Foundations and philanthropic actors

Social Economy Action Plan
1. Introduction

As representatives of the philanthropy and foundation sector (via the joint Dafne & EFC Philanthropy Advocacy initiative), we welcome the opportunity to provide philanthropy-specific input into the European Commission Work Programme 2021 and its envisaged Action Plan for the Social Economy in the fourth quarter of 2021 “to enhance social investment, support social economy actors and social enterprises to start-up, scale-up, innovate and create jobs”. The Action Plan is a central part of the Commission’s Fair Economy Package, that aims at implementing the policy objective for 2019-2024 “An Economy that works for people”.

We have also contributed to the Social Economy Europe (SEE) policy papers in the past (EFC is a member of Social Economy Europe) and their very recent policy paper on the Social Economy Action plan, which is available at the SEE website here.

Following the recent adoption of the new European Disability Strategy 2021-2020, we would like to recall that social economy actors are traditionally more committed to the labour integration of people with disabilities (in some countries they employ up to 3 times more workers with disabilities than traditional enterprises) and that foundations are important contributors to that effect. In line with the European institutions’ approach to mainstreaming disability in all areas of policy and action, the EFC believes that the forthcoming Action Plan on Social Economy is a great opportunity to further recognise and raise visibility about the role and potential that the social economy sector as a whole, and the philanthropy sector in particular, has to generate quality employment for people with disabilities (15% of EU’s population) and promote their social and labour inclusion.

With this Philanthropy Advocacy (Dafne & EFC initiative) paper, we wish to highlight the specific entry points for philanthropy and foundations into the Social Economy Action Plan.

Foundations and philanthropic actors are acting in this sphere with a dual entry:

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1 https://eur-lex.europa.eu/resource.html?uri=cellar%3A91ce5c0f-12b6-11eb-9a54-01aa75ed71a1.0001.02/DOC_1&format=PDF
3 The future of EU policies for the social economy: Towards a European Action Plan,
• As social economy actors in their own right
• As funders/investors and partners of social economy actors

Foundations and philanthropic organisations hence play a role for the European social economy with a wide spectrum of activities from regranting to grass-root level organizations all the way to venture philanthropy, from innovative grantmaking to impact investing and social finance.

2.

The foundation and philanthropy sector in Europe

In ways big and small, foundations and philanthropic organisations are helping to make life better for the people in Europe and around the world. Europe is one of the most generous continents in the world, home to the largest number of public-benefit foundations. A majority of these were established in the last three decades – a result of Europe’s growing stability, prosperity, and solidarity. The philanthropic sector continues to demonstrate dynamic growth today.

Philanthropy refers to foundations and philanthropic organisations (which can take different legal forms), corporate funders, and individuals using their own financial resources strategically for the public good. Philanthropy supports programmes from which we all benefit, in areas such as education, health, science, environment, culture and international development. It works alongside civil society organisations, complementing government and private sector initiatives. A unique characteristic of philanthropy is its ability to respond in real-time to the critical challenges facing our societies, while simultaneously taking a longer-term view.

The economic contribution of philanthropy is significant. There are more than 147,000 donors and foundations in Europe that have an accumulated annual giving of nearly €60 billion, based on data for 18 European countries provided in 2015; the current figure is likely to be considerably higher. The combined assets of public-benefit foundations in 17 European countries is valued at over €511 billion. According to the 2020 report “Taxation and Philanthropy” by the OECD and the University of Geneva, based on a cross-country analysis, the non-profit sector typically contributes between 4.5 and 5.5% of GDP. Furthermore, the European civil society sector engages an
estimated **28.3 million full-time equivalent workers**, both paid and as volunteers, across the 27 EU Member States, the UK and Norway. Thus, the European civil society sector is the third-largest employer in Europe after manufacturing and trade.

The foundation sector is very diverse. Some foundations are large social enterprises. In several European countries foundations also run social businesses such as hospitals, homes for the elderly or other people in need, and cultural organisations such as theatres/operas/cultural heritages. Organisations active in the field of climate and environment are also often established as foundations. Some foundations are only grant-making, or only running their own operations, but the majority engage in a mixture of both. They have their own sources of income, whether or not this takes the form of an endowment. Several foundations also receive public funding (local, national, EU, Norwegian grants) which they sometimes re-grant. Many foundations and philanthropic organisations also support and invest in other actors in the social economy, via grants or capacity-building initiatives, for example, or sometimes via allocation of their assets.

Philanthropic organisations are embedded in local communities across Europe, while also being involved in regional, national and international endeavours. The diversity of the sector in Europe allows for fresh ways of thinking and doing, capitalising on different models, lenses and geographic perspectives. While working alongside corporations and governments, foundations can also support less popular causes, take greater risks than other sectors, and invest in initiatives where social good, rather than financial profit, is the primary goal. Philanthropic funding offers civil society significant flexibility, allowing them to adapt to changing conditions and needs.

Foundations of all sizes across Europe are actively stepping up to meet the demands of the pandemic and foster solidarity in Europe. The coronavirus crisis has mobilised an unprecedented response from the global philanthropic community. Recent analysis identified combined commitments from European philanthropy at almost **€1.1billion by May 2020**.

Philanthropic actors and foundations promote ideas and innovation, using their ability to encourage and support new thinking and approaches to effect positive change in ways that complement public action. They can pilot innovative programmes and share successful initiatives that governments can take up and scale. They encourage civic engagement and empower the voice of European citizens.

**Philanthropic organisations work increasingly across borders**, in collaboration with partners from all over Europe, despite the existence of legal barriers to cross-border philanthropy. The defining challenges of our age, such as the climate crisis, poverty, conflict and migration, the digital transformation, and advancing medical research and public health, do not stop at borders. A successful response to each requires significant cooperation across borders.

Europe needs to mobilise financial, human and non-financial resources to implement its ambitious reforms embodied in the European Green Deal: the new push for democracy; gender equality; an economy that works for people; and making Europe fit for the digital age. Philanthropy is an important vehicle to mobilise these resources. People donate money because they care; they establish foundations and invest their legacies because they want to help their local community
thrive; individuals volunteer because they want to help those in need. In the age of disinformation and mutual distrust, it is important to facilitate horizontal connections and increase citizens’ engagement and giving in Europe.

With extremism, radicalisation, disinformation and discrimination on the rise, the protection of fundamental rights, the rule of law and democracy has never been more urgent. These are core European values and their full respect is a basic condition for building citizens’ trust in the Union. European philanthropy holds a central role in supporting civil society and other actors in building community cohesion and empowering grass-roots mobilisation. Philanthropy is a key enabler of active citizenship.

3. Barriers to foundation and philanthropy cross-border work

Despite the fact that the cross-border engagement of foundations and funders is growing, the legal, fiscal and administrative environment for cross-border philanthropy even within the European Union, is still far from satisfactory. While the European Court of Justice (ECJ) recognised the application of the free movement of capital to philanthropic funds along with ensuring that the principle of non-discrimination applies to donors and foundations in the EU, this does not yet work in practice, and we even see new barriers being introduced. These include so-called foreign agent laws (in Hungary, for example) and overly tight money laundering or terrorism financing policies. Philanthropic organisations are challenged by various legal, administrative, and fiscal barriers which have been estimated in the feasibility study on the European Foundation Statute some 10 years ago to amount € 90,000,000 to € 101,700,000 per year.

Our legal analysis carried out in collaboration with national foundation law experts revealed the following barriers to cross-border work:
Recognition of Foreign EU-based Foundations

Philanthropic organisations sometimes need to register or create a branch before they are able to operate in another country in Europe. The legal personality is not always recognised abroad.

Cross-Border Merger of Foundations

Philanthropic entities cannot merge across borders as companies can.

Cross-Border Transfer of the Seat

There is no legal provision in most countries for shifting a philanthropic organisation’s headquarters across borders, so this process entails a high degree of legal uncertainty.

Restrictions on Foreign Funding

Whereas philanthropic funding should flow freely according to the EU principle of free movement of capital within the internal market, there is a new worrying phenomenon of so-called foreign funding/foreign agent restrictions being introduced, for example in Hungary.

Discrimination of cross-border philanthropy and complex procedures

Some governments have not yet introduced the non-discrimination principle and the free flow of capital but continue to discriminate comparable foreign EU-based public-benefit organisations and their donors from local ones. There are still rules in place which provide that non-resident foundations (and their donors) are denied all or some tax benefits which domestic legislators have granted to resident foundations (and their donors). But even if discrimination is formally removed, rules and processes are often so complex, costly and lengthy that significant barriers to cross-border philanthropic action remain.

Banks are de-risking – overregulation of money laundering and terrorism financing

Foundations and funders have increasingly reported that it is becoming more difficult to transfer philanthropic money across borders due to the fact that banks are applying a disproportionately rigid approach to money laundering and terrorism financing prevention. In some instances, even opening a bank account is becoming difficult for philanthropic organisations.

Complex Impact Investing and Asset Administration rules (not always cross-border context)

Some national laws require a preservation of the value of the endowment – and mission-related investment or asset allocation in social enterprises do not always generate the required returns (or are considered too risky as investments) – and some national laws do not permit the giving of loans by public-benefit organisations or any other programme activity that generates income on the programme side or giving grants to social businesses.
4.

Key recommendations to enable European philanthropy and the work of foundations

We also call for the Social Economy Action Plan to consider the following policy actions to help mobilise more private resources for public good and the social economy:

**Recommendation 1: Recognise philanthropy and engage with philanthropy**

- Improve the visibility of foundations and philanthropic organisations and their contribution to society, Europe and the SGDs.
- Work towards meaningful implementation of civil dialogue (Article 11) and ensure that the philanthropy sector is consulted on EU and national policy crafting.
- Include organised philanthropy into the Conference on the Future of Europe, since their contribution will be vital to shape the Europe of the future.

**Recommendation 2: Facilitate cross-border philanthropy**

Solutions to help overcome barriers to cross-border philanthropy which should be considered in the Social Economy Action Plan include the following:

1. Better implementation of the non-discrimination principle/overcoming barriers to tax effective philanthropy via a code of conduct. This is important to ease tax-effective cross-border donations from individual and corporate donors, and ease their tax-effective asset allocation/investment of the endowment.
2. The creation of a supranational legal form and/or supranational recognition
3. Redress bank de-risking
4. The European Commission must act where national laws that hamper cross-border philanthropy work are in conflict with EU law.

In more detail:

1. **Better implementation of the non-discrimination principle/code of conduct**

The philanthropic sector would benefit from better implementation of the **non-discrimination principle**, which does not yet fully apply to public-benefit organisations and their donors. It is important to ease tax effective cross-border donation from individual and corporate donors to social economy actors, as well as ease their tax-effective asset allocation/investment of the endowment into social economy actors. Some governments have not yet introduced the non-discrimination principle and the free flow of capital, but continue to discriminate comparable foreign EU-based public-benefit organisations and their donors from local ones. Even where such discrimination has been formally removed, the rules and practices philanthropic across must follow to be considered comparable are very complex, costly and legally uncertain. This complexity creates significant and widespread problems, and we call on the Commission to consider the following solutions:

While a multilateral treaty might not be a realistic option, **soft law approaches could be considered.** For example, the **2017 Code of Conduct approach to withholding tax procedures** could be extended and adapted to EU law-based claims of withholding tax discrimination, with the aim of simplifying and streamlining the comparability test for such EU law-based claims. A code of conduct could be considered for guiding the Member States to grant mutual recognition to foreign EU-based public-benefit organisations and their donors. The EU could call on the Member States to simplify procedures. Moreover, we recommend shifting how the notion of **comparability is tested and taking a more functional approach.** One potential approach could be for the Member States to base comparability on a set of common principles around a public-benefit concept, rather than requiring comparability in all details; please see the link below for a specific paper on this topic.

2. The creation of a supranational legal form or supranational recognition

Philanthropy Advocacy calls on the Commission to consider the development of a supranational legal form or a supranational legal recognition for foundations, associations and mutual societies to overcome existing barriers for those actors when acting across borders.

2.1. Supranational legal form

Philanthropic organisations and foundations would benefit from the creation of a supranational legal form which would be recognised across the EU by using one legal tool and a governing structure which would be comparable in all Member States, and which would give greater legal certainty and generate fewer compliance costs. A European Statute would facilitate the pooling and scaling up of foundations’ expertise and resources. Having a recognisable European form for foundations/public-benefit organisations would also stimulate new cross-border initiatives and donations. Member States' economies are likely to see more funding become available for important fields such as research and education, social and health services, culture and the protection of the environment.

2.2. Supranational legal recognition

We also ask the Commission to consider introducing supranational legal recognition for associations, foundations, and mutual societies to overcome existing barriers for those actors when acting across borders. With European legal recognition, foundations, associations and mutual societies would benefit from being recognised in other Member States without having to register an office or branch. They could also move their seat across borders and merge across borders, which would give greater legal certainty and generate fewer compliance costs. Providing European legal recognition could also (if a tax component was included) stimulate cross-border initiatives and donations (in the case of foundations and associations).

3. Redress bank de-risking

Foundations and philanthropic actors must be able to operate cross-border and have access to formal banking channels to transfer funds across borders. Policy should be developed to reduce bank de-risking philanthropic flows and cartable activities. Money laundering and terrorism financing prevention policy must be risk-based and proportionate and must not unduly restrict legitimate philanthropic activity.

4. The European Commission to act where national laws that hamper cross-border philanthropy

The European Commission has a role to play to ensure that national laws are not in conflict with EU law and should start infringement procedures where this appears to be the case, as it did in the case of the Hungarian foreign funding restrictions.
Recommendation 3: Promote an overall enabling space for philanthropy

- Public authorities at local, regional, national and EU level are directly involved in the regulation and promotion of philanthropy. National laws and regulation, as well as EU action, has to be compatible with fundamental rights and EU law. In the case of national law being in breach with EU law, infringement procedures and other protection mechanisms should be considered.
- Money laundering and terrorism financing prevention policy must be risk-based and proportionate and must not unduly restrict legitimate philanthropic activity.
- We call on a fairer VAT deal for public-benefit organisations, since they often end up being treated as the final consumer.
- In the context of the rule of law framework, the EC could consider including civil society space more systematically.

Recommendation 4: Co-grant and Co-invest for public good and civil society

The EU could develop measures and incentives to stimulate more collaboration among the philanthropy.foundation sector and public sector, in order to move EU policy priorities forward, for example, through InvestEU. We also ask the Commission to call for national measures to ease/stimulate more foundation engagement in impact investing on the programme side, and more mission-related investments on the asset allocation side.

1. **Stimulate co-granting and co-investment of philanthropic actors/endowments via InvestEU and other tools**

   Foundations and philanthropic organisations can partner to co-grant and co-invest into EU policy areas. However, the EU could facilitate a more enabling environment for such action.

   Some national laws require preservation of the value of the endowment of a foundation – whereas mission-related investment or investment in social enterprises/small start-ups do not always generate the required returns (or are considered too risky as investments) – and some national laws do not permit the giving of loans by public-benefit organisations or any other programme activity that generates income on the programme side. EU and national measures to ease/stimulate more foundation engagement in impact investing into social business and more mission-related investments could be considered.

   Philanthropic organisations have the potential to come in and **co-invest/partner within the InvestEU instrument in any of the four windows**, if suitable financial products were designed:
   - Social Investment and Skills policy
   - Sustainable infrastructure
   - Research, innovation and digitalisation, and,
   - SMEs
Foundations could also provide different support methods for social economy organisations. EU instruments could potentially offer a complementary mix between non-financial support, financial support via programme side or asset allocation/investment money.

The EU guarantee should also be used to design financial products with a lower risk to make it more attractive for foundations to support social economy enterprises and their scale-up.

Mission-related asset allocation should be further promoted as a means to boost the development of the Social Economy in Europe, given their well demonstrated multiplying effect. Social finance, with the right instruments behind it, can have a huge impact in addressing the worse effects of the crisis and boost the growth of a strong social economy sector that can help us achieve a fair and green transition in the future.

2. **Mobilise foundations and social economy’s potential for a successful implementation of the EU’s recovery policies and EU policy priority areas:**

Foundations and other social economy organisations can be leveraged to accelerate Europe’s recovery, and are an essential part of Europe’s safety net in times of crisis. Therefore, foundations and the social economy should be taken into account by EU Institutions, Member States and all public authorities in the design of recovery policies.

- Foundations and wider civil society must be consulted in the design of national recovery and resilience plans.
- Governments should also consider foundations and philanthropic organisations as partners/co-investors and implementers of the national recovery and resilience plans.
- Where needed, foundations/philanthropic organisations should also benefit from national and EU level recovery policies - Member States should be invited to invest in social economy projects.
- InvestEU should stimulate more investments into the social economy and other public-benefit projects within the four windows outlined above.

3. **Involve foundations around the potentials of InvestEU**

It is important to ensure that foundations and philanthropic investors are aware of new opportunities around InvestEU and other programmes and can make the most of them, not only as co-funders/partners, but also as recipients of investment. The InvestEU Advisory Hub and the InvestEU portal should provide specific and tailored support to philanthropic organisations and other social economy actors who are aiming to finance their projects or become involved as co-funders.
As an additional tool, national advisory hubs could be established to complement EU funding with national funding and promote partnerships among impact investors, foundations, ethical finance institutions, regional financiers, and other relevant actors.

In order to ensure decisions are taken with good knowledge of philanthropy’s activity within the four policy windows, foundation representatives should be appointed as members of the InvestEU Investment Committee.

Support and further engagement around co-funding/co-granting activities through capacity-building, training, visibility, and awareness-raising activities should also be considered.

5. Coordination, implementation, and follow-up of the Action Plan for the Social Economy


The implementation of the Action Plan should be assessed on a yearly basis by the Commission Expert Group on Social Economy and social enterprises (GECES), as promoting social economy entrepreneurship is a permanent effort. As with supporting SMEs or the inclusion of people with disabilities, the Social Economy Action Plan should be renewed every five years.
2. The European Commission Expert Group on Social Economy and social enterprises should be renewed at the end of its mandate

6. Background on EU policies for the social economy and philanthropy

The EU has recognised and promoted the development of social economy actors since its very foundation. The Treaty of Rome (1957) establishing the European Economic Community recognises cooperative societies in its Article 58 (current Article 54 of the TFEU). However, the EU treaties have consistently failed in recognising the diversity of non-profit driven or limited-profitability driven organisations operating in the EU.

In 1989 the Commission published its first communication on social economy Business in the social economy sector: Europe’s frontier free market⁴, focusing on cooperatives, mutuals and non-profit organisations. The communication identified and explored the obstacles faced by social economy enterprises to operate in the Single Market on equal footing with other company forms, planned to “ensure they (social economy enterprises and organisations) will enjoy the environment and resources which the community intends to make available to any enterprise”, and engaged the Commission to establish a dialogue on EU policies with the representatives of the sector.

In 2003, the Statute for a European Cooperative Society⁵ was adopted. The European Commission proposal on a Statute for a European Mutual (1992), a European Association (1992) and European Foundation (2012), were rejected by the Council. The Foundation Statute was only rejected in 2015.

The Small Business Act\(^6\) (2008) and the Single Market Act\(^7\) (2011) recognised and included actions to promote the social economy, as reflected in the Single Market Act:

*In order to expand and meet its objectives, the social economy sector in the Single Market should have at their disposal legal models adapted to their needs. The European cooperative sector, for example, is more vibrant than ever although the slow take-up of the Statute for a European Cooperative Society must be looked into. Mutual societies operate in sectors of key importance to citizens (health, banking, insurance, etc.) but they hardly ever provide their services in more than one Member State. Nonetheless, with a 25% share of the insurance market and 70% of the total number of undertakings in the industry, they cannot be forgotten by the Single Market. Foundations make a strong contribution to the financing of innovative initiatives of general interest. However, they still face difficulties in establishing themselves in other Member States or pooling their assets on a cross-border basis. In order to overcome these difficulties, the Commission will present a proposal for a Regulation establishing a European Foundation Statute.*

In 2011, the Commission adopted its **Social Business Initiative\(^8\)** focusing on social enterprises as an operator of the social economy, a policy initiative that has led to important developments for the social economy and social enterprises, as well as to the creation of the European Commission Expert Group on Social Economy and social enterprises (GECES)\(^9\), first created in 2011 and renewed in 2018 with a mandate until 2024. In 2015, the Council of the European Union adopted its Conclusions on **The promotion of the social economy as a key driver of economic and social development in Europe**\(^10\).

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\(^8\) [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52011DC0682](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52011DC0682)


ANNEX I
List of resources

OUR OWN SECTOR RESOURCES


Annex 9 – short PA paper on potential solutions to facilitate tax effective cross-border philanthropy via a code of conduct.

OTHER SOURCES:
Annex 10 – EESC Report European Philanthropy: an untapped potential :

Annex 11 – European Statute for Social and Solidarity Based Enterprise:

Annex 12– Feasibility study on a European Foundation Statue :


Annex 14
https://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetailDoc&id=38459&no=1

Philanthropy Advocacy (PA) is a joint project of Donors and Foundations Networks in Europe (Dafne) and European Foundation Centre (EFC) acting as a monitoring, legal analysis and policy engagement hub for European philanthropy. Institutional philanthropy in Europe includes more than 147,000 philanthropic organisations with an accumulated annual giving of nearly 60 billion euros. Besides funding and investments, these organisations combine an outstanding set of expertise, deep knowledge and excellent stakeholder networks in the areas of their activities that can be leveraged significantly with the appropriate framework conditions.

The main objective of the Philanthropy Advocacy is to promote an enabling environment by implementing the European Philanthropy Manifesto. The Manifesto recommendations include: a better recognition of philanthropy in EU legislation as well as at national level; supports cross-border philanthropy across the EU; and decreases today’s barriers for philanthropy in order to leverage the impact of donors’ and foundations’ spending of private resources for public good.

European Transparency register of Dafne: 075961340619-25
European Transparency register of EFC: 78855711571-12

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