Chapter 2
Foundation Law in Bulgaria

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2.1 Legal Definition and Main Characteristic of the Foundation

2.1.1 Overview

A legal definition of the foundation first appeared in the Legal Entities Act in 1933. A foundation is defined as a separate property, whose purpose is to accomplish a certain goal. The funds and foundations which were active at the time Bulgaria was a monarchy contributed to a large extent to the development of charity and the formation of a charity culture.

This tradition was put to an end when the state system in Bulgaria was changed in 1944. In the next 45 years, foundations existed legally and were regulated by the existing legislation, but their regime was marked by greater state control both in the process of their formation and in their subsequent activity. Their activity was regulated by the Persons and Family Act (PFA).

A third stage in the legal regulation and the activity of foundations began when the current Not-for-Profit Legal Entities Act (NPLEA) was enacted (2001).

This piece of legislation is the primary law which regulates the activity of not-for-profit legal entities (NPLE) and their legal forms of existence as foundations and associations. This law regulates the establishment, registration, structure and the prerequisites for the termination of not-for-profit legal entities. It is also the first one to introduce the public benefit status of organisations and the distinction between public and private benefit organisations.

According to statistical data, 5,238 foundations were registered in Bulgaria at end 2010, of which about 1,260 had public benefit status. Not-for-profit legal entities in Bulgaria total about 33,000 (both associations and foundations), which

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means that foundations account for 16 % of all not-for-profit legal entities in the country. Twenty-four percent of them are public benefit foundations.

2.1.2 Main Characteristics of the Foundation

The current Not-for-Profit Legal Entities Act does not provide a legal definition of foundations. They can be defined by interpreting the statutory provisions concerning foundation regulation:

Thus, the foundation:

- Is a legal entity which is established as such after being entered at the Register of the District Court based on the foundation's headquarters
- Is established by a unilateral constituent act during one's lifetime or in case of death
- Has its separate property at the time of establishment for achieving certain not-for-profit goals
- Requires no membership but does have a one- or two-tier organisational and management structure

The provided description outlines the following characteristics of a foundation:

1. Property: the type and size which will differentiate the foundation is determined by its founder. The property of the foundation may include all types of measurable rights. The law does not prescribe any requirements for a minimum amount of the constituting property. Thus, a foundation in Bulgaria can be established by a significantly small constitutive donation or a will as the law does not prescribe any minimum of it.
2. The establishment takes place by means of a unilateral constituent act which is in the form of a constitutive donation or will.
3. The foundation is a *non-corporate legal entity* – it does not have any members and no legal membership relations exist.
4. The foundation has its own *management structure* (one- or two-tier system) depending on the foundation's status of public or private benefit.
5. Goals: the foundation is established to achieve certain not-for-profit goals.

2.2 Types of Foundations

The law recognises two types of foundations – public benefit or private (mutual) benefit foundations.

A sovereign right of the founder(s) is to determine the scope and type of activity which the newly established foundation will be carrying out as well as to determine whether these activities will be performed in public or mutual benefit.

Defining a foundation as being one registered in public benefit means that it has to comply with certain legal requirements from the moment of its creation and subsequently in its operation. For instance, for a public benefit foundation to be registered, its goals have to firstly fall under the exemplary list of socially significant activities recognised by the law such as 'development and strengthening of spiritual values, civil society, healthcare, education, science, culture, physical education, assistance to socially vulnerable people, protection of human rights or the environment'. At the time of registration, the court decides whether the specified goals can be considered as socially significant or in public benefit.

Secondly, foundations carrying out public benefit activities are obliged to have a two-tier management system which consists of a collective supreme body and a governing body. The supreme body takes all important decisions about the existence of the foundation, such as the following:

- Amending and supplementing the Statute of the foundation
- Selecting and dismissing the members of the governing body
- Taking decisions on the reorganisation or dissolution of the foundation

Practice shows that the naming of the supreme body varies among different foundations. The most widely used title is Board of Trustees or Foundation Board. The supreme body may consist of either founders of the foundation and/or other individuals. The common practice is to set criteria in the foundation's Statute, which will have to be met by the people who sit on the supreme body of the foundation. The law does not provide for an explicit number of members or terms of offices the supreme body's members may have.

The governing body of the foundation may be either individual or collective. It manages and represents the foundation in accordance with the founder's will and the goals of the foundation as well as the decisions of the supreme body, the Statute of the foundation and the country's legislation.

Unlike public benefit foundations, those registered in private benefit may have a one-tier management system including a governing body which may be individual or collective. In practice, there are many private benefit foundations in Bulgaria which are managed only by one Director/Manager.

Along with the compulsory bodies, foundations can create facultative ones, whose structure and legal powers are regulated in the foundation's Statute. Practical examples for such include the Foundation's Friends Board, the Supervisory Board, etc., whose primary functions are to assist the activities of the foundation's compulsory bodies.

Apart from the aims and organisational structure, there are also other differences between public and private benefit foundations, and they can be noticed in respect to the rules for gratuitous expenditure of property of public benefit foundations, in the way of dissoluting public benefit foundations compared to private ones and, lastly, in respect to tax incentives available only to public benefit foundations.

The legislator's idea when legally introducing the statute for public benefit organisations was to have higher requirements for their establishment, the spending of their funds, holding them accountable and terminating their existence. In return,

the general rule of Art. 3 of the NPLEA stipulates that the state may support these organisations through tax, customs, financial and other economic incentives.

Public benefit organisations and public benefit foundations in particular are required to have additional registration at an administrative body – the Central Register (CR) of Not-for-Profit Legal Entities at the Ministry of Justice of the Republic of Bulgaria.

The registration at this authority makes it legally possible for registered organisations to enjoy some tax and other types of concessions prescribed by the law. These incentives relate to the public benefit status of the organisation, but the prerequisite for its usage is the registration at the administrative body. The legal powers and functions of the CR regarding public benefit organisations will be further addressed in this chapter.

Finally, as already highlighted above, public benefit foundations registered at the CR are the only ones that may use existing tax concessions as opposed to private benefit foundations that do not enjoy a preferential tax regime.

2.3 Establishment of the Foundation: Founder, Founder's Rights, Property

The substantive and legal actions for the establishment of a foundation aim to differentiate between a certain property which will be used to achieve the not-for-profit goals of the foundation in accordance with the will and desire of the founder(s).

The foundation is established by means of a unilateral act which allows the founder to gratuitously provide certain property for achieving the aims of the foundation. The foundation may be established by a unilateral donation act by the founder(s) while they are still alive. The law states that a foundation may also be established in case of death, that is, after disclosing a will, in which the testator has expressed his/her will that the testamentary property will be used to set up a foundation with a specific goal.

In both cases, the minimum and necessary content of the Constituting Act, whether it is a donation act or a will, includes specifying the aims of the future foundation and determining the constituting property which will be used for its operation.

For a foundation to be entered in the court's register, it is also necessary that its name, headquarters, authorities/structure, representation and type of activity (private or public) be specified. In case these additional but essential specifying legal characteristics are not determined in the Constituting Act and cannot be added later on by the founders, they may be added by the court if demanded by the interested parties. In practice, this hypothesis can occur when the foundation is set up by a will which specifies only the goals and property provided to the future foundation. To ensure greater certainty and guarantee that the will of the founder/testator will not

be changed, the right to supplement the establishing statute with the missing statutory essential elements is vested with the registration court.

When the foundation is created during one's lifetime, its founders usually list all the legally specifying characteristics in the Constituting Act. Otherwise, at the time of registration, the court will require them to supplement the Constituting Act.

The law makes a provision for a form of validity of the Constituting Act – a written one with a certificate of acknowledgement. When the Constituting Act is in the form of a will, the legal requirements have to be taken into account depending on the form of the will – whether it is a holographic will or it is notarially attested.

The property of the foundation is the total amount of measurable rights which, by virtue of the constitutive effect of the court decision, are transferred from the patrimony of the founder to the foundation's patrimony. The subjects of constituting property can be real and movable property including money, as well as all types of measurable rights. In all cases, the specific requirements for the form of validity at the time of transfer of the particular property must be met (e.g. when transferring real estate, the Constituting Act must be notarially attested).

The founders of the foundation may be legally capable physical persons and legal entities of Bulgarian or foreign/non-Bulgarian origin.

Directly related to the founders is the question with their reserved rights. NPLEA is the first law to introduce the institute of founder's reserved rights. To a large extent, this is determined by the fact that when regulating the foundation under the Persons and Family Act's regime, the state represented by the respective minister supervised the activities of the foundation and could therefore take the main decisions in relation to the amendments to the Constituting Act or to its governing body. If such regulation exists, the idea of having some form of control exercised by the founder is incompatible as the state control was predominant and did not correspond to any opportunity for the founders to influence the important decisions related to the future of the foundation.

Essentially, the institute of reserved rights legally allows the founder not to stay away from the activity of the foundation but to participate in the important decision-making process, without him/her being part of its governing authorities. Such (a) reserved right(s) is an additional warranty that the foundation's governing bodies will not deviate from the will and the original goals of the founder at the time of its establishment. The practice shows that most founders reserve the rights for themselves; without their consent, no decisions may be made on the dissolution of the foundation, amending its Statute, electing new members of the board or modifying the activities and aims of the foundation.

The founder can reserve certain rights for himself/herself or for (a) person (s) specified by him/her. Reserving rights for a third party will be appropriate especially if the foundation is set up by a will. In this way, the founder will ensure that the nominee will be able to monitor if the establishing will of the foundation will be followed. Often when foundations are established during one's lifetime, the founders reserve certain rights for themselves. Reserving these rights does not

prevent them from being included as part/members of the foundation's authorities. If the founder is a legal entity, it can also reserve certain rights for itself. These rights will be exercised by its legal representative.

In case of death or termination of the founder or the person(s) with reserved rights specified by him/her, the law stipulates that the rights are transferred to 'the relevant body of the foundation'. Furthermore, the legislator has taken into account that if the parties with reserved rights are not exercising them with the necessary care or are permanently unable to do so, the registering court may, when demanded by the governing body, rule that their legal powers have to be transferred to the specific authority of the foundation for a certain period of time or permanently.

2.4 Registration

The factual establishment of a foundation ends when it is entered in the court register of not-for-profit legal entities. The registration is a secure court proceeding and is carried out by the District Court in the legal district where the registered office of the foundation will be located. NPLEA regulates the circumstances which are subject to entry in the court register. The court decision is constitutive and leads to the establishment of a new legal entity in the legal world. In case the court denies entry, an appeal can be brought forward to the higher court.

This court registration aims to exercise judicial control over the lawful establishment of not-for-profit corporate bodies (legal entities). Over the last couple of years, the idea of registering foundations and associations out of court arose. Such a reform has been recently introduced for companies which are now registered at the Trade Register at the Registry Agency. However, until now the registration of the not-for-profit legal entities has been done by the courts.

In relation to the public benefit organisations, in this case public benefit foundations, there is an additional requirement for registration at the Central Register at the Ministry of Justice. This additional registration at an administrative body was introduced by the current law vis-à-vis the existing distinction between public and private benefit organisations. The main functions of the Central Register are to maintain a public online register of public benefit organisations and carry out ongoing and annual control over their activities.

The registration at the CR is not difficult and is associated with the presentation of a certain number of documents, such as a transcript of the court decision on the registration of the foundation, a copy of the registration BULSTAT[1] card and a certificate of good standing, which should not be required at all if there was better communication between the different registers in the country. All mentioned documents may be officially delivered to the CR by the respective authorities issuing them in case the registers kept by different institutions are connected.

[1] Identification code for tax and insurance purposes.

This is still a problem in Bulgaria and part of the future development of e-reform and the establishments of the connection among different registers.

The time limit provided for registration at the Central Register totals 2 months and starts as soon as the court has released its decision on the registration of the foundation. As the time limit is only instructive, exceeding it does not prevent the organisation from having the right to be entered in the register.

The review of the register's work over the last 10 years has lead to the following observations and findings.

In the first place, entry in the register done by administrative officials is followed by a second verification for conformity with the law of the foundation's establishment, in case such has already been carried out by the court. The reason for that, to a certain extent, is the ambiguous legal texts which do not clarify the scope of the verification done by the CR when registering public benefit organisations. Thus, particularly over the last years, an unlawful practice of CR has been observed. An example for such a practice in the past year is the refusal by CR to register the organisations which plan to have economic activities and have stated so in their Statutes. Carrying out economic activities is permissible for foundations in Bulgaria, provided they abide by certain legal requirements for complementarity and consistency of their not-for-profit activity with the goals of the organisation. What happens in practice is that the CR acts as a second instance court which verifies the decision of the registry court. Concentration of almost all CR resources on this activity leads to poor or partial fulfilment of its other functions – to maintain a current database of registered organisations and to monitor their activities.

The CR must oversee the activities of registered organisations. Registered organisations are obliged by law to submit to the CR annual information about their activities and financial statements. The information is provided in the form of annual accounting and financial reports which should be made available for public usage to the users of the database. In addition, the Minister of Justice has the right to make periodical checks on foundations' activities by asking them to submit updated information about their activities. If any violations are found or suspected in the activities of registered organisations, the Minister of Justice shall inform the appropriate authorities such as the Prosecutor's Office, tax authorities, etc. The consequences for the organisations consistently failing to submit the required current information or annual financial and narrative reports on their activities include deregistration from the register. One year after the grounds for deletion have expired, the deregistered organisation can apply for a re-entry in the Central Register.

The position and role of the CR need to be subject to future legislative amendments. In any case, clarification of the verification scope which the register will carry out, simplifying the procedure by officially sending some of the documents to the register, is among the most urgent and important changes which have to be embraced by any future amendments to the law.

2.5 Governance and Activities of the Foundation

2.5.1 Governance of the Foundation

The NPLEA is short-spoken in regulating the organisational structure and governance of foundations as compared to the regulation of associations.

In respect to the governance of private benefit organisations, as already mentioned above, they may have only one governing body which can be either collective or individual. Practice shows that most private benefit foundations are managed by one director and do not have any other bodies.

When the foundation is incorporated as a public benefit organisation, the law requires a two-tier system of management that consists of a high (supreme) and a governing body. For foundations with a dual form of governance, the law stipulates that the rules for the General Assembly and governing body of the association will be appropriately applicable to the supreme and governing bodies of the foundation. The common practical issue which lies here is to what extent these rules are applicable to foundations.

As to the legal powers of the General Assembly of the association, as well as the supreme body of the foundation, there is an understanding that they can both decide on the most important issues which affect the activity and dissolution of the organisation. For example, amending the Constituting Act, deciding on the dissolution or reorganisation of the organisation, selection and dismissal of its governing body's members are all legal powers which are within the competence of the General Assembly of the association, and the law prescribes that they may not be transferred to other bodies. Accordingly, the supreme body of the foundation with a two-tier system of management should also have these powers in case they are not part of the founder's reserved rights, and therefore, it can lead to him/her exercising them individually.

Respectively, the rules affecting the legal powers of the Governing Board of the association should be also appropriately applied to the Governing Board of the foundation.

When the foundation is registered in public benefit and it has chosen to have a collective governing body, the latter should consist of at least three persons, physical or legal.

The NPLEA provision that the rules for the association's bodies are to be accordingly applied means that only the provisions corresponding to its non-corporative nature of a legal entity can be applied to foundations. Thus, an example can be the legal prohibition for a member of the General Assembly of an association to vote on matters relating to him/her, his/her spouse or relative, which cannot find application in any family foundation in which the members of the family constitute the supreme and executive bodies of the foundation.

This illustrates some possible issues that might arise from practice but are not explicitly regulated in the law and the court has no experience with. In any case, the scarce legal regulation of foundations, compared to associations, to some extent

allows for greater freedom of interpretation and gives rise to interesting cases which can have different interpretations.

2.5.2 Activities of the Foundation

The activities that the foundation engages in are linked to its mission and goals.

In relation to public benefit foundations, there is a requirement that they adopt rules for exercising their public benefit activity, including rules which will regulate the cases of gratuitous spending of their funds. These rules have to be presented to the Central Register at the Ministry of Justice which verifies their legality and accordance with the law.

The law stipulates certain safeguards to prevent the unlawful spending of the foundation's money gratuitously. On one hand, this is the requirement for adoption of rules which will specify how to determine the beneficiaries that the foundation will support. The rules are submitted to the Central Register where they are published in the publicly available online database. Secondly, the law requires that the decision for the gratuitous spending of the funds in the Director's or other bodies' benefit, as well as in their spouses' or relatives' benefit up to a certain degree of kinship, must be made by a qualified majority of 2/3 of all supreme body members. The law also prescribes the same qualified majority in case of gratuitous spending of the foundation's property to some other categories of people.

The law also provides that a public benefit foundation may not make business deals with members of its governing body or their spouses and relatives, unless these deals are in obvious benefit to the foundation or they are concluded in accordance with general terms which are publicly announced.

An achievement of the NPLEA is that it introduces the possibility for not-for-profit legal entities to carry out economic activities regardless of their legal form (a foundation or an association) and irrespective of whether they are public or private. For the economic activity of a foundation to be exercised legally, it has to meet certain requirements:

1. To be legally permissible
2. To be regulated in the Statute of the organisation
3. To be relevant to the main activity of the foundation
4. To be complementary to the main activity of the foundation

The purpose of the economic activity is to support the main activity of the foundation. Its tax treatment will be discussed below.

2.6 Accountancy and Transparency

The requirements for accountancy of foundations will be discussed in terms of the requirements for internal accountancy and the requirements for accountancy to the state bodies and public institutions.

Notwithstanding it was already mentioned several times, the regulation of foundations is more fragmented than that of association and that explains why some texts concerning associations have to be applicable to foundations. For example, when the foundation acts as a public benefit organisation, that is, it has a two-tier management system, the governing body is obliged to be accountable to the supreme body for its actions. Practice shows that most of these accountancy reports occur once a year, at the end of the calendar year.

In respect to private benefit foundations, which are allowed to have only a single-tier management system, it is very likely that they will not have an internal form of accountancy. Frequently, the founder is also the director of a private benefit foundation and at the same time there is no other internal body which he/she will be accountable to.

The public and legal requirements for accountancy of foundations are associated with their annual accounts/reports and tax forms of their received income submitted to the National Revenue Agency. The requirement to submit an income tax form applies to both private and public benefit foundations. According to the current tax law, not-for-profit legal entities (foundations in this case) are exempt from submitting tax forms if they have not carried out any economic activity or rented out their property.

It is a general principle that NPLE are only taxed based on their income, which is a result of their economic activity. The income from donations and grants is an income from non-economic activity, and it is tax exempt. Therefore, when a foundation has not done any economic activity within the reporting year, it must submit only a simplified model of a tax declaration.

Annually, foundations fill in and submit a statistical form for their activities to the National Statistical Institute. The purpose of this accountancy to the NSI is to gather statistical data on the different types of corporate bodies.

In relation to public benefit foundations, there is an additional requirement for annual reporting to the Central Register at the Ministry of Justice. By 31 May of the year following the reporting year, public benefit foundations submit an annual descriptive report of their activities, as well as a financial report. These reports are available to the public and are published on the website of the CR.

Private benefit organisations are required to publish, online or in an economic edition, their financial statement for the past year by 30 June of the year following the reporting year. They are not required to publish a descriptive report of their past year activities. The situation raises reasonable criticism and allegations for non-transparency of private benefit foundations. In addition to the fact that the information on the CR of public benefit organisations is outdated, even technically

inaccessible until recently, the allegations for non-transparency of foundations and associations are justified.

The requirement for an audit of foundations is regulated and contained in the *Accountancy Act*.

The conditions for a compulsory audit are different depending on the status of the organisation – whether it is incorporated in public or private benefit. In any case, the preconditions for a statutory audit involve very high values of some of the financial criteria which makes the audit applicable to only a few number of organisations. At the same time, any organisation can do a voluntary audit.

For the sake of thoroughness of the content, it is worth mentioning that over the years attempts have been made to self-regulate the civil sector and to introduce rules and standards for good management of not-for-profit legal entities. An integral part of these standards is the criteria for publicity of organisations' activities, the financing and the parties behind it. Practice shows that in most cases the attempts to self-regulate the sector are sporadic and do not reach the majority of organisations in the sector.

2.7 Transformation and Dissolution of the Foundation

Dissolution of foundations can be divided into voluntary and involuntary, into dissolution with or without liquidation.

The NPLEA general provisions stipulate that the decision for dissolution of a not-for-profit legal entity has to be taken by its supreme body. When a foundation is incorporated in the public benefit and has a two-tier system of governance, it is logical that this legal power will belong to its supreme body. Moreover, Art. 35, Par. 2 of the NPLEA stipulates that if the foundation has a two-tier management system, the rules for the General Assembly of an association will be applicable to the supreme body of the foundation. The law prescribes that part of the legal authority of the General Assembly of the association is to decide on the dissolution of the organisation and also that this power cannot be transferred to other authorities of the association. Therefore, even though there is no express regulation in the Constituting Act of the foundation and the decision to dissolve is not a reserved right of the founder, this decision should be made by the supreme body of the foundation according to the general rule of Art. 35, Par. 2 of the NPLEA. More interesting is the issue with the private foundations which may have only one existing authority – a governing one. Some authors are of the opinion that the cited general legal provision cannot be applied to foundations in case the Constituting Act does not determine the way of dissolution of the foundation. 'The Governing body derives from the founder and without any express authorization, i.e. if the Constituting Act does not specify the way of dissolution, respectively that this to be done by its authorities, the possibility to dissolve the foundation goes

beyond the powers granted'.[2] The institute of the reserved rights also finds application to private benefit foundations, that is, the hypothetical founder of a private benefit foundation can reserve the right to decide on the dissolution of a foundation. In case the founder did not reserve this right, it remains an open question whether the Director of a private benefit foundation can decide on its dissolution. According to the author of the material, especially if the foundation is established in case of death, the parties concerned, in this case the Director of the foundation, can ask the court to complement the Constituting Act in relation to the ways of dissolution. Thus, it will be ensured that the court, as an independent authority, would comply with the will of the founder when deciding on the provisions in the Constituting Act, which will affect the future dissolution of the foundation.

In any case, as it was repeatedly mentioned, the regulation of foundation law and particularly of private benefit foundations is scarce and leads to different interpretations and practical applications.

The involuntary dissolution of a foundation is done by a court proceeding and is based on a court decision, when the relevant circumstances provided by law are present. The legal proceeding is instituted when demanded by the interested party or the prosecutor in case the foundation:

1. Is not established in accordance with the law.
2. Its activity is contrary to the Constitution, laws and the good morality.
3. Is declared bankrupt.

Depending on the ground for dissolution, the court may give a time for correction or removal of the fact leading to dissolution. For example, if the Constituting Act for setting up the foundation was void, this circumstance cannot be corrected and the court must terminate the foundation. However, the court decision will have effect ex nunc. Another case would be if the foundation carried out any economic activity without this being regulated in its Statute. If this circumstance provided grounds for a court referral demanding dissolution of the foundation, a specific period could be determined, in which the foundation can appropriately regulate its economic activity and can thus avoid the dissolution.

Dissolution of a foundation without liquidation happens when the legal entity is transformed through one of the following accepted methods: mergers and acquisitions, division and separation.

Subject to various comments in the literature is the provision of Art. 12 of the NPLEA which states that: 'NPLEs can be transformed into another type of not-for-profit corporate bodies…' This rule must also be interpreted in accordance with Art. 42 of the NPLEA, which provides that public benefit organisations may not transform into private benefit ones.

The interpretation of legal provisions leads to the conclusion that a public benefit foundation may not transform into a private benefit one. (The reverse is possible.) It is possible, however, that a public benefit foundation is transformed into a public

[2] Margarita Zlatareva "Non-profit Legal Entities" 2002 Sofia.

benefit association and vice versa. There is a view that: 'replacing the will in the Constituting Act and transforming the foundation into an association by the recruitment of members and creating articles of association despite having the same purpose as stated in the Constituting Act, sounds contrary to good morals'.[3]

Except for the hypothesis for the transformation of foundations without liquidation, liquidation proceedings are initiated both for voluntary and involuntary dissolution of the foundation. Liquidation proceedings are an institute of commercial law, and their main principles are regulated in the Commerce Act (CA). The NPLEA refers to the Commerce Act and stipulates that the rules regarding the procedures for liquidation and the powers of the liquidator which are regulated in the CA are to be respectively applied to the dissolution of an NPLE. Because of the detailed regulation in the CA, the liquation of an NPLE does not give rise to any practical issues.

There is a legal prohibition for public benefit foundations to distribute the property which remains after satisfying the creditors among the founders, the parties that constitute the foundation's authorities or their spouses and relatives. To contra argue, it is hypothetically possible that the founder of the private benefit foundation receives the whole or a part of the undistributed after liquidation property.

As to public benefit foundations, there is a requirement that if some undistributed property is left after liquidation, it must be given to another NPLE: 'which carries out the same or a similar non-profit activity'. The decision where the remaining property of the foundation will go after it has ceased to operate can be made at the time of establishment, it can be subject to a reserved right of the founder and it can also be part of the legal powers of the authority, which decides on the dissolution of the foundation, for example, the supreme body. In case the procedure for distributing the remaining property is not established in the Constituting Act or the Statute of the foundation, this decision is made by the court, which is to be approached with proceedings for the dissolution of the foundation. If the court in these proceedings does not decide that the remaining property must be allocated to another NPLE, then the property is allocated to the relevant municipality hosting the headquarters of the dissolved foundation. The municipality will be required to deal with the property in a way that best conforms to the goals of the dissolved foundation.

2.8 Tax Regime

The income from not-for-profit activities of a foundation is tax exempt, whereas the income from additional economic activity is taxed with a 10 % corporate tax. This is considered to be one of the lowest tax rates in the European Union. The taxed profit generated by economic activity may not be distributed as a dividend to the

[3] Margarita Zlatareva "Non-profit Legal Entities" 2002 Sofia.

founder or to the parties that constitute the foundation's authorities (the ban on the distribution of profit is one of the substantial differences between not-for-profit legal entities and trade companies). The profit from economic activity can be considered also as a tool for achieving the non-profit goals of the foundation.

Foundations also pay an annual local tax for the real estate they own. Foundations are subject to a VAT registration if the legal prerequisites are present, regardless if they are registered in public or private benefit. The VAT registration can be voluntary or mandatory. For example, mandatory registration is necessary when the foundation has reached a taxable turnover of BGN 50,000 (approx. 25,000 Euro) within 12 consecutive months. The exempt supplies are not included in the taxable turnover, as well as the revenue from donations, grants or state funding for the provision of social services. The VAT rate for services and goods received by foundations is the same as for other entities – 20 %.

2.8.1 Tax Benefits

Taxation of donations and grants: the income from donations and grants is considered to be part of the income from not-for-profit activity; therefore, it is tax exempt for both public benefit and private benefit foundations. However, only public benefit foundations are exempt from paying a local tax on donations, whereas private benefit foundations are not (it is a special tax paid to the municipality where the foundation has its seat).

Tax benefits for donors: there are exemptions only for donors of PBOs (not for private benefit organisations). Public benefit organisations registered at the Central Register at the Ministry of Justice are among the organisations to which the donators enjoy tax concessions after making a donation. Individuals can deduct from their annual income up to 5 % of the donations made to public benefit foundations, whereas corporate donors can deduct up to 10 % of their profit for donations made to such foundations.

Tax benefits for donations apply also to donations made to not-for-profit organisations established in an EU member state.

Tax benefits on passive investments: the income of a foundation formed by bank account interests is exempt from taxes, if the interest arose from the revenues from not-for profit activity of the foundation. The income accumulated from sales of shares or securities on the regulated Bulgarian securities' market is exempt as well.

Exemptions from VAT: there are some exemptions from VAT for NGOs (respectively foundations) that are already registered under VAT law, for example, when they organise fundraising activities related to their non-profit purposes. This means that the NGO must not calculate VAT for the goods and services provided by it if they are related to an organised fundraising event (e.g. organising a charitable auction for fundraising money for renovation of the local school).

The tax treatment of foundations is also related to the issue of legal regulation and the option to create endowments by foundations in Bulgaria.

Firstly, we should mention that there is no legal provision for the creation of endowment by foundations. At the same time, there is no explicit prohibition for the establishment and investment of certain property of foundations, the incomes from which are to be used for achieving the purposes of the foundation. According to a study conducted in 2007, which included analysis of the environment for the development of endowment in Bulgaria, the following conclusion was outlined[4]: 'A general conclusion may be drawn that the legal frame in which foundations exist and function is free and dispositive enough and enables the development of endowment. If the main elements of the definition of endowment are reviewed in sequence, it could be found that, with the lack of legal provisions and the prohibitive rules, there is no obstacle for similar mechanisms to be created under the autonomous will of each foundation provided this does not prejudice imperative norms of the legislation or the moral rules.'

An illustration of this conclusion is the existence of several foundations in Bulgaria which have created an endowment. However, there are a number of obstacles which impede the wider development of the creation of endowment by foundations functioning in Bulgaria.

Existing obstacles may be specified as follows: first, the lack of 'charity culture' is a serious obstacle on the way of the establishment of a critical mass of donators 'for whom donation is to become a conscious necessity and they are to start looking for a worthy cause in the name of which they can donate their wealth[5]'.

Secondly, it is important to think about the adoption of various concessions aiming to create a more stimulating environment in the tax treatment of investments from endowment.

Last but not least, it is important to take into consideration the existing economic environment.

In conclusion, the following trends in the development of the legal regime of foundations over the recent years can be summarised:

1. In Bulgaria, since 2001, there has been a statutory law which provides for the main principles of the creation, functioning, structure and termination of not-for-profit legal entities. One of the legal organisational forms under which a not-for-profit legal entity may exist in Bulgaria is the foundation. The provisions referring to a foundation in the law are more fragmented compared to the ones referring to an association. In many cases, there is even no explicit provision and the rules for association should be applied by analogy. It is recommended that future legal changes on the part of the law treating foundations be developed in more details in view of its future supplementation with provisions referring to their organisational structure, the formation of its bodies and their authority.
2. To summarise the possible amendments to the law, the position and role of the CR (where public benefit foundations are registered) should be also mentioned.

[4] The study was conducted by the Bulgarian Centre for Not-for-Profit Law, the Center for Economic Development and the Association of Public Foundations, Sofia, 2007.

[5] See the above study.

In any case, clarification of the verification scope which the register will carry out, simplifying the procedure by officially sending some of the documents to the register, is among the most urgent and important changes which have to be embraced by any future amendments to the law.

3. Regarding the tax regime for treatment of foundations, the treatment is not different than the one for associations which are also considered not-for-profit legal entities. The condition which the legislator sets for providing a more favourable tax regime is not the legal organisational form (foundation or association) but the aims of the organisation – whether they are public or private.

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