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The 2022 Global Philanthropy Environment Index Spain

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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, Basic Needs, Early Childhood Education through High School, Environment, Higher Education

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

Philanthropic organizations' (POs) registration time varies; from associations (0-30 days) to foundations (more than 90 days according to the law).

Average cost for registering a philanthropic organization: USD 380

The country expert has estimated the cost to register a PO and notarize the required documents. Costs for associations that do not require notarization include EUR 600 (USD 729) for public documents for foundations and EUR 36 (USD 44) for associations. Additionally, the registration fee is usually EUR 80 (USD 97), however it could vary; in some administrations, it could be also free.

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

Both foundations and associations can be registered by the central government's Home Affairs Ministry (for associations) and the Ministry of Justice (for foundations) or by the regional government (*Comunidades Autónomas*) depending on the areas (local, regional, national and international) where they intend to operate. Local governments have slight limitations: they can register POs but merely on an informational basis.

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	4.33	3.75	4.00	3.50	4.00	3.40	3.83
2018 GPEI	4.33	4.00	4.50	3.50	N.A.	3.50	3.97

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: 4.0

There are some differences between the requirements and processes to set up and register a foundation as compared to associations, which only have to be registered if they aim to be declared as public benefit associations. When registering a foundation, the pronouncement of supervising authority on the general interest of the activities is needed, so it can lead to some differences of criteria with founders and some legal uncertainty. The powers of foundations' supervising authorities are in Article 25 of Act 50/2002. Registration for associations is merely declarative and not constitutive of the legal personality.

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

Score: 4.0

The law imposes graduated requirements depending on the amount and source of income, which are more or less similar; however, in practice, the review of annual accounts is more intense for foundations—which are supervised—than for associations. For associations and public benefit associations, bureaucracy is increasing and is costly since they must dedicate human or financial resources to comply. Associations have complete freedom to organize their board with the minimum requirement that they must follow democratic procedures. For foundations, there are a few requirements: members of the board should not be compensated but continue to have broad discretion according to Articles 14 and 15 of Act 50/2002. Board members are liable for damages they could cause to the association or foundation. Associations and foundations are allowed to engage with media or other partners. When advertising or carrying out media campaigns, there are some special rules in favor. Philanthropic organizations can be voluntarily dissolved but with some limitations for foundations, which need a justified reason such as the impossibility of continuing with its activities.

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

Score: 5.0

According to the Spanish Constitution, associations and foundations can only be dissolved involuntarily by a court decision (Articles 22 and 34). Those that pursue objectives that are illegal according to the Criminal Code can be prosecuted. Nonetheless, voluntary extinction and dissolution of a foundation must be endorsed by the supervising authority (Article 32, Act 50/2002). In very

extreme cases, the law allows for temporary dissolution, but this requires a court decision and could occur when criminal suspicions arise (Article 42, Act 50/2002). In cases of involuntary dissolution, public administration can initiate a process if they consider that there are reasons for extinction according to the law—such as lack of activity—but in all cases the court will have to make a decision. A draft law that has not passed in Parliament and is not in force considers the dissolution of foundations that do not follow general public interest, stating that making reparations for the "franquismo" (Spain's dictatorial period) or giving offense to the victims of the Spanish Civil War are not general interests. In Spain, general interest foundations do exist; so the draft law could lead to removing this qualification for existing foundations with diverse purposes, but a court decision would be needed in any case.

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

There are not relevant regulatory changes since 2018, but limits appear that are more relevant to increasing not the number of donors but the amount of the donations. Nonetheless, it seems to be fine to maintain the previous year's scoring for this section. The law was amended partially in 2015 and progressively introduced an increase of the percentage of deduction, mainly for small donations. However, the independent fiscal authority has concluded in a report that this reform is not proceeding, since the increase of donations has not been very relevant.

Deductions for donors are provided in the income tax of individuals and corporations (*Impuesto sobre la Renta de las Personas Físicas* and *Impuesto sobre Sociedades*) for donations made to foundations or public benefit associations, though these donations have to comply with some requirements. Deduction is considered as a tax credit since it is applied on the quota and donations are not deducted in the taxable income. However, deduction limits are based on the taxable income. According to Article 19 and 20 of Act 49/2002, tax credits are as follows: for individuals, 80 percent of the donations up to EUR 150 (USD 182) and 35 percent of the rest of the amount or the value donated, or 40 percent if it is a regular donation to the same PO and the same or higher amount at least during three years. For corporations, 35 percent of the amount or the value donated is deducted in quota. The amount or value donated that can be deducted is calculated on the taxable income and is limited to 10 percent. In the case of corporations, credits can be carried forward to the next ten years, but in the case of individuals, the excess is lost. These percentages can be raised by 5 points for some entities and activities on an annual basis through budgetary legislation. Cash and in-kind donations are deductible, but pro-bono services are not. The rules to calculate the value of in-kind donations have some incoherence. Donations to non-public benefit associations are only deductible at 10 percent and only for individuals and not corporations.

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

Score: 4.5

Both associations (public benefit or not) and foundations are tax-exempted for the donations they receive. But regarding other income such as capital gains or economic activities, not all POs are exempted: only public benefit associations and foundations. Associations have different tax regulations and for these resources they are taxed at the same rate as medium and small enterprises are at 25 percent. On the other hand, foundations and public benefit foundations are only taxed for the gains of certain economic activities and at 10 percent. Public benefit associations and foundations can benefit from some exemptions in property taxes, such as for the real estate that they own.

Tax benefits for public benefit associations and foundations operate generally as a package: if POs fulfill some requirements, they automatically apply the exemptions in their tax forms; but if they cease to fulfill one out of ten requirements, they lose not only the exemptions in their income tax but for local and other taxes and they do not qualify automatically for donors deductions. Hence, tax benefits are a simple system, but are subject to numerous interpretative resolutions of the tax administration related to these ten requirements POs have to comply with. 70 percent of charitable donations to POs are from corporations and 30 percent from individuals. For the sector, this proportion of donations has to change in order to increase civil society participation that is specially stimulated for small 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 Six: To what extent is the legal regulatory environment favorable to sending cross-border donations?

Score: 3.0

As far as we know, the European Commission has not advanced in the infringement procedure (Number 20134086), compelling Spain to adopt internal legislation to Persche and Stauffer cases. Cross-border donations are not eligible for the same tax incentives as domestic donations. Foreign-based POs are also not recognized as tax-exempt entities unless they are registered in the Foundations or Associations Registry if they have regular activities in Spain. Only court decisions have advanced the equal treatment of foreign-based POs compared to Spanish ones. Moreover, there is only one administrative resolution that recognizes the comparability of a foreign-based foundation. There have been some attempts to modify the legislation that have not succeeded.

Except for tax limitations, there are not restrictions on sending cross-border charitable donations, provided donations comply with the Anti-Money Laundering and the Financing of Terrorism (AML/CFT) legislation.. This legislation does not prohibit cross-border donations, but establishes some due diligence procedures for POs. There are no limitations on the activities that can be

supported if they are not illegal and are related to the scope of the PO according to its bylaws. Some restrictions could arise when sending donations to some countries, such as Syria. The main burden or red tape is that Act 10/2010 includes foundations and associations as partial obliged entities, and this is clearly affecting the perception of risk of the entire sector. According to these due diligence obligations, POs are obliged to declare outgoing cross-border donations of EUR 10,000 (USD 12,150) or more.

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

Score: 5.0

There are not excessive costs for receiving donations from abroad, since donations are not taxed for POs. Nonetheless, costs or restrictions come from AML/CFT regulations. The law's regulations are not a matter of prohibitions, but if the donation origin is risky, due diligence processes according to or in line with Financial Action Task Force (FATF) recommendations or/and communications to financial units is implied. All this could lead POs to voluntarily reject some funds.

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: 4.0

The perception of the sector during the COVID-19 crisis has grown, which has improved the recognition of the role of POs in general, by both the government and society. Precise figures are lacking so far, but many cases of collaboration have arisen and more may will come. Advancing public-private and private-private partnerships is one of the main objectives for the sector in the coming years.

Nonetheless, the sector does not feel recognized in the dialogues with the government on the role that foundations and associations could have in the Recovery, Transformation and Resilience Recovery Plan (Recovery Plan), on how their projects can contribute to the objectives of Next Generation EU (NGEU) funds, and to the political objectives of Europe. In Spain, traditionally social dialogue is understood as the relation between government, trade unions, and patronal associations, which undermines the role of the philanthropic sector. The foundation sector employs 270,000 workers in Spain.

There is a matter of perception. In Spain, similar to France, the public sector has a role, leading to philanthropy being criticized and perceived similar to the privatization of public services. Often, some sectors of society perceive foundations only serve as a means to reduce or avoid taxes. This social perception also translates to politicians.

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

Score: 3.0

POs have access to public and private funds and to different resources. The sector is very diverse, and depending on the area, the government promotes the sector—contracting out for social services. However, there is not a philanthropic roadmap as a whole. There is room to improve the sector's oversight, especially for supervising authorities of foundations.

V. Economic Environment

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

Score: 4.0

Despite into account some of the weaknesses of the Spanish economy, Spain is one of the main economies in the world. The Spanish economy has expectations of growth, but faces particular problems around structural unemployment and public debt. See the position of Spain in the principal global economic rankings here: <https://datosmacro.expansion.com/paises/espana>

VI. Socio-Cultural Environment

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

Score: 3.4

POs are generally trusted, but perception differs according to the different types of PO. The level of confidence and reputation varies across NGOs as compared to corporate or family foundations. As stated, the COVID-19 crisis has shown an increase of trust and has positively affected the perception of POs; but this could be a temporary trend. Public critics of some relevant Spanish philanthropists, such as Amancio Ortega, still remain. In general terms studies agree on the need to strengthen the philanthropy ecosystem.

According to a study by the Asociación Española de Fundraising (AEFr), more than 30 percent of individuals in Spain have donated during the last year. Previous studies showed that the percentage of individual taxpayers who declared deductions for donations was at 13 percent.

According to the last analysis of the Independent Authority for Fiscal Responsibility (AIReF) regarding Spanish tax incentives, the last reform of tax incentives for micro-donations is not conclusive but the number of individual donors was noted.. Nonetheless, an increase in donation amount is more relevant than the number of individual donors.

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

Institutionalized philanthropy is increasing, to a certain extent pressured by other actors and initiatives such as social impact investors or social entrepreneurship. Some initiatives to promote philanthropy among wealthy families and individuals have arisen, but it is still difficult to find new generation philanthropy or a quality change. The number of wealth managers, both independent and institutional or private banks-affiliated, are increasing but there are no appreciable relevant outputs.. Spain does not count on a "Giving Pledge" initiative.

A high number of umbrella organizations in the foundations and Third Sector do exist, with different ranges of impacts, but the sector suffers from fragmentation. There are many POs, but most of them are very small organizations that operate in the democratic/citizenship movement tradition—which is a positive trend, but not in the philanthropic tradition. Nonetheless, as a Catholic country, Spain counts on an important range of informal philanthropy.

Finally, Spain has 9,000 foundations, which is a high number. While this could be a positive indicator, many of these foundations are very small with limited capacity.

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

- 1) The COVID-19 pandemic and the mobilization of citizens, POs, and enterprises helping in the social field;
- 2) Economic and social impacts of COVID-19 has put more pressure on the public and PO sectors, with a landscape of imminent or future fiscal cuts that could potentially affect philanthropy; and
- 3) Some Europe-level developments, such as philanthropy opinions produced by the European Economic and Social Council (EESC), the Philanthropy Manifesto published by Philanthropy Advocacy, a joint Donors and Foundations Networks in Europe (DAFNE) and European Foundation Centre (EFC) project that emerged from the sector, some current initiatives like Social Economy Action Plan of the European Commission, or the new attempt to develop a statute for European cross-border associations and non-profit organizations promoted by the European Parliament.

Future development trends in the philanthropic landscape

Emerging forms of philanthropy are clearly a trend for traditional philanthropy, but also an opportunity for new forms of funding and new partnerships. Philanthropy has to think clearly in terms of social impact and see how to increase impact by taking into collaborating with other actors. Measurement is still a challenge and has to improve as part of the transparency of the sector. Digital transformation and new tools such as blockchain can be very helpful for the philanthropic sector and for beneficiaries, but the sector is also an important voice to add in terms of how digitization is affecting people. Globalization remains a challenge for the philanthropic sector.

Three key recommendations to improve the environment for philanthropy

- Engaging different philanthropic actors to create a roadmap for philanthropy at the national and international levels, especially in cases of European projects and Next Generation EU (NGEU) funds;
- A clear and supportive recognition of philanthropy and its social value by institutions: philanthropy and the Third Sector can and should contribute to define general interests and are relevant actors, among other traditional sectors; and
- Measurement of social impact by philanthropic actors to improve their public perception.

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

POs have a clear role in attending to basic social needs. The impact of the COVID-19 crisis has not been totally felt, since a record number of temporary employment regulations are still in force for many enterprises and employees. The sector has also had an important role in education by connecting vulnerable students during the lockdown and beyond. Many of the nursing homes for elderly people, very affected by the COVID-19 pandemic, are aided by POs. Endowed foundations have had a crucial role by supporting many other POs with their new and urgent needs, as they are flexible enough to fund these new projects.

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

New trends in the philanthropic sector are I being flexible, being close to urgent or newly emerged social needs, showing willingness for innovation, and having creative problem-solving attitude in many cases. Many POs have experienced for the first time what is an emergency crisis due to the COVID-19 pandemic. International POs are used to dealing with these challenges and have protocols, but not national or domestic POs.

Impact of COVID-19 on the philanthropic environment

The current crisis has improved the perception of philanthropy, even the political perception of the groups that traditionally are not very supportive with philanthropy and private wealth. Nonetheless, it has yet to be determined if this is only a temporary change or change of trend regarding the perception and recognition of the role of philanthropy and POs in the country.

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

There will be more pressure on the sector due to increasing needs, while the sector has barely recovered from previous economic crisis in 2009–2010.

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