

The Operating Environment for Public-Benefit Foundations in the Western Balkans Region

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The EFC member-led Legal Committee supports one of the Centre's core objectives of creating an enabling environment for foundations and corporate funders in Europe. The Committee has provided overall guidance to this study.

1. Introduction

1.1 Objectives and context

Indigenous as well as foreign foundations active in the Western Balkans region need supportive legislation to operate in the most effective way. Several new laws have emerged in recent years and this study outlines the current state of play and trends regarding the legal and fiscal environment of the foundation sector in the Western Balkans region and how it compares to what is found throughout the rest of Europe.

One of the key priorities of the European Foundation Centre (EFC) is to push for an enabling environment for foundations and funders in Europe. Over the past 10 years, the EFC has focused its mapping and analytical work on EU Member States but has recently started to enlarge its scope with the aim of understanding trends and developments in Europe more broadly.

The following countries fall within the scope of this project: Albania, Bosnia and Herzegovina, Kosovo, Macedonia, Montenegro, and Serbia. Local experts have provided detailed information on the laws affecting foundations as well as their donors in the EFC Legal and Fiscal Country Profile structure. The country profiles are available on the EFC website⁽¹⁾.

1.2 The foundation landscape in the surveyed countries

The foundation landscape in Europe is rich and very diverse. Foundations and their respective operating environments are deeply rooted in the history, culture and traditions of the societies in which they have been established.

The challenging history in the Western Balkans has hindered the development of a strong foundation sector and civil society throughout the region. Following the long history of instability and the recent conclusion of the Balkan wars of the 1990s, the post-communist and post-conflict zone is now moving towards a peaceful and democratic Europe with a growing and creative civil society. This process is also supported through generally enabling laws for the basic operations of foundations. Some of the surveyed countries are EU candidate countries, i.e. Macedonia, Montenegro, and Serbia. EU membership for those countries would certainly further shape the operating environment for foundations in the region. More specifically, the countries would be bound by the Treaty on the Functioning of the European Union, and would therefore be required to apply equal tax treatment to comparable foreign EU-based public-benefit organisations and their donors.

This foundation law mapping focuses only on what is commonly referred to as a public-benefit foundation, i.e. an organisation that has its own assets or income, which is a private, self-governing, non-membership based, non-profit entity and serves a public-benefit purpose⁽²⁾. With respect to the six countries included in this review, there is no common understanding or legal definition of the term "foundation", which makes a comparison of the different environments challenging. The assessment could therefore be conducted only on the basis of a general rather than a "to the letter" review in regard to the translation and interpretation of the regulatory frameworks.

(1) The EFC Legal and Fiscal Country Profiles provide an overview of the diverse legal and fiscal environments of foundations across Europe. Standard sections across all profiles enable an easy comparison of specific legal and tax issues across the countries. The profiles can be downloaded here:

http://www.efc.be/programmes_services/resources/Pages/Legal-and-fiscal-country-profiles.aspx

(2) See for example definition used in the feasibility study on a European foundation statute, page 13

http://ec.europa.eu/internal_market/company/docs/eufoundation/feasibilitystudy_en.pdf

1.3 What sector are we talking about? How many foundations are registered in the region?

There is generally no easy access to official data and statistics about foundations. According to information provided by the foundation law experts and contacts in the region and recent research, the number of registered foundations is estimated as follows:

Albania:	846 foundations (April 2014, provided by Partners Albania)
BiH:	121 foundations at state level⁽³⁾ (May 2014, Ministry of Justice, BiH) 147 foundations at entity level (May 2014, Ministry of Justice, BiH) 60 foundations at entity level (May 2014, Ministry of Administration and Local Self-Governance Republica of Srpska, BiH)
Kosovo:	264 foundations (April 2014, provided by contributing country expert)
Macedonia:	156 foundations (April 2014, provided by contributing country expert)
Montenegro:	182 foundations (September 2013 ⁽⁴⁾)
Serbia:	495 foundations and endowments registered (November 2013 ⁽⁵⁾)

(3) Foundations may be registered at state level in Bosnia and Herzegovina, under the Law on Associations and Foundations of Bosnia and Herzegovina, or they may also be registered at 'entity level', if they operate in only one of the two autonomous entities of Bosnia and Herzegovina: Federation of Bosnia and Herzegovina and Republica of Srpska; or the Brčko district.

(4) Monitoring Matrix on Enabling Environment for Civil Society Development -Montenegro Report:

<http://www.crnvo.me/attachments/article/8322/171-3%20Montenegro%20country%20report%20BCSDN.pdf>

(5) Monitoring Matrix on Enabling Environment for Civil Society Development -Serbia Report:

<https://docs.google.com/file/d/0B-o2DlbivfPRjVWaTZsWHBVYTA/edit>


Thus far, the scope and characteristics of the foundation sector have not been researched extensively. Compared to the estimated number of some 110,000 public-benefit foundations throughout the EU⁽⁶⁾, the foundation sector in the Balkan region is relatively small in terms of numbers.

Reports of national experts have shown that the sector is growing and showing strategic vision. However, one of the key challenges reported is financial sustainability. Most of the foundations are still quite dependent on foreign funding (which is also the case for associations and other non-profits), but there are good examples of foundations that have established other ways of raising resources and contributing to the community. There is the impression among the experts in the region who contributed to this study that corporate philanthropy, or specifically the practice of the establishment of foundations by larger companies, as well as social entrepreneurship initiatives, is growing⁽⁷⁾.

Most of the foundations in the Western Balkans region are not endowed but operate as any other non-profit organisation (NPO). From the experience of the contributing country experts working in the Balkans, there is an impression that the grant-making function and role of public-benefit foundations more generally have not been fully explored. There is a lack of awareness and knowledge about the positive impact that an endowed foundation sector could have. In addition, in most of the countries discussed here there is a lack of a comprehensive framework and other mechanisms to support endowment building. This could be caused by the cultural, social, philanthropic and/or economic climate in the region. As a result, many foundations are not giving out grants. It is estimated, for example, that in Bosnia and Herzegovina, only 30-40 of all registered foundations give some type of grants, donations or scholarships in addition to some 10-15 NGOs who, within their projects, do re-granting for USAID or the EU.

(6) http://ec.europa.eu/internal_market/company/docs/eufoundation/feasibilitystudy_en.pdf

(7) For example, the Mozaik Foundation, in Bosnia and Herzegovina, which is one of the leading organisations in the area of social entrepreneurship in this region.



Indigenous (domestic) grant-making foundations with endowments or well established capital assets are however of paramount importance to the further development and sustainability of the entire NGO sector and the development of a healthy, independent, issue-based rather than ethnically or politically oriented civil society.

As has been seen in several of the Central and Eastern EU countries, once foreign sources of funding are reduced, the state becomes in many cases the main funding source for NPOs. The EU has also been investing greatly in recent years to develop governmental support mechanisms for NPOs in all the Western Balkan countries. This is helpful for many, since perhaps the majority of organisations that provide social services or engage in educational or cultural activities are generally supported by the state. However, experience from the EU countries shows that this has not proven helpful to advocacy organisations (even those working in the social services field), especially watchdog and human rights organisations that aim to ensure government accountability and defend minorities and vulnerable populations⁽⁸⁾. Although corporate social responsibility and individual giving are on the rise across the region, these are not typical sources of funding for such rights-based organisations. In several Central and Eastern EU countries, such NPOs are still supported either by independent foreign foundations (e.g. Open Society Institutes) and foreign public funds (Norwegian mechanism), or domestic grant-making foundations, where they exist.

Unless a strong core of independent and sustainably resourced (e.g., endowed) domestic grant-giving foundations develops in the countries of the Western Balkan region, the sustainability of non-governmental organisations and their ability to engage and mobilise people for more government accountability and the defence of human rights will be seriously in question as soon as foreign funding decreases. This includes EU funding, which is increasingly administered by the national governments and therefore subject to the same administrative and political conditions as domestic budgetary sources.

(8) See for example, ECNL's study on the Sustainability of Human Rights and Accountability Watchdog NGOs in ten new member states of the European Union <http://ecnl.org/index.php?part=13publications&pubid=33>

2. Assessment of the legal framework for foundations in the six selected countries

2.1 Does the foundation exist as a legal form? Are foundations set up for public-benefit purposes only?

The legal form of foundation exists in all six of the surveyed countries. In Albania, Bosnia and Herzegovina⁽⁹⁾, and Montenegro the “public-benefit” criterion is relevant for the definition of the foundation as a legal form. No private interest foundations, such as foundations for the benefit of a family, may be established. Similarly, in Serbia, foundations have to pursue public-benefit purposes but the legal framework in Serbia also distinguishes the legal form of endowments, which is an entity established by the founder to pursue not only public, but also private interests, such as funding the education or living expenses of the members of the founder’s family. In Kosovo and Macedonia, the legal definition requires the pursuit of any lawful purpose, but does not require it to be a public-benefit purpose. The public-benefit concept is hence part of the legal concept of foundations in most Balkan countries, which is also the case in EU countries.

Chart 1: What purpose are foundations legally permitted to pursue?

Country	What type of purposes are foundations legally permitted to pursue?
Albania	Public-benefit purposes only
Bosnia and Herzegovina	Public-benefit purposes only
Kosovo	Both public and private-benefit purposes
Macedonia	Both public and private-benefit purposes
Montenegro	Public-benefit purposes only
Serbia	Public-benefit purposes only

(9) Concerning Bosnia and Herzegovina, the paper only reviews the legal framework for foundations at state level, and does not address the situation at entity level. This is because, according to local experts, the situation is quite similar. The full EFC Legal and Fiscal Country Profile for Bosnia and Herzegovina will, however, study the issue further to identify any major differences that may exist at the entity level.

2.2 Requirements for establishment: Registration, approval

Registration: Foundations in all countries (and endowments in Serbia) can be set up by domestic or foreign natural and legal persons. However, there is a residence requirement for those who wish to set up a foundation in Kosovo: A foundation may be established by one or more persons, at least one of whom has a residence or seat in Kosovo. With respect to the requirements for setting up public-benefit purpose foundations in the surveyed countries, legal personality is reached upon registration in a publicly accessible register.

Chart 2: Register of foundations

Country	Are foundations required to register? With which authority?	Register publicly available?
Albania	Yes (court) - Court of First Instance in Tirana	Yes
Bosnia and Herzegovina	Yes (state) - Associations and Foundations Register at the Ministry of Justice	Yes
Kosovo	Yes (state) - Register of Foundations at the Ministry of Public Administration	Yes
Macedonia	Yes (state) - Central Register of Macedonia	Yes
Montenegro	Yes (state) - Register of Associations at the Ministry of the Interior	Yes
Serbia	Yes (state) - Register of endowments and foundations at the Serbian Business Register Agency	Yes

Approval: Foundations need approval from the competent ministry in Bosnia and Herzegovina and Montenegro, but approval and registration has to be given once all legal requirements are met (there is no discretionary authority). The Ministry of Public Administration in Kosovo can only deny the application for the registration of foundations in Kosovo in clearly defined situations. The establishment and registration of foundations in Albania is effected by a judge of the Court of First Instance of Tirana. In Macedonia and Serbia, every foundation acquires legality on the date of its registration. The registering authority generally has no discretion - it just verifies that the documents provided are in line with the law. The registers are publicly available in all six countries. The overall trend in Europe is to move away from state authority approval systems.

Chart 3: Is state approval required for the creation of a foundation?

Country	Is state approval required to set up a foundation?	If yes, does that state authority have discretion in this matter?
Albania	No	n/a
Bosnia and Herzegovina	Yes	No
Kosovo	Yes	Yes
Macedonia	No	n/a
Montenegro	Yes	No
Serbia	No	n/a

Minimum capital: There is no minimum initial capital amount required in Kosovo and Montenegro. There is also no minimum capital requirement for foundations in Serbia; but for the establishment of an endowment, the law requires an equivalent of €30,000⁽¹⁰⁾. In Bosnia and Herzegovina,

the law requires initial assets equivalent to at least €1,000, but has no requirement to maintain this asset level. In Macedonia, the law requires initial assets of at least €10,000, but there is no requirement to maintain this asset level. In Albania, the court usually accepts a capital equivalent to €715 as an initial capital to establish a foundation, even though this is not specified in the law. The law requires the assets to be sufficient to realise the goals for which the foundation was established.

Chart 4: Minimum capital required?

Country	Is a minimum capital required to establish a foundation? If yes, what is the amount?	Is the foundation required to maintain the capital?
Albania	No, but assets must be sufficient to realise the purpose. Courts have accepted €715 as a minimum.	No
Bosnia and Herzegovina	Yes, +/- €1,000.	No
Kosovo	No.	n/a
Macedonia	Yes, €10,000.	No
Montenegro	No.	n/a
Serbia	Foundations: No Endowments: +/- €30,000.	Endowments: Yes

Conclusions: In all of the examined countries, the establishment of a foundation appears to be relatively easy by way of a registration process, which does not give any discretion to authorities to deny registration if all legal requirements and formalities are met. The capital of a foundation does not appear to play a huge role (except in Macedonia) since the majority of countries do not require a minimum capital amount or only require a relatively low amount.

(10) All amounts are given in the euro equivalent for the sake of comparability and for understanding in the broader European context.

2.3 Governance requirements

Governing organs: All the countries require foundations to have a board as the main governing body. The registration office in Kosovo has issued detailed model statutes, which suggest clear governance rules that foundations may choose to use. In all the surveyed countries, there appear to be no nationality requirements with regard to members of the governing board of a foundation.

The founder cannot be a board member in Bosnia and Herzegovina, whereas the founder according to Macedonian law can retain rights that are usually perceived as competences of the board. Founders may also reserve in the statutes some rights to veto according to the law in Montenegro, and can be board members according to Serbian law.

The following countries require a foundation to have at least three board members: Albania, Bosnia and Herzegovina, Kosovo and Serbia, for both foundations and endowments. There is no such rule in Macedonia and Montenegro. The Albanian non-profit organisation (NPO) law explicitly states that it is not the board that represents the foundation, but the executive body or director.

Supervisory boards are not mandatory for the foundations. However, in Macedonia, a supervisory board is required, if the organisation wants to obtain public-benefit status. In Albania, the capability of boards was recently strengthened by giving them the responsibility to oversee the activity of the organisation in order to ensure that the organisation complies with legislation on the prevention of money laundering and the financing of terrorism.

Chart 5: Governing organ and minimum number of members

Country	Mandatory governing organs of a foundation	Minimum number of governing board members
Albania	Governing board	3 unless otherwise stipulated in the statutes
Bosnia and Herzegovina	Governing board	3
Kosovo	Governing board	3
Macedonia	Governing board	1
Montenegro	Governing board	1
Serbia	Governing board	3

Conflict of interest rules: In all of the surveyed countries, governance and management functions are clearly separated. In most of the countries, the laws specify that staff cannot be members of decision-making bodies. Similarly most of the laws provide for specific conflict of interest rules, especially in terms of engagement of board members. For example, in Albania, the law requires that board members, either of the supervisory or executive board, avoid conflicts of interest in their dealings with the organisation. The foundation may, through its statutes, define specific rules regarding what is considered a conflict of interest and how these conflicts are resolved. In Macedonia, public-benefit foundations must have conflict of interest rules in their statutes in order to qualify for public-benefit status.

2.4 Permitted and prohibited activities

Economic: To undertake direct economic (profit-generating) activity is allowed for public-benefit purpose foundations in all six countries but they may generally not engage directly in economic activities which are not related to their public-benefit purpose. It appears that foundations in Kosovo would also be allowed to engage in unrelated economic activity as long as they use the income to accomplish the goals of the foundation. In Bosnia and Herzegovina foundations may not undertake unrelated economic activity directly but can do so through a specially established legal entity (company). In the other countries, the economic activity should be linked to the purpose of the foundation. It should not become the dominant activity of the organisation. The law in Montenegro explicitly mentions a limit on income generated through economic activities of approximately €4,000 or up to 20% of the organisation's annual income. In addition, in Serbia the economic activity must be foreseen in the statutes. Macedonia sets no limits on economic activity and even allows all income to be generated through purpose-related economic activity.

Political: Regarding political activities, in some countries (Bosnia and Herzegovina, Macedonia, Kosovo, and Serbia), there are also full or partial prohibitions on foundations engaging in certain types of political activities. In others, there is no mention of such restrictions (Montenegro).

Financial: Foundations may not invest their assets abroad according to Serbian law (which is a major restriction and clearly runs counter to the overall European trend); nor are they allowed to give low interest loans. The latter is also not allowed in Albania.

In the context of the debate around prevention of terrorist financing through NPOs, some Balkan countries have tightened their rules applying to NPOs, including foundations. For example, as mentioned above, Albania has recently introduced into its NPO law an obligation for NPO boards to ensure compliance with anti-terrorism and anti-money laundering legislation. Kosovo is in the process of introducing severe restrictions: An NPO shall not accept donations of more than approximately €1,000 per day and shall not distribute more than approximately €5,000 per day. In Macedonia, NPOs are required to develop procedures and measures to prevent money-laundering

and financing of terrorism. The information that is required is quite burdensome, especially for small organisations – e.g. they need to develop procedures for identifying clients and beneficiaries and for monitoring all transactions. If they fail to adopt such a procedure, they can be penalised with fines of between €30,000 and €40,000. NPOs with over 50 employees must form a separate department for this purpose⁽¹¹⁾. The Parliament of Bosnia and Herzegovina also adopted a new law on 6th June 2014 to ensure that anti-money laundering and terrorist financing rules are in place, but without introducing restrictions similar to those introduced in Kosovo.

Chart 6: Are economic activities permitted?

Country	Are economic activities (related/unrelated to the public-benefit purpose) permitted? Is there a ceiling/limit?
Albania	Yes - related and unrelated. Economic activities must be ancillary.
Bosnia and Herzegovina	Yes - related. Unrelated economic activities may only be conducted through a specially established legal entity. No fixed ceiling/limit.
Kosovo	Yes - related and unrelated. No fixed ceiling/limit.
Macedonia	Yes - related. No fixed ceiling/limit.
Montenegro	Yes - annual limit of +/- €4,000 or up to 20% of the total income.
Serbia	Yes - related. Economic activity must be ancillary.

It may be concluded that foundations generally have an enabling environment to raise resources from economic activities to support their work, and in most of the countries surveyed can even rely on such activities as key sources of sustainability. However, in most of the countries they are also not allowed to undertake direct unrelated economic activity (in Bosnia and Herzegovina they can undertake unrelated economic activity through a specially established legal entity e.g. a company).

(11) Recent information suggests that foundations and associations will be exempted from these requirements.

2.5 Requirements for amendment of statutes

Amendment of the statutes of a foundation in Kosovo must be approved by the registration authority. In Albania, Bosnia and Herzegovina, Macedonia, Montenegro and Serbia, however, it seems that changes to the statutes can be made without the approval of an authority and just need to be deposited at the court or registration authority (in Bosnia and Herzegovina, the Ministry of Justice and in Serbia, the Serbian Business Registrar Agency check if amendments are in conformity with the law). Notably, in Serbia, the founder may reserve the right to amend the statutes.

Compared to the overall environment in Europe, it appears that the Balkan countries have less state/authority involvement when it comes to the amendment of statutes. Except in Serbia, one may conclude that the will of the founder is not particularly strongly protected from future statute changes.

2.6 Reporting, accounting and auditing

Regarding reporting, accounting and auditing, all the countries require foundations to keep yearly accounts and to produce annual reports. Tax-exempt public-benefit foundations must submit annual accounts to the tax authorities in all the countries. Annual accounts are publicly available, which represents a higher level of disclosure than is found in a number of western European countries.

Albania: Tax-exempt public-benefit foundations must submit their balance sheet of assets and liabilities, as well as their audited accounts, to the tax authorities which check them. Annual accounts are also deposited with the court of registration, and hence are accessible to the public upon request.

Chart 7: Is external audit required?

Country	Is external audit required by law?
Albania	No.
Bosnia and Herzegovina	Yes, for larger foundations.
Kosovo	Yes, for larger foundations (annual income or expenditure in excess of +/- €100,000).
Macedonia	Yes, for public-benefit foundations whose annual budget is above +/- €20,000. Where budget is above +/- €100,000 auditing must be accordance with international accounting standards.
Montenegro	No.
Serbia	Yes, for larger foundations or smaller organisations with large income.

Bosnia and Herzegovina: Annual financial statements are submitted to the tax authorities and have to be publicly available, but foundations can decide to what extent they disclose further information about their work. Only larger foundations have to be audited by a certified external auditor.

Kosovo: Only annual reports of foundations holding public-benefit status are checked and reviewed by the Ministry of Public Administration. All organisations need to submit tax declarations to tax authorities. While the reports should also be available to the public, the foundation may choose to keep parts of the report confidential. Only larger foundations with public-benefit status have to be audited by a certified external auditor.

Macedonia: Foundations are obliged to compile and submit an annual financial report, and to make it accessible to the public. The annual balance sheet must be submitted to the tax authorities. Only foundations with public-benefit status whose annual budget is above €20,000 are obligated to conduct an independent annual audit of their financial operations, while if their budget is above

€100,000, it is necessary to perform an audit in accordance with international accounting standards.

Montenegro: The annual financial report must be submitted to the tax authority. Larger foundations have to make this report publicly available. An external audit is not required.

Serbia: Financial reports are submitted to the supervisory authority (Serbian Business Register Agency), but the authority only checks the reports in terms of numerical and logistical issues. Tax reports are submitted and checked by the tax authorities. Annual reports and accounts have to be made publicly available. Only a few large foundations and/or endowments have to be audited by a certified external auditor. Certain laws also prescribe fines if organisations do not apply the reporting and audit requirements.

2.7 Supervision

Public prosecutors as well as the court have some supervisory powers. Generally, tax authorities appear to be the authority to review annual financial information, and there are no requirements for review of narrative reports (unless foundations have obtained public-benefit status). In Albania, in addition to the tax authorities, control is exercised by the units responsible for counter-terrorism and anti-money laundering. In Kosovo, the Council for Financial Reporting may penalise foundations for any irregularities related to financial reporting and auditing.

In some countries, stricter supervision is enforced on foundations with public-benefit status. For example, in Kosovo, the Ministry of Public Administration reviews annual reports and may revoke public-benefit status. The Ministry may also collaborate with the tax authorities. In Macedonia, the Public Benefit Commission reviews narrative and financial reports, in addition to the tax authorities, and the government adopts those reports.

In sum, in all the countries state control and supervision appear to not be overly strict for foundations that have not obtained public-benefit status. Tax authorities play the more important role, by ensuring pursuance of the public-benefit purpose.

2.8 Dissolution

Upon dissolution, remaining assets of a foundation in all of the surveyed countries cannot revert to private ownership and would have to be spent on the public-benefit purpose of the foundation or at least on similar purposes (e.g. through allocation to another similar organisation or the state).

In all the countries, foundations may be dissolved if the board so decides (voluntary dissolution). The courts may also dissolve a foundation in case of conflict with the laws in all the countries.

2.9 Recognition of foreign foundations

In Albania, foreign foundations wishing to pursue activities for more than 30 consecutive days but for less than six months need government permission to carry out the activities. For activities of more than six months, foreign foundations will have to register a branch in Albania. The registration of these branches follows the same procedures as the registration of Albanian foundations.

Foreign foundations are authorised to operate freely in the other surveyed countries. In addition, they may register a representative office in all of the countries. In such cases, the general registration procedures for domestic foundations apply, although the laws prescribe some specific rules with respect to the documentation that needs to be submitted during registration. Macedonia, Kosovo and Serbia keep a specific register of representative offices of foreign endowments and foundations.

3. Fiscal framework for foundations and their donors

3.1 Does a specific public-benefit status exist, which leads to tax exemptions for the organisation and tax incentives for its donors?

In Albania, Bosnia and Herzegovina, Macedonia, Montenegro and Serbia, there is a discrepancy between the public-benefit concept regulated in the framework laws, and the public-benefit concept regulated in tax laws. Typically in these cases the tax laws are much narrower in defining what is of “public benefit” and the incentives are not linked to the public-benefit status. Hence, there is some level of legal uncertainty about their interaction.

Albania: Albanian foundations can only exist for public benefit but in order to get a VAT exempt public-benefit status they must pursue a narrower list of public-benefit purposes.

Bosnia and Herzegovina: Public-benefit foundations by definition pursue public-benefit purposes according to the law of association, which is, however, broader than the public-benefit purposes listed in the tax laws. The purposes, listed in tax laws of the Federation of Bosnia and Herzegovina (FBH), Republic of Srpska (RS) and Brčko district (BD) that lead to corporate tax exemptions as well as tax incentives for donors, are limited and exhaustive (but not entirely harmonised). Only in the case of RS does the tax law require that the organisation should support the general public or public-at-large, which is part of a specific public-benefit status granted by the government.

Kosovo: Foundations can apply for public-benefit status upon initial registration or thereafter. The status is defined in the Law on Freedoms of Association and leads to tax exemptions for the organisation. Tax incentives for donors are however linked to a narrower concept of public-benefit purpose than is defined in the framework law.

Macedonia: Foundations may obtain public-benefit status if they perform public-benefit activities according to the Law on Associations and Foundations and have been granted such status by the Government. The law suggests that such public-benefit organisations

should enjoy additional tax benefits, however currently this is not the case. Only one organisation has so far received such public-benefit status. Donations to NPOs, according to the Law on Donations and Sponsorships, qualify for tax benefits. Associations and foundations, which pursue a public-benefit purpose listed in the law, are qualifying recipients according to this law. The concept is narrower than the public-benefit status of the Law on Associations and Foundations. The donor and beneficiary enter into an agreement and the Ministry of Justice confirms the public interest of each donation. This is a rather complex administrative procedure and local partners report that it deters giving.

Montenegro: Public-benefit foundations by definition pursue public-benefit purposes according to the law on non-governmental organisations, which is, however, broader than the public-benefit purposes listed exhaustively in the tax laws.

Serbia: Public-benefit foundations by definition pursue public-benefit purposes only, whereas endowments may also pursue private interests, according to the law on endowments and foundations.

In both Montenegro and Serbia, the tax laws generally exempt various types of non-economic (grants, donations) and economic income from corporate income tax. However, tax benefits for donors are linked only to purposes listed in the tax law.

3.2 Corporate income tax treatment of foundations

In all the countries, foundations generally enjoy favourable tax treatment in terms of corporate income tax. Apart from Kosovo, in all surveyed countries foundations are exempt from corporate income tax on economic activities, regardless of whether or not they have public-benefit status.

Chart 8: Corporate income tax treatment of public-benefit foundations

Country	Income tax on received grants and donations?	Income tax on received income from economic activities?
Albania	No	Related economic activities are exempt. Unrelated economic activities are taxed at the rate of 10%. Investment income is only partially tax exempt.
Bosnia and Herzegovina	No	Income from related economic activity is exempt. Income from unrelated economic activity is taxed.
Kosovo	No	Income from related economic activity is tax exempt. Income from unrelated economic activity is taxed at 10%.
Macedonia	No	Income from economic activity is not taxed.
Montenegro	No	The tax base is reduced by the amount of +/- €4,000.
Serbia	No	Income from economic activities is not taxed up to +/- €3,500 if the organisation does not compete with the private business sector.

Albania: Public-benefit foundations are exempt from corporate tax on donations, grants, and interest from bank deposits. Investment income from fixed rate bonds and lease income is taxed. Income from related economic activity is also tax exempt. Unrelated economic activity is subject to tax. Activities abroad do not put tax exempt status at risk. Foreign foundations with a permit to operate a branch or that are able to register, can apply for tax benefits in the same way as the Albanian foundations, since they enjoy an equal tax treatment under tax legislation.

Bosnia and Herzegovina: Direct taxation falls under the jurisdiction of Federation of Bosnia and Herzegovina (FBH) and Republic of Srpska (RS) and Brcko district (BD).

Qualifying purposes that lead to tax exemptions are limited and exhaustive. They overlap to a large extent but are not identical. The following income is tax exempt:

- FBH: public funds, donations (money and goods), sponsorships, interest, dividends, sale/transfer of goods
- RS: As above but also other investment income (lease/property)
- BD: public funds, donations (money and goods), sponsorships, interest, and dividends. Foreign public-benefit foundations have the same tax treatment as resident foundations

Kosovo: Foundations with public-benefit status are tax exempt for most income if they pursue the public-benefit purpose exclusively (including rental income and micro-financing unless considered excessive income). Unrelated business activity is taxed at a rate of 10%. Foreign foundations, once registered, can enjoy the same tax benefits as resident foundations.

Macedonia: All organisations are exempt from tax on membership fees, economic activities, grants and donations. Macedonia taxes all legal entities at the time of distribution of dividends/profits and since public-benefit foundations do not distribute any profit, they do not pay taxes.

Montenegro: Public-benefit foundations generally do not pay corporate income tax. There are also some tax incentives for income from economic activity (the tax base is reduced by €4,000).

Serbia: Public-benefit foundations do not pay income tax/gift tax on donations or bequests, as long as they pursue public-benefit activities. Income from economic activity is exempt up to a ceiling equivalent to approximately €3,500, if the income is used for the public benefit and no competition exists with for-profit players. Capital gains tax and property tax are levied. Foreign foundations' branches, once registered, enjoy the same tax benefits as resident foundations.

Kosovo: Donations by individual and corporate donors made for humanitarian, health, educational, religious, scientific, cultural, environmental protection, and sports purposes may be deducted up to 5% of taxable income. The donation must be made to an organisation that has received and maintained public-benefit status or to any other non-commercial organisations that directly perform activities in the public interest and are not-for-profit.

3.3 Tax incentives for donors

In line with the overall trend seen in national laws across the EU, individual and corporate donors do enjoy tax benefits for giving to qualifying public-benefit purposes. However, there are no tax incentives for individual donors in Albania and Serbia and the amounts of the tax incentives that do exist are generally lower compared to the overall European trend.

Albania: There are no tax incentives for individual donors. Corporate donors can deduct donations as deductible expenditures up to 3% of the annual profit.

Bosnia and Herzegovina: Generally there are no tax incentives for individual donors in Bosnia and Herzegovina, only donors who earn income from self-employment (e.g. craftsmen, independent professionals etc.) can benefit from tax deductions. Direct taxation falls under the jurisdiction of the Federation of Bosnia and Herzegovina (FBH) and Republic of Srpska (RS) and Brčko district (BD).

- Individual donors who earn income from self-employment can deduct cash or in-kind donations:
FBH: Up to 0.5 % of previous year's annual income
RS: Up to 2 % of annual income
BD: Up to 0.5 % of annual income
- Corporate donors:
FBH, RS and BD: deduction up to 3% of previous year's annual income. Donors to non-resident foundations carrying out activities in BiH can get the same tax incentives.

Macedonia: Donations to NPOs according to the Law on Donations and Sponsorships qualify the donor for tax incentives if the activity for which the donation is given has been approved as being of public benefit by the Ministry of Justice, in consultation with other relevant bodies. The main challenges in the administrative procedure for confirming the public interest of the activity are 1) the procedure is long and burdensome; 2) there is no clear criteria on how public interest is decided; and 3) legal uncertainty remains for the donors (i.e. they do not know whether they can use the tax incentives before they commit to giving the donation/sponsorship). Individuals can deduct up to 20% of the annual tax payable and no more than the equivalent of €390. Corporate donations can be deducted up to 5% of gross income and, in the case of sponsorships, up to 3% of gross income. Donations to foreign NPOs, which are registered in Macedonia, are deductible.

Montenegro: Individuals and corporate donors can deduct donations to medical, educational, scientific, religious, sport, humanitarian and environmental purposes as expenses up to 3.5% of the gross annual income. It is unclear if in-kind donations are deductible.

Serbia: There are no tax incentives for individuals. Corporate donors can deduct donations for health care, cultural, educational, scientific, humanitarian, religious, environmental, and sport-related purposes, and for social security institutions for up to 5% of total revenue. There are no tax incentives for donations to non-resident public-benefit foundations.

Chart 9: Tax incentives for donors

Country	Tax treatment of individual donors	Tax treatment of corporate donors
Albania	No incentives	Donations are deductible up to 3% of the annual profit.
Bosnia and Herzegovina	Incentives only for self-employed persons - Donations are deductible: FBH: Up to 0.5 % of annual income RS: Up to 2 % of annual income BD: Up to 0.5 % of annual income.	FBH, RS and BD: Donations are deductible up to 3% of previous year's annual income.
Kosovo	Donations are deductible up to 5% of taxable income.	Donations are deductible up to 5% of taxable income.
Macedonia	Donations are deductible up to 20% of the annual tax payable, up to the equivalent of €390.	Donations are deductible up to 5% of gross income and in case of sponsorships up to 3% of gross income.
Montenegro	Donations are deductible up to 3.5% of the gross annual income. Unclear if in-kind donations are deductible.	Donations are deductible up to 3.5% of the gross annual income. Unclear if in-kind donations are deductible.
Serbia	No incentives	Donations are deductible up to 5% of total revenue.

3.4 Gift and inheritance tax treatment

Foundations across the Western Balkans region are not subject to gift and inheritance tax. In Albania there are no such taxes; in Montenegro this issue is not specifically regulated; and in Bosnia and Herzegovina, Kosovo, Macedonia and Serbia they are tax exempt.

4. Fiscal barriers to cross-border philanthropy

4.1 Lack of income tax deductibility for EU donors giving to Balkan countries

Almost all EU countries refuse tax deductibility for donations made by individual and corporate donors to foreign (non EU/EEA based) foundations. Donations to Western Balkan countries are hence not deductible. Also tax relief from gift and inheritance taxes does not apply to donations to organisations based in the Western Balkan countries. Double tax treaties do not solve the problem, as these treaties generally do not cover this issue.

As measures undertaken by national and European authorities focus on EU and EEA countries, private agreements could provide pragmatic solutions and help organisations in the Balkan region to fundraise across borders. The Transnational Giving Europe (TGE) Agreement is a good example of such a private initiative. The TGE network enables donors, both corporations and individuals, resident in one of the participating countries, to financially support non-profit organisations in other participating countries, while benefiting directly from the tax advantages provided in their country of residence. TGE so far does not cover Balkan countries but is considering to expand in the future. So for the moment, case by case solutions are to be found if EU private donors want to support organisations in these countries in a tax effective way.

4.2 Tax incentives for cross-border philanthropy in Balkan laws

Similarly, where tax incentives exist, Balkan resident individual and corporate donors/tax payers should also get tax incentives when they give to foreign public-benefit foundations. As for the tax treatment of foreign foundations active and registered in the region, it appears that they can apply for tax benefits in the same way as resident foundations in Albania and Bosnia and Herzegovina, Kosovo and Serbia. The clear provision for tax incentives to apply in cross-border cases would be beneficial to the sector in the region; it could encourage giving and would potentially enable more philanthropic cross-border cooperation within the region.

5. Conclusions

The Legal and Fiscal Country Profiles show that in general there is an enabling legal framework for the establishment and operation of foundations which aim to pursue public-benefit purposes in the Western Balkans region. One of the major issues that foundations are facing, however, is a lack of supportive legal and fiscal frameworks for their financial viability. Greater financial sustainability would play a key role in enabling the sector to make a greater contribution to society.

5.1 Main legal findings

From the legal point of view, all surveyed countries appear to offer a relatively enabling legal environment for the establishment and operation of public-benefit purpose foundations. Registration procedures are relatively simple; in most cases the registration authorities do not have discretionary power and must register organisations if they fulfil legal conditions, or can reject registration only in legally prescribed cases. Except for Macedonia where the founding capital is rather high (€10,000), the countries either prescribe a rather low threshold or do not require minimum capital at all. Foreign foundations may operate freely in all countries, apart from Albania where for activities of over six months they have to register a branch.

The legal provisions on internal governance are supportive and generally allow foundations to determine their own internal structures. The legal environment also appears to allow for amendment to the statutes. There is clear separation of governance and management functions and most of the countries have introduced provisions concerning conflict of interest. Supervisory boards are generally not mandatory (apart from in Macedonia, in the case of public-benefit foundations).

With respect to state supervision, reporting, accountability and auditing, good standards are generally in place. The reporting, auditing and accounting requirements seem to consider various aspects of the foundations, including size, budget and in some countries stricter requirements are imposed only for public-benefit foundations. The laws require annual financial reports to be publicly available, which is considered as an important precondition for improving trust among stakeholders and

beneficiaries. While the main supervisory powers are granted to the internal bodies of organisations, specific government bodies (mainly public prosecutors or tax authorities) are given competences to exercise control over all organisations and stricter supervisory powers may be enforced over public-benefit foundations where such a status exists.

The environment for endowment building is not fully formed. While Serbia regulates endowments through separate laws, the other countries do not deal with this specifically. It appears that most of the foundations do not give grants. This may be because of various cultural, social, and economic reasons which need to be analysed further.

The countries have experienced a setback, however, due to the recent introduction of burdensome requirements or restrictions through anti-money laundering or anti-terrorist financing rules. This is particularly a problem in Kosovo, where all NGOs (including foundations) cannot accept donations of more than €1,000 from a single source per day and may not distribute more than €5,000 per day. If these provisions are fully enforced, they would limit the ability of foundations to raise resources from domestic or foreign donors and to give grants.

Financial sustainability remains a key challenge for public-benefit foundations and other civil society organisations. However, the legal environment does allow foundations to utilise various sources of funding, and recently laws have been improved to also strengthen the ability of an organisation to engage in economic and other income-generating activities.

However, for the time being, funding from the government budget and EU funds continue to be considered as an important source of funding for the sector. Proposals have been made to enable the NGOs to receive some government funding from sources beyond the state budget, for example income generated through games of chance and lottery proceeds. One challenge is the lack of transparent and accountable distribution mechanisms, although efforts are being made to improve the distribution system.

5.2 Main tax findings

From a fiscal point of view, all surveyed countries grant some tax privileges to public-benefit purpose foundations. Importantly, however, the concept of what is defined as public benefit varies and is not harmonised within some national legal systems (e.g., Macedonia, Kosovo and Serbia) and there is a lack of additional incentives that would stimulate further the growth of public-benefit foundations.

Initial research reveals the following positive features in the tax framework affecting foundations and philanthropic donors in the surveyed countries:

- All the countries generally exempt public-benefit foundations from corporate income taxes, insofar as they are established and organised to pursue public-benefit purposes.
- Income from grants, donations and gifts is not taxable.
- All the countries provide tax incentives, in the form of tax deductions or credits, for corporate giving to qualifying public-benefit purposes/activities.

The research also reveals a number of issues which call for further policy development and reform:

- The public-benefit concept is part of the legal structure of foundations in most Balkan countries, and in some it is specifically recognised as a stand-alone status. However, this public-benefit concept has in most cases no direct tax implication since in the tax laws, the public-benefit approach is usually stricter or applies to all organisations. In all the countries surveyed, the notion of public-benefit goals/activities in tax law is typically rather narrow and does not include some public-benefit purposes that are widely recognised as activities deemed as being of public benefit for tax purposes in other European countries. Hence, in most countries surveyed there is a discrepancy between the notion of public-benefit purposes in tax law and that which regulates foundations.
- Albania and Serbia do not provide tax incentives for individual giving. Generally there are also no tax incentives for individual donors in Bosnia and Herzegovina, only donors who earn income from self-employment (e.g.

craftsmen, independent professionals etc.) can benefit from tax deductions.

- Some countries, notably Macedonia, prescribe overly burdensome administrative requirements with regard to donations. Donors there are required to file an exemption request for each donation.

6. Recommendations for policy and law reform

As noted previously the legal environment generally allows for the establishment and operation of foundations for public-benefit purposes without many barriers. The biggest challenges remain financial sustainability and the fiscal treatment of foundations and their donors. Therefore, we recommend that the focus for further interventions in this area should be on those issues, which will enable foundations to fulfil their potential, both in terms of developing the civil society sector and supporting a better provision of services that the state cannot fully accomplish, and ensure their longer term viability. In line with this, we recommend that the following issues should be discussed among local stakeholders as a priority:

- The legal framework, benefits and mechanisms for endowment building on national level should be further studied and considered. This will help with the development of stronger foundations. It could create a sustainable domestic funding base for human rights and watchdog organisations and maintain the independence of civil society more broadly.
- In line with this, such studies should consider existing examples and experiences of other European countries in the creation of state mechanisms and incentives for endowment building and the operation of foundations (e.g. endowment funds), and analyse the feasibility of their application in the Balkan countries.
- To ensure the fair and consistent implementation of public-benefit provisions, most of the countries concerned would benefit from reforms which would harmonise the requirements for public-benefit status and tax benefits, as well as from preparing guidance on the implementation of public-benefit criteria and procedures.
- The tax incentives for individual donations should be reformed to allow for an appropriate level of tax incentives which would inspire individual donors to donate or even establish foundations. At the same time the procedures for claiming such incentives should be easy to administer and not deter the donors. In parallel to this, strategic discussions and sharing of experience among foundations on methods of how to attract both corporate and individual donors to support foundations could also be beneficial for increasing their role and complementing the existing tax incentives. To be in line with the rest of Europe, tax incentives for cross-border donations should be the principle.
- Considering that in three of the countries studied, the anti-money laundering and counter-terrorism related laws have introduced measures that affect the work of foundations, foundations should engage in or call for reform of those laws.
- Considering that the foundation sector is largely unexplored

in the Balkans, and the legal and fiscal issues are but one aspect of the work, foundations may benefit from a more comprehensive study on the factors that influence their development (political, cultural, societal); the opportunities for growth of the sector; and the putting forward of policy options for more comprehensive strategic interventions by donors, foundations and possibly states to help build a more robust foundation sector.

- Looking internally at what the sector can do to enhance the role of foundations, the contributing country experts were asked to reflect on the challenges and possible solutions. One of the key issues raised was a lack of public awareness about the important role that public-benefit foundations play. There is still an attitude of suspicion towards public-benefit organisations as organisations used to channel funds for illegal purposes. Foundations as well as other NPOs should make efforts to raise public awareness about the added value that foundations can bring. This could lead to an improved reputation and increased acceptance of foundations and in the longer run to the creation of more foundations. In this context, it is suggested that networks of foundations/donors could play a stronger role in increasing the knowledge about and reputation of public-benefit foundations. Such networks and other infrastructure support organisations are already emerging in the region (e.g. South Eastern European Indigenous Grantmakers Network, Balkan Community Initiatives Fund, Balkan Civil Society Development Network and Trag Foundation). They could benefit from stronger links with their counterparts elsewhere in Europe e.g. through the Donors and Foundation Networks in Europe (DAFNE).
- Finally, given that foundations from the Balkan region will likely continue to seek and receive funds from Europe and other regions, private initiatives that aim to facilitate cross-border giving might prove to be useful instruments for this purpose.

Overall, NPOs and foundations and the respective public authorities as well as legislative authorities should collaborate more efficiently when it comes to reviewing/revising the operating environment for foundations/public-benefit organisations. All of the above recommendations, if adopted, should be implemented through cooperation and consultation. Legislators should consult the foundation and NPO sector and give them the opportunity to co-shape draft laws.

For all Balkan countries the EU accession negotiations could include a positive push for a strengthened civil society if the creation of an enabling environment was made an issue in the negotiation processes.

Disclaimer

Every effort has been made to ensure the quality of the information provided in this study, and reference has been made to the original sources of information. It is not exhaustive in terms of addressing every aspect of the regulatory framework for foundations in the selected countries. The study should not be relied upon as legal advice, but it attempts to provide an analysis of the legal framework related to public-benefit foundations in the six countries surveyed. The EFC and ECNL have used a variety of recognised information sources, but cannot guarantee the accuracy and completeness of the information they have drawn from these sources.

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The EFC, founded in 1989, is an international membership association representing public-benefit foundations and corporate funders active in philanthropy in Europe, and beyond. The Centre develops and pursues activities in line with its four key objectives: creating an enabling legal and fiscal environment; documenting the foundation landscape; building the capacity of foundation professionals; and promoting collaboration, both among foundations and between foundations and other actors.

Emphasising transparency and best practice, all members sign up to and uphold the EFC Principles of Good Practice.

