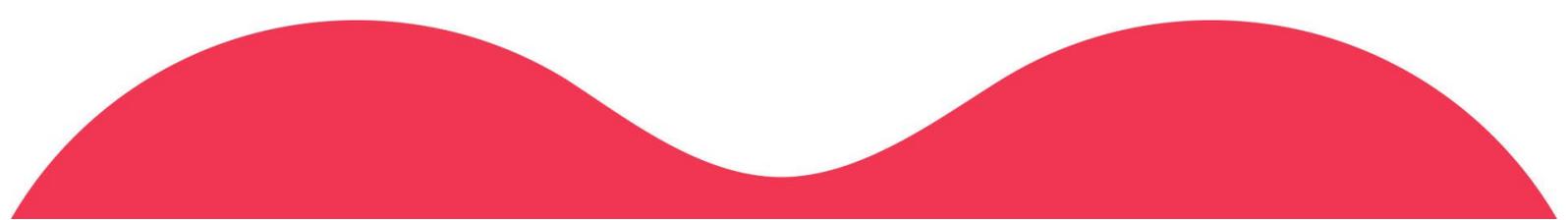


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Philea welcomes EP JURI report as a “game changer” for civil society, including philanthropy

Position paper



Philea, alongside the wider civil society and social economy, welcomes the European Parliament (EP) report, [“A statute for European cross-border associations and non-profit organisations”](#), which will be voted on, in the plenary on 15 February 2022, as an important contribution towards strengthening the recognition and operating space for non-profit organisations (NPOs), including philanthropy.

We fully agree with the rapporteur, MEP Sergey Lagodinsky, when he stated at the end of last year that this report *“marks an important step towards better representation of civil society at EU level. While companies could incorporate themselves for decades, civil society still lacks an appropriate legal form. Today's proposal of a European Association and minimum standards for non-profits in the member states could be a game changer, empowering civil society all over Europe.”*

Philea represents more than 10,000 foundations across 30 countries in Europe thanks to its membership of 250 foundations and 29 national associations of donors. Our purpose is to harness the immense multidimensional potential of philanthropy to address the biggest challenges our society is facing today:

- Accelerating climate change challenging planetary boundaries
- Polarisation undermining our democratic system
- Increasing inequalities and the need to ensure that no one is left behind

Philanthropy and wider civil society, however, need an enabling environment to unleash their full potential. As Philea we map and analyse the operating space for philanthropy in a context of wider civil society and observe that regulation and the wider political climate are increasingly challenging the space for civil society and philanthropic actors. A new analysis across 40 countries in Europe initiated by Philea last year, [“Comparative Highlights of Foundation Laws”](#), confirms that barriers to philanthropy and foundations' cross-border work remain an issue (see Annex).

Cross-border activities of NPOs, including philanthropic actors, remain complex inside the Single Market. The current administrative and fiscal treatment of the cross-border activities results in higher transaction costs than at a national level. Despite numerous calls and attempts, an appropriate European policy framework for non-profit organisations, such as associations and foundations, similar to that of their for-profit counterparts is still lacking.



Hence, we very much welcome the fact that the EP report acknowledges the important role that the sector plays and that it stresses the need to overcome the legal and administrative burdens facing non-profit organisations' (e.g., associations and foundations), preventing them from fully benefiting from the EU Single Market and contributing to the public benefit. Even if the [freedom of movement and establishment is embedded in EU Treaties](#), the fundamental right of association is still not supported and promoted in several Member States.

We are confident that the European Parliament will support the report and its proposals, and we call for a close dialogue with civil society, including philanthropy, to discuss a follow up to this report and its translation into policy and legislation in line with the freedom of association.

The EP report should also be seen within the context of the December European Commission multi-annual [Social Economy Action Plan](#) to which we already contributed (see our Philea [contribution to the Social Economy Action Plan](#)) and should be considered in this context. While not all social economy actors are NPOs and not all NPOs are social economy actors, there are strong links and overlap in scope also concerning some policy recommendations:

1. On the introduction of a new supranational legal form of a European Association:
 - We clearly support the call for creating European supranational legal forms for the NPO sector, which would enable the setting up of truly European public-benefit organisations, mainly governed by EU law and immediately recognised in all Member States, which would help overcome existing barriers and stimulate more truly European public-benefit initiatives.
 - We consider that **next to a European Association Statute, a European Foundation Statute should be created**. With the Association statute, foundations and philanthropic organisations will be able to create a European Association. With a European Foundation Statute, truly European foundations, as purpose-and-asset-driven, independent public-benefit organisations, could be created (noting that the 2012 European Foundation Statute proposal was withdrawn in 2015 since Member States could not agree unanimously on it).
 - Overall, we note that new **European legal forms should be attractive and accessible instruments** that will be picked up by the sector and citizens to operate more easily across borders. Unnecessary red tape and



disproportionate reporting and supervision should be avoided. Involvement of representatives of civil society organisations in any European body should be considered.

2. On the common set of minimum standards for NPOs in the EU:

- We welcome minimum standards that guide Member States to ensure **an enabling environment for NPOs, including philanthropy, by correct application of the freedom of association and freedom of expression and free flow of capital**. We have seen that Member States have issued national NPO laws that are in clear conflict with EU law, and minimum standards could ensure that certain standards and fundamental rights are kept.
- We note that within Member States, NPOs can take different organisational forms such as associations as membership-based organisations and foundations as purpose- and capital/assets-driven organisations. Minimum standards, in particular with regard to establishment, governance, reporting and involvement of external authorities, must take this into account and **offer for sufficient flexibility (avoid one-size-fits-all) and provide for enabling conditions in line with the freedom of association**.
- We clearly support that the draft Directive sets out to **overcome barriers to cross-border philanthropy and NPO work** such as enabling better recognition of foreign EU-based organisations, enabling the move of the seat across borders, and merging across borders.
- We also welcome that the **report considers that rules on combating money laundering and terrorist financing must be applied in accordance with the principles of necessity and proportionality**, particularly regarding risk-assessment obligations under international and EU law.
- Finally, the report acknowledges the application of the free movement of capital to philanthropic flows, along with ensuring that the principle of non-discrimination applies to donors and public-benefit organisations in the EU, while examining tax treatment of **public-benefit entities and their donors**. We are of the opinion that the Directive proposal could link efforts to reach a better implementation of the non-discrimination principle with regard to philanthropy taxation, by for example calling for a **code of conduct or present a blueprint/guidance for how national philanthropy tax laws**



could better implement the non-discrimination principle with regard to the tax treatment of foreign EU-based public benefit organisations and their donors.

The report is an important stepping stone towards a Single Market for Philanthropy, which we have been calling for in our [Manifesto](#) and our contribution to the Social Economy Action Plan. Better recognition of, and dialogue with the sector, facilitation of cross-border action, enabling and protecting the space and co-granting and co-investing for the public good in Europe are our 4 key recommendations. Philea, alongside our civil society and social economy colleagues, consider that this report – also in the context of the recent EU Action Plan for Social Economy – can be a real game changer for enabling philanthropy/civil society and social economy work. The sector wants to be closely involved in further developing these policy recommendations and proposals.

We believe that a SINGLE MARKET for philanthropy will help **philanthropy to contribute even more and better in facing the multiple crises with which societies are grappling today.**



ANNEX: List of barriers to philanthropic organisations/foundations:

Recognition of Foreign 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. Some Member States require a special registration process or even creation of a branch in order for the foreign foundation to be able to operate in their territory.

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.

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 investment in social enterprises do not always generate the required returns (or are considered too risky 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.

Restrictions on Foreign Funding/overly tight AML/CFT rules

In recent years, we have seen restrictions imposed on the operating environment for the philanthropy sector, such as the introduction of so-called foreign funding/foreign agent restrictions which severely restrict cross-border philanthropy. Moreover, certain aspects of money laundering and terrorism financing policy were limiting both the operating space for philanthropy and the wider civic space. Even though not required by the relevant EU directive, a few countries are considering associations and/or foundations as “(quasi) obliged entities” and hence put them under more strenuous reporting requirements, without clearly identified risks. While the security agenda is of great importance, policy measures must be risk-based and proportionate, and caution is needed to avoid unintended consequences for the philanthropy sector.

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 against 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). 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.

