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Lilly Family School of Philanthropy

The 2022 Global Philanthropy Environment Index Montenegro

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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: Arts and Culture, Environment, Housing and Economic Development, Human Rights, Youth and Family

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

Average cost for registering a philanthropic organization: USD 50

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

Philanthropic Environment Scores:

Year	Ease of Operating a PO	Tax Incentives	Cross-Border Philanthropic Flows	Political Environment	Economic Environment	Socio-Cultural Environment	Overall Score
2022 GPEI	4.67	3.50	4.50	3.45	2.80	3.80	3.79
2018 GPEI	4.80	3.50	4.70	3.55	N.A.	3.60	4.03

Source: Indiana University Lilly Family School of Philanthropy, 2022 *Global Philanthropy Environment Index*

Key Findings

I. Formation/Registration, Operations, Dissolution of a Philanthropic Organization (PO)

The three indicator 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 One: To what extent can individuals form and incorporate the organizations defined?

Score: 4.5

Individuals are free to form philanthropic organizations (POs), with little government interference. The registration process is clear and can be accomplished in a reasonable timeframe. Practically no resources are required at the time of establishment, other than a reasonable amount of fees of up to USD 50 (for registering with the Statistical Office and Tax Administration). Registration documents templates are available at no cost. POs obtain legal personality after their entry into the national registry, within 30 days upon the submission date if the application is complete and correct. The Law on Non-Governmental Organizations (Official Gazette 39/2011 and 37/2017) recognizes two types of organizations: associations and foundations. An association needs to have at least three founders, while a foundation can be established by one person only (be it an individual or a legal person). Foundations must serve public benefit purposes, whereas associations can pursue both public and mutual benefit. Organizations can also function without registration, but that prevents their ability to access to public funds and eligibility for tax exemptions.

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

Score: 4.8

The law allows for sufficient discretion in setting the structure and governance of the PO. POs are free to work without government interference and can engage in any kind of lawful activities without constraints. Political, extremist, and violence-inciting activities and the violation of basic human rights are explicitly prohibited. Freedom of expression and access to information are guaranteed by law, and organizations are free to communicate through various media channels and collaborate with domestic and international entities. In terms of reporting requirements, they are clear and accessible. On the other hand, financial reporting and accounting standards are not adapted to nonprofits, although the government keeps announcing adoption of appropriate bylaws.

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

Score: 4.7

A PO's governing body can voluntarily terminate its activities and dissolve it as legal person, notifying the competent government institutions. Involuntary termination only occurs in cases of flagrant violation of the law, extinction, or bankruptcy and can be appealed. A PO can dissolve upon expiry of the term for which it was established; by a decision of its governing body or by court decision in cases where it has not been established in compliance with the legal procedure; it pursues activities

contrary to the Constitution, the law, the public order or good morals; or it has been declared bankrupt.

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

Score: 3.0

Article 6(1) of the Legal Entity Profit Tax Law provides that "non-governmental organizations" (associations and foundations) are exempt from profit taxes. This includes both public benefit and mutual benefit organizations, insofar as they do not engage in direct economic activities. Article 14(1), which was amended in 2016, provides that in-country donations ("expenses") to

"medical, social, educational, scientific, religious, cultural, sport and humanitarian purposes, poverty reduction, environmental protection, protection of disabled persons, child and youth care, assistance to the elderly, protection and promotion of human and minority rights, rule of law, civil society and volunteer development, Euro-Atlantic and European integrations, art, technical culture, support to agriculture and rural development, sustainable development, consumers protection, gender equality, tackling corruption and organized crime as well as tackling addiction, which do not exceed 3.5 percent of the gross annual income are exempt from taxes".

The revised Article 14(1) is largely harmonized with the concept of public benefit in the Law on Non-Government Organizations, with one notable exception: the list of public benefit activities in the Legal Entity Profit Tax Law is exhaustive, whereas the list in the Non-Governmental Organization (NGO) Law is an illustrative one. In addition, Article 14(2) of the Law now specifically provides that donations are recognized in money, goods, intellectual property, and services. On the other hand, Personal Income Tax Law has remained "rigid": Article 24 provides that in-country donations ("expenses") to "medical, educational, scientific, religious, sport, humanitarian and environmental protection purposes which do not exceed 3 percent of the gross annual income are exempt from taxes".

*Note: In June 2021, the Parliament adopted an amended Personal Income Tax Law, finally harmonized with the Legal Entity Tax law, both in terms of public benefit activities and recognizing in-kind contributions.

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

Score: 4.0

There are no restrictions on raising funds locally or internationally, or for accepting donations, and NGOs are exempt from taxes on gifts. Property Tax Law provides tax exemption for POs when the property is used for their basic activities, except when the property is used to make money through real estate (i.e. charging rent). The law prescribes that an NGO may conduct economic activities as a means to generate income for the achievement of related purposes. The economic activities can

be conducted directly within the legal structure of the organization. However, the economic activity or activities must comply with its purpose and goals; must have been declared as one of the sources of income in the statutes of the organization; must not be the main activity of the foundation; and must not exceed the annual limit of EUR 4,000 (around USD 5,000) or up to 20 percent of the total annual income. Article 6 of the Corporate Profit Tax Law provides that "non-governmental organizations" are exempt from profit taxes, except from the income received through economic activities. The process to receive tax exemptions is quite straightforward.

Tax law does not set out any specific conditions which a civil society organization (CSO / NGO) must fulfill in order to qualify as the recipient of tax-exempt donations. This includes the lack of requirement for a CSO—in order to qualify for tax-exempt donations—to serve "public at large" or certain social group as defined by its by-laws – as well as to carry its activities directly. These issues are not addressed in the NGO Law either.

Article 26 of the Value Added Tax (VAT) Law defines a certain number of services of public interest which are not subject to taxation, such as health services; social insurance services; preschool education services; education and training for children, youth and adults; services in areas of culture; services in areas of sport; religious services as well as "services provided by non-governmental organizations established in accordance with the regulations governing activities of these organizations, if there is no likelihood that it will lead to distortion of competition".

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

Score: 4.5

The legal environment for cross-border donations does not impose restrictions in the amounts sent and recipient organizations. Cross-border donations can be sent without additional costs or need for approval.

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

Score: 4.5

Receiving cross-border charitable donations (monetary or in-kind) has very few restrictions and no government approval is required, especially if a funding agreement exists that allows foreign agencies to financially support local organizations.

IV. Political Environment

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

Question Eight: To what extent is the political environment favorable for philanthropy?

Score: 3.5

As noted in the European Commission Montenegro 2020 Report, the legal, institutional, and financial environment under which civil society organizations operate was further improved, in particular the rules on state funding of NGOs. The role of civil society in the design, implementation, and monitoring of public policies is recognized and promoted. However, the genuine inclusion of CSOs in the policymaking process is not sufficiently ensured in practice. The controversial dismissals of prominent NGO representatives in 2018 from key state institutions and regulatory bodies were deemed unlawful by court decisions issued in the course of 2019. 2020 has been a very challenging year for Montenegro (on top of COVID-19 crisis): it was parliamentary elections year, marked by tension and mistrust between political actors and a low level of trust in the electoral framework. Due to the pandemic, the parliament was inactive in the early months of 2020 and was subsequently dissolved due to the August 30 parliamentary elections, which took place in an environment highly polarized over issues of church and national identity. The elections resulted in an unprecedented change of the ruling majority composition after 30 years. It will be a challenge for the new parliament and the new government to find a broad cross-party and societal consensus and demonstrate in practice its commitment to Montenegro's European Union (EU) reform agenda, which is vital for the country's progress on its EU path.

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

Score: 3.4

Prior to 2020, there were some improvements in public policies and practices, including increase in government capacity to support and oversee CSOs/POs. Donors are mostly free to support any philanthropic cause. As reported in the TACSO Regional CS Needs Assessment Report 2018-2019, a new model for a decentralized system of funding and a centralized system of planning funding priorities was also established in Montenegro, amending the percentages for funding CSOs out of the total budget: 0.3 percent for CSO projects, 0.1 percent for projects relating to people with disabilities and 0.1 percent for co-funding for projects funded by the EU. During 2018, new rules were adopted on the format of public calls and reports for consultations. The Regulation on the election of CSO representatives to the working bodies of the state administration and the conduct of public debates in the preparation of laws and strategies was adopted, ensuring the inclusion of CSO representatives in relevant bodies and the public's participation in the process of drafting laws. The involvement of CSOs in decision-making has faced serious violations. Namely, there is a lack of transparency from public institutions in terms of publishing their annual plan of operation and reports, lack of using all forms of inclusion of the public, and lack of practice in publishing calls for consultations and the necessary documents (especially draft acts) in the electronic register. A persistent challenge remains the non-transparent practices in allocating public workspace in almost all municipalities, which is perceived to be more in the service of Government-Organized Non-

Governmental Organizations and Party-Organized Non-Governmental Organizations than the sustainability of the entire sector.

V. Economic Environment

Question Ten: To what extent is the economic context favorable for philanthropy?

Score: 2.8

Economic conditions are unstable and may be an obstacle for the success of philanthropy. The economic regulations to cultivate openness in the country's economy and develop foundations for economic growth are not clear. There have been some positive developments in fighting corruption. It is difficult to assess the country's outlook since there was a transition in power after 30 years.

VI. Socio-Cultural Environment

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

Score: 3.8

There are philanthropic traditions and societal values that encourage giving. Citizens of Montenegro have a deep sense of humanity and solidarity, which was repeatedly demonstrated during major humanitarian disasters. They still mainly experience philanthropy as humanitarian activities and actions that are organized to assist socially vulnerable populations, but not as a vehicle to solving important societal issues that demand a long-term approach. And yet, civil society is developing and more citizens are becoming engaged, taking responsibility, and acting.

Change of attitudes, behavior and practices of citizens has been confirmed by the findings of the public opinion poll/research on philanthropy in Montenegro published in early 2019, as compared to the 2012 research findings:

- Participation in actions for the common good has significantly increased: from 2.8 percent citizens participating once a month in 2012, to 12 percent in 2018; from 15,3 percent participating several times a year in 2012 to 50 percent in 2018;
- An important increase of citizens who are willing to participate in actions for the common good in the future: from 47 percent in 2012 to 64 percent in 2018;
- Trust has increased as well: compared to 2012, significantly lower percentage of citizens believe that the money raised in activities aimed at common good are occasionally, often, or always misused. The percentage of those who believe that funds are rarely or never misused has increased from 9 percent in 2012 to 23 percent in 2018;
- Opinions among citizens on the potential effects of tax incentives/exemptions differ: almost one third believe that these measures would stimulate them to donate more, while the same proportion state that it would impact their decisions a little or not at all.

Similarly to 2012, poor financial situation is considered to be the greatest barrier for more giving. In 2018, more than 60 percent of the citizens mention the preoccupation with personal problems among the three main barriers, which was not the case in 2012.

VII. 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

Foreign donations are still the primary source of revenue for the civil society sector—in Montenegro, EU is the largest donor. However, and though still not significant, corporate and individual giving has grown over the past several years, and the noted philanthropy growth, both at the country and regional level, is actually a result of the efforts of philanthropy organizations to increase awareness and improve their outreach among individual and corporate donors and research, advocate, and promote giving – as the Fund for Active Citizenship fAKT does in Montenegro.

Three major recent events affecting the philanthropic landscape between January 2018 and December 2020

1. COVID-19 pandemic;
2. Unprecedented change in composition the ruling majority after 30 years; and
3. Emergence of new social movements and groups, especially on a grassroots level.

Future development trends in the philanthropic landscape

- Growth of individual and corporate philanthropy;
- Increased use of more innovative fundraising forms and vehicles, especially crowdfunding; and
- Increased use of social media, both to generate support and promote causes.

Three key recommendations to improve the environment for philanthropy

- Capacity building of philanthropic organizations, with a focus on mentorship and tailor-made approaches;
- Communicating the impact of POs work: raising public awareness on its importance and building trust; and
- More stimulating legislation should be adopted (from NGO law, which should be amended/improved, to simplify the administrative procedures for tax laws, and introduce new financial benefits, such as VAT exemptions).

VIII. Philanthropic Response to COVID-19

These questions are used to provide a general picture of the philanthropic response to the COVID-19 pandemic in this country and recommendations for improving cross-sectoral collaboration.

Areas where the nonprofit sector and philanthropy are playing a role in responding to COVID-19

- In providing support to some of the most vulnerable groups: from humanitarian assistance (food and hygiene packages, soup-kitchen) to psycho-social support and support to distance learning (for children living below poverty line, children with disabilities, and Roma children); and

In providing monetary and in-kind support for public health institutions (primarily from business sector and diaspora).

Innovation and new trends in the nonprofit sector and philanthropy related to COVID-19 responses

- Increased use of emerging giving forms such as crowdfunding;
- Increased use of social media for rallying support and calling to action; and
- Increase in donations from diaspora (primarily towards state institutions).

Impact of COVID-19 on the philanthropic environment

It increased giving (to causes described previously), but civil society organizations continue facing many uncertainties and difficulties throughout the region. The most crucial consequence, caused by the state of emergency, is the direct impact in the sustainability of the civil society organizations. The sector continues to face financial difficulties to cover salaries and regular administrative costs, endangering the continuity of the organizations' work and existence. However, considering all the difficulties, the CSOs are demonstrating resilience and agility as they adapt to changing circumstances.

Anticipated impact of COVID-19 on the philanthropic environment in 2021

An assessment of COVID-19's impact on CSOs in the Western Balkans region, from November 2020 (by the Western Balkans Fund), showed that:

“the impact will be long-lasting as COVID-19 has exacerbated historical and ongoing challenges that hamper the CSO sector. If left unattended and without a concrete support, a significant number of CSOs will close down, people working in the sector will lose their jobs, and the various constituencies that depend on CSOs' services and advocacy interventions will suffer the consequences. Still, many CSOs remain optimistic about the future, and majority felt that they would emerge stronger and more agile after the pandemic.”

References

- Catalyst Balkans. (2019). *Annual Report on the State of Philanthropy in Montenegro 2019*. Available at: <https://givingbalkans.org/content/giving-montenegro-2019-report-state-philanthropy>
- European Commission. (2019). *Montenegro: 2019 Report Accompanying the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions*. Available at: https://ec.europa.eu/neighbourhood-enlargement/sites/default/files/montenegro_report_2020.pdf
- European Union Technical Assistance to Civil Society Organizations in The Western Balkans and Turkey (TACSO). (2020). *Assessment on the State of the Enabling Environment and Capacities of Civil Society against the Guidelines for EU Support to Civil Society in Enlargement Region, 2014-2020 for the Period 2018-2019: Final Report*. Available at: <http://tacso.eu/wp-content/uploads/2020/09/Regional-CS-Needs-Assessment-Report-2018-2019-final.pdf>

- IPSOS Strategic Marketing. (2019). *Public Opinion Poll: Citizens of the WB and Philanthropy*. Available at: https://tragfondacija.org/sta-zapadni-balkan-misli-o-filantropiji-kljucni-nalazi/?%20fbclid=IwAR2leZdIAUCN2Mu_rpiRDaH1iDE8NehSnfDRq93ghw3WxVbn8QjglPZWwow
- IPSOS Public Affairs. (2018). *Filantropija u Crnoj Gori*. Available at: <http://faktcg.org/files/filantropija/Istra%C5%BEivanje%20javnog%20mnjenja%20CG%202018.pdf>