014-2016). For health care purposes, crowdfunding in social networks is common now.

- f) Other?

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

Public fundraising is subject to arts. 7 and 7-1 of CACA, with the following provisions:

- Public fundraising on behalf of a foundation or another charity requires a notarised power of attorney by this foundation (except for sms and other telecommunications providers). These powers of attorney shall specify purposes, location and timeframe of raising cash or donations in kind, how the donations will be used, and public access to the foundation's financial reports
- Public fundraising for foundations and other charities requires contracts in writing between foundations and fundraisers. These contracts shall specify purposes, location and timeframe of raising cash or donations in kind, how the donations will be used, public access to a foundation's financial reports and the parties' liabilities in case of misuse of the donations.
- Public fundraising for other beneficiaries, except charities, requires contracts in writing with beneficiaries or their custodians. These contracts shall specify purposes, location and timeframe of raising cash or donations in kind, how the donations will be used, accounting and reporting, as well as liabilities of fundraisers in case of contractual violations regarding beneficiaries and donors, or in case of misuse of the donations.
- Cash donations via sms are tax exempt in full, while they may not be spent for any administrative costs of charities. Reports on uses of such donations shall be available to the public on the foundation's website or an official website of the local community.

- Public servants, except Ministry of Defence officers involved in fundraising for the military, shall not be involved in public fundraising.
- Public fundraising for national defence purposes is subject to special regulations (Cabinet of Ministers Resolution N 451 of June 30, 2015).
- Lotteries in Ukraine is the fiscal monopoly of the state; gambling is de jure proscribed, but charitable contests and in-kind prizes are permitted (Gambling prohibition act N 1334 of May 15, 2009).
- Entertainment events (concerts, exhibitions, festivals etc.) are tax exempt if 80% or more of their revenues is transferred to foundations or to charitable activities (Tour activities in Ukraine Act N 1115 of July 10, 2003).

## VII. Further information

### Useful contacts

**Polina Nyukhina**, Director, [Ukrainian Philanthropists Forum](#), Mykhailivsky Lane 9A, Appt. 51, 01001; Tel. [+38044 279 12 62](tel:+380442791262); [info@ufb.org.ua](mailto:info@ufb.org.ua); <https://ufb.org.ua/>

**Oleksandr Vinnikov**, +38066 226 22 68, [Vinnikov22209@gmail.com](mailto:Vinnikov22209@gmail.com)  
[Zagoriy Foundation](#), Rylsky lane, 6, Kyiv, 01034 [info@zagoriy.foundation](mailto:info@zagoriy.foundation)

### Selected bibliography

- Zagoriy Foundation, Researches on charity development in Ukraine (texts in English) <https://zagoriy.foundation/en/researches/>
- National Institute for Strategic Studies, Research on charity development in Ukraine (2019) <https://niss.gov.ua/doslidzhennya/gromadyanske-suspilstvo/rozvitok-blagodiynosti-v-ukraini>

### Selected law texts online

- [Civil Code](#)
- [Tax Code](#)
- [Charitable Activities and Charities Act](#)
- [Legal Entities and Individual Businesses Registration Act](#)
- [Accounting and Financial Reporting Act](#)
- [Audit of Financial Reporting and Audit Profession Act](#)
- [Anti Money Laundering, Illicit and Terrorism Financing Act](#)
- [Tour Activities in Ukraine Act](#)
- [Cabinet of Ministers Resolution N 451/2015 on Public Fundraising for National Defence Capacity](#)



## 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](http://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](http://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](http://www.efc.be)

---

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



This work is licensed under a Creative Commons Attribution -  
Non Commercial No Derivatives 4.0 International License.

Quotation is subject to full identification of source. The named authors of this country profile bear all responsibility for the correctness and accuracy of the information provided. Dafne and EFC expressly disclaim any liability arising from the use of the information provided in this country profile.