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Legal Environment for Philanthropy in Europe

Lithuania

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 Charity and Sponsorship Funds was adopted in 1996 in Lithuania. This Law has since undergone several amendments, the last of which were made in the end of 2019.

According to the Law on Charity and Sponsorship Funds, “A Fund is a public legal entity with limited civil liability having its own name, which manages, uses, disposes the assets transferred to it and whose main objectives are providing charity and/or sponsorship and other support, in accordance with the procedure established by the Law on Charity and Sponsorship and this Law, to natural and legal persons in the fields of science, education, culture, arts, religion, sports, health care, social care and welfare, environmental protection as well as in other fields recognized as selfless and beneficial to society.”

This Law does not apply to credit institutions and insurance organisations bearing the name of a fund, nor to funds established under separate laws or international treaties with other states and international organisations.

The name of the Fund shall contain the words “charity” or “sponsorship” or “charity and sponsorship.” Funds in Lithuania may both provide and seek grants as well as carry out economic activities.

The most important laws related to funds in Lithuania are: the Law on the Development of Non-governmental Organizations, the Law on Charity and Sponsorship Funds, the Law on Charity and Sponsorship, the Law on Public Establishments, and the Law on Associations.

- 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?**

The founders of a fund may be natural and/or legal persons who have concluded a memorandum of association and who have undertaken, prior to the fund’s registration in the Legal Entities’ Register, an obligation to make monetary or property contributions and provide services to the fund. Where the fund is established by a single person, this person must execute a founding act, instead of a memorandum of association, subject to the requirements applied to the memorandum of association. Persons who cannot be the providers of sponsorship under the Law on Charity and Sponsorship may not be the founders of a fund.

The memorandum of association (founding act) of the fund must be signed by all of its founders. All founders of the fund become its stakeholders as of the date of the fund’s registration in the Legal Entities’ Register. Prior to registration of the fund in the Register of Legal Entities, the founders of the fund prepare the draft articles of association (statutes) of the fund and convene the founding meeting at which the articles of association of the fund are adopted and at least one management body is formed. The managing body shall act on behalf of the fund with respect to relations with third parties and it shall also conclude transactions on behalf of the fund.

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.

The following information shall be indicated in the fund's memorandum of association (founding act):

- The founders (full names, personal identification codes and addresses of natural persons, business names and identification codes of legal persons as well as their registered offices, full names or business names and personal identification codes (identification codes) of their representatives).
- The name of the fund and its address.
- Property and non-property obligations of the founders.
- The fund's objectives.
- The date of the memorandum of association (founding act).

The memorandum of association (founding act) may also specify:

- The procedure of compensation of founding costs.
- The procedure of settlement of disputes between the founders.
- Persons who have the right to represent the fund, and an indication of their rights and powers.
- The procedure for convening a founding meeting and the procedure of adopting decisions by the founding meeting.
- Other provisions, which do not contravene this (the Law on Charity and Sponsorship Funds) and other laws.

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

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

Both the memorandum (founding act) and articles of the association have to be approved by a notary, prior to the fund's registration in the Legal Entities' Register.

5. Are foundations required to register?

- a) If foundations must register, in what kind of register?
- Company register
 - Foundation register at national level
 - Foundation register at the regional/county level
 - Beneficial ownership register
 - Any other public register (other than a foundation/charity one)

Funds are registered at the Legal Entities' Register (The Centre of Registers is a state enterprise).

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

The following documents must be submitted for registration: memorandum of association (founding act), articles of association, request to register in the Legal Entities' Register and contact information. Documents should contain information on the founders and managing bodies. Annual financial and activity reports should also be regularly submitted to 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
- E.g. annual financial and activity reports.

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?

N/A

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

a) Is it mandatory to have a:

- Supervisory board
- Governing board

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

The structure of the fund's managing and other bodies, the scope of competences, the procedures for convening meetings and adopting decisions shall be defined in the fund's articles of association. The decisions on the election (appointment) and removal of the members of a collegiate managing body and single-person managing body, the chairman of a collegiate managing body and the auditor, and also those of other collegiate bodies, where such bodies are stipulated in the fund's articles of association, are taken by the general meeting of stakeholders. The general meeting of stakeholders is entitled to elect (appoint) and remove members of other collegiate bodies, where such bodies are stipulated in the fund's articles of association and where the articles do not provide otherwise.

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

Setting up a board is not mandatory for the fund. The duties and rights of board members, where applicable, are specified in the articles of association of the fund.

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?

Starting from the date the fund is registered in the Legal Entities' Register all the founders become stakeholders of the fund. The general meeting of stakeholders is the supreme governing body of the fund. One stakeholder shall have one vote at the general meeting of stakeholders, unless the articles of association of the fund provide that the number of votes of the stakeholder shall be proportionally related to the amount of his/her contribution. Where the fund has only one stakeholder, its written decisions shall be equivalent to the decisions of the general meeting of stakeholders.

The general meeting of stakeholders shall have the exclusive right to:

- Amend the articles of association of the fund.
- Take decisions regarding the removal of stakeholders from the fund and conferring stakeholder rights to donors.
- Elect (appoint) members of the collegial managing body and the single-person managing body, the chairperson of the collegial managing body and to recall them.

- Elect (appoint) and recall members of other collegial bodies, if such bodies are provided in the articles of association of the fund.
- Within 4 months from the end of the financial year, approve the set of annual financial statements (accounts) or the annual report of the fund.
- Make a decision regarding the reorganisation and termination of the fund (reorganisation or liquidation).
- To make a decision regarding becoming a participant of a limited liability legal person.
- Make a decision regarding the audit of the financial statements of the fund, to elect and recall an audit company or auditor to audit the financial statements (accounts), to determine the terms of payment for audit services.
- Make a decision to form, start managing, increase the endowment capital or terminate its management.
- Approve rules for the management of the monetary and property contributions.

Members of the managing bodies of the fund and other collegial bodies, if they are not stakeholders of the fund, may participate in the general meeting of stakeholders without the right to vote.

- 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?

The general meeting of stakeholders has the exclusive right to amend the articles of association of the fund.

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

The set of annual financial statements (accounts) and the annual report of the fund are public (available at the Legal Entities' Register). At the request of any legal or natural person, the fund should make the report available at its registered office or in any other convenient manner.

- 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?

It is prohibited for the fund to transfer free of charge assets of the fund to ownership of stakeholders; members of the managing and collegial bodies; persons working for the fund under an employment contract or a person related to them; as well as to transfer the assets of the fund to a third party free of charge (e.g. under a trust or loan agreement) (to the close relative or spouse or partner of a stakeholder who is a natural person, or a close relative of the stakeholder's spouse or partner;

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

The managing body may adopt decisions on the establishment of branches and representative offices as well as termination of their activities and approve their regulations, run projects, represent organisations, hire and dismiss employees, conclude employment contracts, prepare a report on the fund's activities and present it to the general meeting of stakeholders, allocate funds for charity and sponsorship, confirm the valuation of property contributions, analyse the results of the fund's activities, make estimates regarding income and expenditures, publish or arrange the publication of public information, and organise voluntary work in accordance with the procedure established by the Government as well as dealing with other issues within the scope of its competence, unless otherwise provided by the articles of association. Members of the managing bodies and staff members may attend a general meeting of stakeholders without the right to vote.

- 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?**

Standards for board members may be specified in the articles of association of the fund.

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

Members of the fund's collegiate bodies, which are not its managing bodies, cannot be remunerated for their activities.

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?

The general meeting of stakeholders first of all.

The general rule is that if the board's decision caused any harm, board members that voted for such a decision could be liable and prosecuted.

- 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 Law on Charity and Sponsorship Funds states: "The management body acts on behalf of the fund when the fund maintains relations with other persons, as well as concludes transactions/agreements on behalf of the fund."

Representation rights are specified both in law and in the articles of association (statutes) of the organisation.

Do the director and officers have powers of representation based on legislation?

Yes.

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

The Law on Charity and Sponsorship Funds states that the fund has the right to carry out economic activities which are not prohibited by law and which do not contradict the articles of association (statutes) of the organisation or the purposes of its activity and are necessary to achieve the fund's objectives.

- 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?**

Not specified.

- 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?**

No.

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?

The fund is allowed to transfer assets and funds managed by the right of ownership or any other right, to secure the fulfilment of obligations or otherwise restrict its rights of management, use and disposal of assets and funds only if this is intended to achieve the fund's objectives set out in the fund's articles of association (statutes) (including charitable and support objectives set out in the articles in the Law on Charity and Sponsorship).

It is prohibited for the fund, even for the above purposes, to:

- Transfer free of charge assets of the fund to ownership of stakeholders, members of the management and collegial bodies, persons working for the fund under an employment contract or a person related to them.
- Transfer the assets of the fund to a third party free of charge (e.g. under a trust or loan agreement), except for the purposes of charity and sponsorship defined in the articles of association of the fund in accordance with the Law on Charity and Sponsorship.
- Pay benefits to the founders or stakeholders of the fund from the part of the surplus (profit) or to transfer the share of the assets of the liquidated fund that exceeds the contribution of the stakeholders.
- Distribute in any manner the fund's assets and funds, including profits, among the stakeholders and founders of the fund and/or members of its managing bodies, or persons employed by the fund on the basis of an employment contract, excluding the payment of wages and salaries, other payments relating to an employment relationship, payments made under copyright contracts and remuneration for services rendered.
- Grant loans, except in cases when the funds constituting the endowment capital are invested in securities.
- Pledge the assets of the fund, guarantee, warrant or otherwise ensure the fulfilment of the obligations of other persons.
- Borrow money.
- Establish a legal body or to be a participant of another legal body with unlimited liability.
- Participate in political activities directly or through third parties, to spread political advertising.

The fund shall refuse to accept funds or assets from the donor if, in so doing, the donor may influence the activities of the fund for its own benefit or for the benefit of other persons.

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 fund is allowed to transfer the assets and funds managed by the right of ownership and any other right, dispose of them by way of security for its obligations or restrict its right to the management, to use and dispose of such assets and funds, only in the event that this is done to attain the fund's objectives indicated in the articles of association (including the purposes of charity and sponsorship specified in the articles pursuant to the Law on Charity and Sponsorship).

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

It is prohibited for the fund to participate in political activities directly or through third parties, to spread political advertising.

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

Only the general meeting of stakeholders is entitled to amend the articles of association of the fund with a majority of at least 2/3 of the votes cast by the stakeholders of the fund participating in the meeting.

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)

The report on the fund's activities should also include information about the fund's activities aimed at attaining the objectives specified in the articles of association; the number of stakeholders at the end of the financial year (financial year ends on 31 December); the annual financial accounts of the fund; and the number of the fund's employees at the end of the financial year.

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)?

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

No. There is no institution obliged to check annual reports of the fund.

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)?

The managing body prepares an annual report on the fund's activities and financial report for the previous financial year and presents it to the general meeting of stakeholders within the terms set down in the articles of association.

Set of annual financial statements (accounts) and the annual report of the fund are public (available at the Legal Entities' Register). At the request of any legal or natural person, the fund should make the report available at its registered office or in any other convenient manner.

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

The fund's annual accounts must be audited when the fund meets at least one of the following criteria:

1) The fund manages the endowment capital.

2) The fund is controlled by a public limited company, or by a private limited company whose shares or part of them are owned by the state and / or municipality, and where those shares represent more than 1/2 of all votes at the general meeting of shareholders of these companies.

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

The activities of auditors and auditing standards are regulated by the Law on Audit of Financial Statements. All auditors must hold an auditor's certificate.

19. Supervision: Which authority, what measures?

There are no specific regulations for supervision of the fund. The provisions valid for any legal persons apply to the fund: The State Tax Inspectorate inspects the payment of taxes, and the State Social Insurance Fund checks the payment of social benefits. The Centre of Registers grants and removes the status of support recipient; and the National Audit Office may audit the use of public funds.

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?

20. When and how does a foundation dissolve?

The general meeting of stakeholders of at least 2/3 of the votes cast by the stakeholders present at the meeting have the exclusive right to make a decision regarding the liquidation of the fund.

After all the claims by creditors and claims by stakeholders, in respect of a specific share of the fund's assets which does not exceed a stakeholder's contributions to the fund, have been satisfied, the fund's assets and funds remaining are transferred (before the fund is removed from the Legal Entities' Register) to another public legal person or other public legal persons, as determined by the meeting of stakeholders or the court which has passed the decision to liquidate the fund. The fund must then do the following:

- Publish an open notice about the liquidation of the fund in a daily newspaper specified in the fund's articles of association.

- Submit to the Legal Entities' Register the documents attesting to the decision to liquidate the fund, as well as the data concerning the liquidator.
- Draw up an opening balance sheet for the liquidation.
- Transfer the remainder of the fund's assets in accordance with the procedure laid down in the law.
- Draw up the fund's liquidation act.
- Deposit the documents for safekeeping.
- Submit to the manager of the Legal Entities' Register the act of liquidation and other documents necessary to remove the fund from the register.

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?

According to the Law on Charity and Sponsorship Funds, a maximum of 20% of the fund's income for the endowment capital received during that year may be used to cover the fund's administration expenses, in accordance with the procedure established by the Lithuanian Government.

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?

A foreign foundation can be recognised under separate laws or international treaties with other states and international organisations. A foreign foundation will also be recognised upon registering its office (branch office) in Lithuania.

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

No, there are no restrictions as to the place of activities conducted by the fund.

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

No.

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?

No.

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

Funds in Lithuania are not eligible for tax exemptions.

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?)

N/A

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

The fund may receive state funds exclusively under grant tenders or public procurement procedures. Activity and financial reports are submitted directly to the institutions with which agreements were signed, following the provisions specified therein. The annual report and financial statements shall include all the funds and assets received during the financial year. The State Audit Office may inspect the use of public 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?

No, there is no such obligation, the donors themselves report to state institutions to obtain reduction of taxes.

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?

The Law on Charity and Sponsorship defines the purposes of charity and sponsorship as follows:

- Charity is a voluntary and gratuitous provision of charity items by the providers of charity to the recipients of charity. Charity items are provided to charity recipients for the purposes of satisfying their minimal socially acceptable needs, ensuring health care, and/or assisting in the alleviation of the consequences of war, natural disasters, fires, ecological catastrophes, outbreaks of contagious diseases and epidemics.
- Sponsorship is a voluntary and gratuitous provision of sponsorship items by the providers of sponsorship to the recipients of sponsorship, including cases where sponsorship items are transferred anonymously or in any other manner in the event that a specific provider of sponsorship cannot be identified. Sponsorship items are provided to sponsorship recipients for the purposes of public benefit (activities for the purpose of international cooperation, protection of human rights, integration of minorities, promotion of cultural, religious and ethical values, educational, scientific and vocational development, non-formal and civic education, sports, social security and labour, health care, national security and defence, law and order, crime prevention, adjustment of living environment and development of housing, protection of copyright and related rights, environmental protection as well as any activities in other fields recognised as selfless and beneficial to society).

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.

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

According to Lithuanian charity laws science, education, culture, art, religion, sport, health care, social care, environmental and other purposes that are not related to personal benefit are included in the concept of public benefit.

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”?
- 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?

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.

- 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?

After all the claims by creditors and claims by stakeholders, in respect of a specific share of the fund’s assets which does not exceed a stakeholder’s contributions to the fund, have been satisfied, the fund’s assets and funds remaining are transferred (before the fund is removed from the Legal Entities’ Register) to another public legal person or other public legal persons as determined by the meeting of stakeholders or the court which has passed the decision to liquidate the fund.

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**?

Members of the fund’s collegial bodies defined in the articles of association, which are not its managing bodies, cannot be remunerated for their activities.

- 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)

The law allows only advertising, which should not exceed 10% of the value of the donation.

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

No.

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

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

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

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

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

| | Yes | Probably yes | Unclear | Probably no | No |
|---|-----|--------------|---------|-------------|----|
| The founder restricts the use of the endowment by specifying that the foundation is required to maintain the founder, their spouse and descendants. | | | | | X |
| The founder retains a beneficial <i>reversionary</i> interest in the capital of a property or other asset to retain for their own continuing use. | | | | | X |

| | | | | | |
|--|--|--|--|--|---|
| The gift consists only of the <i>freehold reversion</i> (residuary interest) in a residence that is subject to an existing lease (for a term of years, or even for life) in favour of the founder (or another member of their family) as tenant. | | | | | X |
| A foundation distributes a (small) part of its income to the founder or their family. | | | | | X |

12. Distributions and timely disbursement

a) Are foundations allowed to spend down their endowment?

Yes.

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

Yes, they may be set up for a limited time, but there is no defined minimum length of time for which the fund must exist.

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. | X | | | | |

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

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

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

The Law on Charity and Sponsorship does not specify the place of provision of charity/sponsorship, but confines the recipients of sponsorship to entities registered in Lithuania.

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)?

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

Exempt (non-taxable).

b) Investment income (asset administration)

Investments are not allowed for non-profit organisations.

- 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)

A non-profit entity is an entity which is established for purposes other than profit-making purposes and which cannot distribute the profits generated under the legal acts regulating its activities among its founders and/or members. But non-profit institutions may have income from economic activity.

From 2019 January 1st amendment of the Law on Income Tax, which entered into force for NGOs (non-profit entities) defines that the profit made during the first tax period is applicable for exempt. And only for those NGOs (non-profit entities) with an average of less than 10 employees with only participants are exempt natural persons, whose profits do not exceed € 300,000 and whose activities are not suspended or liquidated, are reorganized during the first three tax periods.

The income of these NGOs is then taxed with discounted 5% tariff.

There is only an exception that if the profit is used within the next 2 years, then the income tax will not be applied.

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

Same as for investment income.

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

Same as for investment income.

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

No.

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

If the income exceeds €45,000, the foundation becomes a VAT payer automatically.

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

No.

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

No.

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

None.

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

No.

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

No.

23. Does your country apply withholding tax to the income from local investments held by domestic and/or foreign-based foundations? If so, can domestic or foreign-based foundations reclaim all or part of the withholding tax under domestic law?

None.

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 deduction available for legal persons only.

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?

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

No tax incentives in place for individual donors. They can allocate yearly 1,2% of their income tax to an approved public-benefit entity.

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?

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

The taxpayers who are entitled to provide charity and sponsorship under the Law of the Republic of Lithuania on Charity and Sponsorship may deduct from their income all of the payments made (except for cash payments which exceed the amount of 250 BSB (basic social benefit) (~ € 9500 in respect of a single recipient of sponsorship or charity during the tax period), including the assets transferred and services supplied, which are intended for charity and sponsorship in accordance with the procedure laid down in the Law on Charity and Sponsorship, unless this Article provides otherwise.

The taxpayers who are entitled to provide only sponsorship under the Law of the Republic of Lithuania on Charity and Sponsorship, may deduct twice from their income the payments made (except for cash payments which exceed the amount of 250 BSB (basic social benefit) in respect of a single recipient of sponsorship during the tax period), including the assets transferred and services supplied, which are intended for sponsorship in accordance with the procedure laid down in the Law on Charity and Sponsorship, but not in excess of 40% of the taxpayer's income calculated by deducting non-taxable income, allowable deductions and deductions of limited amounts, except for sponsorship, from income and the losses for the previous tax periods.

Where sponsorship is provided in the form of tangible fixed assets, the amount of sponsorship shall be equal to the residual value of such assets. Where sponsorship is provided in the form of other assets, the amount of sponsorship shall be equal to the acquisition value of such assets. Where sponsorship is provided in the form of services, the amount of sponsorship shall be equal to the cost price of such services. Where sponsorship is provided in the form of tangible fixed assets lent for use, the amount of sponsorship shall be equal to the calculated amount of depreciation of such assets over the period during which they were used by the recipient of sponsorship.

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

Not deductible.

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?

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)?

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?

Such form of donations are not deductible.

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 are subject to tax on grants received from foundations, as stated in the Charity and Sponsorship Law.

Legal entities: Is there any legal/fiscal framework for beneficiaries conducting economic activities so that they can be eligible for foundation funding? Are there any limitations on the economic activities of the beneficiaries?

No.

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

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)?**
- 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?**
- 3. Is there a threshold (non-taxable amount) from gift and inheritance tax for donations/legacies to public-benefit organisations?**
- 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?**
- 5. What is the tax treatment (inheritance and gift tax) of legacies to non-resident public-benefit foundations?**

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?**

Yes, discussions are taking place, the law amendments are being prepared.

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

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

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

No.

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

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

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

- a) Law revision in the pipeline
- b) Discussion about the role of supervisory authorities (civil law, charity regulator, tax authority) and collaboration among them? Decentralisation or centralisation of supervisory structures? Use of watchdog/rating agencies?
- c) Tendency towards more transparency requirements?
- d) Tendency towards more self-regulation? Self-regulation replacing hard law regulation?
- e) Tendency to use alternative forms to classic public-benefit foundations
- f) Other?

- 7. Public fundraising: Are there any specific laws that regulate fundraising and do they affect foundations? N/A**

VII. Further information

Useful contacts

Gaja Šavelė, [National Non-Governmental Coalition](#), gaja@nisc.lt

[Non-Governmental Organisation Information and Support Centre \(NISC\)](#), info@nisc.lt

Selected law texts online

- [Lithuanian Parliament official website](#)
- [State Tax Inspectorate official website](#)
- [State Enterprise Centre of Registers official website](#)
- [Legal information retrieval system](#), only for registered users, paid.
- [Non-Governmental Organisation Information and Support Centre \(NISC\)](#)

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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