



Germany

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QUICK FACTS

Legal forms of philanthropic organizations included in the law: Association, Foundation, Cooperative, Limited Liability Company, Dependent Foundation

Five main social issues addressed by these organizations: Higher Education, Primary and High School Education, Arts and Culture, Youth and Family.

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

Average cost for registering a philanthropic organization: US \$3,000

There is no fee for the public registration of a foundation. However, the transfer of assets to the PO may require notary assistance with notary costs attached. This also applies to the establishment of an association where notary fees are required for registration. For foundations, the notary fees depend on the amount of the assets. Given that more than 70 percent of all foundations have assets of less than €1 million, the cost estimate represents the costs needed for a notary-approved donation of that size. The notary cost would apply in the case of establishing a limited liability corporation. For small organizations, the cost is correspondingly lower. The time to establish an organization varies according to the practice of regional authorities, but is limited because, in general, the civil code grants a right to establish a foundation if no violation of other law is applicable.

Government levels primarily regulating the incorporation of philanthropic organizations: Central/Federal Government, State Government.

The civil code and the tax code regulate the basic norms on a Federal level (types of legal forms, basic requirements for their establishment, tax treatment, etc.). Within this framework, implementation guidelines on the civil level are regulated in State (Länder) legislation. Tax jurisdiction is exclusively Federal.

Philanthropic Environment Scores:

Year	Ease of Operating	Tax Incentives	Cross-Border Flows	Political Environment	Socio-cultural Environment	OVERALL SCORE
2018	4.7	5.0	4.0	5.0	5.0	4.73

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: 5.0

The fundamental freedoms of expression, association, and assembly are fully granted in the Constitution. Most forms of POs require legal personality, although the association and the dependent foundation (type of trust) do not. The founders are free to choose their form. If POs apply for charitable status, purposes/goals that benefit the members/founders are not permitted; therefore, cooperatives, associations, foundations can only enjoy the tax privileges of charitable status (Gemeinnützigkeit) if they pursue public benefit purposes specified by the tax code.

For the establishment of POs, including foundations, the civil code grants the right of establishment to natural and legal persons so long as the establishment does not violate any other legal norms (right to establishment for any lawful purpose). The registration procedures for the different legal forms of POs are the responsibility of different levels of jurisdiction, with basic norms being regulated on a federal level and more detailed norms of implementation being the responsibility of the States (Länders).

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

Score: 5.0

POs have to comply with a limited number of governance norms, depending on the legal form chosen. These basic norms are regulated in the civil code and are complemented by governance and reporting requirements in the State (Länder) legislation. For each legal form of PO, there are norms regulating the governance structure requirements; normally, only one level (tier) of governance is required, but organizations have the freedom to apply two-tiers of governance, which is usually appropriate for larger organizations.

There is no restriction on the freedom of (international) communication or cooperation. Cooperation with international partners, however, should fulfill the organization's mission and be within the boundaries of the charter of the organization.

All POs, if charitable, are all subject to the same reporting requirements to the tax authorities (however, without publicity requirement). Concerning reporting to civil authorities, the requirements are different, yet consistent, for each legal form.

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

Score: 4.0

The governing body of a German PO is not free to voluntarily terminate the existence of the organization. Two main considerations apply, depending on the legal form:

The foundation form is legally regulated to exist in perpetuity, except for foundations that are structured to spend down, as established by the charter provisions. Therefore, neither the governing body nor the supervisory authorities can dissolve such a foundation, except in cases in which the mission and purposes of the foundation have become impossible to pursue. In such cases, a change of purpose, a merger with another organization, or the integration into another organization has to be considered with the consent of supervisory authorities. Their basic legal role is the protection of (original) donor intent.

Involuntary termination of activities is only applicable in legally defined cases following investigation, requirement of amendment or correction, and are subject to court appeal (supervision).

The other restriction to voluntary termination originates from the tax law that prohibits charitable from being re-privatized. Voluntary termination, therefore, requires that organizations must transfer their assets to another charitable or public organization that continues to apply the assets to the original purposes or a similar one. For voluntary termination, it is required that the organization's charter includes a clause of provision for the use of assets.

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: 5.0

As charitable organizations, both POs and donors are eligible for substantial tax privileges. Some of the privileges are particularly targeted at endowed foundations, as there are additional privileges for this form of philanthropic organization. Donors can generally deduct donations up to a ceiling of 20 percent (personal income tax) of their taxable income by filing them in their tax declaration. Corporate income taxpayers can deduct up to a ceiling of 4 per thousand of their total of turnover and wages and salaries. These ceiling were substantially increased from previously half that level about 15 years ago.

All donations to a tax-exempt PO made from an estate, or as a result of a last will, are free of any inheritance tax. This exemption from inheritance tax for the part of the estate donated can also be claimed by the heirs up to two years after death of the original owner.

Special privileges apply for endowment donations to foundations. In addition to the above, such donations can be deducted from taxable income up to a ceiling of €1 million (US \$1,139,950) per

taxpayer, which can be carried forward over a period of ten years if income in the first year is lower than the donation. This is equivalent to a lump sum deduction from taxable income up to the amount of €1,000,000 per year over a period of a maximum of ten years.

The donations can be deducted if made to any of the eligible purposes of charitable organizations specified below (see comment on question 5).

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

Score: 5.0

All POs themselves are exempt from paying any taxes, except VAT if charitable status (public benefit purposes) applies. Public benefit status is granted to all legal forms if the organization pursues purposes specified on a list of eligible purposes in the tax code, or any purpose similar thereto (opening clause). For the list, see § 52 AO (tax code). Purposes also include the unselfish support to persons in need (§ 53 AO (tax code)) and the support for religious purposes (§54 AO (tax code)).

Tax-exempt status is granted by application to the tax authorities for pursuing any of the above purposes.

There are, however, clear restrictions for unrelated purposes. Charitable organizations can only conduct unrelated activities if they are not the dominant activity of the organization. Charitable organizations can, however, own for-profit business organizations, either as part of their endowment—in the case of foundations—or as part of their assets in general. In cases of POs that provide social services, this has led to large-holding conglomerates of both charitable and for-profit organizations.

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

POs are free to send philanthropic contributions (grants, disaster relief funding, development aid, etc.) abroad. This is not subject to approval by the supervisory authorities, but is subject to their mission as laid out in their charter document. There are no specific tariffs or duties on such payments, provided that POs are charitable organizations. However, POs themselves are responsible for including evidence in their reports to supervisory authorities that their funds were spent according to their mission and purposes, as well as according to legal requirements of civil and tax code legislation, especially concerning the recipient organizations performing lawful operations as

charities, rather than as commercial entities. This liability requirement applies to funds spent abroad and to those spent within Germany.

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

Score: 4.0

POs are free to receive donations from abroad without restriction, even though these donations, if made by private donors and not by grant-makers, may not be tax-effective.

However, donors may face limitations when claiming deductions for donations made to organizations abroad. As a consequence of recent judgments of the European Court of Justice, which are endorsing a non-discrimination approach within the European Union based on the basic freedoms according to the European Treaties, donors have the right to deduct donations to organizations in other Member States if the deductions are to purposes and organizations which would also be eligible in for charitable Status in Germany. However, this requirement depends on the equivalency test of the German financial authorities and still leaves room for discretion on the part of tax authorities.

Except banking fees, there are no costs for receiving foreign donations, provided the PO has charitable status. German POs are free to receive donations or grants from abroad. There are no specific restrictions on receiving foreign grants of any type, except that POs must include written documentation to both civil and tax authorities.

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: 5.0

In general, the philanthropic sector in Germany has enjoyed a favorable political climate across all relevant parties in Parliament for approximately the last 20 years (at least since 1998). An intergovernmental working group, including federal and state level representatives, issued a report in September 2016 that includes suggestions to further improvements to foundation law, such as official codes in the legislation, which will most likely take effect after the next federal elections in September 2017. More specifically, the report addresses the consequences of the financial crisis and its aftermath for foundations, as well as the conclusions thereof for legislation (e.g. improved regulations for mergers, improved publicity and transparency requirements).

The government allows, and specifically promotes, the involvement of POs in political advocacy and public debate. The size of the philanthropic sector and the nonprofit share of the economy (above

4% of GDP) suggest that the sector is generally accepted and highly relevant, in some aspects like in the social policy legislation, POs are even legally supported by having a right to be involved in advocacy and in legislation according to the social code (1st book).

The growth of the philanthropic sector in the last 15 years, wherein the number of organizations more than doubled, has provided additional support to this relevance of the sector. The German foundation sector is the largest in Europe, both in terms of number of organizations and assets. Bundesverband Deutscher Stiftungen estimated 100,000 million assets in 2017.

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

Score: 5.0

As mentioned above in question 8, the Federal government and Parliament have repeatedly considered reforms to promote philanthropy, namely in 2000, 2002, 2007.

In addition to supporting the philanthropic sector, the government pursues an explicit strategy to promote volunteering/civic engagement.

There are no restrictions by the government or any kind of interference whatsoever to philanthropic purposes pursued.

Networking, training and information opportunities are provided independently by the sector. There is government support for research and information purposes, especially in the context of civic engagement/ volunteering.

V. Socio-Cultural Environment

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

Score: 5.0

Generally, there are strong philanthropic traditions and a high level of citizen involvement. There is growth trend of the foundation sector, and equivalent growth trend of volunteering to currently 43 percent of the adult population being regularly involved in volunteering activities (2014 data, according to Freiwilligensurvey, longitudinal every five years, issue no. 4, funded by Federal Government).

Germany has had a strong philanthropic tradition from pre-modern times, which was vigorous in the 19th century and pre WW I. The two world wars and Nazi dictatorship, as well as Communist rule in East Germany until 1989, were, however, very detrimental to the sector (two hyper-inflations in the 20th century), so the current development can be regarded as a renaissance of a long tradition.

A strong social entrepreneurship tradition that originated in the 19th century (last third of the century) laid the ground for some of the largest operating nonprofits in the country, which play a very strong and competitive role in delivering the services of the German social welfare system in regulated

quasi-markets and in competition with for-profit and public entities. This segment of the sector is particularly relevant for the more than four percent contribution to the German economic value creation.

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

Philanthropy in Germany is a well-organized and highly institutionalized sector. It enjoys the regular support of a large proportion of the population. The German Association of Foundations (Bundesverband Deutscher Stiftungen) is the largest foundation association in world, next to the Council on Foundations of the US, and has more than 4,000 members. Through umbrella foundation organizations, it represents more than 7,000 of the 22,000 German foundations. A parliamentary advisory committee of the German Association counts 92 Members of Parliament (Federal: Deutscher Bundestag).

Next to foundations, the country has a six-digit amount of other nonprofits (exact number unknown due to lack of central register, and because organizations are only registered in decentralized registers and by different legal forms).

There are numerous other umbrella associations organized by field or purpose, by type of organizations (e.g. fundraising nonprofits), or by political advocacy agendas.

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

- Event 1: "Annual Conference of the German Association of Foundations (Bundesverband Deutscher Stiftungen, every May)"
- Event 2: Report of Intergovernmental Commission on Improvements of foundation law published in September 2016
- Event 3: Annual "Forschungsgipfel" hosted by Stifterverband für die Deutsche Wissenschaft (a large private umbrella foundation structure administering about 600 foundations or trusts with assets of about € 2.5 billion) as the "Federal Summit on R&D and Innovation"

Future development trends in the philanthropic landscape

The sector will continue to grow.

Another legal reform bill at the beginning of the next parliament period, after the elections in September 2017, will most likely bring further gradual improvements.

Community Foundations, which have only existed since 1996 and according to the US model, will continue to grow as a segment for small and medium sized donors to promote more effective giving by joining forces and reducing administrative costs.

Impact Investing will most likely be a growing trend in the next few years among German foundations.

Three key recommendations to improve the environment for philanthropy

- Recommendation 1: Include full publicity requirement in the reform bill for 2017 following legislation.
- Recommendation 2: Promote the growth of impact investment as a market-based vehicle of increased philanthropic effectiveness.
- Recommendation 3: Strengthen the landscape of professional capacity building further to improve the overall effectiveness of the sector and meet donor values of high impact expectations.