

Joint Philea and Civil Society Europe Event
A single Market for the Public Good

*Removing Obstacles to
Cross Border activities of associations and cross border philanthropy*

28 November 2023

11:30- 14:00

Flylounge

Rue du commerce 65 - 1000 Bruxelles

Report

This Joint event in cooperation with Philea (Philanthropy Europe Association) on the [EC's proposal for a legislative initiative on cross border activities of associations](#) and guidance on removing tax discrimination on cross-border giving gathered decision makers and civil society organizations. It was organised at a crucial moment ahead of the presentation at the European Parliament of the draft report on the legislative proposal, and following the adoption of a common position among civil society organizations at the European level. It also coincided with the adoption of the [Council recommendation on developing social economy framework conditions](#).

Welcome & Setting the scene

The introductory part included a welcome and setting the scene introductions by Delphine Moralis, CEO of Philea, Carlotta Besozzi, Director of Civil Society Europe and Hanna Surmatz, head of policy of Philea.

Delphine Moralis, CEO of Philea

In light of the intersecting crises we are facing, there has never been a greater need to engage in more dialogue across sectors to discuss solutions to societal issues and to co-create agendas and work in partnership. How can philanthropy engage with wider civil society and policymakers when addressing climate change, increasing inequality, the decline of democracy, and a war in Europe? How can we ensure that, two years after the introduction of the Social Economy Action Plan, the obstacles for philanthropy, foundations and associations and other social economy organisations to operate cross-border are



removed? How can we ensure that civil society and philanthropy space is not shrinking but enlarging?

Philanthropy and foundations can only do their important work if there is an enabling environment for philanthropy across Europe. And in this context I am very happy to announce that tomorrow will also see the launch of the new Philanthropy Manifesto while we are also endorsing the joint call for a European Civil Society Strategy.

The proposed directive on European Cross Border Associations is a good step in the right direction, there is a momentum to achieve big advancements for civil society organisations. However, there are still many barriers to the single market for the public good that prevent civil society and philanthropy to achieve their full potential: those barriers must be tackled.

Carlotta Besozzi, Director of Civil Society Europe

The proposed directive comes after a long work for civil society to be recognised at the European level. It opens a place for the non profit sector in the single market next to other private actors such as profit making companies and public bodies. Furthermore, the ECBA can become a benchmark also for national legislation on the establishment and operations of non-profit organisations. It is paramount that the directive is approved as soon as possible, and that is just a first step: also foundations should have European rules.

Hanna Surmatz, Head of Policy of Philea

We, as the public good sector, do not have a level playing field. We have seen the creation of a European status for companies and cooperatives, but not for our sector. Many barriers are still in place, including those concerning taxation. We are building on what was achieved with the SEAP and now need to make sure that it gets implemented. The proposed directive does not cover tax issues, which has been discussed within other aspects of the Social Economy Action Plan, however still without legislative initiative. In light of the upcoming European elections and beyond, we call on policymakers to create a truly level playing field for public good.

Short case studies on obstacles to Philanthropy and cross border activities of Associations

Real life case studies were presented by Organics Europe and Transnational Giving Europe to illustrate the obstacles faced by non profit association and philanthropic actors in the single market.

Eduardo Cuoco - Director of IFOAM - Organics Europe

IFOAM started work informally in 2018, it was set up and registered in Sweden, without any economic activity there (e.g. employed staff or office), and from 2022 a branch in Brussels with an office and employed staff. Due to the legal registration in Sweden but the economic activities in Belgium, several challenges arose, including the impossibility to provide the employed staff with a pension scheme. Therefore, the process to move the seat from Sweden to Belgium started, but it proved bureaucratically more difficult than expected. IFOAM initially hired a legal consultant, which resulted in thousands of euros spent without any concrete results, as it lacked the necessary specific knowledge of the legislation in Belgium or Sweden. With the current pro bono legal advice it was concluded that the only chance to have a legally recognized entity in Belgium was to set up a new entity, as there were also difficulties in moving assets. This will imply loss of historical data of the organisation, and will have to ask employees and members to move from one organisation to another. IFOAM has frozen the process in view of the proposed ECBA directive.

Anne-Laure Paquot, Network Manager, Transnational Giving Europe

The TGE network covers 19 countries and enables donors, both corporations and individuals, resident in one of the participating countries, to financially support non-profit organisations in other Member States, while benefiting directly from the tax advantages provided for in the legislation of their country of residence. TGE and Philea collected stories on the barriers individual foundations are facing when trying to engage in philanthropy across borders: a selection of such cases is to be published in December 2023.

The most frequently listed barriers are related to taxation. Despite the fact that the European Court of Justice has recognised the non-discrimination principle on the grounds of nationality as applying to philanthropy, in practice some legislators and authorities still discriminate against comparable foreign EU-based philanthropic players, with the result that they often face a number of tax barriers. In the area of tax treatment of donors, based on the case law of the European Court of Justice, donors donating to comparable organisations located in EU or EEA countries outside of their home countries get equal tax treatment, however the conditions for determining comparability vary, and the processes around whether a foreign-based organisation is considered comparable to a national one are often not straightforward (e.g. for Germany, supporting individuals who have their permanent residence in Germany or carrying out activities that could benefit Germany's reputation), and can be costly (e.g. 1.4 million euros for the Volkswagen Foundation), lengthy (e.g. 20 years for a case of the Volkswagen foundation) and burdensome for users as well as the authorities. This is also due to the absence of standard requirements across



countries for the recognition of a public-benefit organisation as comparable to those in the relevant country, and the fact that the documents to make refund claims are very different across countries.

Philanthropic entities cannot merge across borders as companies can. In fact, neither at EU level nor at the level of most Member States are there regulations for carrying out a cross-border merger, resulting in the impossibility to carry out cross border mergers. Furthermore, no legal provision exists in most countries, nor at EU level, to move the headquarters of a philanthropic organisation from one EU country to another, resulting in a great deal of uncertainty and lengthy processes, including setting up a new governance structure, transferring all human and financial resources from one entity to another, and dismiss the original entity. One of the most cited categories of barriers to cross-border philanthropy were those related to accessing banking services, including opening a bank account in countries different from the one of registration, for instance due to the requirement of having a VAT code in the country where the organisation wants to open the account.

Presentation of the legislative and policy solutions and panel discussion

The panel discussion was moderated by Mathieu de Poorter, Board member of Social Services Europe, who stressed the importance of the long awaited proposal for removing barriers for non profit associations in Europe, as well as the recommendation on social economy frameworks just adopted by the Council.

He asked Ms Athanasopoulou to outline the key features of the ECBA proposal, the vision of the Commission in developing the proposal and the current decision-making process.

Anna Athanasopoulou – Head of Unit G2 Proximity, social economy, creative industries of the European Commission

While this is not the first time the Commission tries to create a legislative instrument on civil society, the ECBA directive comes now as there is political momentum for the social economy and its actors, both profit and non-profit. The Commission launched the Social Economy Action Plan, and proposed a Council recommendation on framework conditions for social economy, recently endorsed by the Council. Furthermore, the European Parliament adopted a resolution calling the Commission to propose a status for non-profit organisations. The focus on the not-for-profit associations is based on an incremental approach; nonetheless, close to 90% of the non profit sector in the EU is made of non-profit associations, i.e. around 3 million 800 thousand associations. The cross border aspect is



due to the absence or big diversity of rules in member states for the cross border operations of the associations. The idea behind the ECBA is to give the option to those associations which need it to use this new form to bypass the existing barriers and to engage in cross border activities. Through the proposal, Member States create a new additional form in their national legal order, the ECBA, which will allow not-for-profit associations to establish a legal personality only once in the EU in the Member State of their choice, and once this legal personality is registered, it will be recognised in all member states thanks to the single ECBA certificate. There is also a non-discrimination clause to make sure that this legal form is not treated differently than already existing national associations. Now the proposal is in the hands of the co-legislators, Parliament and Council.

The moderator then asked Mr Raedler from DG TAXUD whether he could present the Council Recommendation on the better implementation of the non discrimination principle in cross border philanthropy and how it can be effective to remove current barriers.

Albert Raedler, Policy Officer in DG TAXUD of the European Commission

Along with the publication of the Commission Proposal for a Council recommendation on developing social economy frameworks, the Commission published two staff working documents , one on framework conditions and the other on non discriminatory treatment in Member States. These working documents are not political documents, but technical ones on how cross border donations should be treated under the EU Treaties. And on that, cross border donations should be treated equally as the national donations. But there are still administrative burdens that hamper that. It could help if this staff working document were also published in other languages. EU infringement procedures could be used to put pressure on Member States that do not comply with the principles of non-discrimination. DG TAXUD Planned webinars with national administrations with EMPL on mutual learning; however, much more cannot be done, as taxation is a national competence.

Mr de Poorter asked the European Parliament Rapporteur on the ECBA if he could outline the current discussions at the European Parliament, and his expectations for the adoption.

Sergey Lagodinsky, JURI Committee of the European Parliament, rapporteur of the ECBA directive

The draft report on the proposal is to be presented on the 29th November in the JURI Committee, probably with a Committee vote by the end of January and a vote by the Plenary in February or March. The aim is to have the position of the Parliament (and hopefully of the Council) before the European elections, and to have the final text finalised

in the trilogue by the Polish Presidency (January-June 2025), as no big expectations are in the Hungarian Presidency (July-December 2024). The rapporteur supports the idea of a directive instead of a regulation in order to make it pass, and the points on freedom of movement and the principle of non-discrimination are already revolutionary. There are still some definitions to be agreed upon, including on political activities, taxation and financial treatment. It is important to mobilise and make the Member States understand that the legislation has no threats, but only opportunities. This call comes from the fact that already Germany's regions (*Länder*) are very skeptical of the proposal.

The moderator asked Ms Peñalosa what is the perspective of the foundations and philanthropy on the ECBA and on the social economy package and efforts to overcome barriers to cross-border philanthropy. He also enquired whether the proposal will contribute to addressing current challenges from a national perspective.

Isabel Peñalosa, Director of Institutional Relations, Consulting and Communication, Asociación Española de Fundaciones

The ECBA Proposal has been positively received by practitioners, philanthropy and foundations. From a national perspective, ECBA gives ideas on how to improve national laws on public benefit associations. As national foundations, the directive is a welcomed tool to develop common projects, and inspire the next steps needed for foundations to operate freely across borders. Taxation is not covered, but the Council recommendation on the social economy framework is a good step. Overall, the ECBA proposal will increase awareness of the importance of civil society.

Finally, Brikena Xhomaqi was asked as representative of the education sector, which is very much involved in cross border activities, as well as of wider civil society, her perspective on the proposal for an ECBA. and what changes it would bring.

Brikena Xhomaqi, Director of Lifelong Learning Platform

The education sector is clearly already cooperating across borders: Erasmus+ is the flagship programme in promoting cooperation in education in the EU and beyond. The directive is therefore welcome, also as a way to make the Member States realise that many activities are already happening across borders and need the current barriers to be overcome. However, it is important to see how the Member States will implement the directive and how it will work in reality, as there is the risk of a big administrative burden, also for those organisations that would like to convert from a national legal form to ECBA form: on that, EU support would be welcome. Many organizations represented in the platform had difficulties in registering and transferring after Brexit. Furthermore, many non-EU elected representatives are represented in the platform: it is crucial that in the



directive there is no discrimination between EU and non-EU members, for instance on the integration of the Western Balkans, which are more and more integrated in European associations but are not still in the EU.

Gabriella Civico, President of Civil Society Europe concluded the event summarising also the discussions.

The idea of a European recognition of civil society has been existing at least since the 90s, and never before has it been so close to be achieved. It can bring forward a more positive narrative on civil society organisations and their contribution for Europe. And there is so much more civil society could do with the right tools. For instance, ECBA would open important possibilities to act in case of disaster relief, as it would greatly facilitate the operations for volunteer associations which could work together across borders when emergencies strike. Therefore, it is important to avoid restrictions to the action of civil society coming from governments. Civil society has to mobilise to make good progress on this before the elections, and to make governments see that this proposal will be of important benefit for people in Europe.