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Response to the "Communication on European Savings and Investments Union" Consultation

Philea

I. Who we are

Philea, the Philanthropy Europe Association, represents 7,500 philanthropic organisations from across Europe, united in contributing to pluralistic, just and resilient societies that centre people and planet. Philanthropy refers to foundations, philanthropic organisations, corporate and individual funders using their own financial and non-financial resources for the public good. Philanthropic organisations support programmes in areas from which we all benefit, such as education, health, science, research, environment, culture and international development. Philea also hosts a group of Enterprise Foundations. These foundations, in addition to their philanthropic activities, own some of Europe's largest enterprises, thereby ensuring the long-term ownership and sustainability of these highly successful companies. The competitiveness of these European-based enterprises is crucial to the prosperity of Europe. Therefore, initiatives aimed at improving or strengthening their competitiveness are both fundamental and highly significant.

As Philea, we are also actively engaged as a board member of Social Economy Europe (SEE) around the wider social economy agenda and also with the wider civil society community on issues of common concern. We are a member of the European Commission Expert Group on Social Economy (GECES) and have also been contributing to the social economy agenda from the perspective of philanthropy and foundations in this context. This paper will focus on the specific philanthropy/foundation perspective, while we are also supporting a separate contribution from Social Economy Europe and from Impact Europe.

II. General remarks and call to create a single market for public good

Philea is pleased to contribute to this important European Commission consultation on a European Savings and Investments Union. In this context we would like to stress our key ask to move towards a European Single Market for public good, which also provides a level playing field for foundations and other public-benefit organisations when acting and investing in the single market. As Philea we are committed to pluralistic, just and resilient societies that centre people and planet. Our cross-cutting themes are democracy, climate and equality and, in this spirit, we consider that the Single Market Strategy should contribute to maintaining high social, participatory and environmental standards.

We echo the political guidelines 2024-2029 of European Commission President von der Leyen as well as recent reports by Enrico Letta and Mario Draghi stating that creating a truly integrated single market is critical for the European Union's future. We welcome the fact that the political guidelines call for a new momentum to complete the single market **preserving the social market economy model and strengthening the EU founding principles.** We welcome the fact that Commissioner Albuquerque has been tasked with developing a **Savings and Investments Union** that aims to leverage private savings and to foster capital for innovation and to harness sustainable finance.

Our main call is that this Savings and Investments Union should **include social economy actors including foundations/philanthropic organisations and aim to remove red tape and barriers for them,** given the important role of social economy, including the foundation sector, in the single market (8% of GDP). Foundations/philanthropic organisations are key actors in the single market with their contributions to addressing societal issues, supporting innovation and research and exploring new ideas. Foundations are also playing a key role as investors of their endowments in European markets in managing various European companies as Enterprise Foundations. The communication should **include the perspective of reducing the regulatory and administrative barriers faced by foundations especially when operating and investing their endowments across-borders and with the aim of leveraging their investments.**

III. Key arguments:

The important role of philanthropy and foundations

The foundation/philanthropy sector plays a critical role in the implementation of the SDGs and in supporting Europe's social and economic resilience and promoting innovation. There are around 186,000 philanthropic organisations in Europe with an estimated €54 billion in expenditure and millions of individual and corporate donors contributing with private resources for public good. European philanthropy is a key contributor to a more equitable and sustainable world and now has a critical role to play in fostering greater resilience and well-being and promoting diversity and inclusion. Enterprise

Foundations also play an important role as owners of companies while also promoting other public-benefit purposes.

To achieve and generate positive social and environmental impact, the traditional mission of philanthropic organisations can be strengthened by deploying capital - whether through programme activities or endowment investments. This deployment also generates financial returns (e.g. repayable financial instruments from programme activities or investing part of their endowment with a social and/or environmental purpose), which qualifies as impact investing. For a visual illustration of the ways philanthropic organisations (foundations) deploy capital for impact (programme activities vs. endowment), see the Annex.

Foundations investing their endowments across borders in Europe

Across Europe, philanthropic organisations are investing their endowments in different types of investment products with the aim of generating a financial return to pursue their public-benefit purposes. Foundations' asset administration does not stop at national borders. Good investment policy usually implies a diversification of the asset allocation, which includes investments in global markets, as well as direct or indirect investments in European markets. However, tax barriers still hamper cross-border European investments, see more below.

Momentum for impact investing is building

Across Europe, philanthropic organisations have started engaging in impact investing, including supporting social economy actors, social entrepreneurs and social start-ups. However, restrictive laws often hinder these efforts as evidenced by Philea's legal analysis. The Accelerating Impact Report showcases examples of foundations using loans and equity to fund social enterprises, demonstrating a high potential of leveraging a full spectrum of capital to achieve social missions.

The European Commission has expressed a clear interest in stimulating more mission-related and impact investing activities by philanthropic organisations. The 2021 Social Economy Action Plan and the InvestEU programme are two prime examples of this commitment. When undertaken in collaboration with public actors, impact investing approaches can serve as a powerful tool to advance and empower impact investors, including foundations, to create lasting social and environmental benefits through coinvesting and blended finance approaches.

Regulatory and administrative barriers

Philea, together with national and European academics, have analysed the operating space for foundations. The analysis across 40 countries in Europe initiated by Philea in 2021, "Comparative Highlights of Foundation Laws', concluded that barriers to philanthropy and foundations' cross-border work exist. These barriers have been highlighted in our recent 2024 publication "Removing obstacles to cross-border philanthropy: The time is now", which lists practical examples around the barriers as follows:

- Lack of legal recognition of foreign foundations
- Impossibility of cross-border merger of foundations
- Burdensome process to transfer seat across borders
- Discriminatory tax treatment and complex procedures for both donors giving across borders and foundations doing asset allocation of their endowments across borders
- Difficulties in accessing banking services and transferring funds across borders
- Restrictions on foreign funding

When it comes to **tax treatment of foundations investing their endowment across borders**, there are still rules in place which mean that non-resident foundations are denied all or some tax benefits that domestic legislators have granted to resident foundations. The tax benefits are not available in some Member States at all if the foundation does not have its seat in the particular Member State (e.g. Croatia, Cyprus, Estonia, Latvia, Lithuania, Slovenia), and in some others they are available only if the foreign foundation also benefits the public of the particular Member State (e.g. France, Germany). Generally, for corporate tax income purposes or foreign withholding tax purposes it is a matter of illustrating comparability to a domestic tax-exempt organisation to receive the same tax status, which is often a complex, lengthy and costly process. Following the non-discrimination principle, when investing in European markets, philanthropic organisations should be able to get tax exemptions that are applicable to local organisations (if they are considered comparable). Real life examples, however, show that it is still very complicated for foundations to claim the tax incentives they are entitled to. Processes can take several years and are very costly and complicated since documents have to be translated and each country has its own system for processing claims.

IV. Our call to action: Policies to remove barriers to cross-border investments of philanthropic endowments in EU markets and more impact investments

We hence call on the European Commission to create a fair and level playing field where public-benefit and social economy organisations can flourish and to include this in the Savings and Investments Union.

We call for creating a single market also for the public good to unlock the full potential of philanthropy/foundations in line with our [European Philanthropy Manifesto.] The Manifesto lays out a roadmap to further advance the Single Market for Philanthropy, including 4 key recommendations to:

- Empower philanthropy/foundations by creating enabling frameworks (enable them to do impact investing and to own companies, as well as engaging in political activities; ensuring that policies to counter money laundering and terrorism financing do not unduly restrict public-benefit and foundation initiatives) and by implementing the Social Economy Action Plan and Council Recommendations for Social Economy
- Facilitate cross-border philanthropy by moving forward with the European Cross-Border Association and a European Cross-Border Foundation, easing tax barriers and red tape, easing cross-border investments and countering foreign funding restrictions, see more below
- Engage with philanthropy by creating dialogue structures among public and private donors and by creating a civil society platform
- Partner with philanthropy for the public good by providing co-investment opportunities (as also announced in the SEAP) and multi-stakeholder partnerships.

Zoom in on overcoming barriers for philanthropic endowments to invest across borders

We are hence calling for standardised procedures (including key elements for equivalency procedures) and multilanguage forms for claiming back EU foreign withholding tax claims.

Zoom in on policy options to boost philanthropic impact investments

1. Enable impact investing at the programme level

In the context of their programme activities, philanthropic organisations should be allowed to support social economy organisations with repayable financial instruments (loans/revocable grants) and other tools - while preserving their public-benefit/tax-exempt status. Existing national measures enabling impact investing from the programme side can serve as an important inspiration to all Member States:

> In the Netherlands, the tax authorities recently clarified that philanthropic organisations can support social economy organisations and generate profits, as long as those profits are spent on the purpose of the organisation.

> In Portugal, the European Social Fund provided an initial endowment of approximately €150 million into the Fundo para a Inovação Social (FIS), a pioneering impact investment fund designed to finance social innovation and entrepreneur projects. By adopting a structured approach to impact investment, the FIS plays a crucial role in de-risking capital, attracting private investors into social impact initiatives and fostering a robust social economy ecosystem in Portugal. Additionally, Portugal's tax framework incentivises impact investments, recognising contributions to social innovation projects as eligible for tax benefits under the Estatuto dos Benefícios Fiscais.

> In Spain, the council of ministers has channelled €400m of its National Recovery and Resilience Plan into the creation of the Fondo de Impacto Social (FIS), a social impact fund aimed at providing financial support to purpose-driven companies, projects and funds. Philanthropic organisations have dual entry points into the fund, as beneficiaries and also as co-investors.

> In Switzerland, the Cantonal Tax Office of Zurich clarified how the tax-exempt, non-profit status extends to additional impact investing , i.e. when investments are being made in areas where profit-oriented third parties would not invest due to high risks. The returned funds must then be used for the non-profit purpose of the organisation.

2. Develop a co-investment facility under InvestEU

As President von der Leyen emphasised, "We will only achieve our climate goals if private investment is mobilised on a massive scale and directed towards green projects." While this is true, such mobilisation won't happen on its own. However, there is a way to support von der Leyen's vision: by envisioning an innovative co-investing or blended finance approach specifically tailored for philanthropic organisations.

The European Commission, the European Investment Fund and the European Investment Bank have started efforts in this direction. We strongly urge an acceleration in the development of a suitable and daring co-investment facility for philanthropy under InvestEU. This facility, in collaboration with the European Investment Bank (EIB), National Promotional Banks (NPBs), and other InvestEU implementing partners, would provide innovative products, tools, and funding vehicles. These offerings would be designed to encourage philanthropic organisations to invest their endowments in mission-related financial instruments while effectively minimising the associated risks.

The Impact Europe case study demonstrates real world examples of how strategic partnerships between NPBIs and philanthropic organisations have successfully driven impact investing, resulting in meaningful social outcomes. By leveraging their endowments, foundations are increasingly engaging in financial strategies that align closely with their missions. These efforts illustrate the growing need for dedicated co-investment facilities and tailored tools that enable them to maximise their impact.

3. Facilitate impact investing at the endowment level

We are also calling for national laws to become more flexible with regards to how philanthropic organisations can invest their endowments and support their missions at the same time. The 2021 Social Economy Action Plan (SEAP) and the 2023 European Investment Advisory Hub's "Philanthropic Capital study" include concrete recommendations to stimulate more mission-related asset allocation and impact investing, as well as public-philanthropy partnerships.

4. Integrate philanthropy in the next Multi-Annual Financial Framework

Looking ahead, the next Multi-Annual Financial Framework should provide for an InvestEU type instrument and ensure that philanthropic organisations are brought in from the start to enable co-investments and impact investing approaches. Philanthropy cannot be left out of the co-investment programmes, as they are part of the solution and can - if desired - provide additional and much-needed private capital aligned with their missions.

We urge all stakeholders to consider the recommendations above and collaborate to create a more sustainable and equitable future. The time to act is now, and with a united effort, we can turn our shared vision into reality.

Conclusion

We hope that our recommendations will be considered in the design of an ambitious savings and investments union that builds an economy that works for people and the planet. We are eager to explore how philanthropy and foundations, as vital drivers of a society and economy that serves both people and the planet, can thrive within the single market.

About Philea

Philea - Philanthropy Europe Association nurtures a diverse and inclusive ecosystem of foundations, philanthropic organisations and networks in over 30 countries that work for the common good. We unite over 7,500 public-benefit foundations that seek to improve life for people and communities in Europe and around the world.

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ANNEX 1: Regulatory and administrative barriers

The following barriers continue to exist, as outlined in our recent publication "Removing obstacles to cross-border philanthropy: The time is now":

Lack of legal recognition of foreign foundations

Philanthropic organisations/foundations 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.

Impossibility of cross-border merger of foundations

Unlike companies, philanthropic entities cannot merge across borders. There is no pertinent secondary EU legislation on cross-border mergers between, and acquisitions or restructurings of, foundations. Directive 2017/1132 relating to certain aspects of company law, which regulates the cross-border merger of limited liability companies, applies only to corporations, not to foundations.

Burdensome process to transfer seat or perform a conversion across borders

The legal situation is unclear if a foundation wants to transfer its registered seat from one Member State to another, since the national laws of the Member States generally do not regulate these cases.

Restrictions on foreign funding and 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 are limiting both the operating space for philanthropy/foundations 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.

Difficulties in accessing banking services and transferring funds across borders

It is not uncommon for foundations, and other non-profit organisations, to struggle in accessing banking services, both in the country where they are registered and in other countries where they wish to carry out their activities. Barriers to accessing banking services may include difficulty in opening bank accounts, sometimes leading to the impossibility of doing so (in certain cases without explanation); excessively lengthy and burdensome "know your customer" procedures; as well as other banking practices - such as caps on amount of funds that can be dispersed in a given period of time, or burdensome authentication procedures - that impose significant hurdles for foundations' ability to access financial services across their national borders.

Discriminatory tax treatment of cross-border philanthropy and complex procedures

a. Tax treatment of donors giving across borders

Following the European Court of Justice "Persche case", in most Member States donors get the same tax incentive when they donate across borders, however this is not yet possible in some Member States (e.g. Croatia, Hungary, Lithuania, Romania, Sweden). Indeed, 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 mean that non-resident public-benefit organisations (and their donors) are denied all or some tax benefits which domestic legislators have granted to resident foundations (and their donors). Based on the 2020 data provided to us by national experts, donors donating to comparable organisations located in EU or EEA countries outside of their home countries do get equal tax treatment, however the conditions for determining comparability vary (e.g. Belgium, Finland, Germany, Luxembourg, Poland, Spain). The processes around whether a foreign-based organisation is considered comparable to a local one seems quite straightforward in some countries such as the Netherlands with its ANBI status criteria, as well as in Luxembourg, where it is possible for a Luxembourg donor to support a European charity tax efficiently, although access to information and centralisation could be improved. However, in some countries, according to legal reports by Philea in 2014/2017/2020, processes are often so costly, lengthy and burdensome for users as well as for the authorities that significant barriers to cross-border philanthropic action remain.

There have been some recent positive developments: In 2023 Spain eased tax deductibility across borders, and Germany introduced a central register where foreign recipient PBOs can register to be eligible recipients of tax-deductible donations. We welcome these changes and hope other Member States will follow suit.

b. Tax treatment of foundations investing their endowment across borders

There are still rules in place which mean that non-resident foundations are denied all or some tax benefits which domestic legislators have granted to resident foundations. The tax benefits are not available in some Member States at all if the foundation does not have its seat in the particular Member

State (e.g. Croatia, Cyprus, Estonia, Latvia, Lithuania, Slovenia), and in some others they are available only if the foreign foundation also benefits the public of the particular Member State (e.g. France, Germany).

Generally, for corporate tax income purposes or foreign withholding tax purposes it is a matter of illustrating comparability to a domestic tax-exempt organisation to receive the same tax status, which is often a complex, lengthy and costly process.

c. Tax treatment of resident organisations acting across borders

Most EU Member States allow tax-exempt public-benefit foundations to engage in activities outside their home country without losing their tax-exempt status in their home countries. However, in some countries, activities carried out abroad can jeopardise the tax status at home under certain conditions (e.g. Austria, France, Germany, Portugal).

d. Inheritance tax treatment of cross-border legacies

The situation varies in EU Member States when it comes to tax treatment of legacies to non-resident public-benefit foundations. Some countries have not yet implemented the non-discrimination principle. Some countries apply the rule that donations to foreign foundations may be exempt from inheritance and gift tax if the recipient's country has entered into a reciprocity agreement (e.g. Germany, Greece, Ireland, Luxembourg).

We have also been alerted of the application of VAT rules, leading to uncertainty or double taxation in cross-border contexts.

Complex impact investing and asset administration rules (not always in a 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 overly risky investments). Additionally, some national laws do not permit equity investments and/or the giving of loans and/or donations by public-benefit organisations or any other programme activity that generates income on the programme side.

Annex 2: List of relevant Philea papers

2024 Philea new edition of legal country profiles https://philea.eu/philea-releases-first-batch-of-2024-update-of-legal-and-fiscal-country-profiles/

2024 Philea/TGE report on barriers to cross-border philanthropy and foundation work

https://philea.issuelab.org/resource/removing-obstacles-to-cross-border-philanthropy-the-time-is-now.html

2024 Note on Enterprise Foundations in Europe – ENEF hosted by Philea

https://philea.eu/opinions/the-role-of-enterprise-foundations-in-addressing-our-greatest-challenges/

2023 Philea Policy recommendations – the Manifesto

https://philea.eu/how-we-can-help/policy-and-advocacy/european-philanthropy-manifesto/

2022 Philea contribution to the European Commission consultation on a European Association Statute

https://philea.eu/wp-content/uploads/2022/10/Contribution-to-European-Commission-Consultation-on-European-Association-Statute.pdf

2021 Philea comparative analysis of foundation laws

https://philea.issuelab.org/resource/comparative-highlights-of-foundation-laws-the-operating-environment-for-foundations-in-europe-2021.html

2021 Philea contribution to the Social Economy Action Plan

https://philea.eu/wp-content/uploads/2021/12/Social-Economy-Action-Plan.pdf