



EFC LEGAL AND FISCAL COUNTRY PROFILE

*The operating environment for
foundations*

SLOVAKIA – 2014

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The operating environment for foundations

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I. Legal framework for foundations

1. 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 as a legal entity is defined by Act 34/2002 on Foundations.

“A foundation is a public benefit organisation that accumulates assets for a specific purpose with a view to promoting and achieving public and benevolent purposes.”

A foundation is a legal entity registered in the Register of Foundations (hereinafter referred to as the “Register”) at the Slovak Ministry of the Interior (hereinafter referred to as the “Ministry”). The Register is a public register listing all particulars and details prescribed by law.

Legal types of foundations:

- Every foundation is an autonomous entity established and incorporated under civil law
- There are no special legal types of foundations such as corporate or enterprise foundations recognised by Slovak law

2. What purposes can foundations pursue?

Only public benefit purposes.

For the purposes of the Act on Foundations, a public benefit and benevolent purpose shall primarily mean:

- Promotion and protection of spiritual and cultural values
- Exercise and protection of human rights or pursuit and attainment of other humanitarian goals
- Protection and creation of a healthy environment
- Protection of natural values and resources
- Public health protection
- Protection of children’s and youth rights
- Development of science
- Education and sports
- Humanitarian aid to individuals and groups (tailored to individual crises) whose lives are in threat, or who are in need of urgent help because of natural disasters

A foundation may also engage in other activities and operations in conformity with its public benefit and benevolent purposes and in connection with carrying on the activities and operations mentioned above. A foundation’s “activities and operations” means:

- Provision of funds and non-monetary means and awarding of grants from the foundation’s assets to third parties
- Administration of the foundation’s assets, including foundation funds

3. What are the requirements for the setting up of a foundation (procedure, registration, approval)? What application documents are required? Are there any other specific criteria for registration?

The Act on Foundations distinguishes between establishment and registration of a foundation.

Establishment of a foundation:

A foundation may be established by an individual or a legal entity (hereinafter referred to as the “founders”) and is established under statutes signed by all the founders. Founders’ signatures must be officially attested. Until the registration of the foundation, the founders jointly or the executive director may act and sign on behalf of the foundation in all matters related to its registration.

Registration of a foundation:

The foundation is registered upon its being officially entered in the Register. A written application to register the foundation in the Register shall be submitted to the Ministry by the executive director; the authenticity of his/her signature must be officially attested.

The application to register the foundation in the Register shall be accompanied by: Two copies of the statutes and the executive director’s written declaration stating that the founders have duly paid their contribution in cash, or the founders’ written declaration stating that they have contributed real estate to the foundation endowment. The authenticity of the executive director’s signature attached to the written declaration must be officially attested. The executive director’s certificate of no criminal conviction must not be older than three months.

Should the founder be a legal entity not established or existing by virtue of law, the application to register the foundation in the Register shall be accompanied by a certificate of registration in the Commercial Register or in any other register, which must not be older than 30 days. In the case of a foreign legal entity, the application shall be accompanied by a certificate stating that it is a legal entity and identifying its statutory body. Should the foundation’s executive director be a foreign individual, the application shall be accompanied by his long-term residence permit authorising him to reside in Slovakia.

Registration of the foundation in the Register shall commence on the date of receipt of the application by the Ministry. Should the application lack any formalities, the Ministry shall within 15 days after receiving it inform the foundation’s executive director that unless all deficiencies are eliminated, the registration process will not start.

The Ministry shall reject the foundation’s application for registration in the Register if the background documentation indicates that:

- Assets have not been accumulated for a specific purpose
- The purpose that the foundation intends to promote and pursue is not a public benefit or benevolent one
- The statutes are in violation of the law

The decision to reject the application must be made by the Ministry within 30 days of the start of the registration process. The decision to reject the application may be appealed against by the foundation’s executive director. The appeal shall be lodged with the Slovak Supreme Court.

Unless the Ministry gives a reason for rejecting the application, within 30 days after the start of the registration process it shall register the foundation in the Register and within the same time limit shall send a copy of the statutes to the foundation’s executive director, clearly stating the date of the foundation’s registration in the Register. The Ministry shall inform the Slovak National Statistical Office about the foundation’s registration in the Register, its name, and the location of its principal headquarters within 10 days after the foundation’s registration.

4. 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?)

No

5. Do foundations have to register? If yes, in what register?

Yes, in the register administered by the Ministry of Interior.

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

The following information shall be kept in the Register:

- Foundation's name, location of its principal headquarters and its registration number
- Public benefit purposes promoted by the foundation
- Founder's full name (company name), birth identification number (company identification number) and permanent address (registered office)
- Amount and composition of the foundation's nominal capital, specifying:
 - Amount of contributions in cash
 - Real property and its market value assessed by an expert
 - Movables and their value assessed by an expert
 - Securities and their market value
 - Other property rights, titles and non-monetary assets, and their value assessed by an expert
- Full name, birth identification number and permanent address of the executive director

b) If foundations are registered, is the register publicly available?

Yes (also on the internet).

6. Is a minimum founding capital required? Is the foundation required to maintain these assets or any other specified asset level throughout its lifetime?

Yes. The foundation endowment is the capital registered in the Register. Upon the foundation's establishment, the endowment shall consist of contributions made by individual founders. Each founder's contribution shall be at least € 663.88, the total foundation endowment must be at least € 6638.78 and may only be represented by contributions in cash and by real property. Any amount in excess of 200,000 SKK may also be represented by movables, securities, as well as other property rights, titles, non-monetary assets and property values that can be assigned a monetary value. The amount of a foundation's endowment may not be reduced below the statutory limit mentioned above.

The foundation's assets shall comprise: the foundation's endowment, monies deposited in the foundation fund, and other assets of the foundation.

7. What governance requirements are set out in the law?

a) Is it mandatory to have a supervisory board?

In accordance with the Act on Foundations, the foundation's governing bodies shall be:

- Board of trustees
- Executive director
- Supervisory Board if the foundation's assets exceed 5,000,000 SKK (approximately €149,000) or in other cases if so prescribed by the statutes

- Inspector if the supervisory board was not set up
- Any other body if so provided in the statutes

Executive Director

The executive director shall manage the foundation's activities and operations and act on its behalf. He/she shall decide on all the foundation's affairs provided that such matters are not reserved for other governing bodies.

The executive director shall be elected and removed from office by the board of trustees. The first executive director shall be appointed by the founders in the memorandum of association upon the foundation's establishment.

Unless otherwise provided by the statutes, the board of trustees may impose limits on the executive director's power to act on behalf of the foundation. However, such a limitation shall not be applicable to third parties.

The position of the foundation's executive director shall be incompatible with sitting on the foundation's board of trustees, or being a member of any other governing body of the foundation. The executive director may attend the board of trustees' meetings and is entitled to an advisory vote.

The executive director may only be an individual with a permanent or long-term residence in Slovakia.

The Supervisory Board / The Inspector

The supervisory board/the inspector shall be the foundation's regulatory body.

Members of the supervisory board/the inspector shall be elected and removed from their office by the board of trustees. Provisions applicable to the election of the board of trustees and sitting thereon shall apply *mutatis mutandis* to the election of the supervisory board and sitting thereon. Provisions applicable to the executive director shall apply *mutatis mutandis* to the inspector. The inspector's term of office shall be three years.

Members of the supervisory board/the inspector may inspect all documents and records concerning the foundation's activities and operations, and check whether the books are kept in accordance with a separate legal rule, and whether the foundation carries on its activities in accordance with generally binding legal rules and its statutes.

The supervisory board/inspector shall mainly:

- Supervise keeping of the books,
- Approve the foundation's annual accounts and its annual report,
- Draw the board of trustees' attention to any discrepancies disclosed, and put forward proposals to eliminate them

b) 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?

Board of trustees (Governing board):

The board of trustees shall be the foundation's supreme body.

The board of trustees shall:

- Decide about the foundation's dissolution if the power to make such a decision is vested in it under the statutes
- Elect and remove the chairman the members of the board of trustees, the executive director, and the inspector, unless the statutes provide otherwise
- Decide on any amendments to the statutes if so permitted by the memorandum
- Appoint a liquidator

- Approve the foundation's annual budget submitted by the executive director
- Decide about employing and disposing of the foundation's assets in conformity with the foundation's public benefit purpose and under the terms and conditions set in the Act and in the statutes
- Decide on any increase in the foundation's endowment and on any changes to its composition
- Decide about establishment of the foundation fund and approve the final report or the annual report on the use of the monies deposited in the foundation fund, provided that the foundation fund was established for more than one year or for an indefinite period
- Determine the executive director's remuneration

Governing board composition (who can become a board member and how; expulsion, resignation, term of office)

The board of trustees shall consist of at least three members. Member of a board of trustees may only be an individual who has full legal capacity.

Membership in the board of trustees shall be incompatible with the position of executive director or member of any other governing body in the same foundation.

A person who has been awarded a grant by the foundation may not become a member of the board of trustees.

Membership of the board of trustees shall be an honorary position. Members are, under a separate legal rule, entitled to reimbursement of costs and expenses incurred by them in the course of performance of their tasks.

Elections of members of the board of trustees and the term of their office shall be specified in the statutes. The composition of the first board of trustees shall be specified by the founders in the statutes upon the foundation's establishment. The statutes may also govern and regulate requirements for becoming a member of the board of trustees.

A vacancy on the board of trustees shall be filled by the board within 60 days after occurrence of the vacancy. A new member shall be elected for the rest of the term of office, or for the next term. If upon occurrence of the vacancy there are fewer than three members of the board of trustees, the board of trustees cannot (except for the election of new members) pass any resolutions until new members are elected.

A proposal to elect and remove members of the board of trustees may be put forward by any member of the board unless otherwise stipulated in the memorandum of association.

An individual shall cease to hold office as a member of the board of trustees upon:

- Expiration of his/her term of office
- The member's written notice of resignation delivered to the executive director or to the board of trustees
- The member's removal from his/her office by the board of trustees
- The member's death

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

The board of trustees shall decide about other matters within the meaning and under the terms and conditions laid down in the statutes. The board is obliged to justify its decisions and shall do so in writing.

The board of trustees shall elect the chairman from among its members. The chairman shall call and preside over the board of trustees' meetings. The chairman may appoint any other member of the board of trustees to call and preside over meetings. Any resolution on the election and removal of the chairman of the board of trustees shall be valid only if voted for by a majority of all members of the board of trustees.

Members of the board of trustees may pass resolutions outside of meetings. In such a case, a draft resolution shall be submitted to individual members for their comments with the deadline by which they are to submit their written positions. Should a member fail to submit his written position within the said time limit, it shall be deemed and understood he does not agree with the draft resolution. The board of trustees chairman shall inform the members of the board of trustees about the results of the voting.

d) 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?

Rights of the founders

Founders shall be severally and jointly liable for the fulfilment of duties and obligations contracted by the founders on behalf of the foundation prior to its registration. Any duties and obligations shall pass to the foundation upon its registration unless refused by the foundation within three months on the grounds that assumption of such duties and obligations would be contrary to the public benefit and benevolent purpose promoted and pursued by the foundation.

- The first executive director shall be appointed by the founders in the statutes upon the foundation's establishment.
- The composition of the first board of trustees shall be specified by the founder in the statutes upon the foundation's establishment.
- The foundation can be dissolved upon the founders' resolution, or upon their mutual agreement if the board of trustees has not been operational for at least one year

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

Rights of the beneficiary are given by individual agreement between respective foundation and its beneficiary.

The Act on Foundations also classifies foundations as organisations that are obliged to publish information on their activities and use of their resources for anybody who approaches them with such a request (based on the Act 211/2000 on free access to information).

f) 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?

The Act on Foundations does not define a Conflict of Interest policy. The Foundation Board has the right to decide if the Conflict of Interest policy is incorporated into the foundation's internal procedures.

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

The Executive director shall manage the foundation's activities and operations and act on its behalf. He/she shall decide about all the foundation's affairs provided that such matters are not reserved for other governing bodies.

The position of the foundation's executive director shall be incompatible with sitting on the foundation's Board of trustees, or being a member of any other governing body of the foundation. The Executive director may attend the board of trustees' meetings and is entitled to an advisory vote.

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

The Act on Foundations specifies that the executive director is the foundation's statutory body that can represent foundation; he/she may manage the foundation's activities and operations and act on its behalf.

a) Do the director and officers have powers of representation?

The executive director is the foundation's statutory body so he/she is entitled to represent a foundation.

Unless otherwise provided by the statutes, the board of trustees may impose limits on the executive director's power to act on behalf of the foundation. However, such a limitation shall not be applicable to third parties.

9. Liability of the foundation and its organs

The foundation shall be liable for its obligations with all its assets (except for the monies deposited in the foundation fund that was established with a view to giving humanitarian support to individuals and groups (tailored to individual crises) whose lives are under threat or who are in need of urgent help because of natural disasters).

If the executive director fails to send to the Ministry the written agreement or decision of the board of trustees on establishment of a foundation fund (within 15 days of the date of its establishment), for the purpose of providing humanitarian support to individuals and groups (tailored to individual crises) whose lives are under threat, or who are in need of urgent help because of natural disasters, the foundation shall be liable for its obligations also with the monies deposited in this foundation fund.

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

No, there is no distinction, since The Act on Foundations defines the position of a board member as honorary

b) 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?

This rule is not defined by the law, however, respective foundations and their governing bodies may act in accordance with this rule (based on their decision).

c) What is the liability of executive staff?

The executive director's liability depends on the type of the employment contract/working agreement between him/her and the foundation. Based on this relationship Civil Code is applied accordingly.

d) Can the founder modify the standard of diligence for board members in the foundation's statutes?

Yes. The founder may specify which particular provisions contained in the foundation's statute may not be amended or modified by a resolution of the foundation's governing bodies.

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

10. Are economic activities¹ allowed (related/unrelated)? If so, is there a ceiling/limit on economic activities (related/unrelated)?

The foundation cannot engage in commercial activities except for leasing out real estate and organising cultural, educational, social or sports events, if its assets will be used more efficiently in such a way and if such activities are in accordance with the public benefit purpose promoted and pursued by the foundation.

11. Are foundations permitted to be major shareholders?

Yes

12. Are there any rules/limitations in civil and/or in tax law regarding foundations' asset management? What, if any, types of investment are prohibited?

The foundation's assets may only be used in line with the foundation's public benefit and benevolent purpose and subject to the terms and conditions specified in the statutes, and to pay the expenses incurred in connection with the foundation's administration. The amount of the administration expenses necessary for sustaining the foundation shall be determined by the board of trustees on an annual basis with a view to sustaining the foundation and providing for its everyday work.

The foundation may not enter into any agreement on silent partnership.

The foundation's assets may not be used to finance political parties' and political movements' activities, nor to support candidates running for election to public office.

The assets comprising the foundation's endowment may not be donated as a gift, invested as a contribution to the authorised share capital of a for-profit corporation, or encumbered or used to secure the foundation's or third parties' obligations. The foundation is obliged to deposit the monies

¹ For the purposes of this profile economic activity can be understood as "trade or business activity involving the sale of goods and services". "Related" economic activity is in itself related to and supports the pursuance of the public benefit purpose of the foundation. According to the above, normal asset administration by foundations (including investment in bonds, shares, real estate) would not be considered as economic activity.

that are part of the foundation's endowment on a separate account opened in a bank or branch of a foreign bank licensed to operate in Slovakia under a bank licence.

The foundation may use the funds comprising its endowment only to purchase:

- State bonds and state treasury notes
- Securities that can be publicly traded as negotiable securities and quoted in the securities market, and bonds in open-end mutual funds
- Mortgage bonds
- Deposit bonds and deposit certificates
- Real estate

13. 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, such allocations can be authorised by the foundation's board of trustees, which has to approve any investments of the foundation.

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

The board of trustees has the right to decide on any amendments to the statutes, if so permitted by the memorandum and Act on Foundations.

15. What are requirements with regard to reporting, accountability, auditing?

a) What type(s) of report must be produced?

- annual financial report
- annual activity report
- public benefit/activity report,
- tax report/tax return,
- other reports e.g. on 1% schemes)

Annual report:

After the end of the calendar year the foundation is obliged to prepare an annual report within the time limit specified by the board of trustees or in the statutes, however, not later than by 15 May of the following calendar year. If, after disclosure of the annual report, any facts or circumstances come to light that must be corrected, the foundation is obliged to correct them immediately.

The foundation shall send a copy of its annual report to the Ministry no later than on 31 May. The foundation shall send the auditor's report for publication in the official Commercial Journal no later than 31 May.

The annual report shall include:

- A summary of activities the foundation was engaged in during the calendar year, and their connection with the public benefit and benevolent purpose promoted and pursued by the foundation
- Annual accounts, analysis of basic data presented there, and the auditor's report on the annual accounts

- A summary of revenues (income) with specification of their sources and origin
- A list of donors if the value of the gift or contribution from one donor exceeds € 3,319.39
- A list of individuals and legal entities to whom grants have been awarded by the foundation for furtherance and promotion of a public benefit purpose for which the foundation was established, as well as information on how the donations have been used
- Total expenses (costs) as itemised according to individual types of activities engaged in during the calendar year and, separately, the administration expenses (costs)
- Any amendments to the statutes and any changes in the composition of its governing bodies during the calendar year
- The executive director's remuneration for performance of his/her tasks, and remuneration due and payable to members of any other governing body if it was formed under the statutes as appropriate compensation for their work
- A summary of investment activity and of monies deposited in the funds
- Any other information specified by the board of trustees

Accounting Practices:

- The foundation shall keep its books under a separate legal rule
- Monies deposited in the foundation fund shall be kept in the foundation's books separately
- The annual accounts must be audited by a chartered auditor

b) Must all/any of the reports produced by the foundation be submitted to the supervisory authorities? If so, to which authorities (e.g. foundation authority, tax authority)?

The Act on Foundations precisely specifies what shall annual report include (please see above). The foundation shall send a copy of its annual report to the Ministry.

There is no public benefit report required by law.

Foundation shall prepare a tax report if its incomes (or one of them) are subject to the income tax. Tax report must be submitted to the tax authorities.

Annually Tax Directorate releases a list of beneficiaries that have received resources through the 2% assignment mechanism. Within 16 months of the release of this list are all beneficiaries that receive more than €3,319.39 in one year are obliged to publish a report on the use of the assigned resources. The report must be released for the purposes of publicising in the Official Journal. The report must include the amount and a specification of the supported purposes. If a beneficiary receives more than €33,193.92 in one year, the report must also include an audited financial statement.

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

The compliance of the annual reports with foundation law is checked by the Ministry. Tax reports are checked by tax authorities.

d) Do any or all of the reports and/or accounts of foundations need to be made publicly available? If so, which reports and where (website, upon request)

The auditor's report of foundation financial statement has to be submitted to the Official Journal. The foundation's annual report has to be submitted to the Ministry.

Annual reports submitted to the Ministry are public; anybody who is interested can make a request to have them released.

Audited financial statements are publicised in the Official Journal.

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

External audit by chartered auditor is compulsory for all foundations and it is required by the Act on Foundations.

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

Audit shall be undertaken by a chartered auditor in accordance with the International Standards on Auditing.

16. Supervision (which authority – what measures / sanctions?)

The Ministry shall supervise whether a foundation has been promoting and pursuing the public benefit and benevolent purpose for which it was established: In order to do so, the Ministry shall analyse and evaluate the annual report.

Should there be any deficiencies or discrepancies, the Ministry will ask the foundation to eliminate them by the set deadline. At the same time, the foundation will be asked to inform the Ministry about the progress of the matter and remedial actions taken.

Should the foundation fail to take remedial action, the Ministry will file a petition.

Upon filing of a petition by the founder, the Ministry, or a person who has duly proved his legitimate interest, the court shall in certain circumstances decide to dissolve the foundation and order its liquidation - see below.

a) 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?

Public administrative body

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

The supervision is conducted within the framework of the Act on Foundations. For instance, the Ministry reviews foundations' annual reports and makes inquiries if any imperfections are noticed, i.e. if a foundation submits an annual report that is not in compliance with the legal requirements.

Tax authorities are entitled to make inspections of any organisations that are beneficiaries of the 2% tax assignment. However, the extent of their inspection is limited to the use of assigned resources, and does not cover the organisation's public benefit status or its use of other organisations' resources or activities.

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

No

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

No

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

The Act on Foundations defines sanctions only for not submitting an annual report to the Ministry. Should the foundation fail to send the annual report by the set deadline, the Ministry shall impose a sanction within the range from € 331.94 up to € 3,319.39.

The Ministry shall supervise whether a foundation has been promoting and pursuing the public benefit purpose for which it was established. In order to do so, the Ministry shall analyse and evaluate the annual report. Should there be any deficiencies or discrepancies, the Ministry will ask the foundation to eliminate them by the set deadline. Should the foundation fail to take remedial action, the Ministry will file a petition. Upon filing of a petition by the founder, the Ministry, or a person who has duly proved his legitimate interest, the court shall decide whether to dissolve the foundation and order its liquidation.

17. When and how does a foundation dissolve?

The foundation shall be officially dissolved upon:

- Expiration of the term for which the foundation was set up
- Fulfilment of the public benefit or benevolent purpose for which it was established
- A decision of the board of trustees to dissolve the foundation
- A court order to dissolve the foundation
- The foundation having been declared bankrupt, or upon dismissal of the bankruptcy petition due to its lack of assets
- A decision of the founders, or upon their mutual agreement, if the board of trustees has not been operational for at least one year

Upon filing of a petition by the founder, the Ministry, or a person who has duly proved his legitimate interest, the court shall decide to dissolve the foundation and order its liquidation if:

- The foundation's endowment has decreased below the statutory limit
- The foundation has failed to submit its annual report to the Ministry within the time limit laid down in the decision to impose a fine (as per Article 36 of the Act on Foundations)
- The foundation's assets were used to finance activities of political parties and political movements, or to support candidates running for election to public office
- Those foundation governing bodies, whose term of office expired more than six months previously, have not been properly elected, or the vacancies have not been filled to give the required number of members
- The foundation has been inactive in furtherance of its purposes for more than one year
- The foundation has been using assets contrary to the Act on Foundations or to its memorandum of association

Upon filing of a petition by the founder, the Ministry, or a person who has duly proved his legitimate interest, the court may order the foundation's dissolution or liquidation if the foundation is otherwise in material or repeated breach of the statutory provisions laid down in the Act on Foundations.

Striking the foundation off the Register:

The foundation's existence shall be officially brought to an end upon its having been struck off the Register. Before being struck off the Register the foundation may be dissolved with or without prior liquidation.

Dissolution does not necessarily have to be preceded by liquidation provided that:

- After the foundation is struck off the Register, its assets and liabilities are transferred to another foundation
- The court has dismissed the bankruptcy petition due to the foundation's lack of assets

- At the end of the bankruptcy proceedings, all the foundation's assets have been distributed among its creditors and there is no surplus left

Dissolution without Liquidation:

- The foundation may merge only with another foundation under a written merger agreement if so permitted by the statutes of both merging foundations.
- The merger agreement must include the names of the parties to the merger and information about assets, liabilities, rights and obligations of the acquired foundation. The merger agreement must be signed by the statutory bodies of both the acquired foundation and the acquiring foundation. The endowment of the foundation that is to acquire the other foundation's assets and assume its liabilities must be increased by the amount of the acquired foundation's endowment.
- An application to strike the acquired foundation off the Register shall be filed by its statutory body, whose signature must be officially verified. The merger agreement, the decision of the board of trustees to dissolve the foundation without liquidation, and the founder's decision to dissolve the foundation (if he/she has so decided) shall be enclosed with the application.
- On the day the acquired foundation is struck off the Register, its assets, as well as its rights, obligations and liabilities shall be transferred to the acquiring foundation.
- In the event of a merger of foundations, their assets shall be transferred to the new foundation that was formed as a result thereof.
- The foundation may be transformed into a non-investment fund, in which case the existing foundation shall be dissolved without prior liquidation if, as of the date of filing the application for striking the foundation off the Register, all statutory requirements prescribed for the establishment of the non-investment fund have been met.
- In the event of transformation, the foundation's endowment shall be transferred to a different foundation or to the municipality in which the former foundation had its principal headquarters.
- The Ministry shall strike the dissolving foundation off the Register and on the same day shall amend the registration details of the foundation that acquired its assets and assumed its obligations.

Dissolution with prior liquidation:

- The start of the liquidation proceedings shall be registered in the Register. During the liquidation, the foundation will use its name with the reference "in liquidation"
- Upon registration of liquidation in the Register, the powers to act on the foundation's behalf originally vested with the executive director shall pass to the appointed liquidator entered in the Register.
- Unless provided otherwise, the liquidator shall be appointed by the board of trustees. Should the board of trustees fail to appoint the liquidator without undue delay, he/she shall be appointed by a court of law. Only a natural person can be a liquidator. In the event of a court-ordered liquidation, the liquidator shall be appointed by the court that ordered the liquidation
- Provisions applicable to liability of the executive director for the exercise of his/her powers shall apply *mutatis mutandis* to the liquidator.
- The liquidator may only carry out activities related to the foundation's liquidation.
- Should the liquidator find out that the foundation is in debt, he/she shall file a petition for bankruptcy without undue delay.
- By the date that liquidation proceedings start, the liquidator shall prepare the liquidation balance sheet and send information about the foundation's assets and liabilities to all members of the board of trustees

- By the date that liquidation proceedings are completed, the liquidator shall prepare the closing accounts and submit them to the board of trustees for its approval. He/she shall at the same time submit a final report on the liquidation proceedings and a proposal to distribute the liquidation surplus (if any).
- The liquidator is obliged to offer the liquidation surplus to another foundation or to the municipality in which the dissolved foundation had its principal headquarters. The liquidation surplus, if accepted by the municipality, may only be used for public benefit and benevolent purposes. The property comprised in the foundation's endowment may be offered to another foundation duly registered in accordance with the Act on Foundations
- Within 30 days after completion of liquidation the liquidator shall file an application to strike the foundation off the Register
- The liquidator's remuneration shall be determined by the body which appointed him/her

18. Under what conditions does the civil law in your country recognise a foreign foundation?

The Slovak law on foundations defines "foreign foundation" as follows:

- A foreign foundation shall be a legal entity with its principal headquarters located in a country other than the Slovak Republic that has a status of a foundation under the laws of the country where its principal headquarters are located.
- The foreign foundation may operate in the Slovak Republic only through its branch under the same terms and conditions and to the same extent as the foundation established thereunder.

19. 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?

Yes, foundations are allowed to have activities abroad. There are no limitations.

II. Tax treatment of the foundation

1. What are the requirements to receive tax exemptions (pursuing public benefit purposes, non-distribution constraint, being resident in the country?). Is there a special approval process for receiving tax exemption? If so does the process have to be repeated every year?

There exist no general requirements, such as pursuing public benefit purposes or non-distribution constraint in order to receive tax exemptions. Tax exemptions are related to the specific taxes and activities, not legal form or public benefit status.

According to the tax law, a foundation is defined as a not-for-profit organisation pursuing public benefit activities that is eligible to register as a recipient of portion of paid income tax (tax designation of 2% of paid income tax of private and legal entities).

2. What are reporting/proof requirements to claim tax exemptions? What does the foundation have to submit to the authorities (statutes, financial reports, activity reports, other?)

n/a

3. Is specific reporting required for the use of state funds?

Yes

4. Is there an obligation to report on donors and beneficiaries?

Yes

5. Are there specific accounting rules for foundations?

The foundation shall keep its books under a separate legal rule.

6. 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.

See question on page 1 of this profile.

7. 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.

No. There is an enumerative definition of public benefit purposes in the law on foundations (see above).

8. Please indicate whether the following purposes would or would not be accepted for tax privileges in your country:

Public benefit purpose	Accepted in tax law (for tax privileges)			
	Yes	Probably yes	Probably no	No
Arts, culture or historical preservation	X			
Environmental protection	X			
Civil or human rights	X			
Elimination of discrimination based on gender, race, ethnicity, religion, disability, sexual orientation or any other legally prescribed form of discrimination	?			
Social welfare, including prevention or relief of poverty	?			
Humanitarian or disaster relief	X			

Development aid and development cooperation	?			
Assistance to refugees or immigrants	?			
Protection of, and support for, children, youth or elderly	X			
Assistance to, or protection of, people with disabilities	?			
Protection of animals	?			
Science, research and innovation	X			
Education and training	X			
European and international understanding	?			
Health, well-being and medical care	X			
Consumer protection	?			
Assistance to, or protection of vulnerable and disadvantaged persons	?			
Amateur sports	X			
Infrastructure support for public benefit purpose organisations	?			
<i>Other – please list other purposes accepted in tax law for tax privileges in your country</i>				

* **Note:** Tax exemptions are related to the specific taxes and activities, not legal form or public benefits status.

According to the law, a foundation is defined as a non-for-profit organization pursuing public benefit activities that is eligible to register as a recipient of portion of paid income tax (tax designation of 2% of paid income tax of private and legal entities).

9. Support of “the public at large”

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

No

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

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

	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					

10. Non-Distribution Constraint

a) Does a tax-exempt foundation generally have to follow a “non-distribution constraint”² which forbids any financial support of the foundation board, staff, etc.?

There is no connection between tax-exempt status and a “non-distribution constraint”.

Foundation law defines reimbursement of board members’ costs and support of board members (see previous section of the profile). There is no constraint as to the staff (stated in the law).

b) What happens with the foundation’s assets in case of dissolution?

The liquidator is obliged to offer the liquidation surplus to another foundation or to the municipality in which the dissolved foundation had its principal headquarters. The liquidation surplus, if accepted by the municipality, may only be used for public benefit and benevolent purposes. The property comprised in the foundation’s endowment may be offered to another foundation duly registered in accordance with the Act on Foundations.

11. “Altruistic” Element

a) Is remuneration of board members allowed in civil law and in tax law? If remuneration is allowed, are there any limits in civil law and/or in tax law?

In civil law exclusively.

² For the purposes of this profile, 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) except where transactions/benefits provided are part of the direct promotion of the public benefit purpose.

The Act on Foundations states that Board members can be reimbursed for the costs and expenses incurred by them in the course of performance of their tasks as a board member.

b) Does tax law allow a donor/funder to receive some type of benefit in return for a donation? (e.g. postcards, free tickets for a concert)

No

c) Is there a maximum amount that can be spent on office/administration costs in civil law and in tax law?

If yes, how are “administration costs” defined? Please indicate which of the following types of expenditures would/would not be considered as “administration costs”:

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

There is no maximum amount. Slovak law on foundations recognises administration costs which must be recorded separately in the books. These costs may include expenses incurred in connection with:

- Protection and increase of the value of the foundation’s assets
- Promotion of the public benefit purpose pursued by foundation, or the purpose of the foundation funds
- Operation of the foundation
- Remuneration paid to the executive director
- Reimbursement of the costs under a separate legal rule
- Wages
- Other costs incurred in connection with other activities carried on by the foundation, and in connection with its operation

12. Hybrid Structures (elements of private benefit in public benefit foundations)

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

	Yes	Probably yes	Unclear	Probably no	No
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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.					x
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.					x
A foundation distributes a (small) part of its income to the founder or his family.					x

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

	Yes	Probably yes	Unclear	Probably no	No
The founder restricts the use of the endowment by specifying that the foundation is required to maintain the founder, his spouse and descendants.					
The founder retains a beneficial reversionary interest in the capital of a property or other asset to retain for its own continuing use.					
The gift is of only the freehold reversion (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.					

13. Distributions and Timely Disbursement

a) Are foundations allowed to spend down their capital?

According to the Act on Foundations, the amount of registered nominal capital may not be reduced. The rest of the capital may be spent down.

b) Are they allowed to be set up for a limited period of time only? If so, is there a minimum

length of time for which the foundation must exist?

n/a

c) 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? If so, is there a specific amount/percentage of the income that must be spent within this time? Which resources would be considered as income? E.g. would donations/contributions designated as being for building up the endowment be included in /excluded from the income to be spent? What expenditures would count towards the disbursement of income (e.g. would administration costs be included/excluded)?

This depends on the type of income, e.g. concerning income from tax designation there is a time period within which foundations shall use this money.

d) 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 “pay-out rule”?

No

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.					

14. Does activity abroad put the tax-exempt status at risk?

Activities abroad do not have any implications for income taxes or tax-exempt status.

15. Are there any civil and/or tax law rules regulating cross-border grants by a foundation? If yes, please provide a description of the requirements the foundation must fulfil in such cases.

16. Income tax treatment

How are the following types of income treated for income tax purposes?

Grants and donations

Grants and donations are not subject to tax.

Investment income (asset administration)

- Interest from fixed rate bonds
- Equities
- Income from leasing of a property that belongs to the foundation

Income from investments is tax-exempt, whereas income from the sale of investments is taxed.

Economic activities related/unrelated)

- Income from running a hospital/museum/opera
- Income from producing/selling books (e.g. art books sold by a cultural foundation)
- Income from running a bookshop inside a museum/opera run by the foundation
- Income from running a café in the hospital/museum run by the foundation
- Income from selling T-shirts (activity not related to the pursuance of the public benefit purpose)
- Income from intellectual property (e.g. royalties and licence fees)

The foundation cannot engage in commercial economic activities except for leasing out real estate and organising cultural, educational, social or sports events, if its assets will in such a way be used more efficiently and if such activities are in accordance with the public benefit purpose promoted and pursued by the foundation. These activities are fully tax-exempt. If these activities are considered to be entrepreneurial, they are fully taxed. tax.

All unrelated activities are fully taxed. Unrelated economic activities can be carried out only as incidental and as such must meet the defined characteristics of incidental activities. If they prove to be regular economic activity of an organization (a civic association or a non-profit organization providing public benefit services), the organization faces a danger of a control executed by the Trade Authority which may result in a high fine. If a foundation carries out economic activities (which are not allowed by the Act of Foundations), it faces a danger of liquidation enforced by the Slovak Ministry of Interior.

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

Income deriving from grant expenditure towards public benefit purpose/programme activities (such as loans, guarantees, equities) is taxed.

Is major shareholding considered as an economic activity and taxed accordingly?

Major shareholding is considered to be an investment and taxed accordingly. If a foundation is a shareholder of a business corporation, the profit share paid out is not subject to tax.

17. Are capital gains subject to tax? If so, are they taxed as income or liable to a separate tax?

Not separate from income tax.

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

Significant amendments to the VAT Act came into effect on 1 January 2010.

The VAT registration threshold for taxable entities with their seat, place of business, or permanent establishment in Slovakia, is a turnover of €49,790 for the previous 12 calendar months.

Requirements applicable to private businesses are applied to non-profit organisations as well; there are no advantages or exemptions conferred by their public benefit purpose or not-for-profit status. However, not-for-profit organisations do not become VAT payers very often because a major part of their income comes from VAT-exempt services or is not subject to VAT at all (such as gifts, grants, subsidies, etc.).

VAT-exempt services include postal services, financial and insurance services, education, radio and TV broadcasting services, and health and social services, as well as lottery services and the transfer and leasing out of real estate. VAT-exempt transactions also include, among other things, services related to sports and physical education provided by not-for-profit entities.

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

Yes

20. Are there taxes on the transfer of assets by foundations?

None

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

Real estate tax: The tax administrator in a given case is the municipality where the real estate is located.

22. 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 – if they have to fulfil exactly the same requirements as local based public benefit foundations, please refer to above but indicate which documents need to be provided and translated

- Statutes (translation required?)
- Last annual financial report (translation required?)
- Documents providing evidence for certain tax law requirements e.g. that income was actually spent for public benefit purposes, which may not be required by the organisation's country of seat but are required according to the legislation of the country from which tax benefits are sought?
- Other?

A foreign foundation shall be a legal entity with its principal headquarters located in a country other than Slovakia and has foundation status under the laws of the country where its principal headquarters are located.

A foreign foundation may operate in Slovakia only through its branch under the same terms and conditions and to the same extent as a foundation established according the Slovak Act on Foundations.

All economic activities of PBO organisations are fully taxed, therefore, the same principle applies to foreign organisations which need to be registered in Slovakia

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

III. Tax treatment of donors of public benefit foundations

1. System of tax credit³ or tax deduction⁴?

Gifts and donations are not tax-deductible items. There are no tax incentives for donors any more (abolished through tax reform).

2. Tax treatment of individual donors

a) What tax relief is provided for individual donors? Is there a minimum and/or a ceiling to a contribution on which tax incentives can be claimed?

b) Which assets qualify for tax deductibility?

None

3. Tax treatment of corporate donors

a) What tax relief is provided for corporate donors? Is there a minimum and/or a ceiling to a contribution on which tax incentives can be claimed?

b) Which assets qualify for tax deductibility?

None

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

None. Donations to individuals or organizations, whether domestic or cross-border, are tax-deductible items.

³ For the purposes of this profile tax credit can be defined as an amount that can be deducted from the actual tax to be paid (reduction in amount of tax paid)

⁴ For the purposes of this profile tax deduction can be defined as a reduction in the gross amount on which tax is calculated (reduction in taxable income/tax base)

5. Other frameworks such as percentage law systems

There is an option to designate a portion of paid income tax.

Individuals can designate 2% of their paid income tax to a qualifying subject of his/her choice (specially registered as a recipient of designated tax). The lowest amount that can be designated is € 3.32.

Legal entities can designate up to 2% of their paid income tax to more than one qualifying subject (specially registered as a recipient of designated tax) of their choice.

There is a significant modification to this mechanism as of 1 January 2011.

This modification connects tax assignment and gift donations. If a legal entity wants to assign 2 % of its income tax, it must donate from its own resources 0.5% of the amount that it pays in income tax. If a legal entity does not donate its own resources, it can assign only 1.5 % of its income tax. A gradual decrease in the amount that can be designated from 2% to 0.5% is planned by 2018.

6. What are the requirements that the donor must fulfil/ information they must provide in order to claim tax benefits?

What information do donors have to provide to their tax authority in order receive tax incentives for their donation (e.g. submitting details on the organisation they support: statutes, annual financial report, documents providing evidence for certain tax law requirements e.g. that income was actually spent for public benefit purposes?)?

None

7. Are there any different or additional requirements to be fulfilled when a donor is giving to a foreign-based foundation?

What information do donors to foreign-based organisations have to provide in order receive tax incentives for their donation (e.g. Statutes (translation required)? Annual financial report (translation required)? Documents providing evidence for certain tax law requirements e.g. that income was actually spent for public benefit purposes?)?

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

1. Individuals

Receiving a grant/benefit/scholarship from a foundation is normally not subject to tax.

2. Legal entities

The recipient of a grant is treated differently for tax purposes depending on whether it is a not-for-profit organisation or a for-profit company.

If the recipient of the grant is a for-profit company:

- It can either pay a tax on the received grant, and all the expenses covered by this grant can be then treated as a tax-deductible items; or
- The received grant is not subject to tax, and all expenses covered from the grant are then treated as non-deductible items.

If the recipient of the grant is a not-for-profit organisation and such a grant enables the organisation to pursue a public benefit purpose, the grant is tax-exempt.

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

V. Gift and inheritance tax

There are no gift and inheritance taxes in the Slovak tax system.

1. Does gift and inheritance tax/transfer tax exist in your country and if yes who has to pay the tax in the case of a donation/legacy to a public-benefit organisation (the donor or the recipient organisation)?

2. What are the tax rates? Is there a preferential system for PBO's? Which PBO's qualify? Is there a difference according to the region or the legal status of the PBO?

3. Is there a threshold (non-taxable amount) from gift and inheritance tax for donations/legacies to public-benefit organisations?

4. Is there a legal part of the estate that is reserved for certain protected heirs and which a donor cannot give to third parties?

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

VI. Trends and developments

1. Are there current discussions about the question of whether cross-border activities of foundations or other non-profit organisations and their donors are protected by the fundamental freedoms of the EC Treaty? Have there been any changes to your country's

legislation, resulting from the Persche, Stauffer, Missionswerk or other relevant ECJ judgments, or are changes being discussed?

No. The ECJ decisions are monitored by Slovak Donors' Forum and its members discuss their implications and act accordingly if required. However, no broader discussion is going on.

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

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

No

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

n/a

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

No

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

No

e) 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

3. Are there any other recent trends or developments affecting the legal and fiscal environment for public benefit foundations in your country?

There is a plan to harmonise income taxation of all legal entities regardless of their profit or not-for-profit purposes or public benefit status, and thus to eliminate all tax exemptions and the tax designation mechanism from the system

4. Public fundraising

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

There is a special rule on public collections and it implies that it applies to foundations as well.

Useful contacts

Slovak Donors' Forum / Forum donorov
Parickova 24
821 08 Bratislava
Slovak Republic
Tel./fax: +421.2.5441 7917
www.donorsforum.sk

Tax Advisory Service:
Open Society Foundation Bratislava
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Tel.: +421.2.5441 4730, magda@osf.sk
www.osf.sk

Information portals:
www.partnerstva.sk
www.changenet.sk
www.obcan.sk
www.minv.sk

Selected bibliography

Please list here any books/articles which provide further information on the any of the topics discussed in the profile. Links to online articles/resources are also appreciated

Selected law texts online:

Please list here the links to relevant national laws where these are available online

About the EFC Legal and Fiscal Country profiles

This profile is part of a series of profiles of the legal and fiscal environments for foundations in 42 different countries across the wider Europe, as well as some countries in other world regions. The aim of these profiles is to paint a picture of the current operating environment for foundations in these countries to better understand the legislative landscape foundations inhabit. The profiles are produced in collaboration with foundations, legal experts, and associations in each country. Each profile is written by the national-level expert. A comparative overview of the country profiles from wider Europe can be downloaded from the EFC website: "Comparative Highlights of Foundation Laws: The Operating Environment for Foundations in Europe."

www.efc.be

About the European Foundation Centre

The European Foundation Centre, founded in 1989, is an international membership association representing public-benefit foundations and corporate funders active in philanthropy in Europe, and beyond. The EFC 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.