

# 2020

## Legal Environment for Philanthropy in Europe

# Glossary

The country profiles included in the Dafne-EFC Philanthropy Advocacy mapping project, “The Legal Environment for Philanthropy in Europe”, were based on a questionnaire sent to national-level experts. This glossary has been developed as an annex to the questionnaire solely for the purposes of this project.

The main objective of the glossary was to facilitate – to the greatest extent possible – the same understanding of some of the key terms used in the questionnaire by the national experts across the 40 countries profiled. The approach taken, with the approval of the project’s advisory group, was to develop functional, rather than legal, definitions. These functional definitions differ from the legal definitions used in national legislations or European/international law contexts.

## Glossary Terms

### Administrative/indirect costs

Office and administrative costs are expenses that are not directly associated with and attributable to a programme, project, or specific area of a foundation's work, but which might still be incurred as a result of a programme, project or specific area of work (e.g. staff, offices space, electricity, utilities etc.).

### Asset

An asset is any resource owned by the foundation. Anything tangible or intangible that can be owned or controlled to produce positive economic value is an asset.

### Beneficial owner

Beneficial owners (BO) are: "natural person(s) who ultimately owns or controls the customer and/or the natural person(s) on whose behalf a transaction or activity is being conducted."<sup>1</sup>

### Disbursement

Disbursement is the act of paying out or disbursing money.

### Economic activity

Economic activity is trade or business activity involving the sale of goods and services. Normal asset administration by foundations (including investment in bonds, shares, or real estate) would not be considered as economic activity.

Related economic activity is in itself related to and supports the pursuance of the public-benefit purpose of the foundation.

### Endowment

Endowment means the part of the assets/property of a foundation, which is generally not to be spent as such but invested in the market to generate income to support the specific purpose of the foundation. "Endowment" refers to the total of a non-profit institution's investable assets, also known as "principal" or "corpus", which is meant to be "invested" in the market and with the return from these investments used for operations or programmes that are consistent with the wishes of the donor. Some countries also allow foundations to spend down the endowment whereas in other cases this is not allowed.

### External audit

External audit is an independent examination by the third party of the financial statements prepared by the organisation.

### Foundation

There is no universal legal definition in Europe for "foundations". Therefore, a "foundation" can have different meanings, varying from one country to another. This is due to the many languages and cultures as well as the different legal and fiscal environments that exist across Europe. This mapping focuses on public-benefit foundations/institutional philanthropy, see the definition below for this term.

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<sup>1</sup> Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (Text with EEA relevance).

### *Foundation in Civil law*

Civil law countries traditionally follow an organisational approach. Usually, an institutional legal form exists having rather similar conceptual criteria, which is usually called “foundation” alongside such other legal forms as the (non-profit) association, the company or the co-operative.

### *Foundation in Common law*

In common law countries different legal forms exist, such as trusts or limited liability companies, but a foundation as a legal form does not exist. The approach is to focus on the “charitable” character of the organisation. To be a charitable institution, an organisation must have exclusively charitable purposes and it must be administered for public benefit.

For the purpose of this PA legal mapping, we hence use a functional approach and use the term public-benefit foundation/institutional philanthropy to embrace and cover all different types of national organisations that are about private resources for the public good, see definition below under public benefit foundation.

### **Foreign foundation/foreign public-benefit foundation**

A foreign foundation means a foreign-based public-benefit foundation (see the definition of public-benefit foundation/institutional philanthropy below) being resident in one country and giving or engaging in activities across borders.

### **Governing board**

Governing board means the legally prescribed decision-making body of a foundation. It is a body of persons holding ultimate responsibility for ensuring that the organisation serves its mission and for the overall welfare of the organisation.

### **Impact investing**

Impact investments are contributions made with the intention to generate positive, measurable social and environmental impact (alongside or without a financial return).

### **Major shareholder**

A foundation is a major shareholder if it holds a significant interest (majority interest/share) in one or more commercial undertakings.

### **Mission-related investment**

Mission-related investment refers to the use of investments (asset allocation/investment of their endowments) by foundations as tools to achieve their philanthropic goals. The term mission-related investments is used to describe investment that supports the mission of the foundation by generating a positive social or environmental impact, while generating reasonable rates of financial return.

### **Non-distribution constraint**

A non-distribution constraint implies that any transactions/benefits to third parties going beyond reasonable compensation for services rendered are prohibited (such as unreasonable board remuneration or excessive payments to service deliverers).

### **Obligated entity**

Article 2 of the Anti-Money laundering Directive (AMLD) defines obliged entities as credit institutions and financial institutions which need to fulfil the obligations laid out in the Directive such as:

- Identify and verify the identity of their customers and of the Beneficial Owners (see the definition above) of their customers (for example, by ascertaining the identity of the natural person who ultimately owns or controls a company), and to monitor the transactions of and the business relationship with the customers.
- Report suspicions of money laundering or terrorist financing to the public authorities, which is usually the financial intelligence unit.
- Take supporting measures, such as ensuring the proper training of personnel and the establishment of appropriate internal preventive policies and procedures.

### Party political foundation

Party political foundations are foundations closely linked with a particular political party, underpinning and complementing the objectives of that party.

### Payout requirement

A payout requirement is the minimum amount of the overall assets or overall yearly income a foundation is required to expend for charitable purposes.

### Public at large

The criterion “public at large” implies that a group of beneficiaries cannot be a closed circle in a sense that beneficiaries can be identified based on legal or family affiliations.

### Public-benefit foundation/Institutional philanthropy

The terms public-benefit foundation and institutional philanthropy are used in this mapping exercise interchangeably in order to recognise and embrace the full variety and structures that exist for such philanthropic organisations. The terms institutional philanthropy and public-benefit foundation refer to foundations, corporate funders and other players that:

- Have their own financial resources which they deploy strategically
- Are independently governed
- Use private resources for public good<sup>2</sup>

According to this functional definition, a public-benefit foundation generally has the following characteristics:

- Is an independent organisation (separately constituted and independently managed body with its own governing board, generally with its own legal personality, and legal form of the organisation in specific terms, for example PLC, S.A., fondation d'utilité publique, etc.)
- Serves a public-benefit purpose (there can be an exhaustive list of purposes or an open list depending on jurisdiction)
- Is either supporting associations, charities, educational institutions or individuals, or operates its own programmes<sup>3</sup>)
- Has its own financial resources either in the form of an endowment (see the definition of endowment) or other source of income (irrevocably provided with valuable goods, rights or other resources and/or having an income at its disposal)<sup>4</sup>

<sup>2</sup> European Foundation Centre, Philanthropy FAQ <https://www.efc.be/knowledge-hub/data-on-the-sector/philanthropy-faq/>

<sup>3</sup> European Foundation Centre, Working with Foundations in Europe: Why and How, (Brussels, 2001).

<sup>4</sup> Feasibility study of a European Foundation Statute, Reimer and Hopt et al 2009, p. 13

<https://www.issuelab.org/resource/feasibility-study-on-a-european-foundation-statute-final-report.html>

- Does not make distributions by way of profit or gain to its founder(s) or the members of its governing organs
- Has an unlimited duration or longer-term vision
- Is under the review of a state supervisory authority

This definition does not cover private-interest foundations such as family foundations, which benefit private interests and which exist in some countries. However, in many countries the framework legislation does not distinguish between private-interest and public-benefit foundations. Rather, the distinction is often made only by tax law or through a specific public-benefit status.

This functional definition is based on common features of philanthropic organisations across Europe as identified through previous mappings. In the countries where there is a legal definition of a foundation, this definition stipulated by the law, with its national particularities, should have been used by the national expert, though focusing on public-benefit foundations.

### Supervisory authority

A supervisory authority is a public body (part of a public authority and/or court) that ensures that foundation assets are managed and appropriated in accordance with their statutory purposes. Where necessary, it applies to the court for appropriate measures.

### Supervisory board

A supervisory board is an additional organ of a foundation that has been installed and exists in addition to the governing board. It often has a control function towards the governing board.

### Tax credit

Tax credit is defined as an amount that can be deducted from the actual tax to be paid (reduction in amount of tax paid).

### Tax deduction

Tax deduction is defined as a reduction in the gross amount on which tax is calculated (reduction in taxable income/tax base).

## About

### Philanthropy Advocacy

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

[www.philanthropyadvocacy.eu](http://www.philanthropyadvocacy.eu)

### Donors and Foundations Networks in Europe (Dafne)

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

[www.dafne-online.eu](http://www.dafne-online.eu)

### European Foundation Centre (EFC)

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

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

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

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