



Austria

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QUICK FACTS

Legal forms of philanthropic organizations included in the law: Association, Foundation, Cooperative, Corporation, Benefit Corporation, Limited Liability Company, Company Limited by Guarantee, Trust, Endowment, Society

Five main social issues addressed by these organizations: Basic Needs, Youth and Family, Religion, Animals, International causes

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

Any association with established bylaws (within the regulations) can be registered within four weeks at the local government institution responsible for associations. Costs are minimal and include bylaw registration and federal tax.

Average cost for registering a philanthropic organization: US \$50

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

The incorporation is regulated by federal law (“Vereinsgesetz”; “Bundes-Stiftungs- und Fondsgesetz 2015”, etc.); however, the enforcement and registration of associations is done at the local government level (“Bezirksverwaltungsbehörde” - local government office), or in the case of federal municipalities at the state government level (“Landespolizeidirektion” – State Police Department, which is the government security agency of first instance).

Philanthropic Environment Scores:

Year	Ease of Operating	Tax Incentives	Cross-Border Flows	Political Environment	Socio-Cultural Environment	OVERALL SCORE
2018	4.6	4.0	4.2	4.6	4.7	4.41

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: 4.5

The Federal Act in Associations 2002 (Vereinsgesetz 2002) entitles the formation of associations and “any association of 2 or more individuals” can register whilst following certain regulations (nonprofit purpose) and become a legal entity. Associations can operate once the registration process has been initiated.

Any individual founding an association has to be at least 14 years of age, but does not have to have Austrian citizenship.

For the incorporation of an association no minimum capital is required, this changes when considering endowments or foundations (minimum starting capital of EUR €50.000), which now also follow a similar incorporation process with the new BStFG (Bundes-Stiftungs und Fondsgesetz) 2015.

Only two documents are required to form an association, which are easily accessible online. However, registration is still not possible online and has to be done in written format to the local government authority.

Albeit, the government has repeatedly expressed interest in providing an online registration process in recent years, no sign of its development can currently be witnessed.

The fee for registration includes federal taxes and is below US \$50, depending also on the extensiveness of the bylaws to be reviewed. All associations are registered within the ZMR (centralized countrywide database), where any individual can do a singular search for any association. The law also includes appropriate safeguards, such as the four (4) week timeline to review and decide upon registration, which is based on the European Convention on Human Rights and can only be denied if it is against the law in regards to the purpose, the naming, or the organizational form of the association. If concerns arise for the incorporation of the association, the government authority is granted another six (6) weeks to review the registration and a written explanation in case of denial has to be issued, stating the reasoning. An appeal to the decision, if denied, is granted at the local government office “Bezirksverwaltungsbehörde.”

According to the new federal law “Gemeinnützigkeitsgesetz (GG 2015)”, which was decided in February 2015 and activated in January 2016, philanthropic engagement should be further developed in Austria. At first glance, the new regulations should lead to additional tax benefits for donors. In addition, the new federal law (BStFG 2015) brings benefits for the creation of nonprofit foundations. The process is now twofold: first, the Federal Ministry of Finance checks the necessary nonprofit status of the organization within six (6) weeks of registration. Second, the agency for

Foundations and Endowments (local government) checks any reasons of non-incorporation based on the law (purpose of incorporation, naming, and not sufficient starting capital).

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

Score: 4.4

Associations have to follow the “Vereinsgesetz” in terms of setting the structure and governance of the PO. However, apart from structural regulations (general assembly time, membership), the POs are free and the law does not constrain the discretion and freedom to run the organization’s internal affairs.

The restriction that has recently been enforced is in relation to the rising terror threats in Europe as well as first signs of political instability and discontent among Austria’s population since 2015, as assessed by the Legatum Prosperity Index 2016. Similar to the Russian foreign agent law, the National Council of Austria enacted the “Federal law on the external legal relationships of Islamic Religious Societies,” which prohibits foreign financing for the “ongoing operation” of a religious society. In addition, there are limitations to “continuous” foreign funding. This has led to Austria being noted in reports by institutions such as the Expert Council on NGO Law, which is consistently “reaffirming the right of citizens to act as free citizens, notably in association with others, i.e. through NGOs or CSOs.”

Apart from the new federal law, POs are still permitted to freely contact and cooperate with colleagues in civil society, business and government sectors, both within and outside the country. In addition, the internet and social media are free forms of communication and participation in networks is encouraged. In The Human Freedom Index 2016, Austria still ranks highly, with the “Freedom of Association”, “Autonomy of Organizations” and “Freedom to Establish Organizations” receiving 10.00 out of 10.00 points. According to the Austria Country profile of CIVICUS (2016), civil society is able to operate freely, campaign and challenge authority within the country.

Finally, clear reporting requirements exist, and are sensitive to the respective legal form and size of the PO, ranging from simple bookkeeping and accounting requirements to annual financial statements.

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

Score: 4.8

According to the federal law “Vereinsgesetz Art. 28”, voluntary termination of the PO is possible, as stated in the bylaws of the PO. The PO has to inform the local government in writing about the termination within four (4) weeks of shutting down the organization.

Involuntary termination, or termination by the authorities, is possible only if the organization violates the law, oversteps its statutory boundaries, or does not fulfill its legal requirements any longer (for example inactive status). The European Convention on Human Rights is used as the basis for such determinations.

Written notice of the termination is issued, however the opportunity to be heard is not given, since the voluntary termination is only granted for the reasons stipulated above. According to the federal law, a requested correction of a legal violation cannot be granted. An appeal to the decision is again granted at the local government level (local government office – “Bezirksverwaltungsbehörde”), or in the case of federal municipalities the state government (“Landespolizeidirektion”), which is the government security agency of first instance.

The situation is similar also for public benefit foundations. A public benefit foundation under the BSFG is dissolved if “no assets are left, the assets are insufficient, or the purpose cannot be fulfilled” (Art. 27 BSFG). The remaining assets are to be distributed to the beneficiaries listed in the statutes or given to another foundation with similar goals.

The founder of a private foundation can also terminate or dissolve the foundation, if such a provision was foreseen in the bylaws (Art. 34 PSG- Privatstiftungsgesetz-Private Foundation Act, 1993).

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: 4.1

In Austria, the tax system is regulated by the Federal Ministry of Finance as the supreme authority of Austria’s fiscal administration. There are limited income tax incentives, equally accessible for eligible individual and corporate donors. In each calendar year, tax deductions are limited to up to 10 percent of the taxable income (Income Tax Code of 1988 (EStG), Article 4a (1)).

In addition, donations are only deductible for Austrian income tax purposes to organizations that are approved by the Austrian tax authorities - according to Art. 4.4.6 of the Austrian Income Tax Code “Einkommensteuergesetz” for organizations in the fields of science, education in science and research, or arts, or to special scientific institutions as well as to organizations specifically mentioned in the law (Art.4.4.6.). On the Global Philanthropy Legal Environment Index, which states that “tax incentives for individuals appear effective in creating a culture of giving” – Austria receives 10 out of 11 index score points, recognizing that there is no estate tax, and no donations after death are exempt in the country. In addition, it is noted that according to the Foundation Receipt Tax Act, donations to private foundations are generally taxed at a flat rate of 2.5 percent (public-benefit foundations are tax-exempt) and donations of real property are taxed at an additional flat rate of 3.5 percent (if the property is not used for benevolent purposes) (European Foundation Center, 2014).

According to the European Fundraising Association (2015, 2017), Austria’s tax-effective giving framework was first introduced in 2009, boosting annual donations from EUR €390 to €550 million in 2014, and up to EUR €625 million in 2016. More than 900,000 Austrians make tax-effective donations on a yearly basis. However, the process of receiving tax benefits when making donations is not completely clear and predictable and has been further complicated by the

“Spendenabsetzbarkeit Neu,”¹ which is being launched with the beginning of 2017, especially for the administrative side of the POs.

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

Score: 3.9

Austria provides tax benefits for POs that pursue directly and exclusively, 1) public-benefit purposes, 2) benevolent purposes or 3) religious purposes. The Federal Tax Act, §4a Article 34 – 37 (Bundesabgabenordnung) regulates and defines “public benefit purposes” as supporting the community at large, with a large number of persons needing to benefit from the foundation. “Benevolent purposes” is defined as supporting persons requiring assistance, therefore also for a small group of people. Finally, “religious purposes” includes all activities dedicated to the advancement of legally recognized churches and religious communities.

Other legal entities, including foundations, which are engaged in science and research, or entities regarded as nonprofits, benevolent or religious according to Arts 34 of the tax code have to ask for special recognition by the tax revenue department. Then, they are included in a special list published annually on the website of the Ministry of Finance (“§ 4a Abs. 3 Z 1 to 3, Abs. 4 lit a to c and lit e to g and Abs. 6 EStG”). In addition, some organizations are explicitly mentioned in Art. Article 4a (4)-(6) of the Income Tax Code as qualifying organizations, such as national and state fire departments (since 2012), museums, the Austrian National Library as well as other federal institutions. In total, the list of POs that can receive tax benefits is broad – however donations to POs that are not listed and have the “Spendenbegünstigung” according to §4a are not tax deductible in Austria. Organizations that do not fulfill the requirements any longer are eliminated from the list.

The process of receiving tax-exempt status is not simple and quite onerous. In addition, it is not predictable because there is no official letter from the Federal Ministry of Finance. The range is broad, however many charitable causes are not deductible, e.g. education, sport, and parts of culture. Finally, associations do not receive tax exemptions on property tax.

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: 4.1

¹ New regulation to support individual tax deduction. Individuals will no longer be required to report their donations to the tax authority, but they need to give their data (name, date of birth) to the POs, and POs can file the necessary documents to the tax authorities. (EFA, 2017, Ministry of Finance, 2017). See: <https://www.bmf.gv.at/kampagnen/spendenservice.html>

Following a recent reform in Austrian tax law, there is no longer a distinction to whether the public-benefit foundation receiving the donation is a resident in Austria or in another EU country (this only applies to the countries that are a member of the European Union and not to other countries).

However, EU based foundations have to fulfill all legal requirements that a resident foundation in Austria has to fulfill, and have to also be included in the list kept by the Austrian Federal Ministry of Finance. The requirements also need to be confirmed by an auditor and have to include a period of at least three years; for the three main purposes; and only ancillary economic activities may be undertaken. The deductions of 10 percent can thus be made as special expenses with the Income Tax Code (Art 18.1.7), or as business expenses (Art 4.4.5 and 4.4.6). This process is very costly, and only a handful of organizations are able to fulfil this requirement.

The Foundation Receipt Tax Act (Art 2.1) provides that donations to foreign public benefit foundations, which are registered in EU/EEA member states, are taxed at a flat rate of 2.5 percent. They need to provide annual activity and account reports to establish their public benefit purpose on a yearly basis; otherwise, the flat taxation rate is 5 percent.

There is no approval process for sending charitable contributions abroad, and there are no restrictions on sending cross-border charitable donations.

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

Score: 4.3

Figures of cross-border philanthropy are still growing; however, the development is countered by dramatic developments in some parts of the world, and also within some countries in Europe, as stated by the King Baudouin Foundation in “Enabling Philanthropy across Europe.”

There are no specific costs/taxes associated with receiving cross-border philanthropic cash and/or in-kind donations, and there is no approval process for receiving such donations. The only restriction is the “Federal law on the external legal relationships of Islamic Religious Societies”, which prohibits foreign financing for the “ongoing operation” of a religious society enacted by the National Council of Austria in 2015. Accordingly, there are limitations to “continuous” foreign funding and the “ongoing operation” of a religious society has to be financed from inland (Expert Council on NGO Law, 2015). In regards to receiving tax benefits for cross-border donations, unfortunately the creation of the European Foundation Statute was withdrawn in March 2015 by the Juncker Commission, despite substantial support, since there was no consensus among the 28 member states. Austria was among the eight (8) member states that have rejected the proposal by the Italian EU presidency.

The network “Transnational Giving Europe” also promotes cross-border donations in Austria, with the “Philanthropie Foundation Austria” since April 2014 now situated in Graz as a member of the network.

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: 4.7

The rules for the formation and operation of civil society groups in Austria are described as “neither obstructive nor restrictive” by the CIVICUS’s Austrian country profile (2016). There have been some instances where criminal law provisions were used to silence certain civil society groups, for example, a case with animal rights activists, however these are rare exceptions, and there is no inherent general conflict between government and the philanthropic sector. The one critical point of issue is that many POs are dependent on state funding for their survival, thus raising concerns about the state’s influence on POs’ sustainability and independence.

Abuses in Austria’s neighboring country, Germany, have been noted in the Civil Society Watch Report 2015, regarding the rise of anti-immigrant groups, which are vitiating the atmosphere for civil society to operate freely. In Austria, the one measure currently infringing on the European Convention on Human Rights is the prevention of non-citizens to be organizers of "Peaceful Assembly", within the context of recent Anti-Islam protests occurring on the streets of Vienna.

The government creates opportunities, already in the lawmaking environment, to involve philanthropic organizations in policy development and implementation. However, as assessed by Transparency International in 2014, the lobbying sphere in Austria is very complex and not all parties associated with the creation of any given law need to be registered and listed within the process. There is certainly room for improvement with the current Lobbying regulations (implemented in 2013), as also claimed by the Austrian Public Affairs Association. Economic growth in Austria has been sluggish, partly because other, faster growing Eastern European countries are seeing greater regional investment and are beginning to compete with Austria. This does not yet pose a threat to the autonomy or sustainability of the philanthropic sector, but it has given rise to the far-right populist Freedom party.

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

Score: 4.5

The recent changes in Federal Legislation to the Tax Code, and fiscal regulations, have been enacted, because the government does want to promote a culture of philanthropic giving, which has not been in existence in Austria in similar ways as to other European nations.

In the CAF World Giving Index 2016, Austria ranks at 30th overall, 4th within Western Europe, and only 12th within all of Europe with many other European countries having far more favorable scores when it comes to helping a stranger, donating money, or volunteering time.

In terms of equal access to resources and opportunities, government tries to offer a broad range of resources, however as of 2014, only 81 percent of Austrians had access to the Internet, showing that inclusion is yet to be universal. The media is also criticized for being in the ownership of too few hands. Additionally, access primary sources of information is limited by strict government information laws. While Austria's constitution guarantees the right of freedom of expression, there are strict criminal and civil defamation laws that limit free speech, as also noted by the CIVICUS's monitoring report (2016). Access to Information and Communications receives an overall score of 91 percent on the 2017 Social Progress Index, demonstrating that there is still room for improvement.

There is no government pressure to support any specific philanthropic cause or organization, and donors and funders can choose from a wide variety of registered and tax-deductible organizations and causes to support. As of October 2016, 1,185 organizations were registered within the Federal Ministry of Finance as offering tax-deductible donations.

The coordination among government agencies to support philanthropic activities can be enhanced, as it was witnessed with the "Spendenabsetzbarkeit Neu," introduced at the beginning of 2017. The legislative regulations were not final until Fall 2016 and information to the general public was not spread.

V. Socio-Cultural Environment

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

Score: 4.7

As mentioned above, Austria's ranking in the CAF World Giving Index 2016 is not high, especially for a country in Western Europe, at 30th place it lags behind others. On a 5-year average, 53 percent are helping a stranger; 53 percent donating money and 28 percent volunteering time – not much above the world's average.

There is no philanthropic tradition embedded in our societal tradition, nor is there a cultural heritage based on philanthropic values. Our society is based on the imperative that government will care for the less fortunate in the welfare state, since the time of Otto von Bismarck in Germany in the 1880s. The availability of basic human needs always scores highly in all indexes (around 100% - Social Progress Index), that is what government provides for. In recent years, there has been a change to some extent, especially in regards to the immigrant crisis and the inability of government structures to respond adequately.

There is a general understanding of what philanthropic organizations do, and POs are perceived in general as trustworthy and accountable. However, the nonprofit sector is very diverse in its structure, and therefore hard to calculate to a certain extent. Its overall value is calculated at EUR €3.4 billion (including government support), and more than 30 percent of the population are engaged with the sector in a voluntary way. According to the yearly donation report (Fundraising Verband Austria, 2016) in the year 2015, 64 percent of the Austrian population donated money, which is a 2 percent increase since the last year. The average donation amount is EUR €122; however based on the

population, it is only EUR €72 per capita, which is again lagging behind other Western European countries (FVA, 2016). There are no limitations that hinder the growth of the sector, which has seen a vast increase with EUR €390 million donated in 2009 and EUR €625 million donated in 2016 (European Fundraising Associations country report, 2015, 2017).

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

The philanthropic sector in Austria has been undergoing some changes to encourage philanthropy in recent years and establish a culture of giving within the country. With the Fundraising Verband Austria (FVA), the country has a long-standing, well-established association (founded 20 years ago, in 1996) with leverage also into politics and government affairs. Not only does the association offer the yearly donation report, it also organizes a yearly convention with international reputation; maintains different focus groups; lobbies into politics, and provides resources and guidance with a Code of Ethics to its more than 300 member organizations. It supported Austria becoming a member of the Transnational Giving Europe (TGE) Network, with the creation of the Philanthropie Foundation in April 2014. It acts as a prominent group supporting the autonomy, sustainability and impact of the sector; also as a guiding member of the European Fundraising Association.

With the potential of creating value of EUR €10 billion yearly, as recent studies demonstrate, the sector is well established and still growing profoundly on a yearly basis. According to Giving in Europe, which just released its new study, Austria's size of the philanthropic sector, which includes "households, bequests, corporations, foundations and lotteries", is around EUR €950 million.

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

- Austria is leaning right in the Refugee crisis: Austria is surrounded by post-communist states in various stages of transition into autocracy, which have refused to cooperate with the EU in solving the migrant crisis. The far right is surging throughout Europe, as also witnessed in recent presidential elections in Austria in 2016. Yet, it has to be remembered that Austria is distinct from Hungary and Poland by way of its strong civil-society institutions, and that the social democrats also beat the far right in communal elections in fall 2015 by campaigning on the defense of human rights.
- According to the new federal nonprofit law "Gemeinnützigkeitsgesetz (GG 2015)", which was decided in February 2015 and activated with January 2016, Austria should be developed further as a country of philanthropic engagement.
- The implementation of the "Spendenabsetzbarkeit Neu" and its developments in 2016: The new regulation was introduced with the beginning of 2017, however legislative details were not final until Fall 2016 and information to the general public was not spread until late 2016. The new administrative guidelines have a profound impact on NPOs, which now have to

gather the correct and full name and birthdate of any donor, who wants to make their donations tax-deductible. It is now up to the organization's responsibility to collect, store and transmit the data to the Federal Ministry of Finance in a responsible way. The administration costs are high, with uncertainties still on the horizon.

Future development trends in the philanthropic landscape

Future development trends include:

- Crowdsourcing – Using the crowds and moving the masses, with efforts such as Respekt.net, which was founded in 2010, and recently gathered momentum also for political campaigning. Its mission is to support and strengthen civil society in Austria by bringing together projects and supporters in an easy format.
- Focusing on trends and making them work to your advantage in the sector – NPOs need to tailor their advertisement taking into account that more people quit social media on their smart phones or family values and the time spent with the family are highly appreciated by the society.
- New Corporate fundraising models – Initiative “Wirtschaftshilft” of the Fundraising Verband Austria with 50 organizations chosen and described in an annual guide for for-profit companies to provide their support. Awards given to the best corporate-nonprofit partnerships, with corporate volunteering programs gaining additional popularity. Legacy fundraising is also gaining increased popularity and becoming positive (while the market is yet underdeveloped compared to the Anglo-American sector), for example with the Initiative “ForgetMeNot” to support the “good testament” with legal counseling.

NPOs are becoming more and more like brokers, with the donors dictating their level of participation and permission to make a difference in society – the young generation of donors is demanding these new ways. Organizations have to become innovative and disruptive – so they are the ones chosen and the individual is in the driver's seat receiving their place to contribute, make a change, and feel the reward.

Three key recommendations to improve the environment for philanthropy

- Use of Online Methods: New generations live in the online world – in order to have their involvement, NPOs presence needs to be enhanced. Currently only 5 percent of all donations are made online, this needs to change in the near future and ways to engage online need to be provided in a better format.
- Political Support and Crowdfunding: the “Spendenabsetzbarkeit Neu” demonstrated the missing support of government and its ability to provide guidance for how the public should interact with the NPO sector. New initiatives such as crowdfunding platforms are demanding new ways of interaction; and government and its structures need to support these new ways of interaction to support civil society not by new regulations (and closed information laws), but by open communication and information to the public.

- Certification and Professionalization of the Sector: With the new momentum of the sector, new jobs are arising, and are being professionalized. Certification and training courses to provide ample opportunities for staff in this sector need to be developed. The CFRE credential is recently becoming more known in Europe, and training courses together with the international community, the FVA (and well-known Austrian institutions) are being developed and need to be free from a high threshold in terms of costs.