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# Response to the "Single Market Strategy 2025" 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. It works alongside and in partnership with other civil society organisations, governments and private sector initiatives. A unique characteristic of philanthropic organisations/foundations is the ability to respond with agility to the critical challenges facing our societies, while simultaneously taking a longer-term view of their causes.

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 engaging as a board member of Social Economy Europe (SEE) around the wider social economy agenda and with the wider civil society community on issues of common concern. We are a member of the European 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 separate contributions from SEE and Civil Society 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 Single Market Strategy for 2025. 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 political guidelines that 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 Executive Vice-President Stéphane Séjourné has been tasked with developing a horizontal single market strategy that aims to remove regulatory and administrative barriers that currently still hamper the single market.

Our main call is that this horizontal Single Market strategy and related Action Plan should **include social economy actors including foundations/philanthropic organisations**, 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 and moving innovation and research and exploring new ideas. Foundations are also playing a key role in maintaining various European companies as Enterprise Foundations. The Strategy and related Action Plan should **include initiatives that reduce the regulatory and administrative barriers faces by foundations especially when operating across-borders**.

### 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 the 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.

#### Need and desire to operate across borders



The climate crisis, the Covid pandemic, the war in Ukraine, the need for new ideas, research and innovation as well as other societal challenges require transnational activity: societal issues and markets do not stop at borders. Many foundations want to pursue European missions across borders and some also want to move their seats or merge across borders. Philanthropic endowments also need a level playing field and non-discrimination with regards to their cross-border asset allocation. Our sector clearly wants and needs to operate across borders in the EU and beyond.

### Regulatory and administrative barriers

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

The barriers faced by philanthropic actors and public-benefit organisations have also been assessed by the European Commission several times. Most recently, in its 2023 Proposal on European cross-border associations (ECBA), the Commission noted that, "... in the Call for Evidence, stakeholders highlighted existing barriers in areas such as providing services in another Member State without registration, problems of recognition in another Member State, access to funding, and different VAT regimes and approaches in different EU countries. In the public consultation, the most recurrent issues were tax-related issues, registration processes, and administrative formalities."



#### IV. Our call to action: A single Market for public good

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 its single market strategy. We call on creating a single market also for public good to unlock the full potential of philanthropy/foundations in line with the Philea [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 action) 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 policy options to overcome barriers to cross-border work**

Despite societal challenges going beyond borders, philanthropic organisations and other members of the social economy and civil society family are still not benefiting from the single market when it comes to their cross-border activities. More specifically, on cross-border barriers, we consider the following policy options:

1. Swift adoption of the European Cross-Border Association (ECBA)
2. Develop a similar legislative initiative for foundations (ECBF)
3. Develop a Directive on mutual recognition of tax-exempt public-benefit organisations within the EU



4. Mutual recognition of the legal personality of philanthropic organisations/foundations and enabling their cross-border mergers and move of seats
5. Guidance to Member States on better implementing the non-discrimination principle in a meaningful way and provide templates to facilitate cross-border philanthropy
6. Refrain from introducing foreign funding restrictions and other barriers to foundation/philanthropy work and counter them using EU law and infringement procedures

## **V. Linking to non-EU contexts**

We suggest that the reinforcement of the single market would also open up opportunities for co-investing and co-granting with organisations from non-EU countries.

### **Conclusion**

We hope that our recommendations will be considered in the design of an ambitious single market strategy. We are eager to explore how philanthropy and foundations, as vital drivers of a society and economy that serve both people and 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.

According to the data provided to us by the national experts in 2020, several EU Member States require a foreign (EU-based or other) foundation to register a branch in the respective country before it is recognised and can enter into contracts (e.g. Belgium, Croatia, Finland, France, Poland). In Ireland, it is even an offence to carry out charitable activities without being properly registered in Ireland. In Spain, recognition is given to all foundations legally constituted in another country as long as they only carry out occasional activities, but registration is needed when the foundation wants to operate more regularly in Spain. One attempted instrument towards automatic recognition has been the European Convention on the Recognition of the Legal Personality of International NGOs. However, this was ratified by only 11 countries.

### **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**

Most Member States apply, with or without variations, general principles of conflict-of-corporate-laws to determine the legal status and the nationality of a foundation. As a general rule, two fundamentally different approaches can be observed in the EU: the “real seat doctrine” and the “state of incorporation doctrine”. Whatever the approach in the country, 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. The 2020 data provided to us by national experts revealed that there are a couple of countries having introduced what we classify as foreign funding restrictions. We are aware of current law proposals in the pipeline in Bulgaria and Slovakia.

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, Spain, 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). 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.issueab.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 Europea 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>

