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Lilly Family School of Philanthropy

The 2022 Global Philanthropy Environment Index Germany

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QUICK FACTS

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

Five main social issues addressed by these organizations: Arts and Culture, Basic Needs, Early Childhood Education through High School, Health and Medical Research, Higher Education

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

Average cost for registering a philanthropic organization: USD 3,000

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

The civil code and tax code regulate the basic norms on the federal level (types of legal forms, basic requirements for their establishment, and tax treatment among others). Within this framework, implementation norms on the civil level are regulated by state (*Länder*) legislation. Tax jurisdiction is exclusively federal.

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	5.00	4.00	5.00	5.00	5.00	4.78
2018 GPEI	4.67	5.00	4.00	5.00	N.A.	5.00	4.73

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: 5.0

The fundamental freedoms of expression, association, and assembly are fully granted. Most forms of philanthropic organizations (POs) require legal personality; the association and the dependent foundation (a type of trust) do not. The founders are free to choose the form of their organization. If POs apply for charitable status, purposes that benefit the members/founders are not permitted. Therefore cooperatives, associations, and 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, which is only restricted to not violating any other legal norms (i.e., they have the right to establish for any lawful purpose). The registration procedures for the different legal forms of POs vary but in each case are required to be conducted at the state (*Land*) level. To establish a PO, the formally required documents include a charter/statute in all cases. Foundations additionally require a deed of resources (not formal, but a practical minimum requirement endowment of EUR 100,000, or USD 121,505).

Question Two: 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 state (*Länder*) legislation. For each legal form of PO, there are norms regulating the governing structure requirements, with normally only one level (tier) of governance being required. However, there is freedom to apply two-tier governance models if appropriate for bigger organizations. There is no restriction on freedom of (international) communication and cooperation. Cooperation with international partners in the understanding of fulfilling the organization's mission should, however, be within the boundaries of the charter of the organization. As of 2026, a uniform national register of charitable organizations (according to tax status) will be introduced (*Gemeinnützigkeitsregister*) along with a harmonization of foundation law becoming effective as of July 1, 2023. Recent rulings by tax authorities have prohibited purely "political" activities of charitable POs. Field associations of POs are campaigning for legislative clarification.

Question Three: 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: foundations are legally required to exist in perpetuity (except spending down foundations, as established by the charter provisions). Therefore, neither the governance 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, and with the consent of supervisory authorities, foundations must consider a change of purpose, a merger with another organization, or integration into another organization. Their basic legal role is the protection of original donor intent. According to the most recent reform bill passed by federal Parliament in June 2021, the options of converting a foundation to spending down status or to merge foundations shall be made easier by law.

It is equally difficult to dissolve other legal forms. For an association, the decision to dissolve can only be taken by the assembly of members with the approval of 75 percent of voting members. In addition, the dissolution of POs is regulated in a restrictive way by the requirement to transfer remaining assets/resources to another organization following the same charitable purpose.

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: 5.0

Both POs and donors are eligible for substantial tax privileges for charitable activities. Some of the privileges are particularly targeted at endowed foundations. Individual donors can generally deduct donations up to a ceiling of 20 percent of their personal taxable income by filing them in their tax declaration. Corporate income taxpayers can deduct up to a ceiling of 4 per thousand (0.4%) of their total turnover, wages, and salaries. These ceilings were substantially increased from previously half that level about 15 years ago. All donations to a PO made from an estate or as a result of a last will are free of any inheritance tax (Germany does not have any other form of estate 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 the death of the original owner. In addition to the above general deduction allowances, donors can deduct an additional EUR 1 million (USD 1.22 million) for an endowment donation to a civil law foundation per person. This amount can be split and carried forward over 10 years; married couples filing together can each deduct this amount.

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

Score: 5.0

All POs themselves are exempt from paying all taxes except the value added tax (VAT) if public benefit status 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. For the list, see § 52 AO (tax code). Purposes also include charitable support to persons in need (§ 53 AO) and support for religious purposes (§ 54 AO). Tax-exempt status is granted by applying to the tax authorities if the organization pursues any of the above purposes. There are, however, clear restrictions on unrelated business purposes. Public benefit organizations can only conduct unrelated business activities as a subordinate activity of minor relevance, which will in turn be accounted for separately and taxed. All types of POs are eligible for public benefit status and can receive donations from private individual donors as well as private legal persons (entities) irrespective of their organizational/legal form (with the exception of the special privileges for donations to endowed civil law foundations listed under Question 4).

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: 4.0

POs are free to send philanthropic contributions (grants, disaster relief funding, and development aid, among others) abroad. This is not subject to approval of the supervisory authorities but is subject to their mission as laid down in their charter document explicitly providing for it. There are no specific tariffs or duties on such payments provided that the PO is a charitable organization. However, the 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 doing lawful operations and working as charities and not as commercial entities. This liability requirement applies with no difference between funds spent abroad and those spent within the country. However, in practice, it may be more difficult for POs to document the eligibility of the recipient organizations of cross-border donations/grants and the purposeful spending of the donations/grants.

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

Score: 4.0

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 including written documentation in the reporting of the PO to both civil and tax authorities. Concerning the tax effectiveness of private

donations to public benefit POs abroad (for German giving entities or persons) or international donations to German POs by foreign donors, the European Court of Justice has established the principle of non-discrimination. This means that donations to any POs are eligible for tax deduction by the donor if the recipient organization abroad and its charitable purposes were eligible for deduction according to the tax code of the country where the donor is filing taxes. There are, however, regular cases of conflict about this ruling, and it is still not fully endorsed by German tax authorities, which maintain sometimes discretionary decisions.

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: 5.0

In general, the philanthropic sector in Germany has enjoyed a favorable political climate across all relevant parties in Parliament since 1998. The reform efforts at further improving the regulatory framework for philanthropy—started by an intergovernmental working group including federal and state level representatives in September 2016—led to the bill passed in June 2021. More specifically, the bill addressed the consequences of the financial crisis and its aftermath for foundations and the needs for legislation (e.g., improved regulations for mergers, improved publicity, and transparency requirements). Apart from these issues, its main goal is the harmonization of the federal civil code of norms so far regulated by state level jurisdiction. Transparency regulation includes the establishment of a Foundation Register, which will be publicly accessible as of January 1, 2026. Government allows and specifically promotes the involvement of POs in political advocacy and works in cooperation with POs in many policy areas. A recent, more restrictive tendency has, however, seen tax authorities decline public benefit status to POs for “political” action when POs showed explicit partisan political positions in campaigning.

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

Score: 5.0

As mentioned above (see Q8), both the federal government and the Parliament have repeatedly considered reforms to promote philanthropy, namely in 2000, 2002, 2007, and again in the recent reviewing process. In addition to support to the philanthropic sector, the government pursues an explicit strategy to promote volunteering and civic engagement. The most recent reform bill has emerged from a coordinated Federal-State Committee which elaborated the draft to harmonize federal and state level legislation specifically on foundations. There are no restrictions by government whatsoever to philanthropic purposes pursued. Networking, training, and information opportunities are very much provided by the sector itself independently. There is government support for research and information purposes, especially in the context of social entrepreneurship.

V. Economic Environment

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

Score: 5.0

Germany has experienced sustained growth of its foundation sector for more than two decades. A particular peak was reached in 2007 as a consequence of a substantial transfer of wealth to the next generation as well as the different reform bills of the years 2000–2007. Since then, sector growth has been stabilized on a level of almost 600 new foundations being established per year. It is, however, too early to assess the full economic impact of the COVID-19 crisis and its economic downturn, or rather the prospect of resumed growth of the foundation sector. The fundamental economic structure is, however, sound and anticipates sustained development of the sector.

VI. Socio-Cultural Environment

Question Eleven: 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 a growth trend of the foundation sector and an equivalent growth trend of volunteering, with currently 43 percent of the adult population being regularly involved in volunteering activities (2014 data, according to Volunteer Survey, *Freiwilligensurvey*). Germany has had a strong philanthropic tradition from pre-modern times, which was vigorous in the 19th century and prior to WWI. The two world wars and Nazi dictatorship as well as Communist rule in East Germany until 1989 were, however, very detrimental to the sector. There were two hyper-inflation periods in the 20th century, so the current development can be regarded as a renaissance of a long tradition. According to recent preliminary data, private household cash donations in Germany grew in 2020 compared to 2019 to an all-time peak of EUR 5.4 billion (USD 6.56 billion) despite the COVID-19 crisis, or perhaps because of it. Religious giving was not included because of the German “church tax”, a voluntary contribution of church members deducted as a share of their income tax on behalf of the churches. This “church tax” giving amounted to EUR 11.9 billion (USD 14.46 billion) in 2020, EUR 800 million (USD 972 million) less than 2019 as a consequence of COVID-19 effects (Hentze, 2021).

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

Philanthropy in Germany is a well-organized and highly institutionalized sector. It enjoys the regular support of a very 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 4,500 members. Through umbrella foundation organizations, it represents more than 7,000 of the more than 23,000 German foundations. At the

same time, the level of volunteering indicates a high level of informal philanthropic engagement as well. Germany has a total of more than 600,000 associations further supporting this. Recent studies show a rapid growth trend of impact investing in the capital market connected both to POs and family offices, which is another indicator of a vital philanthropic sector.

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

1. September 2020: First draft of the Reform Bill of the Foundation Law published by the federal Ministry of Justice.
2. March 2020: First COVID-19 lockdown.
3. June 2020: First systematic German market study on impact investing indicates high growth trend and surprising absolute levels (EUR 6.5 billion, or USD 7.9 billion) invested broadly in impact investment, of which EUR 2.9 billion (USD 3.52 billion) was focused on Finance-First and Impact-First projects.

Additionally, the Reform Bill of Foundation Law passed by the Federal Parliament in June 2021.

Future development trends in the philanthropic landscape

Sustained, continued growth will go along with financial innovation (impact investing), increasing digitization (Germany needs to catch up in this regard as shown by the COVID-19 crisis and its lockdown and home-schooling situations) and a stronger emphasis on social innovation. Competition from social entrepreneurship and related investment activities as well as the variety of philanthropic vehicles will increase.

Three key recommendations to improve the environment for philanthropy

- Strengthen the landscape for professional capacity building further to improve the overall effectiveness of the sector and meet donor values of high impact expectations.
- Promote and advocate for impact investing in a clearly defined approach (avoiding green- and white-washing).
- Establish full transparency and publicity requirements in the regulatory framework.

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

The prime role of POs has been to stabilize nonprofit organizations, especially the performing or service providing POs, which have suffered severely from the lockdown and have not equally benefited from government support provided to business organizations. This could be in the form of grant support, in the form of additional emergency support, or in the form of flexibility in existing grant and cooperation agreements. More comprehensive data on this will emerge from the grantee perception reporting survey which CSI is currently conducting among the grantees of six of the largest German foundations. Foundations continue to be seen as high-reputation, demanding, and

reliable organizations (scoring at around 70% full agreement) and less as innovative, flexible, transparent, and strategic organizations (scoring at around 45% full agreement). However, in longitudinal perspective since 2015, the reputation score increased 7 percent, and the innovation score soared by 15 percent.

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

More digitization, totally new communication formats, and more social innovation initiatives (COVID-19 response Hackathon in cooperation with German Federal Government in the Spring 2020).

Impact of COVID-19 on the philanthropic environment

The COVID-19 crisis has certainly impacted the returns which foundations managed to get on their endowments, but it is too early to specify the dimension. Local solidarity and informal philanthropy have rather surged in the crisis and have shown to be of increased relevance.

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

With vaccination and an economic upswing during the second half of 2021, the prospects for philanthropy should become brighter again. Incentives to become more flexible, digital, and entrepreneurial will remain.

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