

## A Single Market for public good

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### Report

**Hanna Surmatz, Head of Policy at Philea**, set the scene on barriers to the activity of civil society organisations, such as discrimination regarding taxation issues; more regulations including foreign funding restrictions; laws restricting political activities; difficulties encountered for registration and merging; difficulties in opening bank accounts and transferring funds across borders.

This shows that there is still no level playing field in the internal market for the public benefit sector compared to companies. However, there are some promising policy developments at European level, including initiatives adopted in the context of the Social Economy Action Plan such as the Council recommendation on developing social economy framework conditions and the European Commission Proposal to facilitate the cross-border activities of non-profit associations ( ECBA Proposal). The two Staff Working Documents on ‘Relevant taxation frameworks for social economy entities’ and ‘Non-discriminatory taxation of charitable organisations and their donors’ are also relevant for this debate.

**Michael Ristaniemi, Legal and Policy Officer at DG GROW**, spoke about the Proposal on European Cross-border Associations released by the Commission on 5 September 2023 with the objective of improving the functioning of the single market. The directive introduces an additional legal form of European cross-border association (ECBA) in Member States’ national legal systems. Thanks to the single ECBA certificate, an ECBA will be recognised automatically and will be able to engage in activities in all Member States, without issues of double-registration. He explains that, although the Proposal focuses on associations, as they represent 90 per cent of the non-profit sector, foundations are not excluded from the Proposal since they can also become members of an ECBA. The digital aspects of the Proposal are also worth mentioning since: the application for registration of an ECBA

must be offered also as a digital procedure; Member State administrative cooperation takes place digitally; and Member States should publish the registration procedure and further information about ECBAAs on the EU Single Digital Gateway.

**Herlinde Vanhooydonck, European Parliament Legal Adviser to the JURI Committee on the ECBA Proposal**, explained the origins of the Proposal. The European Parliament resolution on a statute for European cross-border associations and non-profit organisations in February 2022 had proposed 2 initiatives: a Council regulation establishing a statute for a European Association and a Directive establishing common minimum standards for non-profit organisations in the EU. She reported on a good alignment between the Commission and the Parliament, as well as between different political groups in the Parliament, adding that the Parliament Plenary is expected to adopt the JURI Committee Report on the Proposal with a large majority in mid-March. The creation of a dedicated initiative for foundations could be considered as a next step if the ECBA moves ahead.

**Giuseppe Guerini, rapporteur for the EESC opinion on the ECBA Proposal**, stressed that the EESC largely welcomed the Proposal. In the EU there are 24 different legal regimes concerning non-profit associations, in some cases there is also more regulatory variety on a regional basis. The existence in the EU of 3.8 million non-profit organisations, contributing to almost 3 percent of Europe's GDP, demonstrates that the single market is not a technical issue, but a social and political construction, where a social dimension is also needed. The internal market is about economic competition, but also competition for a better quality of life. In this respect, the non-profit sector, as a fundamental part of our community, needs dedicated regulation to be part of the single market.

**Mathieu de Poorter, President of the European Council of Associations of General Interest (CEDAG), and also speaking on behalf of Social Services Europe (SSE)**, welcomed the Proposal and the pragmatic approach taken by the Commission. CEDAG and SSE appreciate that the Directive provides flexibility in national contexts, respecting their differences. The use of the Single Digital Gateway is deemed useful to ensure transparency. He then stressed that the Proposal should in no way create inconsistencies in the operating, and access to funding between associations and foundations and mutual benefit societies. The implementation of the Directive should also provide safeguard requirements for quality social services and the provision of other services of general interest. The Directive does not cover them expressly, although mutual benefit societies are implicitly included when they take the form of non-profit associations. It will be important to move forward on the Proposal at Council level and, in the future, also consider the creation of similar initiatives for mutual societies and foundations.

**Albert Raedler, Policy Officer at DG TAXUD** noted that taxation aspects are not included in the ECBA Proposal. As non-profit entities, the tax treatment of ECBAAs will be regulated according to national tax law. Donations to resident or non-resident ECBAAs may be accompanied by a tax benefit according to national tax law. Generally, national tax laws provide tax incentives for donors as well as non-profit organisations, only if the non-profit provides a benefit to the general public and pursues

a worthy purpose as defined by national tax laws. The choice of what is considered a worthy purpose, as well as potential additional requirements, is made at Member State level.

Given the difficulties to donate across borders in a tax effective way – despite the applicability of the non-discrimination principle as recognised by the European Court of Justice – the Commission has made a Proposal for a Council recommendation on developing social economy framework conditions, which calls on Member States to implement the non-discrimination principle with regards to cross border philanthropy. One of the recommendations is to adopt a standardised multilingual version of an e-certificate for tax residency. He notes that it is up to Member States to proceed on these recommendations.

**Carlotta Besozzi, Director at Civil Society Europe**, highlighted that civil society organisations cannot work without support through donations from public and private funding. Diversity of funding and independence of organisations is very important. In the future, there should be a recommendation in the area of recognition of a European public benefit status, which should be as broad as possible.

In addition to the ECBA Proposal, which civil society welcomes and which will hopefully also help set benchmarks at national level, it will also be important to tackle the issue of taxation, where many obstacles hamper the activity of associations and foundations. Finally, it is necessary to proceed on general guidelines for non-profit organisations, as proposed in the European Parliament original resolution.

**Mathieu de Poorter, (CEDAG and SEE), concluded the session.** He stressed the need to also mobilise non-profits around the important agenda to create a single market for public benefit organisations and non-profits outside of the EU bubble. Complementary actions are needed for:

- a swift adoption of the ECBA Proposal by the Council of the EU;
- the recognition of all non-profit organisations including foundations;
- the implementation of the Council recommendation on developing social economy framework conditions;
- the implementation of the principle of non-discrimination;
- the facilitation of cross border philanthropy;
- public procurement and state aid rules which take better into account the specificities of non-profit organisations and the social economy.

## **Recommendations**

The following recommendations emerged from the workshop and were presented in the closing panel of the Civil Society Week 2024:

1. Move ahead to create a single market for public goods, with a swift adoption of the ECBA Proposal by the Council of the EU (see the call of 19 Member States in the Liège roadmap for the Social Economy

in the EU), as an important step towards enabling civil society space and developing a similar legislative initiative to ease cross-border work for foundations and mutual societies.

2. Implement the Social Economy Council Recommendation at national level: guarantee that the non-discrimination principle with regard to taxation applies to cross-border philanthropy in a meaningful way.
3. Work towards a potential future European public benefit status.

The complete **recording** of the session is accessible [here](#).