

2020

Legal Environment for Philanthropy in Europe

France

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 first law on foundations (*Loi 87-571 sur le développement du mécénat – LDM*), enacted on 23 July 1987, covers public utility organisations in general and state-approved foundations of public utility (*fondations reconnues d'utilité publique*). This law was modified on 4 July 1990 by introducing the so-called corporate foundations (*fondations d'entreprise*). Pursuant to amendments to Articles 19-20, one or more private or public corporations, cooperatives or mutual benefit companies can set up corporate foundations to pursue public-benefit purposes.

Art. 18 LDM defines foundations as the legal act through which one or more individuals or legal entities decide irrevocably to allocate property, rights or resources for a non-profit-making activity of public interest ("*La fondation est l'acte par lequel une ou plusieurs personnes physiques ou morales décident l'affectation irrévocable de biens, droits, ressources à la réalisation d'une oeuvre d'intérêt général et à but non lucratif*").

The term foundation is legally protected and can only be used by those foundations that are public utility foundations (*fondations reconnues d'utilité publique*), corporate foundations (*fondations d'entreprise*) or non-autonomous foundations (*fondations abritées*) under the aegis of a few public utility foundations (such as the Fondation de France). The Institut de France, which is not a foundation, has also received a special authorisation by the *Conseil d'Etat* to host non-autonomous foundations.

A new law to promote private giving in France was enacted on 1 August 2003 and published on 2 August 2003 (*Loi relative au mécénat, aux associations et aux fondations, n°709, 1er Août 2003*). This law provides for new measures to promote private giving in France. Proposals regarding the simplification of the public utility approval and the creation and operation of public utility foundations had already been put into practice in the first half of 2003. On 2 April 2003, the Highest Court (*Conseil d'Etat*) approved a new version of the Model Statute for Public Utility Foundations (*Modèle de statuts des Fondations reconnues d'utilité publique*), which is an important resource for public utility foundations and which was updated on 19 April 2018.

Law No. 2006-450 enacted on 18 April, 2006 implemented a new category of foundation dedicated to research projects: foundations for scientific cooperation (*fondations de coopération scientifique*) which may take the form of either a public utility foundation or of an autonomous foundation whose endowment is allocated to a public utility foundation in charge of managing it.

Law no. 2007-1199 (enacted on 10 August 2007) implemented two new categories of foundation: 1) university foundations (*fondations universitaires*), which are non-autonomous foundations created by universities and other public institutions of a scientific, cultural or professional character to perform non-profit public utility purposes within the framework of the higher education public service; 2) partnership foundations (*fondations partenariales*) which are autonomous foundations created by universities and other public institutions of a scientific, cultural or professional character either alone or together with business companies.

Law no. 2008-776 (enacted on 4 August 2008) implemented a new legal tool - "endowment funds" (*fonds de dotation*). Based on the Anglo-Saxon model of an endowment fund, such funds provide an opportunity to establish funds through a simpler process than that which is currently required for foundations of public utility. No endowment obligation was initially required; however law 2014-856 (enacted on 31 July 2014) on the social and solidarity economy set a minimum threshold: the decree no. 2015-49 (enacted 22 January 2015) sets this amount at €15,000 at the creation of the fund.

The implementing decree no. 2014-956 (enacted 21 August 2014) of the law 2009-879 (enacted 21 July 2009) on hospital reforms (*Loi portant réforme de l'hôpital et relative aux patients, à la santé et aux territoires*), implemented hospital foundations (*fondations hospitalières*) which have to be established by one or more public health facilities and must fund medical research work.

The law n° 2019-486 (enacted on 22 May 2019) on growth and transformation of companies (JO 23/05/2019) brought two main evolutions, allowing public utility foundations to receive and retain partnership shares from a company having industrial or economic activities without any limits of capital or voting rights. Therefore, a foundation could become a shareholder of a company thanks to donations and could create a subsidiary under a commercial status. This law of 2019 also created a new status, the sustainability fund (*fonds de pérennité*), which combines economic activities with possible philanthropic action. However, the existence of this sustainability fund will be dependent on an evaluation within three years to see if it really brings positive effects.

Lately, every year since 2017, reforms have been adopted on fiscal rules which have had direct effects on the amounts donated to non-profit organisations, notably foundations.

Finally, a parliamentary report published in June 2020 on French philanthropy recommends simplifying and clarifying the legal framework for foundations.

2. What purposes can foundations legally pursue?¹

- 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?

To establish a public utility foundation, the founder must seek authorisation (*reconnaissance d'utilité publique*) via a decree issued by the French Ministry of the Interior (*Ministère de l'Intérieur*). The founder can establish the foundation through private deed inter vivos (during the founder's life) or through a will. The documents are then filed with the Bureau of Associations and Foundations, which will consult the various Ministries relevant to the contemplated foundation's objectives, as well as the Highest Court (Conseil d'Etat). The Bureau also drafts the decree to be executed by the French Interior Minister (Ministre de l'Intérieur). The foundation gets its legal personality only once the decree is signed and published in the French Official Gazette (Journal Officiel). The foundation's statutes must be based on the Model Statute (available at: <https://www.interieur.gouv.fr/content/download/111357/889847/file/statuts-types-frup-conseil-administration.doc>)

Public utility foundations have full legal capacity. They can receive legacies and gifts, whereas corporate foundations cannot receive donations other than those made by the founding corporation, its employees or the employees of a company related to the founding corporation. They cannot receive legacies.

Corporate foundations receive legal personality either through an authorisation by the *Préfet* (representative of the state at local level) or if the administration does not object within four months of the date on which the authorisation request was filed. Corporate foundations are only established for a limited period of time, a minimum 5 years, which can be extended for at least 3 years. A minimum endowment of €150,000 is required, which must be spent over a maximum period of five years. Corporate foundations have limited legal capacity, as they can only own buildings to be directly used for their operations.

Non-autonomous foundations are created by private contract between the host public utility foundation and the founder. Non-autonomous foundations have no legal capacity. They have their own board that decides on operations, but the host institution administers the assets. The legal and fiscal regime of the host foundation applies to non-autonomous foundations under its aegis.

The establishment process for endowment funds is considerably easier, as they are set up immediately after having filed a declaration with the *Préfet* and having published such declaration in the Official Gazette. Since 2015, a minimum endowment of €15,000 is required.

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

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

It depends of the status of the foundation. To establish a public utility foundation, the founder must seek authorisation (*reconnaissance d'utilité publique*) via a decree issued by the French Ministry of the Interior (Ministère de l'Intérieur). The public utility approval process has been simplified by the 2003 reform. While before this law, it could take up to 18 months for a public utility foundation to be authorised via decree, the procedure has now been shortened to a maximum of 4 to 6 months.

The creation of a corporate foundation needs an authorisation by the *Préfet* (representative of the state at local level); however, it is regarded as officially created if the *Préfet* does not object within four months of the date on which the authorisation request was filed.

The establishment process for endowment funds is considerably easier, as they are set up immediately after having filed a declaration with the *Préfet* and having published such declaration in the Official Gazette.

- Approval by a state authority with discretion: Public utility foundations
- Approval by a state authority without discretion
- Approval by a court
- Notarisation by a notary public

5. Are foundations required to register?

No. Irrespective of their nature (corporation foundations, public utility foundations or non-autonomous foundations) foundations are not required to register, only the authorisation of the Ministry of Interior is required. However, foundations are required to register to the national register of companies and organisations (*Sirene – système informatique pour le repertoire des entreprises et des établissements*) to be able to apply to public grants, to employ staff, to conduct activities which imply to pay VAT or corporate tax.

Endowment funds have to register in a specific register dedicated to associations (decrees are still unpublished).

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

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

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

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 endowment of a public utility foundation is the constituent element of the foundation, which leads to independence and duration. Although the law does not require a minimum endowment, in practice a minimum capital of €1.5 million seems to be requested by the state authorities to grant public utility status.

As of 2003, time-limited foundations can be set up, which are allowed to spend down their endowment. In this case, no minimum endowment is requested by law or in practice.

A minimum capital of €150,000 is required for corporate foundations, which must be spent over a maximum period of five years.

Finally, it is possible to set up a foundation with no endowment, the activities of which depend only on yearly donations (fondations de flux).

Since 2015, a minimum of €15,000 is required for endowment funds.

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

Initially, only long-term endowments were allowed to create foundations without the possibility to spend the initial capital (fondations à dotation pérenne). In that case, the foundation can spend only the income of the capital and to ensure sustainability, the assets must be protected from monetary erosion.

According to Law no. 2003-709, time-limited foundations can be set up, which are allowed to spend down their endowment (fondations à dotation consommable). In addition, it is possible to set up a foundation whose activities depend on yearly donations (fondations de flux). Corporate foundations cannot have an endowment; they are required to spend their capital throughout five years. On the contrary, public utility foundations are required to have an endowment at their creation.

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

or

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 board of a public utility foundation must consist of at least three categories of members:

Representatives of the founders, who cannot exceed one-third of the board,

Qualified members, who cannot exceed one-third of the board, and

Either a representative of the State appointed by the Ministry of the Interior, or members by right, including at least one representative of the Ministry².

Moreover, it is also possible for the bylaws to provide for representatives of the foundation's employees to participate on the board. In this case, a representative is appointed by the employees themselves.

With respect to corporate foundations, their board must consist of at least two employees of the founding corporation. Not more than two-thirds of the members of the governing board can represent the founder. The other board members must have some expertise in the field of the foundation.

The bylaws may freely decide on the appointment and renewal rules applicable to board members and the conditions of their dismissal as well as the term of their mission, which should preferably not exceed 4 years and should be renewed only once (pursuant to the Model Statute). Except for the founder himself and the members by right, the board members may be dismissed for fair reasons. Board decisions are taken with a simple majority, unless the bylaws provide otherwise (a majority of three-quarters of the members for amending the bylaws, for example). A meeting of the board can be called by the president or by at least one-quarter of the board members. The board shall convene at least twice a year (every 6 months, as provided by the Model Statute).

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

The board is in charge of the management of the foundation and rules on all important decisions: the budget, clearance of the annual accounts, modification of the bylaws, acceptance or refusal of gifts and legacies, etc. The president of the board is the legal representative of the foundation. Remuneration of board members is not allowed.

Regarding endowment funds, the only requirement is that the board must consist of at least 3 members, the first ones being appointed by the founders.

- 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?

Only the board of public-utility foundations has the capacity to decide on any change to be made to the bylaws; the founders have no right to that extent.

The bylaws can be modified only after two deliberations of the board of directors (or of the supervisory board) taken between two months minimum and nine months maximum of interval and in the majority of three quarters of the members in exercise. Only one deliberation is needed if the modification is approved unanimously.

Changes of bylaws of a public utility foundation must be approved by the Highest Court or the Minister of the Interior.

Regarding corporate foundations, bylaws can be modified after deliberation of the management board. Then the modifications to the bylaws need an authorisation by the *Préfet* (representative of the state at local level).

As for endowment funds, any amendment to the bylaws must be declared to the *Préfet* (no authorisation is needed) and published in an Official Gazette.

- 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?

Founder or the board cannot amend the statutes on their own. Modifications of the statutes must respect the procedure described above (answer 8.d).

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

The third parties have only a general right of information.

- 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?

Any board member, advisory member, staff member or person representing the foundation shall declare any conflict of interest. In case of conflict of interest, the member shall not take part in the vote on any decision.

However, there is no legal definition of a conflict of interest.

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

It varies from one foundation to another, depending on what has been provided in that respect in the bylaws.

- 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?

Whatever their nature, foundations have a civil liability for damages to third parties. Board members can be held civilly and criminally liable.

The same rules apply to endowment funds.

Fault and negligence are the general standard of diligence.

Yes, France does distinguish between voluntary and paid board members. When unpaid, the liability of a board member is assessed in a less strict manner.

Two public authorities can control breaches of duties: French Anti-Corruption Agency or the Court of Auditors.

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 president of the board represents the foundation or the endowment fund towards third parties. The bylaws may authorise the president to delegate his/her powers to the general manager.

Directors and officers may have powers of representation only if the bylaws of the foundation provide for this, and the board of directors has authorised that powers of attorney be granted to them.

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

Foundations and endowment funds can engage in commercial activities. Commercial activities are allowed within the framework of the foundation, provided they support the public-benefit purpose of the foundation or the funds.

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?

Grantmakers are allowed to fund legal entities that are conducting economic activities if and only if the main activity is in the scope of the general interest as defined in the art. 200 & 238bis of the French Tax code. If so, other criteria are required to be met: the activities should not defend the interest of a closed circle of beneficiaries, the entity should be managed as a not-for-profit one and should not be in direct competition (ie. same product, same public, same price, same advertising methods) with an economic entity.

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?

Since the enactment of a law dated 15 July 2005, a public utility foundation is entitled to hold the majority of the shares in a commercial company provided such ownership is in line with the purpose of the foundation, based on the so-called "principle of speciality" (*principe de spécialité*). However, the bylaws of the foundation may restrict or prohibit major shareholding (for instance, this is the case of Fondation de France). Moreover, due to potential adverse tax consequences, foundations do not currently make use of such a possibility in practice.

These principles have been confirmed in the PACTE law dated 22 May 2019 ("the Action Plan for Business Growth and Transformation").

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?

Unlike corporate foundations and associations that can only own real estate if directly used for their operations, public utility foundations as well as endowment funds do not face such restrictions. They can receive legacies and donations, while corporate foundations can only receive contributions from the founding corporation, and from the employees of the founding corporation and of any related companies.

Financial advantage cannot be granted by the foundation to the founder or their relatives.

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)

The French Monetary and Financial Code (*Code monétaire et financier*) prohibits entities other than banks or financial institutions from granting loans on a regular basis. Therefore, foundations and endowment funds are only entitled to allocate loans within their public-benefit purpose, subject to specific conditions. As a consequence, they notably can only grant no-interest or very low-interest loans.

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

There are limitations:

- Political party related activities are not included in the general interest definition of the Tax code, i.e. foundations are not allowed to conduct these activities.
- Advocacy activities are allowed only if this activity is a means to conduct the main purpose of the foundation; otherwise, advocacy activities are not allowed (not included in the general interest definition of the Tax code).

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

According to Arts. 12 and 15 of the Model Statute, any amendment to the bylaws must follow a strict and complex procedure and has to be approved by French public authorities (cf. answer 8.d).

Regarding corporate foundations, any amendment of the bylaws or of the purposes needs an authorisation by the *Préfet* (representative of the state at local level).

As for endowment funds, any amendment to the bylaws must be declared to the *Préfet* and published in an Official Gazette.

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)?

Art. 16 of the Model Statute requires that all public utility foundations send an annual report and financial statements to both the competent *Préfet* (representative of the state at local level) and the Ministry of the Interior. Other ministries may also ask for an annual report.

Corporate foundations and endowment funds must send their annual report and financial statements to the administrative authorities.

Finally, foundations engaging in public fundraising must also make publicly available a special report, the so-called earmarking of funds account ("*compte d'emploi des ressources*") which details all the funds raised from the public and the use of such funds.

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

They may be reviewed by the supervisory authorities, as well as the tax authorities within the framework of a standard tax audit. In practice, such controls do not seem to be very frequent.

d) Do any or all of the reports and/or accounts of foundations need to be made publicly available? If so, which reports and where (website, upon request)?

Yes. These reports must be published each year on the website of the Official Gazette (*Journal Officiel*).

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

Public utility foundations and corporate foundations must appoint an auditor, plus a substitute. The same rule applies to endowment funds when their annual income exceeds €10,000.

Foundations are also subject to audits made by the Cour des Comptes, which is the Auditors court having jurisdiction to audit the account of public entities and of entities engaging in public fundraising.

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

The auditors of foundations (as well as auditors of any commercial company) are chosen from a list established by local Courts of Appeal, of individuals and audit companies sworn by the auditors' professional organisation.

19. Supervision: Which authority, what measures?

The Ministry of the Interior and the *Préfet* (representative of the state at local level) (the sole *Préfet* in the case of endowment funds and corporate foundations) exercise the supervision once a foundation is set up.

Until 31 December 2005, donations and legacies to foundations had to be approved by the state. However, the process is now easier since the adoption of Law No. 2004-1343 dated 9 December 2004 and Ordinance no. 2005-856 dated 28 July 2005, which have eliminated the need for state approval. As of 1 January 2006, donations and legacies can be freely accepted by foundations, the state authorities having the right to object only if they believe that a foundation would not be able to use a gift or legacy in accordance with its statutory objectives. Please note that gift and legacies made to endowment funds are not subject to this control.

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:

Decisions of the board of directors related to (i) modification of the bylaws, (ii) sale of any real or financial assets which are part of the foundation's capital, (iii) creation of a mortgage and (iv) loans, are all subject to a formal approval of the *Préfet* or the Ministry of Interior for public utility foundations.

Decisions of the management board of corporate foundations related to modification of the bylaws are subject to a formal approval of the *Préfet*.

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: a representative of the State appointed by the Ministry of the Interior, or members by right, including at least one representative of the Ministry (for public utility foundation only).

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

None, except for the cancellation of the public-benefit status with respect to public utility foundations.

20. When and how does a foundation dissolve?

According to Art. 13 of the Model Statute, the managing board or the supervisory board may decide upon dissolution of a foundation. The foundation must be dissolved if its public utility status is withdrawn, or if its endowment becomes insufficient. The foundation also has to be dissolved if its endowment is not transferred to the foundation by the promised date. The Ministry of the Interior, as well as the representative of the government appointed to the board, will have to approve any dissolution of the foundation. Resources not used at the dissolution date must be transferred to another foundation or association, which has a similar purpose.

Regarding corporate foundations, dissolution can occur when its lifetime is completed (5 years if no extension decided), when all funders decide amicably to end it (only if they all provided the promise funds) or when the *Préfet* (representative of the state at local level) removes the authorisation. Resources not used at the dissolution date are transferred to one or several public organisations or public utility organisations having similar activities to the dissolute foundation.

Regarding endowment funds, dissolution can occur when its lifetime is completed if defined at its creation, when the members decide the dissolution or when the *Préfet* notices serious dysfunction. Resources not used at the dissolution date are transferred to another endowment fund or to a public utility foundation.

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 maximum.

22. Does civil and/or tax law require a foundation to spend a certain percentage of its overall assets within a certain period of time (e.g. within the next financial year)? In particular, can

a foundation accumulate these expenses over a period of time (and if so, what kind of authorisation is required to do so)?

No.

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

From a French legal standpoint, foreign foundations may benefit from a limited legal capacity in France provided they have legal personality under the law of their country of incorporation. Pursuant to such limited capacity, they may enter into contracts, purchase and own assets, be party to a legal action, and organise events in France. As a consequence, if a foreign foundation intends to perform its statutory purpose in France, it should then either create a foundation under French law, or seek special authorisation (recognition of public utility status) via a decree issued by the French Ministry of the Interior, after having received the approval of the *Conseil d'Etat* (French supreme administrative court).

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?

French foundations are currently authorised to perform their activities abroad. However, French tax law denies the application of income and corporation tax reductions to gifts made to foundations which do not conduct the main part of their activities in France. As an exception to that principle, French foundations collecting funds and organising humanitarian missions abroad, as well as French foundations collecting funds to promote French language, culture and scientific knowledge outside France, are deemed to be performing their activities in France in that sense.

Following *the Hein Persche c/ Finanzamt Lüdenscheid case*, and the judgement of the European Court of Justice, the French tax code has integrated in 2010 the provision that foreign entities of public interest whose seat is located within the EU or within the European Economic Area can be entitled to tax benefits, only if they have the same characteristics as French entities entitled to art 200 and art 238 bis CGI.

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

The restrictions concern the eligibility of the donor for tax incentives.

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?

There is no mention on that matter in the civil law regarding foundations. The dissolution and then the creation of a new foundation respecting the national law would be the only way to transfer the foundation abroad.

II. Tax treatment of foundations

1. What are the requirements to receive tax exemptions?

- Pursuing public-benefit purposes
- Non-distribution constraint
- Being resident in the country
- Other

2. What are reporting/proof requirements to claim tax exemptions? What does the foundation have to submit to the authorities (statutes, financial reports, activity reports, other?)

No special application is needed to receive tax exemption.

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

Foundations receiving state funds exceeding €23,000 are required to sign a convention with the state, such convention defining the conditions of use of the funds received as well as the rules of reporting.

In addition, the *Cour des Comptes* has full jurisdiction to audit the reports and accounts of foundations receiving state funds, funds from local authorities as well as European funds

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

Foundations engaging in public fundraising must make publicly available a special report, the so-called "earmarking of funds account" ("*compte d'emploi des ressources*"), detailing all the funds raised from the public and the use of such funds.

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?

In France, there is no definition of public-benefit purpose in civil law.

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.

In France, under tax law, the public-benefit purpose condition is regarded as fulfilled when (i) the activity of the foundation is a non-for-profit one, (ii) the management of the foundation is non-profit-minded, (iii) no advantage is obtained for the founders and (iv) the foundation's activities do not benefit a limited group of persons.

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”

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

In France, under tax law, one of the conditions of the public-benefit purpose is that the foundation's activities do not benefit a limited group of persons.

- 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?

The “limited /restricted group” notion is not a reference to a small number of persons, but rather to a restrictive definition of beneficiaries. Therefore, a foundation could support persons who suffer from a rare disease (since anybody could potentially be affected by such disease), whereas it could not support veterans or former students of a particular school.

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.?

No, from a legal standpoint. However, such prohibitions or limitations are frequently included in the bylaws of French foundations.

- 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?

French civil law provides that, in such a situation, the foundation's assets must be devolved by the board to another foundation. A similar rule applies to endowment funds.

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**?

No, board members can benefit from a refund of their business expenses only if provided by the foundation's internal regulations.

- b) Does **tax law** allow a donor/funder to receive some type of benefit in return for a donation? (e.g. postcards, free tickets for a concert)

Yes. However, the tax reduction regime is denied to the donor/funder if the benefit granted in return for the donation exceeds a certain limit, which represents a ratio of one to four between the amount of the benefit and the amount of the gift, with a ceiling of €65 for individuals. A valuation of gifts made by non-profit organisations is required when the donations are received by companies, and the companies have to declare the valuation to the tax administration.

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

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

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.	Yes, provided that the reversionary interest is limited to a specific length of time or to the life of the founder and the interest reverts to the foundation at the expiration of this period.				
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.	Yes, provided that the foundation can freely decide not to renew the lease upon its expiration.				
A foundation distributes a (small) part of its income to the founder or their family.					No, since it would then not be of public benefit.

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.	Yes, provided that the reversionary interest is limited to a specific length of time or to the life of the founder and the interest reverts to the foundation at				

	the expiration of this period				
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.	Yes, provided the foundation can freely decide not to renew the lease upon its expiration.				
A foundation distributes a (small) part of its income to the founder or their family.					No, since it would then not be of public benefit.

12. Distributions and timely disbursement

- a) Are foundations allowed to spend down their endowment?

Yes, in the case where the foundation is set up for a limited period of time. By definition, this is the case for corporation foundations.

Endowment funds are normally not allowed to spend down their capital, unless this is authorised by their bylaws. However, if such a provision is included in the bylaws, the endowment fund becomes liable to corporation tax.

- 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, with no minimum length of time, except for corporate foundations which must be created for a minimum of 5 years.

- 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 th 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 th 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?

It is possible under certain conditions. French foundations or foundations collecting funds and organising humanitarian missions abroad, as well as French foundations collecting funds to promote French language, culture and scientific knowledge outside France, are deemed to be performing their activities in France in that sense, as well as those acting in favour of environmental protection.

The donors get the same tax incentive if the public-benefit organisation is established in the EEA and is comparable to a French public utility organisation in terms of purpose and legal form.

Regarding donations to organisations outside the EEA, these are eligible to tax incentives if both of the following conditions are met:

- The gifts are dedicated to promote and disseminate French language, culture and scientific knowledge outside France, dedicated to humanitarian activities, or dedicated to actions in favour of environment protection.
- The organisation defines and controls the programme of actions from France or the EEA state where the seat is located; it should also fund directly the actions and it should be able to justify all expenses to realise its mission.

The following are also eligible:

- International organisations in which France takes part and which engages in public fundraising (for instance, UN programmes)
- Fellowships abroad for French students, for PhD or post-doctoral work

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)?

Public-benefit organisations are not allowed to fund for-profit organisations as one of the criteria to be eligible to engage in grantmaking is that the organisation's management does not have a financial interest in the organisation.

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

Grants and donations received by foundations are tax exempt.

b) Investment income (asset administration)

Since 1 January 2005, most investment income (dividends, interest, rental income derived from unfurnished premises) is tax-exempt.

A 15% withholding tax applies to French non-profit organisations, except public-benefit foundations and endowment funds which are exempted from it. This withholding tax at a rate of 15% is also levied on dividends paid to comparable foreign organisations as of 2010.

Interest from fixed rate bonds

Public-utility foundations, as well as endowment funds whose bylaws do not allow their capital to be consumed, are tax exempt with respect to income derived from their estate, including interest and

dividends. All other PBOs are taxable with respect to interest from fixed-rate bonds at reduced rates of 10% or 24% (interest from fixed-rates bonds issued prior to 1 January 1987 are tax exempt).

Equities

Public-utility foundations, as well as endowment funds whose bylaws do not allow their capital to be consumed, are tax exempt with respect to dividends.

Income from leasing of a property that belongs to the foundation

Public-utility foundations, as well as endowment funds whose bylaws do not allow their capital to be consumed, are tax exempt with respect to income derived from their real estate, including income derived from the leasing of a property belonging to them. All other PBOs are taxable with respect to rental income at a reduced rate of 24%.

c) Economic activities (related/unrelated)

Income from running a hospital/museum/opera

Ancillary economic activities of PBOs that are directly linked to the public-benefit purpose of the organisation are exempt from corporate tax up to a ceiling of €72,000 exclusive of VAT.

Income from producing/selling books (e.g. art books sold by a cultural foundation)

Ancillary economic activities of PBOs that are directly linked to the public-benefit purpose of the organisation are exempt from corporate tax up to a ceiling of €72,000 exclusive of VAT.

Income from running a bookshop inside a museum/opera run by the foundation

Ancillary economic activities of PBOs that are directly linked to the public-benefit purpose of the organisation are exempt from corporate tax up to a ceiling of €72,000 exclusive of VAT.

Income from running a café in the hospital/museum run by the foundation

This is regarded as an unrelated economic activity, which is fully taxable.

Income from selling merchandise (activity not related to the pursuance of the public-benefit purpose)

This is regarded as an unrelated economic activity, which is fully taxable.

Income from intellectual property (e.g. royalties and licence fees)

This should be regarded as passive income derived from the foundation's estate, and should thus be exempt from company tax, but subject to VAT at a reduced rate.

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

The French Monetary and Financial Code (*Code monétaire et financier*) prohibits entities other than banks or financial institutions from granting loans on a regular basis. Therefore, foundations and endowment funds are only entitled to allocate loans within their public-benefit purpose, subject to specific conditions. As a consequence, they notably can only grant no-interest or very low-interest loans. In such cases, income derived from such loans is tax exempt as far as it is regarded as directly linked to the purpose of the foundation.

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

Major shareholding is normally not regarded as an economic activity but as simple administration of assets. However, if a foundation is actively involved in the operational management of a company, the shareholding would then be considered a taxable economic activity, which could entail a corporate tax burden for the foundation if not considered an ancillary activity.

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

N/A

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

As long as they do not perform economic activities, foundations and endowment funds are not subject to VAT.

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

There is no capital tax applicable to legal entities in France.

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

Sales of real estate or shares by a foundation are subject to transfer taxes (*droits d'enregistrement*) which are usually borne by the purchaser. The transfer of assets from a foundation to a public-utility foundation is exempt from transfer tax, irrespective of the nature of the assets transferred (Article 1039 of the French Tax Code).

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

Foundations and endowment funds are liable for property tax on any immovable property they own on 1 January of each year.

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

Yes, but only if it performs its activities on French territory and is regarded as having a public-benefit purpose in France.

All of the above listed documents must be provided, as well as information on the nature of their non-profit activities performed in France.

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 no bi-lateral tax treaties specific to public-benefit organisations. Treaties exist only regarding succession and/or gift duties (see. V.5 below).

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?

Most tax treaties signed by France do not cover French foundations, which are thus usually not regarded as "residents of France" for the application of such treaties. Therefore, income derived by a French foundation from foreign investment is normally subject to any applicable foreign withholding tax, unless provisions of the foreign applicable domestic law exempt them from such withholding 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?

French resident taxpayers, regardless of their nationality, benefit from a tax credit in relation to gifts made to foundations. The beneficiary foundation, irrespective of the location of its head office in France or abroad, must however conduct part of its activities in France or benefit the national community. To that extent, a French foundation collecting funds and organising from France humanitarian missions abroad is deemed to be performing its activities in France in this sense. The foundation must provide the donor with a receipt, and such a receipt must be enclosed with the donor's tax return in order for them to enjoy a tax credit.

Any type of donation can be made to a foundation: cash, shares, securities, real estate, in-kind donations, etc.

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?

Individuals making gifts to public-utility foundations, to foundations under the aegis of a public-utility foundation or to endowment funds, as well as employees contributing to the corporate foundation set up by their company, benefit from a tax reduction equal to 66% of the value of their gift (75% for gifts made to foundations and other organisations which supply free meals to persons in difficult situations), up to 20% of the donor's taxable income, according to Art. 200-1 CGI. When the amount of the gift exceeds this threshold, the excess is carried forward over the next 5 years.

Since 1 January 2018, individual donors may opt to benefit from a real estate wealth tax reduction with respect to gifts of cash and/or listed shares made to public-benefit foundations. The wealth tax reduction is equal to 75% of the value of the gift and is limited to €50,000. Please note that if the donor opts for the real estate wealth tax reduction, he cannot benefit from the income tax reduction with respect to the same gift. This tax advantage has not been extended to gifts made to endowment funds.

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

Any kind of assets qualify for personal income tax deductibility, i.e. cash, shares whether listed or not, real property, intellectual rights, etc. With respect to wealth tax deductibility, only cash and listed shares qualify.

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?

According to Art. 238 bis of the Tax code, corporate donors can benefit from a tax reduction equal to 60% of the donations to public-utility foundations and to endowment funds up to €10,000 or up to 0.5% of their annual turnover if this amount is higher than €10,000. The €10,000 ceiling was introduced in the 2019 financial law to favour gifts from small companies. Should there be no profits in the following years, the deduction can be carried forward over the next five years. The deduction may also be carried forward over the following 5 years, if the donations are beyond the 0.5% limit. The founding company can also benefit from a tax credit with respect to gifts made to a corporate foundation it has set up.

From 31 December 2020, the 2020 Financial Law sets the ceiling of the gift to €20,000 (or still 0.5% of the annual turnover) and for gifts higher than €2 million, the tax reduction will be 60% up to €2 million and 40% on the amount over €2 million.

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

Any kind of assets qualify for tax deductibility, i.e. cash, shares whether listed or not, real property, intellectual rights, as well as gifts in kind and even skill-based sponsorship.

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

The donors get the same tax incentive if the public-benefit organisation is established in the EEA and is comparable to a French public-utility organisation in terms of purpose and legal form.

Regarding donations to organisations outside the EEA, these are eligible for tax incentives if the following conditions are met:

- The gifts are dedicated to humanitarian activities, to promote and disseminate French language, culture and scientific knowledge outside France, or to actions in favour of environment protection.
- The organisation defines and controls the programme of actions from France or the EEA state where the seat is located; it should also fund directly the actions and it should be able to justify all expenses to realise its mission.

The following are also eligible:

- International organisations in which France takes part and which engage in public fundraising (for instance, UN programmes);
- Fellowships abroad for French students, for PhD or post-doctoral work.

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)?

The donor, whether an individual or a corporation, must file together with its annual tax return a form delivered by the foundation certifying the nature and the date of the gift it received as well as the amount of such gift. No other information is required.

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?

Due to ongoing discussions among the French authorities, this information is pending.

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

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

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

No.

IV. Tax treatment of beneficiaries

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

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

Individuals receiving funds from a foundation are exempt from paying tax on them if such funds are granted as assistance of an exceptional nature. However, if such funds are granted in exchange for compensation (such as the provision of certain services), they are subject to individual income tax at standard rates.

Prizes granted by a foundation are normally taxable. However, literary, artistic and scientific prizes are tax exempt provided they are allocated by an independent jury and have been granted for at least 3 years.

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?

Grantmakers are allowed to fund legal entities that are conducting economic activities if and only if the main activity is in the scope of the general interest as defined in the art. 200 & 238bis of the French Tax code. If so, other criteria are requested: The activities should not defend the interest of a closed circle of beneficiaries, the entity should be managed as a not-for-profit one and should not be in direct competition (ie. same product, same public, same price, same advertising methods) with an economic entity.

Subsidies granted by a foundation to non-profit entities are tax exempt if they are used for the purpose of tax-exempt activities by the beneficiary entities.

Otherwise, the beneficiaries are subject to corporate income tax.

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

None

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 taxes exist in France, and are to be paid by the recipient organisation.

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?**

Gifts and legacies to public-utility foundations are subject to gift/inheritance tax at the following rates: 35% for that part of the gift/legacy between 0 and €24,430, 45% over €24,430.

Gifts and legacies made to other foundations are taxed at 60%.

However, public-utility foundations whose resources are exclusively spent for assistance, environment, animal protection, scientific, cultural or artistic purposes are exempt from inheritance and gift tax. Special donations such as goods of historical value, books, and paintings are also exempt from this tax.

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

No.

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

The descendants of a deceased person benefit from a heritage reserve, fixed in:

- 50% with the presence of a child
- 2/3 with the presence of 2 children
- 3/4 with the presence of 3 children or more

The surviving spouse is also entitled to a reserve of ¼.

A parliament report published on 9 June 2020 advises to change the heritage reserve.

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

Donations made to non-resident public-benefit foundations are subject to French gift taxes, unless provided otherwise by a tax treaty. Up to now, France has signed treaties regarding succession and/or gift duties **and** containing a specific provision relating to non-profit organisations only with the following countries: Austria, Finland, Italy, Spain, Sweden, the United States and Switzerland (only with respect to some “cantons”).

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?**

In December 2009, the amending law to the 2009 budget law was adopted, including provisions in order to remove discrimination against foreign charities (associations and foundations) in practice. Under this legal provision, French tax residents making gifts to public-benefit organisations established in the EEA that are comparable to French public-benefit organisations will be given the same tax advantages as those granted to French tax residents making gifts to French non-profit organisations, subject to the following conditions:

- The foreign organisation is established in a country which has signed a tax treaty with France containing a clause for assistance against tax fraud or evasion and the foreign organisation has obtained a specific agreement from the French tax authorities.
- In the case where the organisation has not got this agreement, the donors may still benefit from the tax advantages provided that they file evidence that the organisation is comparable to a French tax-exempt organisation.

In June 2017, the tax doctrine has specified these conditions (cf. answer III.4.).

There have been no further discussions since then.

- 2. Has the fight against terrorism and financial crime led to the introduction in recent years of new laws/rules affecting the foundation sector (e.g. implementation of EU Anti Money Laundering Directive, or reactions to recommendations of the Financial Action Task Force)? Has it for example become more difficult to:**

The French law on fighting terrorism and dealing with security and border controls issues (Law no. 2006-64 dated 23 January 2006) does not affect directly the foundation sector. However, foundations often set up best practices related to this issue, and auditors are particularly cautious on the matter.

- Set up a public-benefit foundation
- Obtain permission to transfer funds across borders
- If able to transfer of funds across borders, has the process become more burdensome administratively
- Open a new bank account
- Maintain a bank account
- Fund certain activities
- Fund certain regions/countries
- Fund certain organisations (please explain the reason - foreign funding restriction?)
- Report to authorities/deal with administration
- Other

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

No.

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

No.

5. Does your country have a specific register for BO of legal entities/foundations or does the foundation/company/association register serve as a BO register?

No.

6. Are there any other recent trends or developments affecting the legal and fiscal environment for public-benefit foundations in your country such as one or more of the following?

a) Law revision in the pipeline

A parliamentary report was published in June 2020 on French philanthropy, presenting 35 recommendations to support French philanthropy by changing the general framework of philanthropy. Thus, revisions of the law might occur in the coming years.

The main recommendations address the following issues:

- Simplify and clarify the legal framework of foundations (for instance, by decreasing the number of legal forms, reinforcing the role of the government representatives)
- Diversify the funds of philanthropy (for instance, by modifying the legal framework of donations and legacies)
- Reinforce the support and evaluation of philanthropy, mainly by the creation of a multi-actor and inter-ministerial organisation in charge of monitoring the sector.

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?

The report described above suggests to create a dedicated structure to monitor and evaluate the foundation sector.

c) Tendency towards more transparency requirements?

The report described above addresses ethical and transparency issues as well.

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

The report described above recommends more governmental controls than self-regulation.

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

The report described above recommends to reduce the number of legal forms of foundations, but recommends to keep 3 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?

Yes, Law no. 91-772 dated 7 August 1991 regulates public fundraising done by organisations in order to support scientific, social, family, humanitarian, philanthropic, educational, sports, cultural or environmental actions, irrespective of the nature of the organisation concerned. Therefore, the provisions of this law fully apply to foundations provided they are authorised to engage in public fundraising (which is not the case for corporate foundations). Since 22 May 2019, organisations engaging in public fundraising must declare it beforehand to the *Préfet* (representative of the state at local level) if the collected amount is higher than €153,000.

VII. Further information

Useful contacts

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- [Law no. 2003-709 dated 1 August 1 2003](#) (Loi relative au mécénat, aux associations et aux fondations)
- [Law no. 2004-1343 dated 9 December 2004](#) (Loi de simplification du droit)
- [Law no. 2006-450 dated 18 April 2006](#) (Loi de programme pour la recherche)
- [Law no. 2007-1199 dated 10 August 2007](#) (Loi relative aux libertés et responsabilités des universités)
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- [Law n° 2019-486 dated 22 may 2019 on growth and transformation of companies](#) (JO 23/05/2019)
- [Tax Code – art. 200](#) (*Code général des impôts – article 200*)
- [Tax Code – art. 238bis](#) (*Code général des impôts – article 238bis*)
- [Parliamentary report of deputies El Hairy & Moutchou on la philanthropie à la française](#), delivered to Prime Minister on the 9th of June 2020. See also the [interview of Sarah El Hairy by the CFF](#).

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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