Belarus

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QUICK FACTS

Legal forms of philanthropic organizations included in the law: Association, Foundation, Cooperative, Institutions

Five main social issues addressed by these organizations: Health and Medical Research, Youth and Family, Environment, Human rights, Sport

Average time established by law to register a philanthropic organization: 31-60 days

Average cost for registering a philanthropic organization: US $120

Public associations and foundations are the most appropriate legal forms for philanthropic purposes. However, registration of an association or foundation is time consuming and is more expensive than the registration of commercial organizations. Moreover, the government often arbitrarily refuses registration to such legal entities. For this reason, the majority of new, small philanthropic organizations register as institutions; therefore, they gain the status of legal entities on the same day, so long as they are in compliance with application requirements. However, this form is not suitable to all philanthropic initiatives. As a result, large organizations have to spend time and money, and must negotiate with the authorities in order to register as foundations or public associations. The terms “philanthropic organization” or “charitable organization” are not defined in the legislation, but some laws use these terms. The legislation also lacks standards for granting special status to “public benefit organizations.”

Government levels primarily regulating the incorporation of philanthropic organizations: State Government

Philanthropic Environment Scores:

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<th>Year</th>
<th>Ease of Operating</th>
<th>Tax Incentive</th>
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<tr>
<td>2018</td>
<td>2.5</td>
<td>2.2</td>
<td>1.6</td>
<td>2.8</td>
<td>2.5</td>
<td>2.30</td>
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I. Formation/Registration, Operations, Dissolution of a Philanthropic Organization (PO)

The three questions in this section pertain to the laws and regulations governing philanthropic organizations (POs). The scoring questions for this category cover three aspects of regulations: (A) formation and registration, (B) operations, and (C) dissolution.

Question 1: To what extent can individuals form and incorporate the organizations defined?

Score: 2.0

The activity of unregistered CSOs is forbidden under Article 193-1 of the Criminal Code (1999), which carries a sentence of imprisonment for up to 2 years. Since 2008, there have been no sentences on such charges but government officials issue warnings to members of unregistered groups to stop their activities until they obtain legal registration or they may be brought to court. There has been at least one known case when such warning became the reason for the termination of a PO providing shelter for individuals experiencing homelessness.

Foreign citizens and stateless persons, even with permanent residence in Belarus, are not allowed to found associations, but can found foundations and institutions. There is a requirement of startup capital for charitable foundations—US $1,150 for local foundations and US $11,500 for national or international foundations. Besides the value of the property (and start capital), between them there is no difference in the possibilities of activity between the local foundation and the national/international Foundations. Local foundations can operate across all the country. There is a difference between them in the registration procedure (for example, national and international foundations are registered by the Ministry of Justice, while local foundations are registered by the regional justice departments). There are some administrative features and responsibilities for national foundations: for example, they must open branches in majority regions of the country within six months after registration. However, in practice it is only an issue of prestige: If the founders want to have an impressive combination of words "Republican Fund" in the name and have enough money—they go this way. For example, during 2017 year in Belarus only one national and 21 local foundations has been registered. The startup capital amount seems excessive, and this is one of the reasons why only about 10 foundations are registered per year. The legislation does not provide the legal framework for creating endowments.

The registration procedure for associations and foundations is complicated and requires many documents. A large number of founders (50) are required to form a national association. A PO’s legal address cannot be a residential house; instead, it must be a public office. The fee for registration of associations and foundations is 10 times higher than the fee for registering commercial organizations. Because the law is unclear about the criteria for approved registration, and because there is room for interpretation, rejections are often based on political reasons rather than the law. It is possible to register an institution, which is a PO founded by a single owner, by following the application requirements and regulations. The legislation sets the terms for administrative response time to filed documents at 1 month for foundations and associations (though it can be prolonged for an additional month) and at 1 day for institutions. In practice, it works most of the times.
Question 2: To what extent are POs free to operate without excessive government interference?

Legislative frameworks restricting the activities of POs remain as severe as usual. For example, under the law, public associations can be dissolved for single or minor violations to the Legislation on Street Meetings (Law on Mass Events, No. 114-З of December 30, 1997). The law also establishes the dissolution of an organization for single and minor violations to the Legislation on Foreign Aid. The legislation on combatting extremism, financing of terrorism and money laundering contains standards that set severe restrictions on the dissemination of information and stipulate strict control over the financial activity of POs. Some of these norms are applied in practice; for example, if the government considers a PO’s publications to be extremist they are banned. Additionally, access to certain websites is restricted.

Some state entities and universities block access to PO’s websites in offices and campuses. However, in practice, the majority of such norms are not applied to philanthropic organizations. They are mostly applied to human rights and political groups, as well as watchdog initiatives. The law strictly regulates the structure and the procedure for internal governance of foundations and public associations, while there are no such strict guidelines for institutions. At the same time, such a liberal procedure for institutions has a negative side, since the majority of institutions do not comply with the statutes of democratic collegial governance, supervisory councils, or internal accountability and transparency mechanisms. Inspections, including inspection by tax authorities, are frequently used as methods to interfere with the activities of the organization. In some cases, they lead to involuntary dissolution. Restrictions on international contacts are not addressed in the law, but have been applied de facto, although with less frequency lately. Requirements for reporting on a PO’s activity to a registering body are, in general, reasonable. However, reporting on taxes by POs is subject to the same procedure used by commercial organizations, which requires a lot of paperwork.

Question 3: To what extent is there government discretion in shutting down POs?

The legislation and practices concerning the dissolution of POs (both mandatory and voluntary) have not changed lately. Voluntary dissolutions of POs are conducted freely; settlements of debts and settlements with creditors are carried out in accordance with a simple procedure. The State provides broad guidelines for the mandatory dissolution of associations by court decisions, often for single and minor violations. For example, a PO can be dissolved for violating the regulations on foreign donations and regulations on rallies and demonstrations. They can also be dissolved for failing to submit reports to the Ministry of Justice within 3 years of operation or due to other violations of the established reporting regulations. However, the practice of such forcible liquidations is quite rare. At the same time, there has been at least one case during the period under review when the State dissolved a PO that was providing assistance to prisoners. The surrounding circumstances indicate that this was a political decision, although the State cited a minor violation of the tax legislation as a legal ground for liquidation; in this specific case, the PO submitted a tax declaration several days later than required.
The possibility of arbitrary and inconsistent interpretation remains the key problem in regard to mandatory dissolutions; depending on the organization, authorities, such as the Ministry of Justice and Tax, may issue a warning, pursue no sanctions, or make a case for dissolution in court. Along general dissolution, another serious threat to institutions is the possibility of a special procedure that recognizes one’s registration as unlawful. A case for unlawful registration can be made when the institution submits “deceitful data or forged documents in the process of registration.” In such cases, the institution not only terminates their activities, but all previous activities are considered unlawful and all financial sources are deemed unlawful profit.

II. Domestic Tax and Fiscal Issues

The two questions in this section pertain to laws and regulations governing the fiscal constraints of giving and receiving donations domestically.

Question 4: To what extent is the tax system favorable to making charitable donations?

The current tax code provides an insignificant number of tax deductions to donors and recipients of gratuitous aid. In accordance with the general rule, tax deductions are not provided to corporate donors. Income tax deductions for donor organizations are set only for donations and given to a narrow range of POs, which are enumerated in the law by organization name. Today, the Tax Code lists 13 organizations to which corporate donors can make tax-exempt donations; for example, public associations for disabled persons and charitable organizations. This tax benefit is also applied to donations made to commercial enterprises established by any of these 13 organizations. In 2016, when new amendments to the Tax Code were introduced, the list of the beneficiary organizations was extended from nine to thirteen organizations. Lawmakers did not consider the suggestions of the civil society to instead define common attributes of organizations, for which corporate donors can make tax-exempt donations, but listed specific beneficiary organizations including new organizations, such as the Chance International Children’s Charitable Foundation.

The law also stipulates preferences for donations to organizations of a certain kind. For instance, certain amount of money given by donor organizations to religious organizations, social service institutions and some sport organizations are exempt from income tax. In both cases, the list of specific organizations, enumerated in the Tax Code, and religious and sport organizations, there is a ceiling of how much of corporate donations can deduct taxes. It cannot exceed 10 percent of a donor organization’s general income and it has to be granted to health, education, social welfare, culture, and sports state institutions; religious organizations; social services institutions; and public associations, or spent for acquisition of goods, works, or services for the benefit of the named institutions. There are no tax deductions for individual donors.
Question 5: To what extent is the tax system favorable to POs in receiving charitable donations?

The Tax Code provides tax exemption for donations received by POs from individuals who permanently reside in Belarus. Such donations should be used for their intended purposes; if these purposes are not defined, donations should be used for the implementation of organizations’ statutory goals. In practice, individual donations are the main source of domestic funds for philanthropic organizations, including crowdfunding. The liberalization of anonymous donations in 2016 is a significant and positive amendment to the legislation of the Decree № 5 of the President of Belarus on Foreign Gratuitous Aid of August 31, 2015. Before the amendment, any anonymous donation was treated as foreign aid and required registration with the Department for Humanitarian Activities.

In general, tax legislation is not favorable for POs. Many technical requirements on tax calculations are designed for commercial organizations and the specific features of POs are not taken into consideration. For example, when an NGO does not have any financial activity, it must submit empty tax declarations every month. There are no official legislative definitions of “charitable activity,” “charitable (public benefit) organization,” or “volunteer.” The legislation utilizes different terms, such as donations, gratuitous (sponsor) aid, foreign gratuitous aid, and international technical aid. In practice, this creates significant difficulties in the execution of donations for correct calculation of taxes and bank transactions.

Any sum received by an individual as a gift, so long as it does not exceed 5,555 Belarusian rubles (US $2,880) in total from different sources within a year, is exempt from income tax. When it comes to donations to orphaned children or persons with disabilities, each donation that does not exceed 11,102 rubles (US $5,760) is tax deductible, and organizations can receive multiple such donations. Additionally, there are no restrictions on the total sum exempt from taxes per year. The same applies to taxpayers who need medical aid, including medical surgeries, if they have confirmation from the Health Care Ministry. Public associations are deprived of the right to conduct independent entrepreneurial activity.

III. Cross-Border Philanthropic Flows

The two questions in this section concern laws and regulations governing the fiscal constraints of giving and receiving cross-border donations. The scoring for these questions pertains to the donor and receiving entities.

Question 6: To what extent is the legal regulatory environment favorable to sending cross-border donations?

Donations made by Belarusian residents to destinations abroad are mainly connected with capital movement. Such operations do not have any taxes or other deductions and are conducted only after receiving approval by the National Bank. Cross-border financial operations are subject to
government monitoring and control within the framework of the legislation to combat money laundering and the financing of terrorism. The revised Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT) law came into force in 2015. Under this law, non-commercial organizations are special control objects; when banks deal with a NGO’s transactions, they must check the compliance of the financial transaction with the purposes stipulated by the NGO’s charter. The government explained that the introduction of such a form of control over NGOs’ financial activities is based on the need to follow the recommendations by the Financial Action Task Force. Cases of application of this norm are unknown because Belarusian FATF reports are not published, their preparation is not made public discussion, and, in general, FATF actions remain secret. However, these new rules could potentially threaten cross-border donations—both those made to and from Belarus.

**Question 7: To what extent is the legal regulatory environment favorable to receiving cross-border donations?**

Receipt of foreign donations is regulated by Decree № 5, which came into force in March 2016 and replaced the previous Decree №24.

Despite some insignificant changes in general, the restrictive order for the receipt of foreign donations remained the same. Decree № 5 bans the use of foreign aid in three cases: extremist activities, political campaigns and seminars, and “other political propaganda work with the population.” These prohibitions are worded in such a way that they raise concerns within the nonprofit sector regarding subjective and arbitrary implementation of the law (Civic Freedom Monitor, 2017).

Although government held discussions for the creation of Decree № 5 with a wide range of POs and some foreign donors, at the end the majority of proposals from Belarusian POs and international experts were ignored. Both the International Center for Not-for-Profit Law (ICNL) and the European Center for Not-for-Profit Law (ECNL) sent their suggestions to the draft decree. The main positive change introduced by the decree is that, from now on, anonymous donations are not equated to foreign aid and they are not subject to authorization by the Department on Humanitarian Activity.

Foreign aid is subject to obligatory preliminary registration with the Department on Humanitarian Activity. In practice, registration of foreign aid is of a selective nature. The legislation determines the limited list of acceptable purposes for receiving of foreign aid, none of which may be connected with human rights protection. In autumn 2011, the government introduced a criminal charge for the violation of regulations in the use of foreign gratuitous aid; Article 369 of the Criminal Code stipulates a criminal charge for the violation of the regulations concerning the receipt of foreign aid and assigns a penalty of up to 2 years of imprisonment. Foreign donations are not exempt from taxes, even if permission for their use is granted. Exemptions from taxes of registered foreign donations are conducted in accordance with a separate procedure, and the State often refuses tax exemption with no explanation, or it only exempts a portion of the donation from taxes. International technical assistance funds are regulated by a separate legislation and are subject to the State’s approval, as well as numerous restrictions on the purposes of their use.
IV. Political and Governance Environment

The three indicator questions in the next two sections concern the political and governance context, socio-cultural characteristics, and economic conditions that influence the environment for philanthropy.

Question 8: To what extent is the political and governance environment favorable for philanthropy?

Score: 3.0

There are some positive trends in the development of philanthropy in Belarus, and they are favorable to the sustainability of philanthropy. The economic crisis of 2011 has positively influenced the development of philanthropic values in society. To a certain extent, it has also brought about changes in the State’s policy concerning the development of philanthropy. In particular, the decrease in real income and the reduction of social security have increased the demand for charitable activities, and non-governmental organizations have begun to attract more local resources for providing such activities.

The boom of crowdfunded charitable projects, including use of fundraising Internet platforms, and social entrepreneurship was noticeable between 2014 and 2016. Unfavorable regulations for philanthropic activity in Belarus are the reason why there are no reliable statistics on the volume of charitable donations in the country. Nevertheless, according to some indications, we can assert that the volume of private and corporate donations for charitable purposes has increased lately. For example, the Association of Belarusian Banks claimed that Belarusian banks allocated more than US $12 million for charitable purposes in 2016, and that the main areas of aid were cultural, educational, sport, and healthcare projects. From 2014–2016, the civil conflict in Ukraine served as a new challenge for philanthropic activities in Belarus, as it moved a great number of refugees and IDPs from Ukraine into Belarus. Both existing philanthropic organizations and new initiatives got involved in solving the problem. They provided humanitarian aid outside the country, collected charitable aid in Belarus and transferred them to Ukraine, and helped refugees who moved to Belarus from Ukraine.

Question 9: To what extent are public policies and practices favorable for philanthropy?

Score: 2.5

Government policies toward the civil society are inconsistent. Laws do not favor the establishment of POs and restrict their funding opportunities. In the first place, philanthropic organizations that are active in protecting civil rights and the rights of minorities, including LGBT rights, advocacy initiatives, and watchdog groups, suffer the most. In general, philanthropic organizations are less exposed to restrictions and repressions.

Lately, government policies toward philanthropy have been changing for the better, authorities have abandoned propaganda campaigns against foreign foundations, the government and local authorities engage in dialogues with philanthropic organizations on many issues, philanthropic activities, as a whole, and particular charitable projects get favorable publicity in newspapers and on
TV, and some POs receive positive assessments from politicians and businesses. Unfortunately, these changes in government policy still remain at the level of declarations and fail to result in concrete steps taken to improve the legal environment for POs. In particular, there have been no systemic reforms to facilitate POs’ access to internal and foreign resources.

The alteration to the regulations for receiving anonymous donations in 2016 is another positive change in the government’s policies. Equally positive is the introduction of the practice of providing government funds to POs delivering social services between 2014 and 2016, although it has developed very slowly and funds allocated by the State are still quite small. The government Coordination Council on International Technical Assistance, established in 2016, creates a space for the participation of representatives of various state organs, donors of foreign aid, and POs. This tripartite council has more potential for the coordination of key stakeholders’ interests to ensure the effectiveness of the programs providing international assistance to Belarus. In particular, the plan for attracting international assistance for 2017-2020 is now under preparation.

V. Socio-Cultural Environment

Question 10: To what extent are socio-cultural values and practices favorable for philanthropy?

The existence of an undemocratic regime and the absence of rule-of-law do not favor the development of philanthropic POs in Belarus. For this reason, Belarusian society is slowly developing philanthropy, and, in general, is caught in the post-communist model of relations between the State and society, where the State remains the main source for solving social problems.

Paternalism prevails in the culture of Belarusian society, and an understanding of civil society institutions and civil participation as part of the solution to solving social problems is developing very slowly. According to the CAF World Giving Index 2016, prepared by the Charities Aid Foundation, Belarus is among the nations with weak shared philanthropic values; out of 145 nations included in the rating, Belarusians are 100th in their readiness to make charitable donations. Moreover, Belarusian neighboring countries in the region (Lithuania, Latvia, Russia, Poland and Ukraine) rated even lower in this research.

According to the Civic Literacy Test, published by Pact, Belarusians have high basic civic knowledge but lack trust in their ability to influence government. Ninety nine percent of Belarusians believe that they cannot influence state policies or the decisions of the authorities, both at local and national levels. Only 66.5 percent of respondents said they were ready to join their neighbors in civic action. At the same time, only 4.8 percent of respondents stated that they participated in socially beneficial activities in the last year. Engagement of Belarusians in the global context is weak; 61 percent of respondents do not speak or understand any foreign language, and 69 percent travel abroad no more than once a year. 60.5 percent of Belarusians did not attend any civic educational programs, and 58.8 percent expressed no interest in receiving such training in future. Belarusians often demonstrate deeper knowledge, greater activism, and positive attitudes when it comes to issues that affect them personally, as opposed to matters of common concern or those in the public sphere.
VI. Future of Philanthropy

These questions are used to provide a general picture of the future of philanthropy in this country as well as recommendations to improve the philanthropic environment.

Current state of the philanthropic sector

In 2016, the civil society sector has continued to improve. According to the CSO Sustainability Index, prepared by the USAID, experts have observed improvements in all parameters, except in the legal environment. The general assessment of civil society sustainability has improved for the second consecutive year. Moreover, beginning in 2008, the improvement has been 0.5 point, which indicates significant changes, according to the methodology of this index. This positive trend in the CSO Sustainability Index reflects the paradoxical state of the philanthropic sector in Belarus. Unfavorable legal environment and laws that are not consistent with the needs of the philanthropic sector lead to a poorly institutionalized sector that lacks professionalization.

At the same time, informal philanthropy and charitable activity at the individual level are growing and developing. Furthermore, in comparison with other civil society segments, philanthropy is in the vanguard of positive change—philanthropy and its manifold positive practices have spread into other civil society segments. For example, the initial boom of POs’ crowdfunding projects influenced the spread of this practice to attract local resources to all civil society segments. Now we can observe the active development of social entrepreneurship through philanthropic organizations in Belarus. For the first time in Belarus, a bidding process has been introduced into the civil society wherein government funding is awarded on a competitive basis through the institution of the State Social Order to social organizations. The establishment of the tripartite Council on International Technical Assistance, which boasts the participation of donors, the State, and philanthropic organizations, is also a positive example of the institutionalization of social dialogue, which has prospects of success and growth in the future.

Three major recent events affecting the philanthropic landscape between January 2014 and December 2016

- March 2016: New Decree No 5 on foreign aid excludes anonymous donations from the definition of foreign aid, and lifts restrictions for the collection of anonymous donations. However, restrictions on foreign aid remain severe, and the introduction of the new decree has been accompanied by significant technical difficulties for POs.

- 2014–2016: Conflict in eastern Ukraine and the flow of refugees and displaced persons from Ukraine to Belarus became a new challenge for Belarusian philanthropic organizations.

- 2016: Establishment of the Coordination Council on International Technical Assistance, which has the participation of the government, philanthropic organizations, and foreign donors.
Future development trends in the philanthropic landscape

Continuing positive trends:

- Improvement of the public attitude toward philanthropy and charitable organizations, which will strengthen the philanthropic culture.

- Development of Internet crowdfunding mechanisms in new areas, which has increased the volume of collected funds, as well as the share of internal resources in the budgets of Belarusian philanthropic organizations.

- Development of social entrepreneurship and of corporate social responsibility, both of which provide opportunities for the active inclusion of businesses in philanthropic activity. The increase of foreign investments and foreign businesses’ coming to Belarus, which follows the opening and liberalization of the Belarusian economy, will play a big role in this process.

- Increase of the volume of financial resources allocated by the State to civil society and philanthropic organizations based on competitive bidding through mechanisms of the State Social Order.

- At the same time, some negative trends, which may become challenges for the philanthropic sector, can also be observed:
  
  o Emergence of even more State initiated and supported charitable GONGOs (Government-Organized (and operated) Non-Governmental Organization), aimed to attract and accumulate foreign charitable aids under the de facto control of the state.

  o Increasing government-led cooperation with non-government organizations to redefine the policies and practices regarding major foreign assistance donors.

  o The decline in living standards caused by the economic crisis, which may produce a stagnation of the philanthropic sector in a moment of increased demand for philanthropic initiatives. The crisis can cause philanthropic organizations to fail to increase donations and funds to meet the demand.

Three key recommendations to improve the environment for philanthropy

- Abolish criminal responsibility for the organization of and participation in nonregistered POs’ activities (i.e. exclude Article 193.1 from the Criminal Code), and simplify the procedure for the registration of public associations and foundations.

- Abolish the preliminary registration requirement for foreign donations. Eliminate restrictive lists of purposes for which foreign donations and donations from Belarusian businesses can be received. Broaden opportunities for philanthropic organizations to attract donations and provide tax benefits for donations from Belarusian businesses.
• Develop a non-discriminatory and open system of government funding for civil society, in general, based on competitive bidding; publish data on the amount of State support to POs, as well as reports from recipient organizations on the use of donations; legislate mechanisms of consultations and partnerships between State bodies and philanthropic organizations; and extend the practice of discussing draft laws and other legal acts with the affected philanthropic organizations.