



Bosnia and Herzegovina

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QUICK FACTS

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

Five main social issues addressed by these organizations: Art and Culture, Basic Needs, Human rights, Sport, Socio-economic rights of special groups, Social assistance

Average time established by law to register a philanthropic organization: 0-30 days

Average cost for registering a philanthropic organization: Costs for registering a PO in Bosnia and Herzegovina differ, depending on the Law, as well as on the responsible territory and registering body. In general, registration costs between US \$100– US \$170. With administrative taxes, costs can rise to US \$270.

Government levels primarily regulating the incorporation of philanthropic organizations: Central/Federal Government, State Government, Local Government, Other: cantonal Ministries of Justice, district courts

Philanthropic Environment Scores:

| Year | Ease of Operating | Tax Incentives | Cross-Border Flows | Political Environment | Socio-Cultural Environment | OVERALL SCORE |
|------|-------------------|----------------|--------------------|-----------------------|----------------------------|---------------|
| 2018 | 4.3 | 3.5 | 4.0 | 3.0 | 3.0 | 3.57 |

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: 4.0

The legal framework governing POs in Bosnia and Herzegovina is comprised of three main laws: the Law on Associations and Foundations of Bosnia and Herzegovina, the Law on Associations and Foundations of the Federation of Bosnia and Herzegovina, and the Law on Associations and Foundations of Republic of Srpska¹. Associations and Foundations can choose under which law they want to be registered, regardless of territory.

Note: To avoid repetitions, the main law to be analyzed will be the Law on Association and Foundations of Bosnia and Herzegovina, and differences in other laws will be pointed out.

The law permits the formation and operation of unregistered groups, but the registration of associations is required for an association to take part in legal or financial transactions, such as opening a bank account, having employees, etc. Foundations must be legally registered, as they are defined as legal entities by the Law. Associations can be founded by three individuals or legal entities (in any combination), while foundations require only one individual or legal entity as a founder. To act as a founder of a PO, a person must be a BIH citizen or resident, or a registered legal entity (either domestic or foreign). There are no specific mentions of minors and stateless persons as founders, but from other articles it may be concluded that minors can act as members, and therefore founders, of Associations. POs are free to pursue any legal goals, regulate their internal affairs, and operate in accordance with their statutes and by-laws. No minimum starting capital is required for registering associations, while foundations must have minimum capital of 2,000 BAM (approximately US \$1,100). Required documentation for registration is clear and documents are easy to create and obtain; templates for by-laws and other required documents are easy to access and edit for entities with basic governance structures. The registration process for POs is reasonably fast with the relevant body, and the BIH Ministry of Justice is obligated to process the request within 30 days of receiving it. Due process is defined with the appropriate rights of appeal or resubmission of further documentation. Fees and taxes for the registration process are not cost-prohibitive. Registration can be denied based on a clear and concise list of grounds; if the registration is denied, there is no right to a direct appeal, but the PO can initiate a legal proceeding with the court. A register of all POs is publicly available.

Federation of BIH: Foreign citizens may act as founders of associations if they have resided in the Federation of BIH at least one year. The Federation is comprised of cantons. If the PO operates in more than one canton, the body responsible for registration is the Federation-level Ministry of Justice; if the PO operates only in one canton, then the cantonal government is responsible for registration. Registration fee is approximately US \$110 (200 KM).

¹ In addition, organizations can be registered under the Law on Associations and Foundations of District Brcko and cantonal laws. However, since those Laws are quite similar to other laws, this paper will not address them.

Republic of Srpska: Foundations are required to have some capital (cash or property), but the law does not define a minimum amount; therefore, they can be registered with symbolic capital. The body responsible for registration is the district court in the territory where the PO has its headquarters. A unique registry is kept by the Republic of Srpska's Ministry of Public Administration and Local Self-Government. Registration fee in the RS is approximately US \$165 (300 KM). The list of documentation requested for registration is shorter in both the Federation of BIH and Republic of Srpska than on the national level.

Question 2: To what extent are POs free to operate without excessive government interference?

Score: 5.0

All laws (BIH, FBIH, RS, and DB) provide a relatively simple framework of governance requirements and, for the most part, they are in line with global and European standards.

Bosnia and Herzegovina (BIH): Associations should have a minimum of three founders, an assembly of members (with membership defined in the statutes), and a named legal representative. Other governing bodies may be defined in the organization's statute. Foundations should have a minimum of one founder and a Board of Trustees (with at least three members). Minors, persons employed in the foundation, as well as persons that are members of other governing bodies cannot be board members. Basic responsibilities of the prescribed governance bodies are defined by the laws, but in their statutes, POs can add other responsibilities and/or define other governance bodies. POs are restricted from pursuing the following goals and/or activities: overthrowing the constitutional order of Bosnia and Herzegovina; committing a violation of guaranteed human rights; instigating or abetting inequality, hatred, or intolerance toward racial, national, religious, or other affiliations; and engaging in election campaigns, fundraising, or financing political parties and/or candidates. POs must work within the areas or topics specified within their statutes. POs are free to use any form of communication channel in their work. Cooperation between the business, government, and civil society sectors is unrestricted, both within the country and across borders. Participation in country-level or multi-country networks is common. Reporting requirements apply only to registered POs; they report to the Ministry of Justice.

Federation of BIH (FBIH): Associations must have an assembly and a board; minors cannot be board members for foundations. Bookkeeping rules for non-profits are regulated separately and financial reports are submitted to the Financial Intelligence Agency (FIA).

Republic of Srpska (RS): Associations must have an assembly and a board, or, if not a board, then a legal representative; board members cannot be employed by the foundation. Bookkeeping rules are the same as for any other legal entity and reports, though slightly simpler than in FBIH, and all reports are submitted to the Intermediary Agency for IT and Financial Services (APIF).

POs registered in the **District of Brcko (DB)** can choose whether they will apply rules for FBIH or RS.

In both entities, financial reports can be done within internal financial departments or outsourced. In both cases, financial reports must be signed and stamped by a certified accountant. POs are

obligated to conduct an independent audit if they have: a) more than 50 employees; b) property worth more than approximately US \$500,000; or c) annual income greater than US \$1 million.

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

Score: 4.0

BIH: The governing bodies of a PO have authority to voluntarily dissolve/terminate the PO. The conditions and procedures for such a step are required to be a part of the PO's statutes. The distribution of any property or assets from such a dissolution must be laid out in the statutes; in such cases, POs must distribute the remaining property or assets to another registered PO that has similar goals and activities. The registration authority possess the authority to involuntarily terminate the registration of a PO in the following situations: 1) the PO is engaging in activities expressly forbidden by the law, such as overthrowing constitutional order of Bosnia and Herzegovina, violating guaranteed human rights, instigating or abetting inequality, hatred, and intolerance with regard to racial, national, religious, or other affiliations, engaging in election campaigns, fundraising, or financing political party and/or candidate; 2) the PO is engaging in activities not in accordance with the registered goals and activities declared in their statutes; and 3) the PO continues to perform activity for which it has been fined (under 1 or 2). In cases of involuntary dissolution, the proceedings are initiated by the body in charge of monitoring the work of POs, and the final decision is made by the Court of Bosnia and Herzegovina. The law does not exactly define what is meant by "overthrowing of constitutional order of Bosnia and Herzegovina; violating guaranteed human rights; instigating or abetting inequality, hatred and intolerance regarding racial, national, religious, or other affiliations." Therefore, this latitude might be cause for concern; however, in practice, it has not been misused.

Federation of BIH: Related to involuntary termination, if PO is engaging in the activities expressly forbidden by the law (overthrowing of constitutional order of Bosnia and Herzegovina or overthrowing the constitutional order of FBiH), proceedings against the PO are initiated by either the federation or cantonal prosecutor's office—depending on the place of registration—and a decision is made by either the Supreme Court of FBiH or the relevant Cantonal Court.

Republic of Srpska: Related to involuntary termination, if a PO is engaging in activities expressly forbidden by the law (overthrowing of constitutional order of Bosnia and Herzegovina or overthrowing the constitutional order of RS) or if the PO continues to engage in activities for which it has previously been fined, proceedings can be initiated by the court in which the PO was registered, applying the Law on Criminal Proceedings.

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?

Score: 3.0

The constitutional framework of BiH provides that issues related to direct taxation fall within the jurisdiction of the respective entities (Federation of BiH and Republic of Srpska). The central government does not have jurisdiction over those issues (i.e.: income, gifts/inheritance, taxes).

Federation of BiH: Tax incentives for legal entities in FBiH are defined in the FBiH Legal Entity Tax Law. Under this Law, giving to humanitarian, cultural, educational, scientific, and sport purposes (except for professional sports) is tax deductible up to 3 percent of gross annual income. Scholarships are also eligible as a tax-deductible expenditure. Individuals receive income tax deductions up to 0.5 percent of the gross annual income for in-kind donations, goods, and money donated to cultural, educational, scientific, medical, humanitarian, sport, and religious activities carried out by in-country associations and other entities that operate under special regulations. In addition, donations exceeding the foregoing threshold may be tax deductible in full, following a decision of the line ministry on the implementation and financing of special programs and action furthering public benefit purposes, which fall beyond the scope of regular activities of the recipient of a donation. Citizens who are not registered entrepreneurs cannot claim tax deductions. Donations may be financial or in-kind contributions for both legal entities and individuals (entrepreneurs). The process of receiving tax benefits is clear and predictable; in reports to Tax Authorities, giving for public benefit purposes is recorded only if the amount given exceeds the prescribed amount (3% of gross income). In a recent survey on tax deductions for companies, most of the larger companies interviewed claimed that the process is clear, while numerous Small and Medium Enterprises (SMEs) stated that they are not certain when and if their giving falls under the categories described by the law. In addition, the list of public benefit activities is narrowly constructed in both laws, and there is some discrepancy in the eligible causes between Legal Entity Tax Law and Income Tax Law.

Republic of Srpska: Tax incentives for legal entities are defined in the RS Legal Entity Tax Law. The law recognizes as tax-deductible in-country giving for humanitarian, social, cultural, and sport purposes in an amount up to 3 percent of gross annual income. Article 20 identifies scholarships as another tax-deductible expenditure. For individuals, the RS Income Tax Law provides that sponsorships and in-country donations by registered entrepreneurs for humanitarian, cultural, educational, and sport purposes are exempt up to 2 percent of the gross annual income. As in FBiH, this means that citizens who are not entrepreneurs cannot claim tax deductions. The law does not provide a clear-cut answer as to whether in-kind donations are also recognized. The process of receiving tax benefits is not that clear. In difference to Federation of BiH, legal entities and entrepreneurs report the amount donated (not whether it exceeds the law's threshold). In a recent survey, half of respondents claimed that they do not use the mechanism for tax benefits, stating that law is not precise enough and that it was better for them to not apply for tax benefits (deductions) than risk being fined for breaking the law. As in FBiH, the list of the public benefit activities is narrowly constructed in both laws, and there is a discrepancy in the causes between Legal Entity Tax Law and Income Tax Law.

Question 5: To what extent is the tax system favorable to POs in receiving charitable donations?

Score: 4.0

In both FBiH and Republic of Srpska, associations and foundations are exempt from income taxes if their activities correspond to those that they are registered for. Tax exemption status is, therefore, automatically acquired during the process of registration, and the range of POs that are tax exempt is quite broad. POs in both entities do not pay taxes on donations. In FBiH, they also are exempt from paying taxes on membership fees, while RS associations, which are not humanitarian (registered only for humanitarian activities), must pay taxes on this type of income. POs in both entities can engage in income generating activities if they correspond to their goals/activities as defined in the statutes. In FBiH, POs are exempt from taxes on such income. In RS, however, such income is subject to taxes under the Legal Entity Tax law. If a PO engages in income generating activities that are not directly connected to activities that they are registered for, such income is subject to the Legal Entity Tax law in both entities. FBiH does not have jurisdiction over property tax; this tax is regulated by cantonal governments; thus, in Sarajevo canton (and most others), POs are not exempt from property taxes. In RS, POs are exempt from property taxes if they are using property for the purposes stated in their statutes. In both entities, the concept of public benefit status is not well developed in the tax laws, and, therefore, POs are obligated to pay value-added tax (VAT) on all goods and services they purchase, except in specific cases (see answer on Indicator 7). POs in both entities are free to receive donations and to raise funds from any public or private source, company, or individual within Bosnia and Herzegovina or abroad, without any fear of interference from the government. All donations must be documented with a donation agreement or other documentation in cases of in-kind donations.

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?

Score: 4.0

The tax deductions apply only to domestic donations and cannot be applied to donations out of country. Cash donations across borders need to be documented via a donation contract/agreement. There are no restrictions on the movement of capital across borders, except those that relate to anti-money laundering controls. This issue is mitigated through the presence of the donation agreement. No government approval or reporting is required for such cross-border cash donations. In-kind donations are treated just like any other export of goods. Depending on the size and content of the shipment, proper export documentation is required. As such, VAT and other fees are based on the assessed value of donations, just as they would be with any other export.

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

Score: 4.0

There are no restrictions on receiving cross-border charitable donations, and documenting such donations is the same as documenting in-country donations. In both the FBiH and RS, POs are exempt from income taxes on cross-border (foreign) donations; but they must pay VAT on purchases made from such donations. However, they have the right to ask for refund of the VAT return, and, in some cases, they are freed from paying VAT in the first place, if the cross-border donation comes from a foreign government/entity as part of their international development assistance programming and it falls under the bilateral agreements between the donor country and BiH. POs also may be freed from paying custom fees under the national BiH Customs Law (applicable to both the FBiH and RS) in specific cases such as the following: goods for distribution for humanitarian support to persons in need (food, medicines, clothes etc.); equipment and office supplies sent to nonprofit and humanitarian organizations that are necessary for their work; equipment for people with disabilities; and specified materials with educational, cultural, and scientific purposes. Exemptions, however, must be acquired in advance from the custom department. POs are free to receive donations and raise funds from any cross-border (foreign) public or private source, company, or individual, without approval procedures or any fear of interference from the government.

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

Due to the internal governance structures in BiH (federal government, entities and District Brcko) it is difficult to provide a comprehensive assessment of the relations between the government and POs. However, on all levels, while there are no extreme tensions between the governments and POs, there is no active cooperation. All governments, in fact, 'procrastinate' in creating a strategic framework for cooperation with POs, which is sporadically addressed in various legal acts, but not unified, and is rarely implemented. Thus, The Council of Ministers (CoM) BiH signed the Agreement of Cooperation (2007) between CoM and POs, but the Agreement was never fully implemented. FBiH government has not developed any strategic document for cooperation; RS government, similarly, has no overall framework, but included programming for developing civil society in the Local Self-Government Strategy; again, there is a question of implementation. Finally, District Brcko adopted the Basic Principles of Partnership with Citizens, which stresses the important role of POs in policy dialogue, which, again was never implemented. All governments formally recognize POs as actors and agents of change, however, that recognition is indeed formal, and, in many cases, due to the influence of international actors. Consequently, governments are not actively involving POs in policy development and implementation, though when pressured—either by POs or international

actors—they allow involvement. The level of true cooperation depends a lot on the current political situation. Indeed, the increasing political tensions between entities affect the work of philanthropic organizations in Bosnia. This is not particularly favorable to philanthropic development, as “more important” issues are on the politicians’ table. The economic crisis in the country continues, and, in fact, worsened over the last year, and is definitely a threat to the sustainability of POs, which, with rare exceptions, remain largely dependent on foreign sources.

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

Score: 3.0

Governments on all levels, and in general, support philanthropy if it helps its institutions provide services to citizens that governments are obliged to provide, yet often fail to. However, it cannot be said that they consider philanthropy important enough to actively promote and/or support it. In some cases, philanthropy, especially the tradition of philanthropy, is used to accentuate national and religious differences in BiH (particularly between Bosnian and Serbian communities). In other cases, politicians, especially in the Republic of Srpska, use philanthropic causes as a way of self-promotion. When it comes to the issue of improving the legal and fiscal framework, support depends on the current political situation and interests, while success of such initiatives depends on the current political moment. In that respect, governments certainly allow access to resources and opportunities for information, services, trainings etc., but do not promote or actively support it. Donors and funders are free to support any philanthropic cause and/or organization. However, sometimes politicians use their power to promote and recruit support by local companies/wealthy individuals to certain philanthropic causes--usually humanitarian groups or organizations that support marginalized groups. This has been particularly noticeable in RS. Governments at all levels generally fail in the implementation of the laws, and while formally condemn corruption, are doing little to effectively prevent and combat it.

V. Socio-Cultural Environment

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

Score: 3.0

There is a long tradition of philanthropy in Bosnia and Herzegovina, grounded in both a cultural and religious heritage. As in other former Yugoslav (FY) countries, while solidarity was promoted traditional philanthropy was neglected. Postwar Bosnian society (again as with other FY countries) has experienced a collapse of values, particularly trust; however, altruism and solidarity remained strong. In recent years, philanthropy has reappeared in various forms. However, it is perceived primarily as a way to help individuals in need and rarely as a tool for solving important issues that demand a long-term approach, such as economic development. As in most other Western Balkan countries, trust in POs is relatively low, particularly in regard to those engaged in civil society development, human rights, media freedom, etc. In fact, there is little understanding of their work and importance. However, POs that engage in direct humanitarian support or that provide services for marginalized groups--particularly children—enjoy higher levels of trust and, in fact, sometimes are more supported than institutions, which obviously also do not enjoy trust of citizens. While POs

respect legal requirements for transparency and accountability, they are investing relatively little effort in communicating their work, financial support, and, most importantly, their results to the public. There are no social barriers to participate in philanthropic activities on the side of donors; however, prejudices can influence the choice of recipients. Similarly, national and religious differences/divisions can play a role in philanthropic efforts. As in other countries, POs pursuing financial sustainability, businesses implementing CSR practices, and the failure of the State to provide basic needs are factors that encourage philanthropy, while a lack of trust and tensions based on national/religious differences remain negative factors.

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

Overall, the philanthropic sector is in the mid-level of development. While there are a number of larger organizations that are quite professionalized, the development of community-based organizations that would tackle local problems and connect to citizens is lower. The sector is overwhelmingly dependent on foreign funding, and, while efforts to attract local sources exist, there is space for significant improvement in this area. There is a small number of intermediary organizations, particularly foundations (either on national or community level). Consequently, there is a need for more support to POs to tap into local sources of funding (education, trainings or other services). POs that are successful in attracting local sources are few and are mostly oriented toward providing humanitarian support. There is still not enough understanding of the importance of developing a constituency among POs. As in other countries in the region, POs need to work on increasing transparency and accountability levels and on communicating their results to the public. Collaboration and cooperation among POs exist but need to be significantly strengthened. POs could also be investing more effort in developing collaboration with other sectors and attracting a larger number of stakeholders in developing philanthropy. Overall, it might be concluded that, while the sector has achieved certain level of development, it is now stagnating.

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

- In May/June 2014, severe flooding in the region heavily hit Bosnia and Herzegovina, and created one of the largest natural disasters in recent years. It mobilized citizens, corporations, diaspora populations, and neighboring countries. It is estimated that philanthropic contributions reached over 48 million EUR.
- Failure of the State to provide resources for adequate healthcare, especially for persons/children that need medical treatment outside of the country, continuously mobilizes citizens and other actors. In the last three years, nearly 3 million EUR (and it is estimated that the amount is significantly higher) has been donated to improve conditions in the healthcare system and to support medical treatment of children, youth, and adults abroad.

- Emergence of larger and continuous non-profit campaigns, which are becoming an annual tradition, directed toward various causes. Examples include collecting donations for capital investments to help house parents whose children are in the hospital for cancer and raising money for SOS Children Villages and other similar organizations.

Future development trends in the philanthropic landscape

Donors: Mass, individual giving will continue to increase, making citizens more ‘active’ donors, while the business sector will continue to be the type of donor who invests the largest amounts.

Purpose of giving: Healthcare will remain a primary cause for donations, while support for marginalized groups, poverty reduction, and education will remain as other top causes for which contributions are made. While the range of issues supported will remain wide, the number of instances and amount given for other causes will not increase in any significant measure.

Beneficiary institutions/primary recipients: Individuals will continue to be important recipients of philanthropic contributions. Philanthropic organizations and the State will maintain the current level of support, although some increase in the amount donated to humanitarian and organizations serving children might be expected.

Final beneficiaries: Key final beneficiaries will remain persons with health issues and those who are economically disadvantaged; there might be an increase of support to populations of local communities and people with disabilities, as well as to children without parental care. No significant increase is expected for other beneficiary groups.

What is donated: Money will remain the primary type of donation, with possible smaller increases in in-kind donations.

Ways of donating/fundraising: Campaigns, crowdfunding, and cause-related marketing will be increasingly used.

Legal and fiscal environment: No major improvements are likely to be achieved in the next year or two, although smaller steps might be made.

Infrastructure: No significant change is expected in terms of building infrastructure; intermediary organizations will remain on the current level, both in numbers and in strength and capacity. However, more organizations will try to attract philanthropic contributions. No significant changes are expected in terms of networks (either in number or effectiveness).

Three key recommendations to improve the environment for philanthropy

- Increase pressure on the governments all levels and entities to harmonize and unify the legal and fiscal framework; also, enable a more efficient use of already existing mechanisms, such as tax-deductions for the business sector or introducing deductions for individuals).

- Increase efforts to develop the infrastructure for philanthropy. Increase intermediaries that support POs in attracting local contributions and organizations that educate and support donors. Offer services to both POs and donors, and strengthen networks with clear goals.
- Invest in efforts to increase POs' transparency and communication toward the public. Release data related to giving. Transparency of recipients both in terms of donation amounts and results achieved.