

EFC COUNTRY PROFILE JANUARY 2011: ROMANIA

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I. Legal framework for foundations

- **Does the jurisdiction have a basic legal definition of a foundation (Description where applicable)? What different legal types of foundation exist (autonomous, non-autonomous without legal personality, civil law, public law, church law, corporate foundations, enterprise foundations)?**

A foundation is a legal entity created by one or more persons who, on the basis of an act of will *inter vivos* or upon a death, establish a patrimony designed permanently and irrevocably for achieving an objective of general interest or, if such be the case, of community interest (according to Ordinance no. 26 of 30 January 2000 on associations and foundations).

According to the law, there is no difference between different types of foundation. The common legal framework is Ordinance 26/2000 and Law 246/2005 on associations and foundations.

- **What purposes can foundations pursue?**

According to the definition, the purpose is “achieving an objective of general interest or, if such be the case, of community interest”.

- **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?**

In order to set up a foundation, the founder or founders, draw up the constitutive act and the statutes of the foundation in authentic form, otherwise they are subject to annulment.

Then the foundation acquires legal status upon registration in the Registry of Associations and Foundations at the clerk’s office at the court in whose territorial jurisdiction it has its headquarters.

- **Is State approval required? (approval by a State Supervisory Authority with/without discretion? Registration with a state authority or court? Notarisation by a Notary public?)**

Yes, at the court.

- **Do foundations have to register? If yes, in what register?**

It is a National Register of Associations and Foundations.

If foundations are registered, what information is kept at the register?

Name of the organisation, contacts (phone and address), aim and the founders.

If foundations are registered, is the register publicly available?

Yes

➤ **Is a minimum capital required?**

Yes. The initial capital of the foundation must include in-kind or cash assets whose total value should be at least 100 times the minimum gross salary in the national economy,¹ on the date the organisation is created.

By derogation from the provisions requiring that assets have to be at least 100 times the minimum gross salary, foundations whose exclusive goal, under penalty of dissolution by court decision, is fundraising for other associations or foundations, in order to assure that the latter carry out their own programmes, may have an initial capital with a total value of at least 20 times the minimum gross salary in the national economy.

➤ **What governance requirements are set out in the law?**

The bodies of the foundation are:

- The board of directors
- The auditor or, if such be the case, the committee of auditors. The board of directors consists of at least 3 members appointed by the founder or, if such be the case, the founders upon establishing the foundation
- In the event that, during the foundations' operation, the composition of the board of directors cannot be modified according to the terms provided by the statutes, the court shall appoint persons to become members of the board of directors, by presidential ordinance,² upon the request of any interested party.

The committee of auditors consists of an odd number of members.

Regarding the rights and duties of the board: The board of directors of the foundation is the leadership and administrative body of the organisation.

The board of directors ensures the pursuit of the purpose and goals of the foundation and has the following rights:

- To establish the general strategy and the programmes of the foundation
- To approve the budget and the (financial) accounting balance sheet
- To elect and revoke the auditor or the members of the committee of auditors
- To establish branches
- To draw up legal acts in the name and on behalf of the foundation
- To execute the budget of revenues and expenditures
- To approve the staff structure and strategy of the foundation
- To modify the statutes of the foundation
- To perform any other duties stipulated in the law or in the statutes

The general rules regarding the organisation and operation of the board of directors are established in the statutes. The board of directors may draft its own internal rules.

Is it mandatory to have a supervisory board?

Yes

¹ The minimum salary in the national economy is regulated by Government decisions, unless specified in the national budget law.

² This is a court order issued by the president of that court.

What are the requirements concerning board members? Is a minimum/maximum number of board members specified? What are the rules concerning appointment of board members? And their resignation/removal?

There are no specific rules. The only rules would be those outlined in the statutes.

What are the duties and what are the rights of board members, as specified by national legislation?

Yes

The Board of Directors has the following prerogatives:

- Presents to the General Assembly the activity report on the prior period, the execution of revenue and expense budget, the balance sheet, the draft revenue and expense budget and the draft of the foundation's programmes
- Makes legal documents on behalf and for the foundation
- Approves the organisational chart and the human resource policy of the Federation;
- Elects a chair and a vice-chair from its members
- Appoints and discharges the executive director
- Determines the prerogatives of the executive director
- Decides regarding approval and discharge of foundation members
- Administrates the property of the foundation and disposes of it within the limits set by the General Assembly
- May appoint a treasurer from its members and determines his/her prerogatives

What are the rights of founders? Can fundamental decisions, such as change of purpose, be made at the discretion of the founder? What are the legal requirements in such circumstances?

The founders can change fundamental aspects, but if this change involves changing the statutes of the organisation, such changes must be registered at the court.

What are the rights of beneficiaries (e.g. right of information)?

n/a

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?

n/a

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

This situation is not dealt with by the national legislation. The individual statutes of the foundation are the document that governs this matter i.e. it depends on the organisation concerned.

➤ **Who can represent a foundation towards third parties? Is this specified in law or is it up to the statutes of the organisation?**

The executive director represents the foundation, but also the statutes can have other specific things.

Do the director and officers have powers of representation?

The executive director / the president.

➤ **Liability of the foundation and its organs**

Legal representation of the foundation is a duty of the board, in accordance with the statutes.

What is the general standard of diligence for board members? Does your country differentiate between voluntary (unpaid) and paid board members?

No distinction is made between voluntary and paid board members.

Is there a “business judgment rule”, giving a board member a “safe harbour”, if she/he (1) acts on an informed basis; (2) acts in good faith, (3) acts in the best interests of the corporation, (4) does not act out of self-interest (duty of loyalty concept plays a role here), and (5) is not wasteful?

n/a

What is the liability the directors and officers?

The executive director along with the president is responsible before the law.

Can the founder modify the standard of diligence for board members in the foundation’s statutes?

Yes

Can board members be held **civilly** and/or **criminally** liable in the following cases?

	Yes	Probably yes	Unclear	Probably no	No
The foundation distributes money for a purpose which is a public benefit purpose but not accepted in the foundation’s statutes.					X
The foundation loses its status of a tax benefit foundation (because one requirement in tax law was not fulfilled).					X
The foundation loses money because a board member has acquired some stocks in a company which unexpectedly went bankrupt.					X
The foundation sells immovable property to the spouse of a board member. The board		X -civilly			

member was unaware that the price was too low.					
The foundation sells immovable property to a third person. The board member was unaware that the price was too low.		X - civilly			

➤ **Are economic activities allowed (related/unrelated)?**

Yes, if the activities have an accessory character and are closely connected to the main purpose of the organisation, up to an annual limit of €15,000 profit.

➤ **Are there any rules/limitations regarding foundations' asset management?**

No. Regarding alternative investments, hedge funds, private equity), the regulations are similar to those governing the business sector.

➤ **Are foundations legally allowed to allocate grant funds towards furthering their public benefit purpose/programmes which (can) also generate income? (recoverable grants; low interest loans; equities)**

Yes

➤ **What are the requirements for an amendment of statutes/amendment of foundations purpose?**

Modifying the constitutive act and/or the statutes of the foundation is done by registering the modification in the Registry of Associations and Foundations at the clerks' office at the court in whose territorial jurisdiction the organisation has its headquarters.

➤ **What are requirements with regard to reporting, accountability, auditing?**

The compulsory requirements are related to financial and accountability aspects, the annual balance sheet, taxes and fees to the state.

Reporting requirements: Do annual reports and/or accounts of foundations need to be made publicly available?

Only the accounts, and only by the fiscal authority.

What type(s) of report must be submitted (annual report including details of finances and activities, public benefit report, tax report/tax return, other reports e.g. on 1% schemes)?

Only the financial data: The balance sheet, once per year.

Who checks (supervisory/tax authorities)?

The financial authority.

Where is the required information publicised?

In the data base of the Ministry of Public Finance

What are the legal requirements concerning external audit? Is external audit required by law for all foundations?

There are no specific regulations on this matter

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

No

➤ **Supervision (which authority – what measures / sanctions?)**

With regard to public benefit foundations, the Minister of Justice and /or government will ask for a financial report, i.e. balance sheet and activities report.

With regard to foundations, the supervision on dissolution shall be done by a decision of the court in whose territorial jurisdiction the organisation has its headquarters, upon the request of any interested party.

Does the supervisory authority comprise of a public administrative body, a public independent body, a combination of a governmental body and a court, or a public body and an independent body?

The supervisory authority is a public administrative body: The Financial Administration.

What is the extent of the supervision? Does the body review reports and make inquiries? Are public benefit organisations subject to inspection?

The regulation on supervision only requires that the financial documents are submitted on time.

Public benefit organisations may be subject to inspection, especially if they have contracts with public institutions.

Is approval from the authority required for certain decisions of the Board of Directors?

No

Is it mandatory to have a state supervisory official on the board?

No

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

➤ **When and how does a foundation dissolve?**

A foundation dissolves:

- Lawfully
 - By court decision
 - If the period the organisation has been established for has come to an end
 - if the purpose for which it has been established has been accomplished or can no longer be accomplished, if within 3 months of reaching such a conclusion the purpose is not modified
 - If it is impossible to constitute the board of directors according to the statutes of the foundation, if this situation lasts for more than a year from the date when the board of directors should have been constituted, according to the statutes
 - By decision of the court in whose territorial jurisdiction the foundation has its headquarters, upon the request of any interested party
- **Under what conditions does the civil law in your country recognise a foreign foundation?**
- Must be registered as a Romanian juridical entity.
- **Does the civil law in your country allow a foundation to conduct (some or all) activities (grant-making, operating, asset administration, fundraising) abroad? Is there any limitation?**
- There is no limitation and there are no incentives.

II. Tax treatment of the foundation

- **What are the requirements to receive tax exemptions (pursuing public benefit purposes, non-distribution constraint, being resident in the country?)**
- No tax exemptions.
- **What are reporting/proof requirements to claim tax exemptions?**
- n/a
- **Is specific reporting required for the use of state funds?**
- Yes
- **Is there an obligation to report on donors and beneficiaries?**
- There is no obligation in national legislation, only in the contract with the donor.
- **Are there specific accounting rules for foundations?**
- No

- **Is there a statutory definition in the civil law (foundation law, trust law) of your country what a public benefit purpose (charitable purpose) is? If yes, please give us the definition.**

The public benefit purpose definition is:

- The activity of the NGO is for public benefit
- The NGO is active for more than 3 years
- The NGO must have an activity report, including balance sheets (income and expenditure) for the last three years
- The organisation must maintain the value of its founding assets each year

- **Is there a statutory definition in the tax law of your country of what a public benefit purpose is? If yes, please give us the definition.**

n/a

- **Support of “the public at large”**

Do the activities of a tax-exempt foundation generally have to benefit “the public at large”?

n/a - There are no tax exemptions.

If yes, can a tax-exempt foundation support a small number of disadvantaged/underprivileged individuals?

n/a

Examples: Do the following purposes promote the public at large?

The national legislation is not clear in this case. It is not presented a limitation regarding the number of inhabitants or other criteria.

	Yes	Probably yes	Unclear	Probably no	No
For benefit of the inhabitants of a city with 1,000,000 inhabitants					
For benefit of the inhabitants of a village with 10,000 inhabitants					
For benefit of the employees of a company					
For benefit of the members of a family					
For benefit of the students of a university					
Award for the best student of a university					

- **Non-Distribution Constraint**

Does a tax-exempt foundation generally have to follow a “non-distribution constraint” which forbids any financial support of the foundation board, staff, etc?

n/a

What happens with the foundation's assets in case of dissolution?

n/a

➤ **“Altruistic” Element**

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**?

The law makes no specific reference to this matter. 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)

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?

➤ **Hybrid Structures (elements of private benefit in public benefit foundations)**

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, his spouse and descendants.					
The founder retains a beneficial reversionary interest in the capital of a property or other asset for his own continuing use.					
The gift is of only 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 favor of the founder (or another member of her/his family) as tenant.					
A foundation distributes a (small) part of its income to the founder or his family.					

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, his spouse and descendants.					
The founder retains a beneficial <i>reversionary</i> interest in the capital of a property or other asset to retain for its own continuing use.					
The gift is of only 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 favor of the founder (or another member of her/his family) as tenant.					
A foundation distributes a (small) part of its income to the founder or his family.					

Are there any other examples from your country (in **civil law** and/or **tax law**) regarding such "hybrid structures" (e.g. law provisions, court decisions, etc.)?

➤ **Distributions and Timely Disbursement**

Are foundations allowed to spend down their capital?

The law makes no specific mention of this matter.

Are they allowed to be set up for a limited period of time only?

n/a

Does the **civil law** and/or the **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?

n/a

Does the **civil law** and/or the **tax law** of your country require a foundation to spend a percentage of its overall assets in the form of a "payout rule"?

n/a

Example: Does the **civil law** of your country accept the following activities of a public benefit foundation?

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

Example: Does the **tax law** of your country accept the following activities 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.					

Are there any examples or cases from your country (in **civil law** and/or **tax law**) regarding the question of “timely disbursement” (e.g. law provisions, court decisions, etc.)?

➤ **Does activity abroad put the tax-exempt status at risk?**

No

➤ **Income tax treatment**

Grants and donations

Grants and donations are not taxed.

Investment income (asset administration)

Investment income (asset administration) is treated like any other economic activity.

Economic activities related/unrelated)

Foundations may carry out direct economic activities, if they have an ancillary character and are closely connected to the main purpose of the organisation. But if they make a profit of €15,000 or more, the tax liability will be similar to that applicable to a commercial business.

Major shareholding – considered as economic activity and taxed accordingly?

Taxed at 16% of dividend value.

➤ **Capital gains tax, where separate from income tax**

16% of income.

➤ **Withholding tax on foreign investment income?**

16%

➤ **Gift- and inheritance tax**

There are no such taxes in Romania.

➤ **Value added tax (VAT)**

24%

➤ **Capital taxes on value of assets, where applicable?**

16%

➤ **Taxes on the transfer of assets?**

16%.

➤ **Other taxes, where applicable (Real property tax)**

16%.

➤ **Can a foreign foundation 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?**

n/a

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

n/a

➤ **Are there current discussions about the question of whether cross-border activities of foundations or other non-profit organisations are protected by the fundamental freedoms of the EC Treaty? Especially: Are the consequences of the Stauffer decision of the European Court of Justice and/or the current infringement procedures of the European Commission discussed by legal scholars or by practitioners? (e.g. publications in law journals) / Have there been any resulting changes to your country's legislation, or are changes being discussed?**

n/a

III. Tax treatment of donors

➤ **System of tax credit or tax deduction?**

2% of total income for individual donors.

3% of the turnover, but no more than 20% of the profit tax, for companies.

➤ **Tax treatment of individual donors**

Donations of cash, shares, securities, real-estate and in-kind-donations are deductible.

Limit of tax incentive is 2% of total income.

Donations to non-resident public benefit foundations are not deductible.

➤ **Tax treatment of corporate donors**

Donations of cash, shares, securities, real-estate and in-kind-donations are deductible.

Legislation (Law 32/1994 on sponsorship) limits the maximum amount of donations and sponsorship to 3% of the turnover but no more than 20% of the profit tax.

Donations to non-resident public benefit foundations are not deductible.

➤ **Tax treatment of donations to non-resident public-benefit foundations**

Donations to non-resident public benefit foundations are not deductible.

➤ **Other frameworks such as percentage law systems**

n/a

➤ **What are reporting/proof requirements to claim tax benefits?**

n/a

IV. Tax treatment of the beneficiary (receiving a grant or other benefit from a foundation)

Individuals

No taxes are levied.

Legal entities

No taxes are levied.

V. Trends and developments

➤ **Recent trends or developments affecting the legal and fiscal environment for public benefit foundations**

n/a

➤ **Impact of anti-terrorist debate**

Is there a specific national/regional anti-terrorism act (legislation) in your country, (which one and date of entry into force or adoption)?

Since 2004 we have specific national antiterrorism legislation (http://www.clr.ro/rep_dil_2002/rep.aspx). The subject is also part of the National Security Strategy (2007):<http://www.presidency.ro/static/ordine/SSNR/SSNR.pdf>.

If so, has this law introduced new legal and regulatory requirements for foundations (please describe)?

No new requirements for foundations.

Has the foundation supervisory authority introduced new regulatory/oversight requirements to comply with counter terrorism measures/law?

Has the foundation supervisory / regulatory authority(ies) introduced guidance tools to assist foundations to comply with counterterrorism measures/law?

No

If so, did the foundation supervisory authority engage in a consultation with the foundation sector on counter terrorism measures/ does it plan such a consultation?

No

➤ **Public fundraising**

Are there any specific laws that regulate fundraising and do they affect foundations?

No

Useful contacts

www.forumuldonatorilor.ro

Selected law texts

Government Ordinance no. 26/2000 on associations and foundations

Law 246/2005 on associations and foundations.

The Romanian Fiscal Code

Law 32/1994 on sponsorship

www.cdep.ro

www.presidency.ro