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# ANALYSIS OF THE LEGAL AND REGULATORY FRAMEWORK ON PHILANTHROPY IN KOSOVO





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## Foreword

**K**CSF is delighted to present this comprehensive analytical report on the legal and regulatory framework on philanthropy in Kosovo. This report marks a significant milestone in our ongoing efforts to foster a vibrant and sustainable civil society in Kosovo. It is a result of the generous support from USAID through the Citizen Engagement Activity (CEA) and great efforts from the teams of the European Center for Not-for-Profit Law (ECNL) and the Kosovar Civil Society Foundation (KCSF), as well as countless other partners and stakeholders who have participated in various stages of work. I am grateful to everyone who has contributed to this analysis, including the CSO representatives who participated in our consultative meetings and provided invaluable feedback. Their insights have been instrumental in shaping our understanding of the challenges and opportunities facing the philanthropic sector in Kosovo.

The report is a crucial contribution of the CEA program to the development of the philanthropy ecosystem in Kosovo, building on the long-standing contribution of KCSF and the goals of our Strategic Framework 2024–2028 to enhancing the capacities of civil society by creating an enabling environment that supports their growth and sustainability.

Civil society in Kosovo has been and continues to be a success story - from the widespread societal engagement of the 90s to the emergency and reconstruction efforts of the 2000s, and most recently, its pivotal contributions to the state-building process and the creation of a democratic and inclusive society. The unwavering determination of Kosovo's citizens for a democratic society has been strongly supported by the international community, and together, they have been crucial factors to an impactful organized civil society. It is now time to increase local ownership of democracy building and sustainability of already achieved results, while maximizing the impact of ongoing support from international community.

To this end, KCSF envisions Kosovo as a society where civil engagement is both meaningful and sustainable. Achieving this vision requires robust engagement from all sectors of society—civil society, government, citizens, private sector, and the diaspora, to enhance the capacity and resources of civil society while ensuring their legitimate representation of community interests. Over the past years, the focus has been in empowering organized civil society through adequate resources, capacities, and a positive environment for engagement in



policy processes. While continuing along the same path, KCSF is upscaling its efforts to add a specific perspective of resource diversification to ensure that Kosovo's democratic development increasingly makes use of local resources, thus becomes more participatory and sustainable. The private sector and diaspora present a strong potential for enhancing the support base of Kosovar civil society, both financially and non-financially.

The findings and recommendations in this report highlight the critical need for a supportive legal and institutional framework to facilitate philanthropic donations. Our goal is to identify and address the key bottlenecks that impede the development of philanthropy in Kosovo, drawing on international and European standards as well as best practices from other countries. We are committed to initiating a policy dialogue that promotes a culture of strategic individual and corporate giving for the public good, and this analytical report aims to serve as a solid foundation for all stakeholders that are engaged in this process.

As we move forward, I encourage all stakeholders—government institutions, private sector and individuals in Kosovo and diaspora, and CSOs—to join us in this endeavor. Together, we can create a legal and institutional environment that not only supports the growth of philanthropy but also ensures that it becomes an integral part of our societal fabric.

Thank you for your continued support and commitment to our shared vision.

**Taulant Hoxha**

Executive Director of KCSF

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# 1. Introduction

The lack of financial sustainability is one of the key challenges for civil society organizations (“CSOs”) in Kosovo. Public funding and international donors remain the two biggest sources of funding but their availability in the longer term is still to be seen. The 2022 report prepared by Civikos “Mapping and challenges of Civil Society Organizations in providing social and family services in Kosovo”<sup>1</sup> shows that 29 out of 35 organizations working in the social field declared that the received support from the state is insufficient and is mainly in the form of short-term grants or free rent of office space. Due to the above reasons, it is crucial that Kosovar CSOs diversify their sources of funding.

One of the funding sources with relatively untapped potential is individual and corporate philanthropy. According to the USAID CSO Sustainability Index 2021, local philanthropy in Kosovo is undeveloped. While there are some positive signs, the report outlines that the majority of philanthropic initiatives are aimed at “*more traditional welfare-related causes, as well as sports events and cultural activities*”.<sup>2</sup> Moreover, according to the Catalyst report, both donation instances and the total amount of donations went down in 2021 and returned to its pre-pandemic levels<sup>3</sup>. According to the same report the average donation per capita is just 1.2 EUR which is below the region’s average. Nonprofits receive just 25 % of all donation instances, although in terms of value, this is <sup>3</sup>/<sub>4</sub> of the total donation amount in 2021. Diaspora giving remains a key source for philanthropy.

At the same time, Kosovo has reported philanthropic traditions and values of generosity and solidarity that encourage giving and provide basis for the development of philanthropy.<sup>4</sup> This was also confirmed by the latest CAF World Giving Index 2022 (“CAF WGI 2022”). According to the CAF WGI 2022, Kosovo ranked 19<sup>th</sup> in the world in the willingness to donate money, with 56 % of respondents answering positively to requests for donations.<sup>5</sup>

Still, companies do not give to their full capacity and individual giving is not yet fully developed. According to some experts, this may be due to the financial crises, low

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<sup>1</sup> [http://www.civikos.net/repository/docs/Mapping\\_publication\\_eng\\_577533.pdf](http://www.civikos.net/repository/docs/Mapping_publication_eng_577533.pdf)

<sup>2</sup> USAID: 2021 CSO Sustainability Index: Kosovo.

<https://www.fhi360.org/sites/default/files/media/documents/csosi-europe-eurasia-2021-report.pdf>

<sup>3</sup> Catalyst Balkans: Giving Kosovo 2021: Annual report on the state of philanthropy. Available at:

<https://www.slideshare.net/CatalystBalkans/giving-kosovo-2021-report-on-the-state-of-philanthropy>

<sup>4</sup> Indiana University, Lilly Family School of Philanthropy: The 2018 Global Philanthropy Environment Index Kosovo.

<https://scholarworks.iupui.edu/bitstream/handle/1805/16001/Kosovo.pdf?sequence=1&isAllowed=y>

<sup>5</sup> CAF World Giving Index 2022, available at: [https://www.cafonline.org/docs/default-source/about-us-research/caf\\_world\\_giving\\_index\\_2022\\_210922-final.pdf](https://www.cafonline.org/docs/default-source/about-us-research/caf_world_giving_index_2022_210922-final.pdf)

socio-economic development, poverty and the distrust towards CSOs.<sup>6</sup> In addition, corporate social responsibility is not a popular concept and only 13 out of 101 surveyed CSOs reported receiving support from corporations<sup>7</sup>. According to the same report, the CSOs that reported receiving donations from individual donors are even less (9 out of 101 surveyed CSOs). Therefore, there is a need for great awareness of philanthropy, promotion of CSOs' work and broader engagement of other stakeholders.<sup>8</sup>

The Kosovo Government Strategy for Cooperation with Civil Society 2019-2023 (the Strategy) lists the lack of development of individual and corporate philanthropy as one of the problems CSOs have with regard to CSO funding. That is why one of the specific objectives of the Strategy is to “*improve the legal and institutional framework for the development of individual and corporate philanthropy*” (specific objective 2.2). It includes further improvements on the national legal framework, institutional mechanisms, and promotion of individual and corporate philanthropy.<sup>9</sup>

To support private giving, ECNL and KCSF initiated an assessment of the legal and regulatory environment for philanthropy in Kosovo. The analysis aims to identify the key bottlenecks impeding the development of philanthropy in Kosovo from the regulatory perspective and serve as a foundation to initiate a policy-dialogue that promotes a culture of individual and corporate giving for the causes of the public good.

The analysis first describes international and European standards pertinent to philanthropy and CSO access to resources in general. This is followed by a thorough mapping of the regulatory framework for philanthropy in Kosovo. In the same section, the document looks into the key bottlenecks identified in Kosovo and describes best regulatory practices supported by comparative examples from Europe. In the last section, the document provides a set of conclusions and recommendations for improvement of regulation of philanthropy in Kosovo.

The analysis was developed within the Civic Engagement Program, which is implemented by KCSF in partnership with USAID in Kosovo. This Program aims to support CSOs<sup>10</sup>. It was prepared based on the desktop review of the legislation, existing research and indexes on the philanthropic environment in Kosovo. It was supported by the review of international and European standards and country practices that are relevant for the Kosovar context. In order to collect feedback of CSOs on existing

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<sup>6</sup> Indiana University, Lilly Family School of Philanthropy: The 2022 Global Philanthropy Environment Index Kosovo. <https://scholarworks.iupui.edu/server/api/core/bitstreams/0883823d-8938-42e8-a856-dc61ef6beb5d/content>

<sup>7</sup> 2020 Monitoring Matrix Kosovo country report, KCSF. [https://www.balkanccd.net/novo/wp-content/uploads/2022/03/KCSF-Monitoring-Matrix\\_Kosova-Country-Report-2020\\_eng.pdf](https://www.balkanccd.net/novo/wp-content/uploads/2022/03/KCSF-Monitoring-Matrix_Kosova-Country-Report-2020_eng.pdf)

<sup>8</sup> Indiana University, Lilly Family School of Philanthropy: The 2018 Global Philanthropy Environment Index Kosovo.

<sup>9</sup> Indiana University, Lilly Family School of Philanthropy: The 2022 Global Philanthropy Environment Index Kosovo.

<sup>10</sup> See more about the Citizen Engagement Activity here: <https://www.kcsfoundation.org/en/research-advocacy/about-cea/about-cea-2/>

practices and challenges related to philanthropy, KCSF organized a <sup>11</sup> on July 12 with the participation of 13 CSO representatives (“*Consultative meeting*”). An additional consultative meeting was organized on November 30, 2022, with the participation of 22 CSO representatives. We are grateful to those who participated in the consultative meetings and everyone who contributed to the research by sharing their experiences and other valuable information.

## 2. International and European standards and regulatory frameworks on giving

Philanthropy has been one of the key traditional income sources and plays an important role in diversifying CSO funding, especially in countries where CSOs predominantly rely on international funding. There is a variety of international and European standards and regulatory frameworks that apply to philanthropy and enabling environment for CSOs at large. The most common instruments include the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights and European Convention on Human Rights.<sup>12</sup> These standards are typically components of the freedom of association and right to privacy.

### 2.1. Freedom of association

CSOs’ right to secure resources is an integral part of the right to freedom of association guaranteed by various international and European instruments listed above. According to the UN Human Rights Committee interpreting article 22 of the International Covenant on Civil and Political Rights, “*the right to freedom of association relates not only to the right to form an association, but also guarantees the right of such an association freely to carry out its statutory activities. The protection afforded by Article 22 extends to all activities of an association. . .*”<sup>13</sup> The Human Rights Committee stressed that **funding restrictions that impede the ability of associations to pursue their statutory activities constitute an interference with article 22** of the ICCPR.<sup>14</sup> Thus, raising funds, including through individual and corporate philanthropy is considered to be a statutory activity that is essential to maintaining the financial sustainability of CSOs.

According to the latest Report of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément Nyaletsossi Voule, “*...Associations’ access to funding is essential not only to the existence of the association itself, but also to the realization of other human rights, to the achievement of the 2030 Agenda for Sustainable*

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<sup>11</sup> Consultative meeting for the mobilization of new financial and non-financial resources for civil society organizations (CEA internal short report)

<sup>12</sup> See, for example: [Universal Declaration of Human Rights](#), articles 7, 12 and 20(1); [International Covenant on Civil and Political Rights](#): articles 17, 21, 22 and 26; [European Convention on Human Rights](#): articles 8, 11 and 14.

<sup>13</sup> UN Human Rights Committee, Communication 1274/2004, “International Covenant on Civil and Political Rights,” October 16- November 3, 2006, [Communication no. 1274/2004](#) .:

<sup>14</sup> Protecting civic space and the right to access resources: General Principles. Available at: [GeneralPrinciplesProtectingCivicSpace.pdf \(ohchr.org\)](#).



*Development and to COVID-19 resilience and recovery plans.*<sup>15</sup> In the Report, he highlighted the negative impact restrictions and barriers to funding have on CSO existence and operation and called for support of financial sustainability of CSOs, including through philanthropy.<sup>16</sup> More specifically, he recommended States to *“Strengthen the financial sustainability of civil society organizations through diverse and flexible forms of financial and non-financial support, including institutional funding, meaningful tax benefits, promotion of the activities of civil society organizations in State-supported media, and support for philanthropy, local crowdfunding platforms and other new, innovative mechanisms.”*<sup>17</sup>

Previous Mandate holders, including Mr. Maina Kiai, have also emphasized the importance of strengthening the CSO access to resources, stressing that States have both positive and negative obligations to safeguard the right to freedom of association, including access to resources. They have to take positive measures to establish and maintain an enabling environment for CSOs, and not to unduly obstruct the exercise of the right. States must ensure that all CSOs, including unregistered organizations, enjoy this right and guarantee the free movement of donations to and from abroad.<sup>18</sup>

At the European level, there are several instruments protecting the freedom of association of CSOs, including the access to funding. The most common ones were adopted at the Council of Europe or European Union level.

### **2.1.1. Council of Europe**

Article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) protects the freedom of association in the Council of Europe member states.<sup>19</sup> According to the Report of the Parliamentary Assembly of the Council of Europe (PACE) of January 2016, the protections afforded to the freedom of association extend to CSOs’ right to receive donations and other forms of funding.<sup>20</sup> Moreover, Article 50 of the Council of Europe’s Recommendation on the legal status of

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<sup>15</sup> UNHRC: Report of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément Nyaletsossi Voule on access to resources, May 10, 2022, A/HRC/50/23, Summary. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G22/337/82/PDF/G2233782.pdf?OpenElement>

<sup>16</sup> Ibid, para 54 and following.

<sup>17</sup> Ibid, para 64 (g).

<sup>18</sup> See, for example, UNHRC: Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, August 4, 2015, A/70/266. Available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N15/242/64/PDF/N1524264.pdf?OpenElement>

UNHRC, Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kiai, May 21, 2012, A/HRC/20/27, para. 63-64. Available at: [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27_en.pdf).

<sup>19</sup> Council of Europe, “European Convention for the Protection of Human Rights and Fundamental Freedoms,” November 4, 1950. Available at: [https://www.echr.coe.int/documents/convention\\_eng.pdf](https://www.echr.coe.int/documents/convention_eng.pdf)

<sup>20</sup> Council of Europe Parliamentary Assembly, “How to Prevent Inappropriate Restrictions on NGO Activities in Europe?” January 8, 2016, para. 3.1. (10), <http://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewPDF.asp?FileID=22310&lang=en>

NGOs provides specific **guarantees for receiving donations, including from individual and corporate donors**. It states that “NGOs should be free to solicit and receive funding—cash or in kind donations—not only from public bodies in their own state but also from institutional or individual donors, another state, or multilateral agencies, subject only to the laws generally applicable to customs, foreign exchange, and money laundering and those on the funding of elections and political parties.”<sup>21</sup> In addition, according to the Recommendation, giving to CSOs should be incentivized through income tax deductions or credits.<sup>22</sup>

### 2.1.2. European Union

Freedom of association at the European Union level is protected by Art. 12 of the EU Charter of Fundamental Rights.<sup>23</sup> The authorities of EU countries are bound to comply with the Charter when implementing EU law.

At the EU level, there are other legal acts that apply to CSO access to resources, and more specifically, to philanthropy. For example, the Directive No. 2006/112 on the Common System Value-Added Tax (VAT) regulates the tax treatment of cross-border giving. This directive obliges all EU member states and accession countries to provide, under certain conditions, VAT free treatment for supply of goods and services.<sup>24</sup> The member states are obliged to transpose the EU directive to their legal systems.

Conditions for cross-border giving were also reviewed by the European Court of Justice (ECJ). The ECJ has dealt specifically with the cross-border tax treatment of CSOs and their donors. Through its judgements *Hein Persche v. Finanzamt Lüdenscheld* (*Persche*)<sup>25</sup>, *Missionswerk Werner Heukelbach v. Belgian State* (*Missionswerk*)<sup>26</sup> and the *Commission of the European Communities v. Republic of Austria* (*EC v. Austria*)<sup>27</sup>, the ECJ developed a nondiscrimination principle for cross-border philanthropy in the EU.

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<sup>21</sup> Council of Europe Committee of Ministers, Recommendation CM/Rec (2007) 14, “On the Legal Status of Non-Governmental Organizations in Europe,” October 10, 2007, Art. 50. Available at: <https://wcd.coe.int/ViewDoc.jsp?id=1194609&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75>

<sup>22</sup> *Ibid*, Art. 57.

<sup>23</sup> Charter of Fundamental Rights of the European Union, Art. 12. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT>.

<sup>24</sup> Council of the European Union, Directive 2006/112/EC, On the Common System of Value Added Tax, Art. 132 (1), November 28, 2006, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32006L0112>

<sup>25</sup> *Hein Persche v. Finanzamt Lüdenscheld*, ECLI:EU:C:2009:33, <http://curia.europa.eu/juris/liste.jsf?language=en&num=C-318/07>.

<sup>26</sup> *Missionswerk Werner Heukelbach eV v. Belgian State*, ECLI:EU:C:2011:65, <http://curia.europa.eu/juris/liste.jsf?language=en&num=C25/10>.

<sup>27</sup> *Commission of the European Communities v. Republic of Austria*, ECLI:EU:C:2005:427, <http://curia.europa.eu/juris/liste.jsf?language=en&num=C-147/03>.

## 2.2. Right to privacy

Donors, beneficiaries of donations and other individuals involved in giving have a right to privacy that is guaranteed by numerous international and European instruments. The right to privacy is protected by all major international treaties and regional documents, including Article 17 of the ICCPR, Article 8 of the European Convention on Human Rights, and Council of Europe Convention 108 for the Protection of Individuals With Regard to the Processing of Personal Data<sup>28</sup>.

In the European Union, the EU General Data Protection Regulation (“GDPR”)<sup>29</sup> is the overarching privacy instrument complemented by national level data protection laws. GDPR is based on the rule that data processing has to comply with a set of criteria, including determining an appropriate legal basis for the processing and limiting the personal data processed to what is strictly necessary. It strengthens the protections afforded to the individuals and gives them a set of rights, including a right to withdraw a consent or object to the processing of personal data under certain circumstances.<sup>30</sup> These protections were introduced to clamp down on illegitimate processing of personal data and strengthening individuals’ decision-making power over the use of their personal data. This regulation, on one hand, provides greater safety and privacy to donors and beneficiaries, however, on the other hand, it may cause some difficulties in CSOs’ fundraising work.

Besides GDPR, the EU has been working on the new ePrivacy Regulation<sup>31</sup> that should replace the ePrivacy Directive<sup>32</sup> currently in effect. Both the Directive and the future Regulation cover the usage of electronic communications, including the rules for using electronic contact details of individuals. When passed, the Regulation will directly apply in all EU Member States and replace the non-harmonized approach caused by the inappropriate transposition of the Directive throughout the EU. Both ePrivacy documents have a significant impact on CSOs’ fundraising practices, as they set rules for contacting past and potential future donors.

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<sup>28</sup> <https://www.coe.int/en/web/data-protection/convention108-and-protocol>

<sup>29</sup> <https://eur-lex.europa.eu/eli/reg/2016/679/oj>

<sup>30</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation). Available at: [EUR-Lex - 32016R0679 - EN - EUR-Lex \(europa.eu\)](#)

<sup>31</sup> Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL concerning the respect for private life and the protection of personal data in electronic communications and repealing Directive 2002/58/EC (Regulation on Privacy and Electronic Communications). Available at: [EUR-Lex - 52017PC0010 - EN - EUR-Lex \(europa.eu\)](#)

<sup>32</sup> Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications). Available at: [EUR-Lex - 32002L0058 - EN - EUR-Lex \(europa.eu\)](#)

## 3. Legal aspects of corporate and individual giving in Kosovo

There is a spectrum of laws and regulations that need to be considered related to the process of soliciting, using and reporting about donations and its tax implications. This section maps out the current legal regulation applicable to philanthropy in Kosovo, highlighting the potential legislative bottlenecks. It is accompanied by some examples of practical impediments shared by Kosovar CSOs.

### 3.1. General regulation on donations

The Law on Freedom of Association in Non-Governmental Organizations (“NGO Law”)<sup>33</sup> provides a list of the potential income sources of CSOs, including donations<sup>34</sup>. Apart from this the NGO Law neither defines the term “donations” nor sets any further conditions for obtaining and using proceeds from donations.

Kosovo does not have an adopted Civil Code. The Draft Civil Code of the Republic of Kosovo has been under development and was approved in the 52nd meeting of the Government of Republic of Kosova with the decision No. 05/52, dated 29.12.2021.<sup>35</sup> Gift contracts are regulated under chapter III of the draft Civil Code. The draft also includes the possibility of periodic gifts.

#### 3.1.1. Regulation of payment and fundraising methods

Individuals and companies can support CSOs by using diverse payment methods, including cash, credit and debit card, bank transfer and direct debit. They can donate to CSOs in national and foreign (Fiat) currencies, and virtual currencies (cryptocurrency). CSOs can attract donations through various fundraising methods, including cash boxes and other cash solicitations, website collections, crowdfunding, SMS and phone call collections, lottery, fundraising events and other methods.

#### Payment methods

Individual and corporate donors can use various payment methods to support CSOs.

- *Cash.* Cash payment is the traditional way through which donors can support CSOs. CSOs can collect cash payments through cash boxes, street and door-to-door collections, and other cash solicitations. CSOs need to respect the limitations on cash payments under the Law No. 05/L-096 on the prevention of

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<sup>33</sup> <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2764#>

<sup>34</sup> Art. 35 of the Law No. 06/L – 043 on Freedom of Association in Non-Governmental Organizations

<sup>35</sup> Draft Civil Code of the Republic of Kosovo: [http://civilcode-kosovo.org/wp-content/uploads/2021/12/PDF\\_Projektkodi-Civil\\_30.12.21.pdf](http://civilcode-kosovo.org/wp-content/uploads/2021/12/PDF_Projektkodi-Civil_30.12.21.pdf)

money laundering and combating terrorist financing. (see further details below under cash collections)

- *Bank transfer.* Individuals and companies can also donate to a CSO by transferring money to its bank account. The Law No. 04/L-155 on Payment Systems sets out the conditions under which payment institutions providing payment services are authorized and operators of payment, clearing and securities settlement systems are licensed; the terms and standards under which such services may be provided; and the rules on the execution of payment transactions.<sup>36</sup> According to Article 2, payment institution is either a bank or a financial institution that has been granted an authorization by the Central Bank to provide payment services. Credit transfer is a “*payment transaction originated by the payer, who issues a payment order to its institution instructing it to transfer funds from the payer’s account to the payee or to the payee’s account.*”
- *Credit and debit cards.* Donors can make a payment to CSOs through their website by using a credit or debit card which is then processed through a payment system. CSOs can indicate the available payment options on their website and social media platforms. In order for CSOs to integrate card giving on its website or social media platform, they need to enter into an agreement with a payment institution.
- *Direct debit.* According to the Law on Payment Systems, debit transfer is “*a payment transaction originated by the payee’s payment order, based on the payer’s authority, instructing the payee’s institution to collect money from the payer’s account*”. Based on this a donor can give an authorization for a CSO to debit its account with a one time or regular donation.
- *Virtual currencies.* In 2021 the drafting of a cryptocurrency bill began. Although the parliament was expected to adopt it by the end of 2021, the legislation is still pending. On January 4, 2022, the Kosovar government introduced a ban on cryptocurrency mining in order to curb electricity consumption as the country has been facing the worst energy crisis in a decade<sup>37</sup>.

### Source and destination of giving

There are no legislative restrictions to cross-border giving.<sup>38</sup> At the same time, the same restrictions apply for cash donations from foreign sources as to the domestic cash donations.

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<sup>36</sup> <https://gzk.rks-gov.net/ActDetail.aspx?ActID=8663>

<sup>37</sup> <https://www.reuters.com/markets/commodities/kosovo-bans-cryptocurrency-mining-save-electricity-2022-01-04/>

<sup>38</sup> Dafne, EFC: Legal Environment for Philanthropy in Europe: Kosovo 2020. Available at: [Legal Environment for Philanthropy in Europe: Kosovo 2020 \(slideshare.net\)](#)

## Fundraising methods

There is no overarching law that would apply to different fundraising methods in Kosovo. There is neither any regulation that would require CSOs to obtain a permit or license to conduct any fundraising activities. There are a variety of rules that shall be followed when a CSO conducts fundraising activities depending on the method used. The potential methods include cash collections, website collections, crowdfunding, SMS/phone call donations, fundraising events, lottery, and others.

In this section we will review the peculiarities of legislation in regulating the different fundraising methods with the aim of identifying gaps in legislation and its implementation, as well as some practical problems regarding some of the methods.

- *Cash collections (e.g., cash boxes, street and door-to-door collections)*

There is no specific regulation on cash boxes and street collections in Kosovo. There are, however, some general rules that are relevant for cash payments. Specifically, CSOs are subject to the requirements of the Law No. 05/L-096 on the prevention of money laundering and combating terrorist financing (hereinafter “**AML/CTF Law**”). Based on the AML/CTF Law, CSOs are limited in the amount they could raise in cash. According to Art. 29 of the AML/CTF Law, CSOs may receive/accept contributions in cash in the value which does not exceed the amount of five hundred (500) Euros or the equivalent value in a foreign currency, from a single source within one (1) single day. The total amount of the contribution received according to this paragraph, during the year shall not exceed the value of one thousand (1,000) Euros. This provision creates serious barriers to traditional fundraising methods that are typically pursued in cash, including street and door-to-door collections, fundraising using collection boxes etc. While according to the consultative meeting, CSOs generally do not fundraise such large amounts of funds in cash currently, this nevertheless is a real barrier to using a variety of fundraising methods.

- *Website collections*

Currently not many Kosovar CSOs solicit donations via their websites through credit card giving. One of those that use this method is SOS Children’s Villages Foundation<sup>39</sup>. According to them, it took one year for the organization to set up the process for a donation button. They managed to reach an agreement with a local bank and have a special offer. The local bank has provided for free the payment gate for the organization. Still, the website donations are not fully functioning the way they want it to. They are planning to focus more on digital fundraising in 2024 and are working with banks to have recurring payments through the website.<sup>40</sup> With regard to legislation, we

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<sup>39</sup> <https://www.soskosova.org/behu-hero/>

<sup>40</sup> Source: Consultative meeting with CSOs on November 30 and follow up e-mail exchange

did not identify any specific regulation that is applicable to this fundraising method that may create obstacles.

In general, bank fees for CSOs are considered high. Another practical problem is that it is not possible for Kosovar CSOs to use the Facebook fundraising options- neither to initiate a fundraiser, nor to donate to an existing campaign through Facebook).<sup>41</sup>

- *Donations-based crowdfunding*

CSOs can also raise funds through crowdfunding through dedicated crowdfunding platforms. There are no specific regulations concerning crowdfunding in Kosovo. Also, there are very limited crowdfunding initiatives so far in the country. KOSOVA ideas is the first crowdfunding platform 100% committed to projects in all fields of art and culture, civic engagement and sustainability realized in and for Kosovo. It is a not-for-profit NGO registered in Basel, Switzerland. In addition, another Swiss-based legal entity, KOSOVA ideas GmbH, develops and manages the platform, recruits staff, takes on board partners, invests in necessary software and infrastructure and reinvests any profits to further develop and promote the platform.<sup>42</sup> The General Terms and Conditions of using the platform are posted on the website, including the commission and transaction fees, the obligations of the project owners, the rules on data protection and others.<sup>43</sup> During the consultative meeting, the representative of Kosova ideas described their experience with crowdfunding. According to them, some of the main challenges include the planning of the campaign ahead of its start and the lack of connection with the community. Moreover, due to political reasons, a well-known international money transfer service PayPal is not functioning in Kosovo. To overcome this issue and allow for the transfer of funds to Kosovo, the organization set up its offices outside of the country where PayPal is functioning.<sup>44</sup> Another example of a platform located outside of Kosovo that helps to raise funds for Kosovar CSOs as well is Global Albanians Foundation. It is a registered US 501 c (3) organization and after the funds are collected, they are transferred to the respective CSO<sup>45</sup>.

In addition to this, there are also Kosovar campaigns on global giving platforms, including support to youth, families and vulnerable communities.<sup>46</sup> There are also several individual or other initiatives that aim to raise funds for projects in Kosovo on global crowdfunding platforms, including Kickstarter<sup>47</sup>, Crowdfunder<sup>48</sup> and Crowdify<sup>49</sup>.

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<sup>41</sup> Source: Consultative meeting with CSOs on November 30

<sup>42</sup> Official website of Kosovo ideas: [https://kosovaideas.com/content/page/about\\_us](https://kosovaideas.com/content/page/about_us).

<sup>43</sup> <https://kosovaideas.com/content/page/terms>

<sup>44</sup> Source: Consultative meeting

<sup>45</sup> Official website of Global Albanians Foundation <https://globalalbanians.org/>

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<https://www.globalgiving.org/search/?size=25&nextPage=1&sortField=sortorder&selectedLocations=00kosovo&loadAllResults=true>

<sup>47</sup> See for example: <https://www.kickstarter.com/discover/places/pristina-xk>

<sup>48</sup> See for example: <https://www.crowdfunder.co.uk/p/kosovo-sports-relief1/rewards>

<sup>49</sup> See for example: <https://www.crowdify.net/de/projekte/soziale-projekte.21/KO>

- *SMS donations/phone calls*

CSOs need to sign a contract with a telecommunication company in order to obtain a charitable number. According to consultation with CSOs, it is sometimes used, but mostly for very specific campaigns – for example by some foundations that aim to help people in poor welfare conditions. SOS Children’s Villages Foundation also used it previously to collect money for children without parental care and children in risk, but at the time of writing this report they did not benefit from this.<sup>50</sup>

The Regulation on the national numbering plan for electronic communications networks in the Republic of Kosovo specifies that the series of numbers starting with 5xxxx can be used for humanitarian services/donations (contribution for a specific cause)<sup>51</sup>. Then, depending on Table 6 of the Regulation (“Codes that will be available for value-added services by SMS”), the service requester determines the value. In case of numbers 55 000 - 55 999 reserved for High Premium Payment codes, the highest fee is over 0.50€ (including VAT). For phone calls, the plan does not determine any specific numbering series for this category of services.<sup>52</sup>

According to the available information, telecommunication companies Vala and IPKO provided SMS numbers to support donations and charity initiatives. According to the website of Vala, free short numbers (51XXX – 55XXX) can be used for payments over the phone, including, among others, for donation and humanitarian needs.<sup>53</sup> One such example was the support of Familja Dobra.<sup>54</sup> IPKO also enabled the use of SMS short codes 55049, 55001, 55006 and 55008 for fundraising purposes, specifically to gather funds for individuals in need of medical treatment and to support other charitable initiatives. They supported 20 requests in 2019, 37 requests in 2018, 31 requests in 2017 and 24 requests in 2016. However, due to a management decision, IPKO does no longer provide or activate short code SMS for donation purposes. All charitable organizations and private individuals benefiting from IPKO’s SMS short codes have entered into formal contracts with the company. These agreements have been signed in accordance with their established procedures, overseen and authorized by IPKO’s CEO. The terms and conditions of these contracts outline the specifics of the partnership, including the obligations and benefits for both parties. IPKO ensures transparency and a clear understanding of the terms to foster a collaborative relationship. IPKO users can only send short code SMS to IPKO. Therefore, different short codes have been activated for the same cause from different operators. The amount charged for a single SMS short code was 1 euro. If 1000 SMS were sent to that specific SMS short code, 1000 euros have

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<sup>50</sup> Source: Consultative meeting with CSOs on November 30 and follow up e-mail exchange

<sup>51</sup> Article 17.2. d) of the Regulation No. Prot. 011/B/21 issued by the Regulatory Authority of Electronic and Postal Communications on the national numbering plan for electronic communications networks in the Republic of Kosovo

<sup>52</sup> Source: Information provided by IPKO

<sup>53</sup> Further information can be found on the website: [N https://kosovotelecom.com/biznes-3/sherbime-te-personalizuara/numer-te-shkurte-per-sms/](https://kosovotelecom.com/biznes-3/sherbime-te-personalizuara/numer-te-shkurte-per-sms/)

<sup>54</sup> <https://www.epokaere.com/familja-dobra-ka-nevoje-per-ndihmen-tuaj/>



been transferred to the organization or person that they wanted to support. Donors cannot instruct the company to make a regular deduction from their phone bill for charitable purposes.<sup>55</sup>

- *Fundraising events*

We did not identify any specific regulation of this fundraising method. According to the Catalyst report<sup>56</sup>, 8 % of all donations in Kosovo in 2021 were raised using different types of events, the most popular being sports events and exhibitions. This makes events the third most popular fundraising method after direct donations (57 %) and targeted campaigns/calls (33 %).

- *Virtual currency donations*

The receipt of donations in virtual currencies is currently allowed. According to some opinions shared during the consultative meeting, it would require a huge undertaking to raise awareness about this way of soliciting donations. Some participants also raised concerns about the lack of transparency and accountability due to the nature of cryptocurrency transactions which would not allow CSOs to report about their donors.<sup>57</sup>

There is no law that addressed VAT or tax specifically for virtual currency. However, virtual currency is treated by Kosovo Tax authority as a taxable income based on the Law No. 03-L/222 on Tax Administration and Procedures. If the status of the person who has generated such revenues is a non-business natural person or a natural business person, he must implement the legal provisions set out in Law No. 05/L-028 on Personal Income Tax and on generated revenue. If the status of the person who has generated such revenues is a legal person, he must implement the legal provisions set out in Law No. 06/L-105 on Corporate Income Tax.

- *Lotteries*

The Law 04/L-080 on games of chance allowed the allocation of a certain amount of money from the Kosovo Lottery Fund to be used for funding of social categories, human rights issues, culture and sports. The details of such transfers remained to be determined through secondary legislation. By the middle of 2019, the Law on Games of Chance was repealed by the Government of Kosovo thus cancelling the legal provisions for eventual financing of civil society from the Lottery funds.<sup>58</sup>

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<sup>55</sup> Source: Website and information provided by IPKO, see more information on IPKO's website: <https://www.ipko.com/en/kodet-e-sms-ve-sherbimi-per-te-dhuruar-para-per-organizatat-bamirese-dhe-personat-ne-nevoje/>

<sup>56</sup> Catalyst Balkans: Giving Kosovo 2021: Annual report on the state of philanthropy

<sup>57</sup> Source: Consultative meeting

<sup>58</sup> Monitoring Matrix on Enabling Environment for Civil Society Development. Country report: Kosovo. 2019. [https://monitoringmatrix.net/wp-content/uploads/2020/06/MM-2020\\_Kosova-country-report\\_final.pdf](https://monitoringmatrix.net/wp-content/uploads/2020/06/MM-2020_Kosova-country-report_final.pdf)

There is a draft Law on the lottery of the Republic of Kosovo introduced in 2020 that would regulate the organization and operation of the Lottery of the Republic of Kosovo, the types of games of chance organized by the Lottery, the conditions and manner of organizing the games of chance, the rules of the game, their supervision and the method of distribution of lottery gambling revenue<sup>59</sup>. There have been no developments with the adoption of the Law by the time of publishing this analysis.

- *Payroll giving*

We did not identify any specific regulation of this fundraising method. SOS Children's Village Kosovo have tried to introduce it with several companies and to use their example as a good model to be promoted. Unfortunately, they were not able to find an interested company as companies consider this is too burdensome for them. One of the suggested ways to enhance this is when the company is willing to duplicate or add money as well.<sup>60</sup>

### ***3.1.2. Taxation of donations, including income tax treatment of donations, VAT treatment***

Obtaining and using donations have tax implications both for the donor and the beneficiary CSO, depending on its form and way of giving.

- *Income tax*

According to Art. 8 (1), subparagraph 1.7 of the Law No. 05/L-029 on Corporate Income Tax, income from donations that is received in compliance with the regulations and earning criteria is exempt from income tax. This provision applies to all legal entities, including CSOs. In addition, the Corporate Income Tax Law exempts all income of CSOs with public benefit status, except for income earned through economic activities that is not exclusively related to its public purpose.<sup>61</sup>

According to the explanation of the Tax Administration Decision<sup>62</sup>, this will also apply to income from cryptocurrency. Specifically, "For non-business natural persons, business natural persons and legal persons who do not declare revenue generated and do not pay Taxes and Pension Contributions, Tax Administration of Kosovo (TAK) will take measures according to the tax legislation."

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<sup>59</sup> <https://konsultimet.rks-gov.net/viewConsult.php?ConsultationID=40915>

<sup>60</sup> Source: Consultative meeting with CSOs on November 30

<sup>61</sup> Art. 7 of the Law No. 05/L-029 on Corporate Income Tax. Available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=20988>

<sup>62</sup> [Notice to taxpayers - Revenue generated by crypto currencies is taxable revenue! - Administrata Tatimore e Kosovës \(atk-ks.org\)](https://www.atk-ks.org/en/notice-to-taxpayers-revenue-generated-by-crypto-currencies-is-taxable-revenue/)

- *Value added tax (VAT)*

CSOs are not considered taxable persons under VAT for payments deriving from membership, if they have such or funds, grants, donations received for the purpose of their non-profit activity<sup>63</sup>. The CSO can be treated as taxable person if it receives payments as a result of economic activity. Therefore, if the taxable turnover (from economic activity) of a CSO in a calendar year exceeds 30 000 EUR, it has to register for VAT purposes.

Accepting monetary income from donations by CSOs is not subject to VAT, because no provision of services/sale of goods occurs. According to the Public Explanatory Decision no. 04/2016, supply of goods/services funded from the proceeds of grants shall be invoiced by the supplier of goods/services without the VAT, with the right to deduction of VAT. Each invoice prepared under such circumstances should contain a reference to Art. 33 (3) sub para 3.1 of the Law no. 05/L-037 on VAT.<sup>64</sup>

Similarly, all purchases of goods/services by a CSO for projects in support of humanitarian and reconstruction programs and other projects including European integration projects in Kosovo using the proceeds of donations are exempt from VAT.<sup>65</sup>

According to Art. 36 of the VAT law, every taxable person shall have the right to deduct the input VAT for goods and services used under the exemptions in art. 33. That means that any donation of goods and services by an entity that benefits from the VAT exemptions, will also be able to fully recover any paid input VAT, regardless of whether it donates the respective goods or services. This exemption does not, however, extend to normal donations, outside of exempt grants and donations. The law states that “*the supply of services without consideration carried out by a taxable person*”<sup>66</sup>. Similarly, “*using goods by a taxable person, part of his business assets for private use or for his staff, or their disposal free of charge or, more generally, their use for purposes other than those of the business, shall be treated as a supply of goods for consideration*”<sup>67</sup>.

The VAT Law does not contain any specific exemption for telecommunication services and therefore, if a donation through SMS or phone call is treated as a service, there is VAT on it. According to the information provided by IPKO they as a company paid the VAT when they provided SMS numbers to support donations and charity initiatives.<sup>68</sup> However, in many countries such SMS/phone calls are not treated as provision of service but as a way to transfer a monetary donation and therefore would be exempt from VAT.

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<sup>63</sup> Art. 4 (2) of the VAT Law.

<sup>64</sup> Art. 33 (3) sub para 3.1 of the Law no. 05/L-037 on VAT.

<sup>65</sup> Art. 30 (2) sub para 2.1. of the Law no. 05/L-037 on VAT.

<sup>66</sup> Art. 15 (2) VAT Law.

<sup>67</sup> Art. 11 (1) VAT Law

<sup>68</sup> Source: information provided by IPKO

### 3.1.3. Tax incentives for donors

Philanthropy can be incentivized through tax benefits for donors that are typically in the form of tax deductions or tax credits. In Kosovo, there are several types of tax benefits available for donors. Despite their existence, however, there is limited interest in using them.

Following are types of tax benefits available for corporate and individual donors:

- *Corporate donors*

There are tax deductions available for corporate donors donating for activities of public interest defined by the law. According to Art. 10(1) of the Law on Corporate Income Tax *“Contributions made by taxpayer who keep books and records in accordance with paragraph 5 of Article 35 of this Law, in the form of donations or sponsorship for humanitarian, health, education, religious, scientific, cultural, environmental protection and sports in accordance with this law, are considered as contributions given for public interest and are allowed as a deduction up to a maximum of ten percent (10%) of taxable income computed before this contributions are deducted.”* Donating amounts above the 10 % threshold is possible but will not be tax-exempt. Moreover, taxpayers providing contributions to certain areas may benefit from additional 10% deduction, if prescribed by specific Kosovo laws.<sup>69</sup>

Tax deductible donations can be received by any CSO, as long as it is duly registered in accordance with the NGO Law and has received and maintained public benefit status. Other CSOs such as organizations to protect the environment (among others) and institutions, including medical and educational institutions, religious institutions and orphanages are also eligible recipients of tax-deductible donations. The tax exemption provided cannot be used if the donation directly, or indirectly, benefits the donor or related persons of the donor<sup>70</sup>.

The definition of public interest for the purposes of the Law on Corporate Income Tax is narrower than the definition of public benefit provided by Art. 37 of the NGO Law. As a result, donations for causes that are recognized as being of public benefit, including protection and promotion of human rights, support to democratic practices and civil society, promotion of voluntary work, consumer protection, refugee assistance and support, are not tax deductible.<sup>71</sup>

According to Art. 14 of the Administrative Instruction MF no. 02/2016, in order for taxpayers (the donors) to claim their deductions, they need to furnish a receipt signed and stamped by the CSO confirming the purpose of the donation and containing the following information: (i) name of the donor, (ii) tax identification number (fiscal

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<sup>69</sup> Art. 10(1) and (5) of the Law No. 05/L -029 on Corporate Income Tax.

<sup>70</sup> Art. 11 (3), Law No. 05/L -029 on Corporate Income Tax.

<sup>71</sup> Art. 37 of the NGO Law.

number) of the donor, (iii) address of the donor, (iv) name of contact person and address of the donor, (v) name of the recipient, (vi) tax identification number (fiscal number) of the recipient, (vii) address of the recipient, (viii) name of contact person and phone number of the recipient, (ix) the amount of the charitable contribution donated, (x) date of donation, (xi) a declaration by the recipient that the data on the receipt is correct and that the recipient has no direct or indirect conflict of interest with the donor.<sup>72</sup>

- *Individual donors*

The Law no. 05/L -028 on Personal Income Tax provides identical conditions for claiming tax deductions on donations made by individual donors.<sup>73</sup> The only difference is that the law does not limit the recipients to public benefit organizations.

- *Benefits for in-kind donations*

The law does not limit the tax exemption to monetary donations only. Art. 11.4 of the Law on Corporate Income Tax refers to the need to present receipts for the donations made which may be interpreted more broadly. However, art. 28.4 of the Personal Income Tax Law states that “any taxpayer who claims allowable deduction must present to the TAK the proof sheet of payment in respect of such deduction”. Therefore, it may be good to ensure that donations in kind are also covered by this exemption.

- *Additional tax benefits arising from the Law on sponsorship in the field of culture, youth and sports*

According to the Law on Sponsorships, sponsors for sponsorship of sports activities shall be subject to 30% deduction from the tax on profit and sponsors for sponsorship of culture and youth shall be subject to 20% deduction.<sup>74</sup> In addition, revenues from the sponsorship are non-taxable income of beneficiaries of the sponsorship, including CSOs.<sup>75</sup> Sponsors can be individual, co-sponsors, legal domestic or foreign entities.<sup>76</sup>

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<sup>72</sup> Art. 14 of the Administrative Instruction MF no. 02/2016 for implementing the Law No. 05/L -029 on Corporate Income Tax. Available at: [UDHEZIM ADMINISTRATIV PER TATIMIN NE TE ARDHURAT E KORPORATAVE-1.pdf \(atk-ks.org\)](https://gzk.rks.gov.net/ActDocumentDetail.aspx?ActID=11014).

<sup>73</sup> Art. 28 of the Law no. 05/L -028 on Personal Income Tax. Available at: <https://gzk.rks.gov.net/ActDocumentDetail.aspx?ActID=11014>

<sup>74</sup> Art. 12 para 1, 2 of the Law No. 05/L-090 on Sponsorship in the Field of Culture, Youth and Sports. Available at: [LAW NO. 05 L-090 ON SPONSORSHIP IN THE FIELD OF CULTURE YOUTH AND SPORTS1521189204.pdf \(qkk-rks.com\)](https://gzk.rks.gov.net/ActDocumentDetail.aspx?ActID=11014)

<sup>75</sup> Ibid, Art. 12 para 4

<sup>76</sup> Ibid, Art. 6 para 1

### **3.1.4. Transparency and reporting requirements**

There are no specific transparency and reporting requirements applicable to CSOs when raising funds from private donors. CSOs typically report their income through annual tax declarations, and they are obliged to maintain financial data on their transactions in accordance with the AML/CTF Law. CSOs with public benefit status are subject to additional transparency and reporting requirements.

Donors claiming tax benefits for their donations need to submit together with their tax declaration the receipts of the donations made which show all the relevant information about the donations, including the exact amount and the recipient (see previous section).

Special requirements apply to sponsors and beneficiaries of sponsorships under the Law on Sponsorships. According to Art. 14 of the Law, donor and the recipient of sponsorship are obliged to prepare a report on the granted and accepted sponsorship that contains: i) name and the title of the donor and the recipient; ii) name and the title of the last user; iii) description of the subject and the purpose of the sponsorship, which enables their identification with accurate data on the quantity, value and its other properties; iv) the final use of the sponsorship subject; v) other data. In addition, the agreement for sponsorship and advertising with the financial report are necessarily submitted to the Kosovar tax authorities, at the latest 30 days from the day of fulfilment-completion of the agreement.<sup>77</sup>

## **3.2. Other barriers to philanthropy**

According to the consultative meeting discussion, CSOs are experiencing other barriers to philanthropy, most commonly related to banking activities. Some CSO representatives reported issues related to opening a bank account, the high banking fees or the suspension of existing accounts. Others mentioned that banks in general consider CSOs as of high risk and create additional obstacles for CSOs in providing certain types of services or refuse to work with them altogether. It has had an impact on the ability of CSOs to raise funds, especially via digital means. This concern has been raised for many years and documented in the Report on the impact of banking restrictions on NGOs in Kosovo.<sup>78</sup> In order to address this CIVIKOS and KCSF, with the support of ECNL, initiated a multistakeholder dialogue on bank de-risking in Kosovo, including key stakeholders such as the Kosovo Banking Association (“KBA”), the Central Bank, the Ministry of Finance, the Financial Intelligence Unit of Kosovo (“FIU-K”) and other CSOs. Over the past two years CSOs managed to establish a solid cooperation with KBA.

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<sup>77</sup> Art. 14 of the Law No. 05/L-090 on Sponsorship in the Field of Culture, Youth and Sports.

<sup>78</sup> [https://civikos.net/wp-content/uploads/2023/12/Raporti\\_OJQ-Bankat\\_shqip\\_373851.pdf](https://civikos.net/wp-content/uploads/2023/12/Raporti_OJQ-Bankat_shqip_373851.pdf)

## 4. Key regulatory issues pertinent to philanthropy in Kosovo and their regulation from a comparative perspective

The following section highlights the key issues that we identified during the mapping of the regulatory environment for philanthropy in Kosovo vis-à-vis international standards and good European practices.

### 4.1. General regulation on donations

We did not identify any bottlenecks related to the general regulation on donations. The NGO Law provides basic guarantees for CSOs to access resources, including income from donations.

#### 4.1.1. Regulation of fundraising methods, including traditional and digital ones

The research has identified several problems with some of the fundraising methods. As a starting point, cash collections are a problem because of the limitation to receive cash (see above the section on cash collections). This is a serious problem for various methods that require collection of cash, including cash boxes, charitable sales, etc. Currently there is a Proposal for a Regulation of the European Parliament and of the Council on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing which will set an EU-wide threshold on cash transactions – 10 000 EUR/transaction<sup>79</sup>. Some EU member states have put even lower thresholds on cash transactions (e.g., in Bulgaria the limit is 5 000 EUR). However, it is important to note that the limit in the EU countries is per transaction, not per day or per client. In an attempt to lower the existing threshold for cash transactions in the case of business or professional relations (there is no limit when not acting in professional capacity), Spain proposed the limit to fall to 1000 EUR/transaction. However, the European Central Bank issued a statement that this is disproportionate<sup>80</sup>. Among the reasons cited was that “cash is a crucial payment method for the elderly, immigrants, the disabled, socially vulnerable citizens and anyone with limited access to digital services, and, as such, serves inclusion”.

Another practical problem is related to banks that are not interested in providing financial services to CSOs because of their AML/CFT risk-aversion policies. Moreover, during the consultative meetings, we have also heard about high bank fees, which is another obstacle for CSOs.

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<sup>79</sup> [https://eur-lex.europa.eu/resource.html?uri=cellar:0a4db7d6-eace-11eb-93a8-01aa75ed71a1.0001.02/DOC\\_1&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:0a4db7d6-eace-11eb-93a8-01aa75ed71a1.0001.02/DOC_1&format=PDF)

<sup>80</sup> Opinion of the European Central Bank of 15 March 2022 on limitations to cash payments (CON/2022/9), <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022AB0009>

Another issue that we have identified relates to the engagement of companies in philanthropy. While there are many good examples of companies providing donations, there are practical problems in engaging with companies in specific areas. Examples include using charitable SMS and phone calls and the development of payroll giving programs.

#### **4.1.2. Tax treatment of donations**

Donations in Kosovo are generally subject to favourable tax treatment, which is in line with international standards as well as comparative practices. Donations from individual and corporate donors are traditionally exempt from income tax and the supply of goods and services is exempt from VAT.

However, in Kosovo, the VAT exemption for supply of goods and services extends only to humanitarian and reconstruction programs. As mentioned above, in the European Union, the Member States are obliged to provide a broader VAT exempt treatment for CSOs, including for the “*supply of services... for the purpose of rendering their members the services directly necessary for the exercise of that activity*” or supply of services under certain conditions by “*...non-profit-making organizations with aims of a political, trade-union, religious, patriotic, philosophical, philanthropic or civic nature...*” In addition, the Directive specifically provides for an exemption of “*the supply of services and goods, by organizations whose activities are exempt pursuant to points (b), (g), (h), (i), (l), (m) and (n), in connection with fund-raising events organized exclusively for their own benefit, provided that exemption is not likely to cause distortion of competition.*”<sup>81</sup> Therefore, there is a room for broadening the scope of services/goods whose supply is exempt from VAT in Kosovo. This is especially important for in-kind donations.

Looking into comparative practices, in Hungary all donations that support the public benefit activity of public benefit organizations are exempt from VAT (if the donor has the certificate of the beneficiary). In Bulgaria there is VAT exemption in the case of import of donated goods when they are donated to charitable or philanthropic organizations. In Croatia, the import of donated goods for the fulfilment of basic human needs—such as food, medicine, clothes, etc.- is exempted from VAT. This is also the case for equipment donated by registered humanitarian and charity organizations. In the case of in-kind donations, usually if the donor has claimed its VAT on the input (when purchasing/producing the good or delivering the service), then VAT on the output (the donation) needs to be paid (as someone has to pay the VAT on those goods/services as it was not paid on the input). In some countries, including Czechia and Bulgaria, there is a special treatment for the donation of food. In Bulgaria, there is no output VAT on the food, if it is donated to a special category of CSOs called food banks, and there are some additional conditions for the donation. In Czechia, while output VAT is charged on the “market price” of the food donation, the market price could be zero or close to zero under certain conditions when food is donated. At the same time, there are specific exemptions from VAT in certain areas for the provision of certain public benefit services (e.g., education, culture, social services and others)

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<sup>81</sup> Art. 132, para 1 f), l), o).



according to which no VAT is charged to the beneficiary of the service (output VAT). In most cases, however, the exemption does not allow the provider to reclaim the VAT it has paid (input VAT). In addition, there is a special VAT exemption for CSO fundraising activities in the Netherlands and Bulgaria.

It is important that these exemptions are regulated clearly in law to avoid any potential confusion and difficulties to donate for donors. One concrete example that demonstrates the importance of clear regulation of VAT on donations is SMS donations. Such charitable SMS should be exempt from VAT unlike the regular mobile phone services as the mobile phone is just the tool through which the donation is made (so by definition the charitable SMS is a financial transaction that is normally outside of the scope of VAT). For example, Bulgaria does not have a specific provision exempting donations through charitable SMS which created confusion, and donations were also charged with VAT (and treated as a service offered by the mobile phone companies). As a result, tax authorities issued guidance to ensure that the law is not misinterpreted, and charitable SMS is VAT exempt. The situation was similar in Czechia until 2005 after which, an amendment to the Law on VAT came into force in January 2006 that resolved the confusion with treatment of charitable SMS as mobile phone service and ensured their VAT exemption.<sup>82</sup>

#### ***4.1.3. Tax benefits for donors***

The legal framework in Kosovo provides tax benefits for individual and corporate donors up to 10% of taxable income. While there are countries that may have larger thresholds for tax deductions for donations, it is important to also understand why the existing tax benefits are not sufficiently used and whether there are any practical problems for using existing tax benefits for donations (e.g., how bureaucratic those are).

One problem that we identified during the research was the difference between the public benefit definition in the NGO Law and the list of public benefit areas in the tax laws. Moreover, there is a slight difference between the personal income tax law and the corporate income tax law in terms of recipients (e.g., there is no requirement for the recipients to be registered public benefit organizations for the benefit for individual donors).

Another problem that creates uncertainty is related to the tax laws which do not provide clear guidance on whether the existing tax benefits can be used in the case of donations in-kind. This was highlighted in another research<sup>83</sup> as well.

Compared to other Western Balkan countries, the current tax benefits for donations are not insignificant. Still, it is important to facilitate a discussion on how to further

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<sup>82</sup> Comparative research on Tax Benefits Stimulating Philanthropy. ECNL, 2021.

<https://ecnl.org/publications/tax-benefits-stimulating-philanthropy>

<sup>83</sup> <https://fiqorg.com/wp-content/uploads/2020/05/ENG.Aanlize-legjislacionit-te-Kosoves-final-ENG-1-1.pdf>

promote philanthropy in Kosovo. For example, we can discuss the need to introduce benefits for large donations to stimulate endowment building and major giving such as the possibility for carry-over of the donation exceeding the 10 % tax-exemption threshold to the following years. In the table below<sup>84</sup> we have provided some comparative examples of such tax deduction benefits as well as the rules in other Western Balkan countries as a comparison. Some are more, others are less favorable than the current rules in Kosovo.

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<sup>84</sup> Sources: Council on Foundation Country Notes: <https://cof.org/country-notes>, Philea Country profiles, <https://philea.eu/how-we-can-help/policy-and-advocacy/analysing-the-legal-environment-for-philanthropy-in-europe/>, Comparative research on Tax Benefits Stimulating Philanthropy. ECNL, 2021. <https://ecnl.org/publications/tax-benefits-stimulating-philanthropy>. Further details on the tax benefits in the Western Balkan region is also available in the Regional report on the Enabling Environment for Civil Society Development: [https://www.balkanicsd.net/novo/wp-content/uploads/2021/07/94-5-Regional-Monitoring-Matrix-Report-2020\\_FINAL.pdf](https://www.balkanicsd.net/novo/wp-content/uploads/2021/07/94-5-Regional-Monitoring-Matrix-Report-2020_FINAL.pdf)

Country	Individual donors	Corporate donors
<b>Albania</b>	Individual donors cannot deduct any kind of donation for tax purposes.	The Law “On Sponsorship” recognizes as a deductible expense up to 5% for publishers and publication of literature, scientific works and encyclopedia; as well as cultural, artistic and sport-related activities and up to 3 % for all other corporate entities.
<b>Croatia</b>	Donations to cultural, scientific, educational, health, humanitarian, sport, religious, ecological and other purposes deemed for public benefit are exempted up to 2% of their gross annual income in the preceding year. The tax-exempt percentage may be higher, pursuant to a decision of the line ministry on financing particular programmes and actions. There is no minimum amount on contributions in order for it to qualify as tax exempt.	Donations to cultural, scientific, educational, medical, humanitarian, sport, religious, ecological and other purposes deemed for public benefit are exempted up to 2% of their gross annual income in the preceding year. The tax-exempt percentage may be higher, pursuant to a decision of the competent ministry on financing particular programs and actions. There is no minimum ceiling on contribution in order for it to qualify as tax exempted.
<b>Czechia</b>	Donations are deductible up to 15% of the tax base. For the tax periods of 2020 and 2021, donations were deductible up to 30% of the tax base.	Donations are deductible up to 10% of the tax base. For the tax periods that ended between 1 March 2020 and 28 February 2022, donations were deductible up to 30% of the tax base.
<b>Germany</b>	Donations are deductible up to 20% of yearly income. There is no minimum amount for the contribution.	Donations are deductible up to 20% of yearly taxable income; OR 0,4% of the sum of the turnover and salaries.  No minimum ceiling on contribution.

	<p>In addition, an individual donor can deduct up to €1,000,000 for a donation to the endowment of a foundation with qualifying purposes. The deduction can be taken in the year of donation and/or divided over the following nine years.</p>	
<p><b>France</b></p>	<p>Individuals are eligible for tax credits for donations to public utility organizations, general interest associations, and religious organizations authorized to receive contractual donations. Tax credits are calculated at 66% of the value of the donation, and an individual's total tax credits for one year may not exceed 20% of the individual's taxable income. Employees of a commercial entity that donates to a corporate foundation founded by their employer are eligible for this tax credit.</p> <p>Individuals are also eligible for tax credits for donations to certain charitable organizations that serve the needy. Such tax credits are calculated at 75% of the value of the donation. Donations over this amount are eligible for a tax credit calculated at 66% of the donation and the credit may not exceed 20% of the individual's annual income. As is the case with legal entities, individuals may report excess amounts to the tax authorities, which will be credited against their taxes on a carry-forward basis for the following five years.</p>	<p>Legal entities are eligible for tax credits for donations to general interest associations, public utility associations, and public utility foundations. Tax credits are calculated at 60% of the value of the donation, and a legal entity's total tax credits for one year may not exceed 0.5% of its annual turnover. When the amount of the donation exceeds the threshold for exemption, the excess amounts may be reported to the tax authorities and credited against tax due on a carry-forward basis for the subsequent five years. If the legal entity's charitable contributions within one year exceed 2 million Euros, the tax credits will be reduced by 40%.</p>

	<p>There is also a tax credit on wealth tax for those taxpayers who make donations to public utility foundations (cash or full ownership of listed companies' shares). The tax credit is calculated at 75% percent of the donation, with a limit of 50,000 Euros.</p>	
<p><b>Hungary</b></p>	<p>No tax deductions are available for individual donations.</p>	<p>The pre-tax profit may be reduced:</p> <ol style="list-style-type: none"> <li>1. by 20% of the donation if the donation supports the public benefit activity of a public benefit organization;</li> <li>2. By 50% if the donation supports the Hungarian Relief Fund, National Cultural Fund, or the Damage Mitigation Fund; or</li> <li>3. By 50% if the donation supports a higher education institution in the course of a grant agreement, up to the amount of the pre-tax profit on the aggregate.</li> </ol> <p>There is a higher threshold for deducting donations if there is a donation agreement for at least three years (i.e., the monetary contribution is provided on the basis of an agreement between a public benefit organization and its donor wherein the donor undertakes to provide the donation in the subject year and at least once a year for at least three forthcoming years, in the same or larger amount, without any consideration). More concretely, the threshold is 40% of the amount of the donation made if there is a long-term contract instead of 20% if there is none.</p>

<b>Kosovo</b>	The Law on Personal Income Tax provides identical conditions for claiming tax deductions as to corporate donors. The only difference is that the law does not limit the recipients to public benefit organizations.	Contributions made by taxpayer in the form of donations or sponsorship for humanitarian, health, education, religious, scientific, cultural, environmental protection and sports in accordance with the law are considered as contributions given for public interest and are allowed as a deduction up to a maximum of 10% of taxable income. Taxpayers who make such donations in particular subject areas may receive an additional allowance of up to 10 percent of their income for deduction purposes, if so prescribed by separate Kosovo laws.
<b>Montenegro</b>	Individuals may deduct up to 3,5% of their gross (pretax) income for contributions to “medical, educational, scientific, religious, cultural, sport, humanitarian and environmental purposes.	Corporations may deduct up to 3,5% of their gross (pretax) income for contributions to medical, educational, scientific, religious, cultural, sport, humanitarian and environmental purposes.
<b>Netherlands</b>	Deductible between 1% to 10% of the gross income, provided it is more than €60 in total.  Periodic gifts: no threshold and up to 100% of the tax base of a certain year. Periodic gifts are gifts which the donor is, by notarial or private gift deed, obliged to pay annually during at least five years while they are alive <sup>85</sup> . Also, if the periodic gift exceeds the income of a certain year, the remainder can be deducted in a following year.	Gifts are deductible up to a maximum of 50% of the profit with a maximum of €100,000.

<sup>85</sup><https://www.belastingdienst.nl/wps/wcm/connect/nl/aftrek-en-kortingen/content/verschil-periodieke-giften-gewone-giften>

<p><b>North Macedonia</b></p>	<p>Individual who donates funds to a legal entity in accordance with the provisions of the Law on Donations and Sponsorships, and based on a donation agreement, is entitled to a decrease in the determined, but not paid personal income tax or return of the paid personal income tax determined on the basis of the individual's annual tax return in the amount of the donation, but not more than 20% of the donor's annual tax debt, with a ceiling of 24,000 Denars (around €390). There is no required minimum contribution.</p>	<p>Donation or sponsorship is considered as an eligible expense and deducted from the tax base up to 5% of annual turnover for donations and up to 3% of the annual turnover for sponsorships.</p>
<p><b>Serbia</b></p>	<p>There is no tax benefits provided for individual donors.</p>	<p>Tax deduction of up to 5% of annual income of a corporation is provided for giving to qualifying public-benefit purposes; no minimum contribution is set in law.</p>

#### 4.1.4. Transparency and reporting requirements

The majority of Kosovo's requirements for transparency and reporting are in line with international standards. According to these, any rules on reporting and oversight must respect freedom of association, the right to privacy (of the CSO and its donors, employees and other associated individuals) and the principle of non-discrimination. Any potential limitation on freedom of association and access to resources must be based in law, serve a legitimate aim and be necessary and proportionate. Self-regulation can complement or even replace reporting, disclosure, and oversight requirements set by the state. In fact, building public trust and enhancing accountability and transparency are some of the key motives to establish self-regulatory schemes.<sup>86</sup>

As described above, there are no specific transparency and reporting requirements applicable to CSOs when raising funds from private donors in Kosovo. CSOs typically report their income through annual tax declarations, and they are obliged to maintain financial data on their transactions in accordance with the AML/CTF Law. CSOs with public benefit status are subject to additional transparency and reporting requirements. However, we identified one issue that creates an unnecessary burden for CSOs and their sponsors: the existence of separate reporting for sponsorship.

#### 4.2. Measures to support financial access

Civil society organizations face complex challenges with their access to financial services across the world that also affect their fundraising efforts. Addressing such problems is a shared responsibility between financial institutions and state bodies and should involve civil society actors. There are several good practices<sup>87</sup> that can serve as an inspiration for commercial banks, bank associations, bank regulators and financial intelligence units. For example, several measures have been taken in Netherlands to address this:

- *Multistakeholder dialogue*: There are two multi-stakeholder working groups (roundtables) that ensure dialogue, offer solutions and actionable work: 1) Work group led by Dutch Bank Regulator and Dutch Banking Association; and 2) Work group led by Ministry of Finance, Ministry of Foreign Affairs and Human Security Collective (a Dutch CSO). Both of these groups include CSOs as equal

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<sup>86</sup> Article 22 of the International Covenant on Civil and Political Rights. See further principles related to transparency, accountability and oversight in the Fundraising Principles: <https://ecnl.org/sites/default/files/2020-08/Fundraising-Principles.pdf>

<sup>87</sup> Effective solutions to improve civil society's access to banking services <https://ecnl.org/publications/how-can-financial-institutions-and-csos-work-together-ensure-access-financial-services>



partners and aim to identify and solve problems that CSOs face in relation to banks.

- *Bank regulator*: the Dutch Bank Regulator changed its vision from rules-based to risk-based approach based on the findings from a detailed study, and pressure from Dutch CSOs and commercial banks. One of the practical ways in which this change has manifested was the decision of the regulator to lead a dialogue to prepare specific standards that determine real risks across sectors so that banks' client due diligence can be targeted accordingly. This was conducted through a working group (roundtable), including various stakeholders. One of the sectors for which standards are co-drafted is the nonprofit sector.
- *Commercial bank*: One of the Dutch banks, ABN AMRO has taken progressive steps to ensure access to financial services for CSOs. As a first step, they recognized the problem of de-risking as one of the most salient human rights issues. They put this recognition into practice through: 1) dedicating resources for staff and processes to ensure that CSOs can access financial services; 2) educating and raising awareness of CSO clients through the first, dedicated CSO portal created together with Dutch CSOs; and 3) actively engaging in country-level dialogue through roundtables.

In Hungary, one of the commercial banks, the Magnet Bank has special services, including bank account packages for nonprofits.<sup>88</sup> There are several examples of how financial institutions and CSOs can work together to ensure access to financial services<sup>89</sup>.

## 5. Conclusions and policy recommendations

Philanthropy is yet to become a major source of income for CSOs in Kosovo. To achieve that, several important steps could be taken to stimulate philanthropy. We hereby provide some general and some specific thematic recommendations for further discussion by CSOs, companies, state authorities and other relevant stakeholders.

### General recommendations:

1. *Engage in broad discussion about the future of philanthropy and the ways to support it.* One potential avenue may be the development of a policy document jointly with CSOs to promote and stimulate philanthropy, to be adopted by the government.

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<sup>88</sup> <https://www.magnetbank.hu/nonprofit>

<sup>89</sup> <https://ecnl.org/publications/how-can-financial-institutions-and-csos-work-together-ensure-access-financial-services>

2. **Improve the understanding and increase the skills and capacity of CSOs to fundraise from individual and corporate donors.** For this purpose, it could be helpful to develop practical materials that explain how to donate to CSOs, and how companies and individuals can benefit from existing tax exemptions when they provide support to CSOs.
3. **Identify organizations that are interested in engaging in systematic efforts for promoting philanthropy,** advocating for a supportive environment, developing new mechanisms for raising funds from corporations/individuals and increasing the capacity of CSOs. Such organizations (or a coalition of organizations) should be engaged in strategic discussions about philanthropy (see recommendation 1 above) and in advocating for an improved environment in Kosovo.
4. **Consult major CSO funders, including international donors, to stimulate support for CSO financial sustainability when they fund projects.** Examples for measures that donors can undertake to help CSO financial sustainability include: allowing a budget line as part of the direct expenses under funded projects to cover the costs of fundraising and CSO institutional development; providing matching funding for resources raised through philanthropy; supporting the development of financial sustainability strategies of their grantees; etc.
5. **Collect information about philanthropy in order to build a database that can help for further analysis and policy development.** As a starting point, it is important to ensure that tax authorities collect information about the tax incentives used for giving and sponsorship.

**Specific thematic recommendations:**

1. **Continue the multistakeholder dialogue** with commercial banks, the Central Bank, FIU, Ministry of Finance and CSOs to resolve challenges related to bank de-risking and financial access, including high bank fees for CSOs.
2. CSOs could **engage in dialogue with banks** for introducing specialized products for the sector.
3. **Engage with the corporate sector in specific areas** to ensure that certain fundraising methods are developed. Examples include:
  - a. Work with telecommunication companies to develop, elevate and promote the system of providing charitable numbers and provide more information on the conditions to benefit from such an opportunity;
  - b. Work with companies to develop and promote payroll giving and other mechanisms to stimulate employee giving.

4. ***Increase the current threshold*** of five hundred (500) Eur/day and eliminate the annual threshold ***for cash donations*** (currently 1000 EUR/year from 1 source).
5. Tax authorities should provide ***clear guidance on how the existing tax benefits can be used*** in the case of donations in-kind and whether SMS and phone call donations are exempt from VAT.
6. ***Engage in additional research*** on whether there are practical problems in using existing tax benefits for donors.
7. ***Consider the need to introduce further tax benefits to promote philanthropy, including*** benefits for large donations to stimulate endowment building and major giving such as the possibility for carry-over of the donation exceeding the 10 % tax-exemption threshold to the following years.
8. ***Revise the definition of public benefit activities in the tax laws*** and equate it to the public benefit definition in the NGO law.
9. ***Remove the requirement to provide separate reports on sponsorship*** and discuss on how to ensure transparency of giving in Kosovo.