

2020

Legal Environment for Philanthropy in Europe

Methodology

1. Rationale

Institutional philanthropy in Europe includes more than 147,000 philanthropic organisations with an accumulated annual giving of nearly 60 billion euros. Besides funding and investments, these organisations combine a valuable set of expertise, deep knowledge and excellent stakeholder networks in the areas of their activities that can be leveraged significantly with the appropriate framework conditions.

Philanthropy and philanthropic organisations are a critical part of our democratic and pluralistic societies. Therefore, it is necessary that philanthropy has a policy and regulatory environment that allows it to operate to its full potential. Of concern however is evidence indicating that regulation as well as the wider political climate are increasingly challenging civil society and philanthropic actors' activity.¹

In the light of recent legal developments, including laws restricting foreign funding and amendments to the AML-CFT Directive exposing foundations to a higher degree of scrutiny, DAFNE and the EFC under their joint Philanthropy Advocacy initiative, will prepare an update of the legal and fiscal country profiles and comparative highlights that were published by the EFC in 2015.

Conducting this mapping exercise implements one of the key priorities of Philanthropy Advocacy, namely pushing for an enabling environment for foundations and funders in Europe, while identifying trends and developments in their regulatory frameworks across Europe.

The outputs of the project will be used as tools for further research in the field of the legal and fiscal environments regulating foundations. Information included in the country profiles should also be of interest to foundations and other public-benefit organisations to inform themselves about the situation in a particular country and to provide the data-based comparative arguments for advocacy at national and European levels.

2. Methodology

The PA legal and fiscal mapping exercise will include two deliverables, one being individual country profiles and the other the comparative highlights and benchmarking based on the country profiles.

With both deliverables the PA Secretariat seeks to identify the factors influencing current philanthropic capacity as well as the challenges to be overcome.

Country profiles will give an overview of the legal and fiscal operating environments for foundations in countries across Europe and beyond. Each profile will contain information such as the purposes that foundations are allowed to pursue, the requirements for setting them up, and governance requirements, as well as transparency and accountability requirements.

The tax treatment of foundations will also be outlined, with details on the income tax treatment of the foundation, including income from economic activities and asset administration. In addition information on tax incentives for individual and corporate donors, including on the issue of cross-border donations, will be included.

¹ European Philanthropy Manifesto https://www.philanthropyadvocacy.eu/wp-content/uploads/2019/03/20190321-Philanthropy-Manifesto_420x210_WEB.pdf

Country profiles will also include information on the current trends and developments in the countries and also serve as an "alert system on national level" to be able to react in the case of a threat or negative development in a particular country.

Based on the information in the country profiles, comparative highlights will be developed to provide a comparative overview of the diverse legal and fiscal environments of foundations, thus allowing for the identification of trends.

The mapping will focus mainly on Europe, which means all the 27 Member States of the European Union, the UK, countries of the Western Balkans and countries of the European Economic Area (Liechtenstein, Norway, and Switzerland). However, the scope of the mapping exercise will also cover selected countries beyond Europe (US, China).

The mapping exercise will be conducted through collaboration with national experts, who will be predominantly members of the EFC and DAFNE from the respective countries. Appointed experts in the field will provide the information by filling out a questionnaire with specific in-depth legal questions concerning civil law, tax law and overall development in the country.

The work on the mapping exercise will be guided by an Advisory Committee. The Advisory Committee will consist of academics and practitioners. They will provide their views and feedback on the questionnaire and at a later stage also on the conclusions in the comparative highlights.

The new questions will be developed taking into account the previous questionnaires developed by the EFC, as well as the files the PA Secretariat is currently working on. The questionnaire itself will be developed by the PA Secretariat and reviewed by the Advisory Committee.

The PA Secretariat will edit the information provided by the country experts to obtain a comparable level of information about all monitored countries. However, the national experts will have an opportunity to review the county profiles and comparative highlights before publication. Consequently, the experts shall bear the responsibility for the accuracy of the information in the final profiles and publication.

3. Timeline

The timeline of the project foresees the selection and appointment of the experts as well as the Advisory Committee at the end of February 2020.

The project description and the questionnaire developed by the PA Secretariat with the guidance of the Advisory Committee shall be shared with the PA Legal Affairs Committee (LAC) in March 2020 before its in-person meeting on 25 March 2020 in Brussels. The LAC meeting will provide a forum where the project description, together with the questionnaire, shall be further discussed and agreed upon.

The approved questionnaire will be shared with the experts at the beginning of April 2020 with a view to obtain the requested information at the end of June 2020.

The PA Secretariat will subsequently review the questionnaires provided by the experts in order to ensure that the level of information for each monitored country is in a comparable form. The PA Secretariat will review and select the information from the country profiles and prepare comparative highlights in a user-friendly form in November 2020.

The outputs prepared by the PA Secretariat will be shared with the national experts and the Advisory Committee in order to review them and confirm the conclusions.

The final version of country profiles and comparative highlights will be published by the PA Secretariat in English on its website at <https://www.philanthropyadvocacy.eu/>

