

Journalism Funders Forum's contribution to the public consultation on the European Media Freedom Act

Submitted by Philea, a joint Dafne and EFC convergence

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Executive Summary

- **Recognition of public interest journalism as a tax relevant purpose**

We call on the European Commission to include in the European Media Freedom Act the recognition of the important role of public interest journalism for our democracy, recommend to call on Member States to introduce “public benefit journalism” as a public benefit purpose in tax law to stimulate more philanthropic funding of public benefit journalism.

- **Facilitating cross-border philanthropy**

Cross-border philanthropy is still hampered by legal and tax barriers as revealed by Philea's 2021 mapping and analysis, provided in Philea's detailed [profiles of the operating environment for philanthropy in 40 EU and non-EU countries](#) and the comprehensive analysis, ["Comparative Highlights of Foundation Laws"](#), published in 2021.

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. 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). If discrimination is formally removed, rules and processes are often so complex, costly and lengthy that significant barriers to cross-border philanthropic action remain. We hence call on EU policy makers to facilitate cross-border philanthropy by drafting a code of conduct for Member States or by issuing guidance to Member States as was recently suggested by the December 2021 EU Social Economy Action Plan.

Who we are

The Journalism Funders Forum is an open community of European funders working together to ensure more effective and impactful funding of journalism in Europe, in ways that respect and grow media freedom, independence and viability. It was founded by the European Journalism Centre in 2017, and is today hosted by the Philanthropy Europe Association, Philea.

Philea, a joint Dafne (Donors and Foundations Networks in Europe) and EFC (European Foundation Centre) convergence, is representing more than 10.000 public benefit foundations across 30 countries in Europe.

Philea has advocated in its [European Philanthropy Manifesto](#) for better recognition of and dialogue with the philanthropy sector, facilitation of cross-border philanthropic action, enabling and protecting the civic space and co-granting and co-investing for the public good in Europe.

Introduction

We welcome the opportunity to provide input from the European philanthropy sector to the European Commission's consultation on the European Media Freedom Act.

We as Philea work on the enabling framework for philanthropy in the context of wider European civil society space. For several years now, we have observed a worrying trend of restrictive measures in several Member States which is negatively affecting the rule of law, democracy and civic space as well as the ability of philanthropic organisations and wider civil society actors to carry out their work. Our members and partner organisations have also reported on general rule of law concerns in several Member States.

Threats to the rule of law in the narrower sense have been observed by the philanthropy infrastructure and by our members and partners in several EU Member States where governments have enacted new laws that threaten independent media, or that directly undermine access to justice and judicial independence.

Journalism: Challenges and opportunities

The Covid-19 crisis has hit the media sector in several countries at a time when it plays a crucial role in providing accurate information and countering disinformation about the pandemic - a role which many governments and Member States recognised, by designating journalism as an 'essential service' and journalists as 'key workers'. Some countries have tried to introduce a "media tax" imposed on publishers, broadcasters, cinema owners and companies providing advertising services, in order to raise funding for the healthcare and culture sectors.

The structural changes of the media sector due to digitisation as well as the decrease in advertising revenues is hitting the commercial media industry hard, and is exposing market failure that require interventions to correct. As a consequence we experience across Europe media concentration, increased risk of media capture, reduced media coverage in particular at local level, and increasingly difficult working conditions for journalists, both employed and freelance. This has a negative impact on the quantity and the quality of public interest journalism, including investigative journalism, the “watchdog” in our democratic societies, while disinformation is rising. Furthermore, communities that have long been excluded from or badly covered by the established media are at risk of further marginalisation.

As much research and analysis shows, economic pressure on media can put media pluralism and media freedom at risk, and on a concrete level, leads to a reduction in the amount of public interest reporting. This is particularly alarming in countries where the editorial independence of private as well as public service media is already considered fragile, and the concentration of media ownership in the hands of a few large entities, coupled with the resulting decrease in media pluralism, was already a cause for serious concern. Larger media conglomerates are in better shape to withstand the financial shock, with smaller, local and regional outlets under greater threat and already closing down, merging or reducing their operations. Media in major capitals and cities may be better equipped to weather the storm than their colleagues in smaller towns, or rural areas, where resources are scarce and threats are magnified.

Since for-profit journalism is under pressure for the above-mentioned reasons, non-profit journalism is experiencing a proliferation at the global level due to charitable funders and non-profit organisations committed to actively support the fourth pillar of democracy, including ensuring its editorial independence. Research shows that, in jurisdictions where non-profit and charitable journalism is enabled and given legal certainty by law, more public interest-oriented journalism organisations are created, and more philanthropic funds are dedicated to supporting public interest media that contribute considerable public benefit and social value.

Whilst there is a clear growth in the number and range of organisations operating as non-profits across the European Union, they do not have legal certainty, especially those that wish to go further by becoming charitable organisations. This is particularly problematic for the non-profit and charitable media sector, as many of organisations in the sector - and those that fund and support them - are involved in and committed to collaborative and cross-border work both within and beyond the European Union, as many of the public interest topics they cover, such as human rights, the climate crisis, illicit financial flows, public health, economic inequality, and so on, are themselves inherently cross-border or transnational. Because the regulatory picture is so fragmented and complex across and between EU Member States, and requires additional resources for legal and bureaucratic compliance, this presents a barrier to growth and innovation in this sector. This picture within the European Union is at present uneven, with few Member States recognising this specific form of public benefit within the law. This would also reinforce measures aimed at increasing the transparency of media markets across the EU, as philanthropic funds towards the media would be more clearly identifiable under a separate purpose, and, as the European philanthropic sector moves both towards providing core or unrestricted grants to journalism organisations, and more systematic publishing of its grants as open data, greater clarity and trust in relation to philanthropy’s role in supporting media too.

Non-profit media organisations and public interest journalism are evolving into a distinct and new hybrid media sector, which have the public interest as their core purpose, complementing the for-profit media market in areas where there are gaps and market failures, and more disposed to find common purpose with civil society. There is emerging evidence around the world, including in the EU, that co-founders of such independent digital media tend to be more diverse - for example, with a greater percentage of women co-founders - than among the established media. Therefore this emergent non-profit and charitable media sector is increasing media diversity, participation and accountability, and public interest journalism is strengthening information quality, which provides a bulwark against disinformation.

The EU therefore should recognise the important function of public interest journalism for our democracy by introducing journalism as a charity purpose in tax law and to work with Member States to remove barriers for philanthropic funding of non-profit journalism. Furthermore the EU should facilitate cross-border philanthropy to allow philanthropic donations to cross borders across Europe in the same way as products and services can do today as part of the Single Market.

Charitable status of non-profit journalism

We want to preserve media diversity across Europe and strengthen both the spirit of entrepreneurship and diversity of ownership in journalism.

We are experiencing a lot of encouraging developments right now: In journalism, we can observe promising experiments in many places. One driving force is the non-profit initiatives such as the research bureau CORRECTIV, the newsroom EUobserver, investigative research bureau Bellingcat, the non-profit organisation ARENA for Journalism in Europe providing networks and knowledge for cross-border-journalism. What these pioneers in public interest journalism have in common is that they were only able to achieve their non-profit status by stretching or circumventing existing legal barriers - performing organisational acrobatics in order to fit into existing criteria. This is labour-intensive, expensive and inefficient, as it requires individual organisations to come up with tailored legal solutions and compromises, at great cost, even when supported by pro bono lawyers, and regulatory and compliance costs when dealt with on a case-by-case basis by tax or regulatory authorities. For example, in order for its work to be recognised under the tax code, because the public benefit offered by journalism is not currently recognised as a distinct purpose, Correctiv was forced to classify its work under the 'education' purpose, because part of its work includes further education events and an online learning platform for citizens.

By anchoring public interest journalism as a non-profit or charitable purpose in tax codes, even more start-ups could focus on all relevant journalistic issues and gaps in reporting could be better filled. Giving such journalistic enterprises legal certainty across the EU would also give reassurance to philanthropic and charitable donors, and in turn to social investors and impact investors. The ability to attract philanthropic and other donor funding can work to attract and de-risk other forms of financing, especially for a fragile sector, for which more traditional

financing and lending institutions have few benchmarks, and for which little R&D or innovation financing exists.

By opening up new financing channels beyond the business models that have been common up to now, the critical and control function of journalism would thus be strengthened and public opinion-forming in democracy would thus be revived.

Independent of the discussion about strengthening media diversity in the private media, it is therefore urgently necessary to take a closer look at non-profit journalism. Alongside strengthening the independence and viability of the established public and private media, non-profit media could become an important third pillar for media diversity and independent journalism across Europe.

However, the current legal uncertainty in tax law in EU Member States is a major obstacle to the establishment of non-profit media and to the financial commitment of public benefit foundations and individual and corporate donors for non-profit journalism.

The EU therefore should recognise the important function of non-profit journalism for our democracy and calling on Member States to include journalism as a public benefit purpose in tax law with the aim to stimulate more philanthropic funding of non-profit journalism. An interim mechanism, such as a means of establishing equivalency between Member States, could serve as a practical stepping-stone towards fuller recognition.

The European Media Freedom Act should also explicitly affirm the principle - as some individual Member States did during the early weeks of the pandemic - that journalism is an 'essential service' and that journalists are 'key workers'.

Cross-border philanthropy

Some philanthropic organisations, together with innovative civil society actors, impact investors and social entrepreneurs act as real thought leaders and incubators for social and green investments. In order to unleash their full potential, philanthropy, civil society and the social economy need an enabling environment. Philea maps and analyses the operating space for philanthropy and observes that old and new barriers prevent the sector from unleashing its full potential across borders: see Philea's 2021 analysis, "[Comparative Highlights of Foundation Laws](#)".

The current administrative and fiscal treatments of cross-border philanthropic activities result in high transaction costs. Despite numerous calls and attempts, an appropriate European policy framework is still lacking.

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 donations from individual and corporate donors, as well as ease their tax-effective asset allocation/endowment investment.

The EU should also develop measures and incentives to stimulate more collaboration (including co-granting and co-investing) between the philanthropy sector and public sector, in order to move EU policy priorities forward, including the digital transition and its impact on journalism, for example through InvestEU. We ask the Commission to consider own measures to stimulate more impact investing/asset allocation but also 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. More capacity-building schemes should also be considered.

Recommendations

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Contact

Philea, the Philanthropy Europe Association, is joint Dafne and EFC convergence. It nurtures a diverse and inclusive ecosystem of foundations, philanthropic organisations and networks in over 30 countries that work for the common good. Philea unites over 10,000 public-benefit

foundations that seek to improve life for people and communities in Europe and around the world. It fosters collaboration in order to increase synergies, scale up innovation and uses its voice to impact policy that enables positive change. Philea believes that philanthropy in Europe plays a unique, risk-taking role in sparking innovation and acting as a catalyst for good. It wants to connect citizens and communities with philanthropic organisations and contribute to building more resilient, sustainable and just societies. www.philea.eu

EU transparency number:

- Dafne (Donors and Foundations Networks in Europe): 075961340619-25
- EFC (European Foundation Centre): 78855711571-12

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