



A statute for European cross-border associations and non-profit organisations

European added
value assessment

STUDY

EPRS | European Parliamentary Research Service

Authors: Klaus Müller and Meenakshi Fernandes
European Added Value Unit
PE 662.630 – May 2021

EN

A statute for European cross-border associations and non-profit organisations

European added value assessment

So far, non-profit organisations (NPOs) have been developing in the context of the EU Member States' or other countries' national regulatory frameworks, yet with the completion of the European single market they too will be able to take full advantage of the opportunity to engage in cross-border activities. This assessment reviews the current situation of NPOs in the EU and the challenges that limit their development across national borders. It then proceeds to identify avenues for EU action, including specific policy options. Drawing on qualitative and quantitative information, the study examines the potential EU added value of each policy option (encouraging cross-border transactions, enhancing social outcomes and increasing economic contributions) and its drawbacks. The assessment furthermore highlights supporting non-legislative measures that could promote specific NPO functions in the EU, such as service provision, civic engagement and advocacy, financial intermediation and social innovation.

AUTHORS

Klaus Müller with the collaboration of Meenakshi Fernandes, European Added Value Unit, Directorate-General for Parliamentary Research Services (EPRS).

This paper has been drawn up by the European Added Value Unit of the Directorate for Impact Assessment and European Added Value, within the Directorate-General for Parliamentary Research Services (EPRS) of the Secretariat of the European Parliament.

The annexed study on a Statute for European cross-border associations and non-profit organisations: Assessing the European added value, has been written by Helmut K. Anheier of the Hertie School, Berlin, and the University of California Luskin School of Public Affairs, Los Angeles, at the request of the European Added Value Unit (EPRS).

To contact the authors, please email: eprs-europeanaddedvalue@europarl.europa.eu

LINGUISTIC VERSIONS

Original: EN

Manuscript completed in April 2021.

DISCLAIMER AND COPYRIGHT

This document is prepared for, and addressed to, the Members and staff of the European Parliament as background material to assist them in their parliamentary work. The content of the document is the sole responsibility of its author(s) and any opinions expressed herein should not be taken to represent an official position of the Parliament.

Reproduction and translation for non-commercial purposes are authorised, provided the source is acknowledged and the European Parliament is given prior notice and sent a copy.

Brussels © European Union, 2021.

PE 662.630

ISBN: 978-92-846-8013-9

DOI: 10.2861/410733

CAT: QA-02-21-554-EN-N

eprs@ep.europa.eu

<http://www.eprs.ep.parl.union.eu> (intranet)

<http://www.europarl.europa.eu/thinktank> (internet)

<http://epthinktank.eu> (blog)

Executive summary

Associations and non-profit organisations (NPOs for short, as associations are a specific form of the broader category that non-profit organisations represent) have so far developed in the context of the EU Member States' or other countries' national policies and regulatory frameworks. However, the completion of the European single market means that NPOs, too, enjoy the full freedom to engage in cross-border activities. While they play important roles in the Member States and increasingly at EU level, such activities are currently hampered by legal and administrative obstructions and by the limits placed on NPOs' organisational capacity to operate across borders. As a result, their contributions are likely below their potential in a wide range of areas such as education, culture, health care, social services, research, development aid, humanitarian assistance and disaster preparedness. They are also below their potential in adding to the social cohesion among EU societies, especially in cross-border regions.

Across the Member States, the area between the market and the state, variously referred to as civil society or the third, voluntary, social or non-profit sector, presents a conceptual tangle with a great diversity of definitions as well as legal and fiscal treatments. The legal, cultural, political and economic differences among the Member States continue to make cross-border NPO activities highly complex. The current administrative and tax treatment of cross-border NPO activities, including the practice of comparability for the purpose of establishing equivalence, results in higher transaction costs than would be the case domestically. It is also likely to act as a disincentive for international NPO activities generally.

Only a few countries have more comprehensive and up-to-date information on the scale and scope of NPO activities, expenditures and revenues. Irrespective of the paucity of available data, the empirical findings point to a significant potential for enhanced cross-border activities and suggest that:

- the great majority of NPO activities are domestic; however, a growing number of NPOs operate across borders;
- the amount of cross-border financial flows among NPOs has increased substantially over the past decade but remains well below domestic levels;
- all Member States are included in a complex network of NPOs linking citizens through individual and organisational memberships;
- there is also greater awareness among policy-makers as to the potential NPOs' offer in terms of service delivery, civic participation and social innovation;
- cross-border regional activities are growing in importance but vary significantly in their effectiveness across the EU.

EU action could serve to promote NPOs by addressing the inconsistent treatment of cross-border transactions and the significant administrative costs and barriers faced by NPOs. Three landmark decisions by the European Court of Justice (ECJ Cases C-386/04; C-318/07; and C-25/10) have presented additional considerations for EU action and served as the basis for putting together three policy options.

Policy option 1 involves monitoring developments of cross-border NPO activities in the hope that the various comparability tests will become more similar and the administrative practices less costly and cumbersome over time. While this approach has the advantage of making it possible to build a better evidence base and thereby to help prepare the ground for the second and third options below, it risks that NPOs would continue to contribute below their potential, that administrative barriers would remain in place, and that both the complexity and the fragmentation of comparability procedures could actually increase rather than decrease.

Policy option 2 involves using the regulatory route via Article 352 of the Treaty on the Functioning of the European Union (TFEU) and the European Commission initiating the relevant legislative processes. While this option would create the level playing field required under the single market, it is worth mentioning that it requires unanimity in the Council of the EU (and the European Parliament's consent).

Policy option 3 includes introducing harmonisation measures as envisaged under Article 114 TFEU, to advance the objectives set out in Article 26 TFEU. The Parliament and the Council can, acting in accordance with the ordinary legislative procedure and after consulting the European Economic and Social Committee, adopt the measures needed for improving the functioning of the internal market. However, since the tax treatment of NPOs would be a central aspect of the legislative action, using Article 114 TFEU might be limiting, as according to clause 2 of Article 114, it does not apply to fiscal provisions.

Table of contents

1. Introduction	1
2. An overview of the status quo	2
2.1. The problems and objectives of EU action	2
2.2. Overview of non-profit organisations in the EU	2
2.2.1. NPOs at Member State level	2
2.2.2. International NPOs active in the EU	8
3. Existing problems and their impacts	11
3.1. Problems	11
3.2. Impacts	15
4. EU action – Possible avenues and impacts	16
4.1. SWOT analysis for EU action to promote the NPO sector	16
4.2. Overview of possible EU-level policy options	18
Annex – A statute for European cross-border associations and non-profit organisations: assessing the European added value	21

Table of figures

Figure 1: Status of formal volunteering in the EU by Member State and gender, 2015	6
Figure 2: Relationship between NPO-related volunteer work and paid employment	7
Figure 3: EU Member States' national NPOs by area of activity	8
Figure 4: International NPOs present in the EU, by area of activity, 2021	9
Figure 5: Number of INPOs by Member State – 1900 to 2020	9

Table of tables

Table 1: Typology of non-profit organisations	3
Table 2: Estimated number and types of foundations in selected Member States, various years	5
Table 3: SWOT analysis of the benefits of EU action for NPOs	16

1. Introduction

Associations and non-profit organisations (NPOs for short, as associations are a specific form of the broader category represented by non-profit organisations) have so far developed in the context of the EU Member States' or other countries' national regulatory frameworks. NPOs form the backbone of civil society, being a highly diverse ensemble of organisations that range from small local associations to large international NGOs like Greenpeace, and from social service providers and relief agencies to philanthropic foundations handling billions of euros. Civil society is an arena where citizens self-organise in order to have their interests heard and to exercise an influence. NPOs embody the capacity of society to self-organise and its potential for peaceful, though often contested, settlement of diverse private and public interests.

Most developed market economies have seen a general increase in the economic importance of NPOs as providers of diverse health, social, educational and cultural services. NPOs support public management approaches by building, maintaining and rebuilding social cohesion, by strengthening the nexus between the social capital of citizens and economic development, and by being a source of social innovation in addressing diverse public problems. In many ways, NPOs push against their stereotypical portrayal as charities, which dates back to the 19th century, and present a growing and diverse group of private organisations dedicated to a public purpose.

While they play an important domestic role within the EU Member States, NPOs face legal and administrative barriers when it comes to operating across borders. As a result, their contribution to the European project is likely below their potential in a wide range of areas such as education, culture, health care, social services, research, development aid, humanitarian assistance and disaster preparedness. They are also below their potential for increasing social cohesion among European societies, especially in cross-border regions.

The main objective of this study is to assess if Parliamentary action at EU level could support the development of a European civil society, with a specific focus on the role of NPOs and their cross-border activities.

Section 2 ('An overview of the status quo') of the present study defines some key NPO-related concepts and presents an overview of the scale and scope of national and international NPOs currently present in the EU. Section 3 ('Existing problems and their impacts') highlights the key issues at present and the areas in which EU action is needed. Section 4 ('EU action – Possible avenues and impacts') defines the scope for EU action, identifies several policy options, including the proposed European statute of associations and non-profit organisations, and assesses them.

2. An overview of the status quo

2.1. The problems and objectives of EU action

While private-sector actors can leverage the EU internal market to set up EU-wide companies, non-profit organisations (NPOs) do not have a comparable legal and policy framework. Consequently, associations, non-profit organisations and foundations in the EU are primarily developed in a national context. Their potential to carry out cross-border fundraising and activities is limited due to the inconsistent treatment of cross-border transactions.

EU action in this area has a potential to strengthen civil society and enhance its contributions both within the Member States and across the EU in a wide range of areas such as education, culture, social services, research, development aid and humanitarian assistance.

2.2. Overview of non-profit organisations in the EU

NPOs in the EU operate mostly at the national level, but over time, they have been increasingly engaged in cross-border operations (in which case they are referred to as international NPOs (INPOs)). Section 2.2.1 presents a snapshot of national-level NPOs, while Section 2.2.2 presents an overview of INPOs.

2.2.1. NPOs at Member State level

The area between the market and the state, variously referred to as civil society or the third, voluntary or non-profit sector in the 23 EU languages and the various national jurisdictions, amounts to a massive terminological tangle at the cross-national level, with a great diversity of definitions. The terminology varies across the EU due to differences in language, tradition, legal and fiscal treatment. For example, in Sweden, a very substantial network of volunteer-based advocacy, recreational and hobby organisations exists alongside a highly developed system of public-sector service provision. In most other 'older' Member States, there are various systems of state-sponsored welfare provision that include a substantial role for NPOs, many of them religiously or otherwise ideologically affiliated. In the Netherlands, there is the system of pillarisation, in Germany – that of subsidiarity, and in France – networks like *Séours Catholique* and *Séours Populaire* that offer welfare services of many kinds and enjoy significant support through public funding. Versions of such public-private partnerships are found in southern Europe, though are somewhat less developed. In central and eastern European EU countries, both government spending on social welfare and non-profit activity remain limited. Nonetheless, both have increased since those countries joined the EU, but are not at the level witnessed in other Member States.

Irrespective of national differences, there are three main types of NPOs in the EU depending on their governance structure, and they are the focus of the present assessment. Table 1 presents an overview of these main types of NPOs.

Table 1: Typology of non-profit organisations

Type of non-profit organisation	General focus	Governance structure
Association	Common interests, civic engagement and self-organisation. This makes an association a constituent of civil society	Private members elect a board that represents their interests. The board, in turn, is accountable to the members
Corporation	Service delivery and close to the provision of services in areas such as health care, social services and education	A corporation that allows for the pursuit of a public or charitable objective, while limiting the liability of those involved. The board is only liable to the extent of the corporation's assets. Some have members while others apportion voting rights
Foundation	Philanthropy and private contributions to the public good	Typically structured in relation to an ownerless asset that can be financial or in the form of property that has monetary value. The assets are typically overseen by an entity with a governance structure, for example, a board of trustees

Source: Prepared by the authors on the basis of Annex I to this paper.

It is useful to think of these three entities in terms of their basic reference: associations are about common interests, civic engagement and self-organisation, and are hence constituents of civil society. Non-profit corporations are largely about service delivery and are close to the provision of services in areas such as health care, social services and education. Foundations are about philanthropy and private financial contributions to the public good. However, in everyday parlance, legal treatment and policy debates, the terms denoting these entities are often mixed up and used interchangeably. What is more important, though, is that these entities frequently intermingle with each other in various combinations, especially within the larger non-profit networks. For example, the Friedrich Ebert Foundation or the Konrad Adenauer Foundation, both of which operate in several Member States, are registered associations. Caritas Germany is an umbrella organisation registered as an association for some 25 000 separate entities that include foundations, associations and corporations.

Some Member States classify certain types of organisations as belonging to the NPO sector, while others consider them part of the social or the market economy. For example, in France, Belgium and Spain, cooperatives,¹ mutual societies² and social enterprises³ are seen as part of, or close to, associations and non-profit organisations.

¹ Cooperatives are organisations formed freely by individuals to pursue the economic interests of their members. The basic principles of cooperatives include i) democratic control, i.e., one person, one vote; ii) shared identity, i.e., members are both owners and customers; and iii) orientation to provide services to members 'at a cost'.

² Mutual societies are, like cooperatives, organised by individuals seeking to improve their economic situation through collective activity. Mutual societies differ from cooperatives in that they are mechanisms for sharing risk, either personal or property, through periodic contributions to a common fund. Examples are retirement, sickness and burial funds, or savings and loan associations.

³ Social enterprises are related entities, as they place service to the organisation's members or to the community ahead of profit. Unlike associations and non-profit organisations, they may distribute their profits to members. Unlike for-profit firms, however, the distribution is based on membership rather than on capital contributions.

Data on the NPOs in the Member States are rather patchy, frequently misleading and often outdated. Most importantly, NPOs are not fully covered by the European System of Accounts (ESA) on a regular basis, and there are few efforts to measure the comparative scale and scope of non-profit activities.

More comprehensive data on the economic size of the non-profit sector are mostly sourced from various research projects, most prominently the Johns Hopkins Comparative Nonprofit Sector Project.⁴ Data on giving, volunteering and membership reported in this section are mostly from various population surveys that use varying definitions and are not regularly conducted.

According to a report by the Charities Aid Foundation,⁵ individual giving as a percentage of gross domestic product (GDP) varies across Member States and is not associated with taxation rates. The share of individual charitable donations as a share of GDP is highest in Italy and the Netherlands (0.30 %), followed by Ireland and Germany (0.17 %) and Sweden (0.16 %). Asset estimates are the most difficult data to obtain about foundations, especially cross-nationally, given the influence of different valuation measures and techniques and the limited availability of information. Available estimates reveal significant cross-national variations. According to estimates, the assets of German foundations are worth €67.9 billion, of Italian over €46.1 billion and of Swedish €2.9 billion.⁶

In recent decades, Europe has experienced a veritable foundation boom, with the majority of its estimated 110 000 foundations having been created in the last two decades of the 20th century.⁷ In 2019, there were over 23 000 foundations in Germany alone.⁸ The number of foundations varies greatly from one Member State to another (see Table 2), ranging from more than 23 000 in Germany, roughly 13 700 in Sweden, and over 8 000 in Spain, to lows of some 700 in Austria, fewer than 500 in Portugal (excluding foundations registered under canonical law) and in Belgium. The data suggest an average of around 400 foundations per one million inhabitants.⁹ The priority areas for European foundations are education (28 %), human services (23 %) poverty alleviation, arts and culture (17 % each).¹⁰ For many European foundations, the economic weight of operating institutions, programmes and projects tends to be more important than their actual grant-making activities. For example, France, Greece, Ireland, Spain, Italy, and Portugal all have more operating foundations than grant-making ones.¹¹

⁴ Helmut K. Anheier, Markus Lang, and Stefan Toepler, 'Comparative Nonprofit Sector Research: A Critical Assessment' In: Patricia Bromley and Walter W. Powell (eds.), *The Nonprofit Sector: A Research Handbook* (3rd Ed.), 2020, pp. 648-676.

⁵ [International Comparison of Charitable Giving](#), Charities Aid Foundation, London, 2016, p. 7.

⁶ <https://www.efc.be/knowledge-hub/data-on-the-sector/>

⁷ Helmut K. Anheier, 'Philanthropic Foundations in Cross-National Perspective: A Comparative Approach' *American Behavioral Scientist* 62 (12), pp. 1591–1602, 2018.

⁸ <https://www.stiftungen.org/stiftungen/zahlen-und-daten/grafiken-zum-download.html>

⁹ Klaus J. Hopt, Thomas von Hippel, Helmut K. Anheier, Volker Then, Werner Ebke, Ekkehard Reimer and Tobias Vahlpahl (2009): [Feasibility Study on a European Foundation Statute, Final Report](#) (for the European Commission).

¹⁰ Paula Johnson, [Global Philanthropy Report: Perspectives on the Global Foundation Sector](#), Cambridge: Harvard Kennedy School, p. 25, 2018.

¹¹ Anheier, 'Philanthropic Foundations', 2018.
Anheier, H., & Daly, S. (Eds.). (2006), *The politics of foundations: A comparative analysis*, London, Routledge.

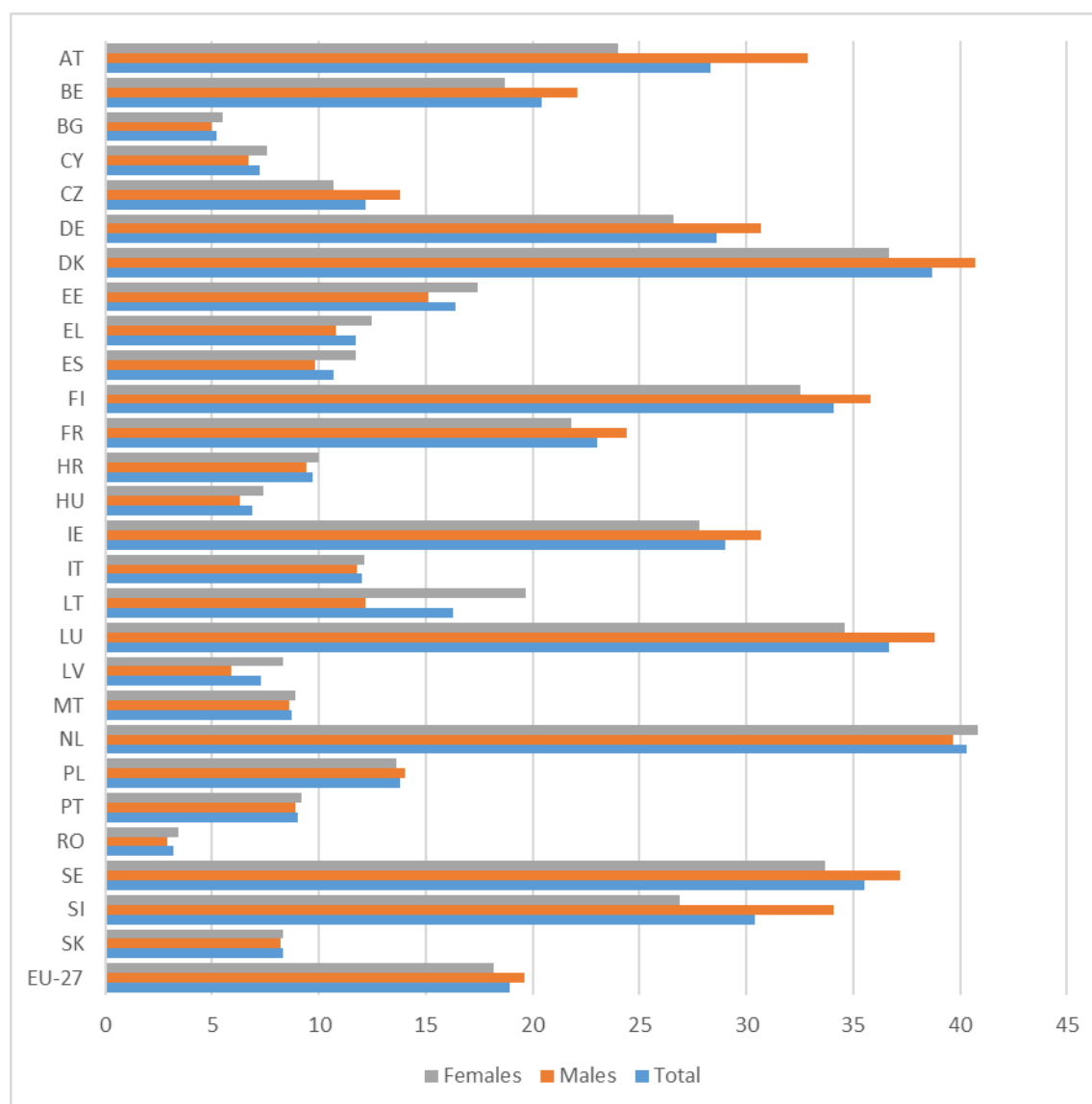
Table 2: Estimated number and types of foundations in selected Member States, various years

Country	Number	Relative share of grant-making foundations	Relative share of operating foundations	Mixed type
Austria	3 390			majority
Belgium	665	few		majority
Denmark	14 000			
Estonia	638			
Finland	2 600	50 %	30 %	20 %
France	1 226		majority	
Germany	22 230	~50 %	~25 %	~25 %
Greece	489	few	majority	few
Ireland	107	27 %	70 %	3 %
Italy	6 220	20 %	50 %	30 %
Netherlands	~6 000	majority		
Portugal	485		majority	
Spain	14 120	25.4 %	69.4 %	5.2 %
Sweden	14 500			

Sources: Bundesverband Deutscher Stiftungen, 2020; others from chapters cited in the special issue on philanthropy, *American Behavioral Scientist*, 2017.

According to the information in Figure 1 below, about 19% of the EU adult population engages in formal volunteering activities.¹² Organisations with a sports or recreation profile are by far the most favoured among volunteers in EU countries, with adults in the 35-49 age group having the highest rate of volunteering. In terms of gender, Figure 1 depicts quite a fragmented landscape across Europe (see Figure 1). The more educated are more likely to be engaged in volunteer work.

Figure 1: Status of formal volunteering in the EU by Member State and gender, 2015

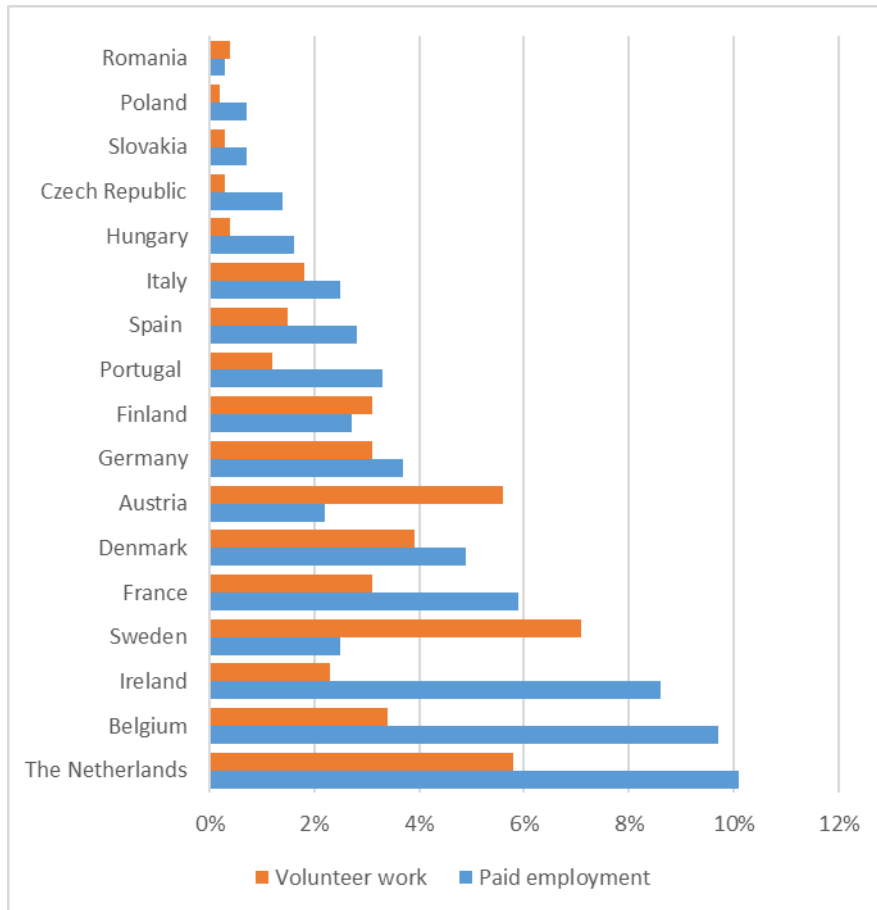


Source: [https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Social participation and integration statistics](https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Social_participation_and_integration_statistics), Eurostat, 2015.

¹² Unless otherwise indicated, data reported in this section are from: Eurostat 2015 ([https://ec.europa.eu/eurostat/statistics-explained/index.php/Social participation and integration statistics#Formal and informal voluntary activities](https://ec.europa.eu/eurostat/statistics-explained/index.php/Social_participation_and_integration_statistics#Formal_and_informal_voluntary_activities)); Annette Angermann and Birgit Sittermann, Volunteering in the Member States of the European Union – Evaluation and Summary of Current Studies, Observatory for Sociopolitical Developments in Europe, Frankfurt, 2010.

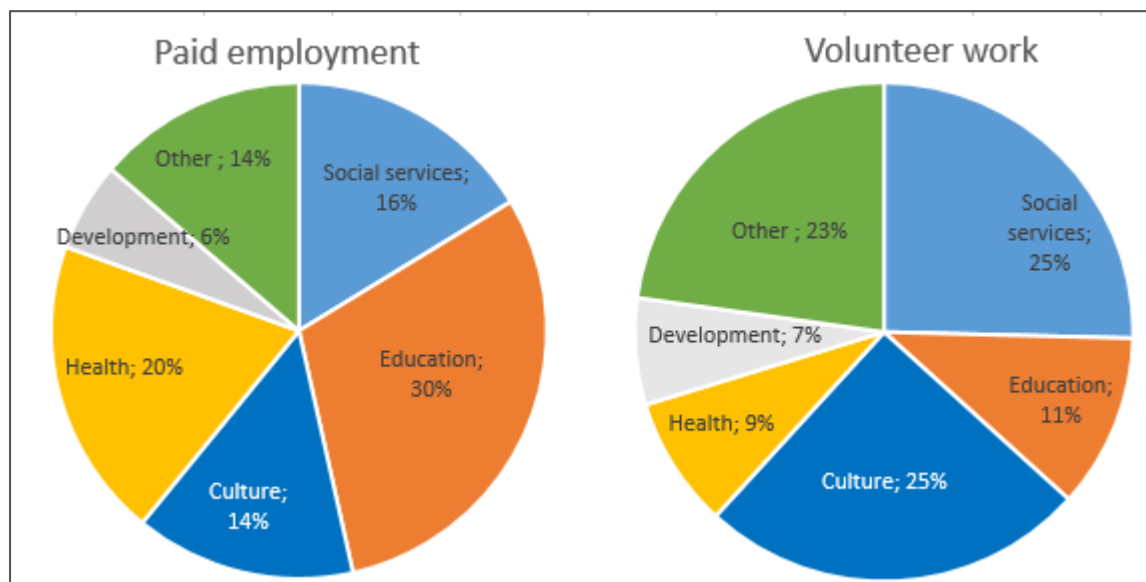
Figure 2 shows the relative size of the non-profit sector as seen through the relationship between volunteer work and paid employment. The sector is relatively small in Romania and Poland, while larger in Ireland, Belgium and the Netherlands. Activity is concentrated in four areas – social services, education, culture and health (see Figure 3).

Figure 2: Relationship between NPO-related volunteer work and paid employment



Source: Annex I to this document.

Figure 3: EU Member States' national NPOs by area of activity



Source: Annex I to this document.

2.2.2. International NPOs active in the EU

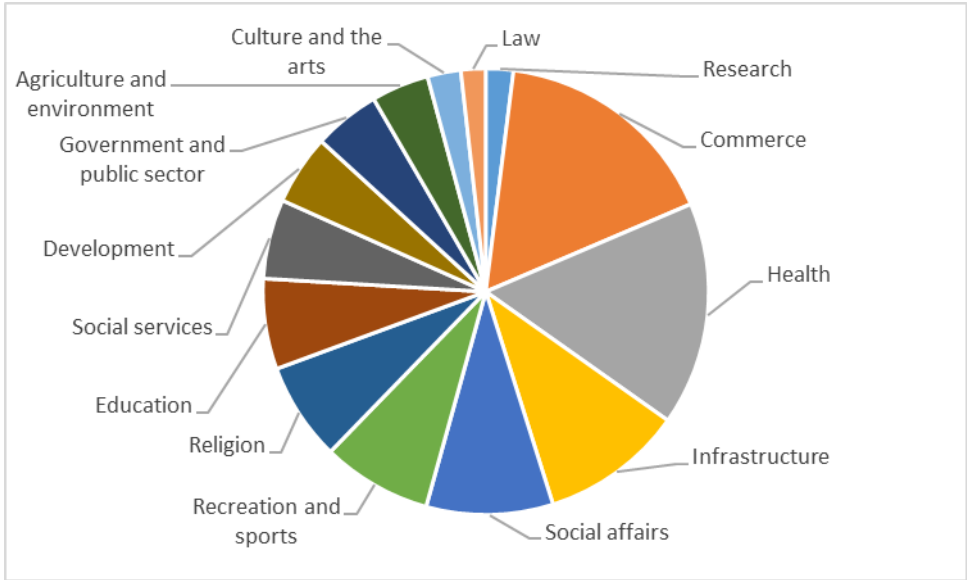
The Union of International Associations defines NPOs that are set up in more than one Member State with objectives and activities framed in a European or wider context as international NPOs (or INPOs). An example of an INPO is Greenpeace, comprised of 27 independent national or regional organisations in over 55 countries and coordinated by Greenpeace International, which has its legal base in the Netherlands. Many think-tanks and advocacy organisations closely associated with EU institutions are established according to Belgian and not EU law.

According to the European System of National Accounts, operations of NPOs in another Member State are counted as 'domestic' actors if they have an ongoing and formally registered presence there. For example, the various Caritas operations across Europe would not be part of Caritas Germany or Caritas International but would be included in the domestic non-profit sector in the respective Member States where they are present. Many NPOs have de facto become major European actors, but are not recorded as such officially.

In total, there were an estimated 4 996 INPOs established across the EU countries in 2020 (UIA, 2021). An average INPO has members in nine other Member States. As shown in Figure 4, the dominant areas of activity for INPOs include commerce (1 711), health (1 673) and infrastructure (1 066). The number of INPOs has increased about 30 % since 2010, with an increase by about 100 each year. The level of cross-border financial flows related to INPOs has increased substantially over the past decade, but remains lower than at the national level. Belgium hosts the largest number of INPOs followed by Germany, France, the Netherlands and Italy (see Figure 5). The prominent figures for Belgium are clearly a result of the 'EU effect' and the agglomeration of INPOs in Brussels. Many INPOs close to the EU institutions, such as think-tanks, advocacy and interest entities, are established according to Belgian and not EU law. They are not European actors of the *societas Europaea* kind.¹³

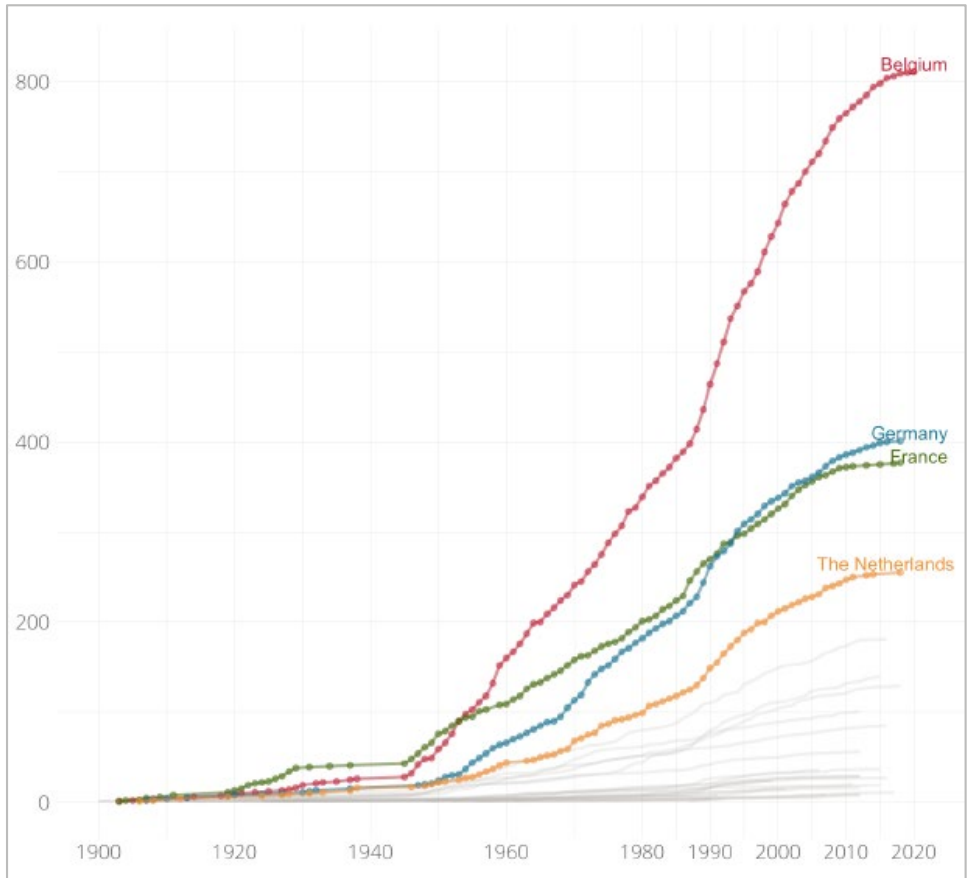
¹³ https://europa.eu/youreurope/business/running-business/developing-business/setting-up-european-company/index_en.htm

Figure 4: International NPOs present in the EU, by area of activity, 2021



Source: Annex I to this document.

Figure 5: Number of INPOs by Member State – 1900 to 2020



Source: Annex I to this document.

A recent survey by the European Foundation Centre¹⁴ has found that 64 % of its members work internationally, 38 % have offices in more than one country and provide funding internationally, and every second (48 %) has funds across borders while not having offices abroad. Figures collected by Transnational Giving Europe and reported by Surmatz¹⁵ show that in 2019, some €13.9 million was donated by foundations and individual philanthropists across borders, involving 6 630 separate donations to 420 beneficiaries in 21 countries. The amounts given have increased from between €2 million and €4 million for the 2007-2010 period, to between €11 million and nearly €14 million since then.

¹⁴ <https://efc.issuelab.org/resource/key-facts-about-european-philanthropy-working-internationally.html>

¹⁵ Hanna Surmatz, 'How to ease tax-effective cross-border philanthropy within the European Union and beyond?' presentation at the Taxation and Philanthropy conference, Geneva, Switzerland, 26 November 2020.

3. Existing problems and their impacts

Several problems in the status quo have a negative impact on the size, development and health of European civil societies.

3.1. Problems

This assessment identifies five key problems in the status quo. Each is briefly described below.

Problem 1: The lack of consistent definitions and data on NPOs

As highlighted in Section 2.2.1, there is broad diversity across the EU as regards the types of NPOs and their legal and fiscal treatment. Few Member States have up-to-date information on NPO activities, expenditures and revenues.

Problem 2: Uneven approach to tax exemptions for NPOs across the Member States

While establishing and registering a NPO is relatively straightforward in all Member States (although formal requirements do vary), obtaining tax exempt status is more demanding and large differences exist across Member States. More common – and critically so – are two regulatory issues: i) to what extent are surpluses the result of economic activities linked to the pursuit of the values/interests that are subject to special tax treatment, and, whenever surpluses are the result of such economic activities, according to what criteria is this happening; and ii) to what extent are advocacy activities 'political' in the sense of electioneering and supporting particular parties or candidates, and whenever such activities are political, according to what criteria is this happening? The first issue addresses the sectoral 'border' between NPOs and the private, for-profit or business sector, and the second addresses the NPOs' 'border' with the political system in place, i.e., a democracy within the EU. A good illustration of the challenges faced by cross-border NPOs is a cross-border region between Germany and Czechia. Differences in the regulatory, funding, and institutional setups in the two countries have inhibited the effective implementation of projects.¹⁶ In Saxony, NPOs are relatively well funded (albeit dependent on state funding) and seen as partners to the public institutions. On the Czech side, they are also dependent on government support but are far more financially unstable, lacking in long-term strategies and not viewed as equal partners to the public authorities.¹⁷ Challenges in cross-border NPO activities have also been documented between Vienna and Bratislava,¹⁸ and the Danube, Körös, Maross and Tisa regions. Particular difficulties have also been noted with respect to cross-border NPO activities related to health care.

A decision by the European Court of Justice recognises the complexity of the current situation. In ECJ Case C-386/04, *Centro di Musicologia Walter Stauffer v. Finanzamt München für Körperschaften* ('the Stauffer case'), the court ruled in favour of exempting an Italian NPO from property taxes in Germany.

¹⁶ M. Spaček, (2018), 'Multilevel cross-border governance in the Czech-Saxon borderland: Working together or in parallel?' *Administrative Culture*, 18(2), 175-202. doi:10.32994/ac.v18i2., p. 161.

¹⁷ *ibid.*, doi:10.32994/ac.v18i2.161, p. 187.

¹⁸ C. Sohn and R. Giffinger, (2015). 'A policy network approach to Cross-Border METROPOLITAN governance: The case of Vienna and Bratislava', *European Planning Studies*, 23(6), doi:10.1080/09654313.2014.994089., pp. 1187-1208.

Problem 3: Barriers to cross-border charitable donations to NPOs

All Member States recognise the need to regulate cross-border charitable contributions. However, the tax exemptions they offer for different kinds of activities vary in terms of their extent and criteria. They furthermore differ in the strictness with which they distinguish between advocacy and politics, on the one hand, and between private and public utility, on the other. It is possible to say that in this respect, the Member States have a patchwork of rules and regulations. The tax treatment, in particular, has resulted in a complex system of regulations that many experts see as being no longer adequate and in need of reform.¹⁹ For example, German tax law (*Abgabenordnung*) discourages NPOs from building up and managing financial reserves as investments, which makes longer-term planning difficult.²⁰ Generally, the complex tax treatment of NPO cross-border transfers and transactions presents major disincentives. Tax exemptions on charitable donations typically apply only to national tax-resident entities and not to those from other countries. Exemptions may be granted if a foreign charity is deemed to be comparable.

Problem 4: Complexity and inconsistency of comparability procedures

Most Member States do not offer a formal or uniform approach to testing comparability. In most countries, the competent tax authority determines, on a case-by-case basis, whether a foreign charity can be considered comparable to a domestic one. Comparability involves three core tests (although some authorities demand more): first, whether both the domestic NPO and that based in another EU country work for a public-benefit purpose according to the laws of the respective Member States; second, whether the public-benefit purpose is exclusive; and third, whether the respective NPO articles of incorporation include a non-distribution constraint whereby revenues cannot be distributed as income but are exclusively dedicated to the public benefit. No two countries have the same procedure; furthermore, a large number of supporting documents that need to be translated and notarised are often needed. Supporting documents may include certificates of tax residence, withholding tax vouchers, audited accounts, key legal establishment-related documents (e.g. constitution, statutes and articles). The burden of proving comparability falls on the foreign charity, which should be familiar with the national legislation. The best examples of formal comparability procedures in the EU at present can be found in the Netherlands and Luxembourg (see Box 1 below). Even in these countries, comparability procedures involve high transaction costs and administrative barriers.

Problems concerning the tax treatment of cross-border donations and comparability procedures are reflected in ECJ jurisprudence. In ECJ Case C-318/07, *Heinz Persche v. Finanzamt Lüdenscheid* ('the *Persche* case'), the ECJ ruled in favour of a German donor seeking to make an in-kind contribution to a Portuguese non-profit care home.²¹ According to the court's decision, a denial of tax incentives would be permissible only in case the Portuguese organisation were not (notwithstanding its seat) comparable to a German NPO. In another case (ECJ Case C-25/10, *Missionswerk Werner Heukelbach eV v. État Belge*, or the '*Missionswerke* case'²²), the court ruled in favour of a Belgian citizen who appointed a German NPO as her heir. The Belgian regional tax authority sought to apply an inheritance tax at a rate of 80 % rather than 7 %. A restriction on tax incentives would be permissible

¹⁹ Hopt, von Hippel et al., [Feasibility Study on a European Foundation Statute. Final Report](#), 2009. Helmut K. Anheier and Stefan Toepler, 'Policy Neglect: The True Challenge to the Nonprofit Sector' *Nonprofit Policy Forum* 10 (4), 2019.

²⁰ Stephan Schauhoff, *Handbuch der Gemeinnützigkeit*. 3. Auflage. Verlag C.H. Beck, München 2010, [ISBN 978-3-406-59794-7](#).

²¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62007CJ0318>

²² <https://curia.europa.eu/juris/liste.jsf?language=en&num=C-25/10>

only in case the German association were not (notwithstanding its seat) comparable to a Belgian NPO. All three cases highlight the critical issue of comparability for cross-border donations.

Problem 5: Member States have taken limited action

In many Member States, there is a legacy of policy neglect and sometimes decades of regulatory passivity if not inaction.²³ The clearest case of such policy neglect are the efforts of the inter-governmental Financial Action Task Force to control international money laundering and financing of terrorism by monitoring 'philanthropic' channels and NPO networks. Countries remained passive in correcting the negative consequences of anti-terrorist measures on NPO cross-border transactions and transfers.

Among the Member States, France seems to be the exception to this general rule. The French government has been actively advancing a reform agenda pursuing supply- and demand-side tools as well as improved regulations, to give NPOs and social enterprises a boost. On a more modest scale, in 2020, Germany introduced a minor improvement to the tax treatment of NPOs, by widening the scope of tax exempt purposes. Thus, irrespective of the greater awareness among policy-makers at the EU and Member State level currently, the legacy of policy neglect persists.

²³ Anheier and Toepler, 'Policy Neglect, 2019.

Box 1. Requirements for formal comparability procedures – examples of best practices in two Member States

The Netherlands

In the Netherlands, NPOs from outside the country can obtain ANBI (Algemeen Nut Beogende Instelling = Public Benefit Organisation) status with the tax authority by submitting the following documents in Dutch. The application review can take 4-6 weeks.

- legal form in home country;
- public benefit purposes in home country, which must represent 90 % of activities;
- proof that board and staff comply with Dutch integrity requirements;
- statement that in case of dissolution assets go to similar purposes;
- proof of reasonable remuneration of board members;
- proof of reasonable administration costs (overheads);
- proof of regular publication of annual reports;
- copies of statutes, byelaws and equivalent document;
- the names and address of the board members;
- document presenting organisational plans, and, if possible, a financial forecast;
- copy of the status similar to the ANBI status in the home country, including a declaration by the tax authorities and the equivalent national chamber of commerce registration;
- a copy of the ID of the person signing the application form;
- a copy of the relevant legal provisions of the home country.

Luxembourg

The Luxembourg model is somewhat different, and it has two steps: first, the tax declaration of the Luxembourg-based and resident donor states that the receiving organisation in another Member State meets the requirements of Luxembourg's tax law, typically by providing proof that the organisation is recognised by the other Member State as a public-benefit body and as being entitled to receiving tax deductible donations and as being exempt from income and wealth tax. The second step requires the recipient organisation in the other Member State to sign a model certificate that places four requirements:

- proof of formal registration: date of establishment of the organisation in accordance of the laws of the respective Member State;
- proof of recognised purpose: direct and exclusive focus on one or more of the following nine purposes according to the Luxembourgish categories of recognised purposes: art, education, philanthropy, worship/religion, science, social issues, sports, tourism or development cooperation;
- proof of recognized purposes Recognition of purpose as eligible for receiving tax incentives in the respective Member State;
- proof of tax status: the organisation is exempt from income tax and wealth tax in the respective Member State.

3.2. Impacts

The problems identified in Section 3.1 generate a range of negative impacts. First of all, the problems generate **high compliance and legal costs for NPOs carrying out cross-border activities**. Such NPOs incur costs to comply with civil and tax law in other EU countries, which may include legal assistance. One study estimates that European foundations incur costs within the range of €90 million to €101.7 million per year.²⁴ **These costs may prove to be especially burdensome for small NPOs** and to limit their potential to expand across borders. Compliance costs can also be substantial for large NPOs.

The lack of a harmonised tax and legal treatment of NPOs places barriers before the single market. As other studies have argued, such barriers **hinder the market power of national organisations, productivity and cross-border financial flows, while also limiting competition, job creation and investment** (EPRS, 2019).²⁵ Charitable contributions across borders are likely to be lower due to disparate practices. The number of INPOs and their capacity is less than what it could be in a more integrated market offering economies of scale. Charitable giving, a form of investment, may be in particularly constrained by the fragmented market.

²⁴ Hopt, von Hippel et al., [Feasibility Study on a European Foundation Statute, Final Report](#), 2009.

²⁵ [The Cost of Non-Europe in the Single Market, EPRS](#), study, EPRS, European Parliament, 2014.

4. EU action – Possible avenues and impacts

The need for EU action to address the problems facing NPOs in the EU has been recognised ever since the publication of the Fontaine report in 1987. Proposals have been put forward for the establishment of a European association, a European foundation and a European mutual society. In each case, the process of adoption has either been officially suspended or interrupted.

EU action is still warranted, and it has the potential to promote NPO cross-border transactions and economic contributions by NPOs, and ultimately to enhance the social outcomes that NPOs seek to achieve. Section 4.1 presents a strengths-weaknesses-opportunities-threats (SWOT) analysis of the potential value of EU action in this area, and Section 4.2 presents each of the possible policy options.

4.1. SWOT analysis for EU action to promote the NPO sector

A SWOT analysis was carried out to investigate avenues for EU action that take into account the benefits and opportunities while limiting the weaknesses and threats. The findings are summarised in Table 3 and described below.

Table 3: SWOT analysis of the benefits of EU action for NPOs

Strengths	Weaknesses
Existing networks of major cross-border NPOs, many with multiple locations in various Member States	Evidence base for all aspects of cross-border activities of NPOs is incomplete and out of date
All Member States are included in this NPO network and are linked by individual and organisational membership	There are currently few national-level reforms and there is a legacy of policy neglect
Many cross-border regions involve civil society connections facilitated by NPOs	Legal, legal and fiscal barriers for cross-border activities remain; comparability tests are cumbersome
A growing number of NPO operations across borders	Some Member States are unwilling to remove barriers or lack interest for doing so
The amount of cross-border financial flows among NPOs as donors and recipients is increasing	Interest in a European association statute remains limited
Cross-border membership and interest in international volunteering is increasing	Economic disparities between different sides of border regions are impediments to deeper collaboration
	Cultural differences in terms of participation and civic engagement persist
	Language barriers

Opportunities	Threats
Comparability test models are more widely accepted	Creation of a statute with limited uptake
Statute could encourage other reform efforts and bring a social innovation push	Some Member States and major players may oppose
Potential for social markets in health, education and social services	Lack of interest among relevant parties
Volunteer programmes to encourage cross-border engagements	Member States reluctant to adopt comparability models
Sharing cross-border best practices could increase cross-border cohesion	Illiberal tendencies suppress civil society
Awareness campaigns	Rekindled nationalism and micro nationalism

Strengths. There exists a network of cross-border NPOs, many of them with multiple locations in various Member States. All Member States are covered by this complex network composed of individual and organisational members. This network across Member States, could form the basis for expanded inter-associational structures across borders.

There are also indications that the volume of cross-border financial flows among NPOs as donors and recipients seems to be increasing, although data are incomplete. The same upward trend applies to the number of NPO operations across borders as cross-border memberships and volunteering.

In addition, a growing number of NPOs are being established in Brussels to represent various economic, civic, cultural, educational, environmental or regional interests. What is more, many cross-border regions involve civil society activities facilitated by NPOs. They complement the above-mentioned national networks at many regional levels.²⁶

Weaknesses. The evidence base for all aspects of cross-border activities of NPOs is incomplete and basic statistics are rarely comparable and frequently out of date. The same applies to data on actual and potential barriers. There is an acute risk of embarking on reform efforts, the premises of which can easily be challenged by opposing parties.

The tax treatment of NPO cross-border activities and transfers by Member States is complex and comes with relatively high transaction costs. For smaller NPOs or smaller sums, these costs may well be prohibitive and stand in no proportion to the intended scale of activities.

Given the existing legal, fiscal and administrative barriers before cross-border activities, the various comparability models and tests provide some relief but remain still rather complex, especially given their case-by-case modus. Some Member States seem less willing to remove barriers than others, or less interested in doing so.

Opportunities. Policy-makers' increased interest in NPOs and the enhanced role NPOs currently play in the EU may present policy windows for the creation of a European statute. In addition, the experience amassed in running comparability tests and implementing related measures points to the possibility of a higher level of adoption by the Member States. Awareness campaigns could

²⁶ Communication on 'Boosting Growth and Cohesion in European Border Regions', (COM(2017) 534, European Commission, 2017.

certainly add momentum to such (and similar forms of) improvement as regards tax treatment, as would propagating and strengthening cross-border volunteer programmes.

Since many membership associations also provide services, there is a potential for social markets in health, education and professional services that cross-border activities could provide. This link has not been explored systematically but could strengthen the case of legislative action to enhance cross-border activities.

Many best practices for cross-border cooperation have been identified, and solutions to many cross-border cooperation been developed, a systematic approach to reducing administrative and other barriers could add significant momentum.

Threats. Some Member States could be reluctant to make the necessary domestic legal changes to accommodate new legislation. Therefore, it will be important to conduct a systematic stakeholder analysis to gauge the positions of the Member States and the Parliament early on. There are also risks coming from suppressing civil society or targeting specific kinds of NPOs, usually those operating across borders. These tendencies coincide with rekindled sentiments of regional-level nationalism and micro-nationalism, which could affect activities in some cross-border regions in particular.

4.2. Overview of possible EU-level policy options

The three landmark decisions by the European Court of Justice (ECJ Cases C-386/04; C-318/07; C-25/10) provide both the legal and the substantive foundations for legislative options. All three judgments point to the critical issues of comparability of public utility status and tax treatment across Member States. However, the burden of proving comparability currently falls on NPOs, which can be a prolonged and costly process that is often difficult for smaller organisations to handle. What is more, within the Member States, different authorities have say regarding these issues. These authorities, which typically have broad discretion, require different types of evidence and forms, and operate on a case-by-case basis. As a result, NPOs face significant administrative costs and barriers.

Comparability generally involves three core tests (although some authorities demand more): first, whether both the domestic NPO and the one based in another EU country pursue a public-benefit purpose according to the laws of the respective Member States; second, whether the public-benefit purpose is exclusive; and third, whether the respective NPO articles of incorporation include a non-distribution constraint, whereby revenues cannot be distributed as income but are exclusively dedicated to the public benefit.

How to achieve a more effective and efficient regulatory framework for establishing comparability?

Looking at the regulation or at harmonisation measures, the objective is to

- facilitate cross-border activities of NPOs by reducing existing barriers;
- enhance NPO contributions to the public good and the social cohesion of the EU;
- help create and sustain vibrant European civil societies.

For the purposes of the regulation or the harmonisation measures, NPOs are entities that are:

- private, i.e., not part of the Member States' governments and public administration systems;
- formally registered in one or more Member States;
- not distributing profit;

- serving a recognised public benefit;
- self-governing.

NPOs enjoy exemption from specified taxes and levies according to a schedule of public benefit purposes agreed by all Member States. Prominently, these purposes also include pan-European objectives such as contributing to cross-border social cohesion and civic engagement for Europe. The tax exempt status is contingent on:

- near-exclusive pursuit of stated public purpose or purposes;
- adherence to a European NPO governance code (to be developed);
- public transparency (using a standard set of accounts and an annual reporting format).

The Member States would have to agree on a common

- legal form for registration and administrative requirements;
- comparability model for tax and related purposes;
- governance code for accountability purposes, and;
- set of standard accounts and reporting requirements for transparency purposes.

The actual registration, administrative and regulatory oversight remain with the Member States.

In summary, there are three principal policy options. A variant of any option is to add further supporting measures that target specific NPO functions (i.e., service provision, civic engagement and advocacy, financial intermediaries, social innovation) and address emerging policy issues proactively.

The first option is to monitor developments of cross-border NPO activities in the hope that the various comparability tests will become more similar and administrative practices less costly and cumbersome over time. While this approach has the advantage of making it possible to build a better evidence base and thereby of helping prepare the ground for the second and third option, it risks that NPO contributions will continue to be made below their potential, that administrative barriers would remain in place, and that both the complexity and the fragmentation of comparability procedures could actually increase rather than decrease.

The second option is to use the regulatory route under Article 352 TFEU and initiate the relevant processes in the Parliament and the Commission. While this option creates the level playing field required for the single market, it is worth mentioning that this option requires unanimity in the Council.

The third option includes harmonisation measures under Article 114 TFEU to advance the objectives set out in Article 26 TFEU. The Parliament and the Council can, acting in accordance with the ordinary legislative procedure and after consulting the European Economic and Social Committee, adopt the measures needed for improving the functioning of the internal market. However, since the tax treatment of NPOs would be a central aspect of the legislative action, using Article 114 TFEU might be limiting, as according to clause 2 of Article 114 TFEU, it does not apply to fiscal provisions.

Finally, irrespective of each option, there is an urgent need for a more comprehensive, comparable and up-to-date evidence base on the cross border activities of EU NPOs.

A statute for European cross-border associations and non-profit organisations

Assessing the European added value

The main objective of this study is to assess what legislative action and other measures emanating from the European Parliament could support the development of a Pan-European civil society, especially the role of non-profit associations and organisations (NPOs). Based on an analysis of the scale and scope of NPO activities, the report addresses the need for EU legislation such as a future European Association Statute and other measures. Using qualitative and quantitative information, the study examines the potential added value of the Statute (encouraging cross-border transactions, enhancing social outcomes, and increasing economic contributions) and outlines four options, including potential drawbacks of each:

The first option is to monitor developments of cross-border NPO activities and barriers. While this approach has the advantage of allowing for building a better evidence base, it risks that NPO contributions continue below their potential, that administrative barriers remain in place, and that both the complexity and the fragmentation of comparability procedures increase over time.

The second option is to use the regulatory route under Article 352 TFEU and initiate the relevant processes in the European Parliament and the Commission. If successful, it would reduce barriers significantly and create a level playing field for cross-border NPOs and civil society activities in and for Europe. However, given the unanimity requirement in the Council, this option carries a risk of failure.

The third option is harmonisation measures under Article 114 TFEU to advance the objectives set out in Article 26 TFEU, which offers a procedurally less demanding route. However, since the tax treatment of NPOs could be a central aspect of the legislative action, using Article 114 might be limiting as it does not apply to fiscal provisions.

A variant of all options is to add supporting measures targeting specific NPO functions (service provision, civic engagement and advocacy, financial intermediaries, social innovation). Irrespective of which option is chosen, however, there is an urgent need for a more comprehensive, comparable and up-to-date evidence base of cross-border NPO activities.

AUTHOR

This study has been written by Helmut K Anheier of the Hertie School, Berlin, and the University of California Luskin School of Public Affairs, Los Angeles, at the request of the European Added Value Unit of the Directorate for Impact Assessment and European Added Value, within the Directorate-General for Parliamentary Research Services (EPRS) of the Secretariat of the European Parliament.

ADMINISTRATOR RESPONSIBLE

Klaus Müller, European Added Value Unit

To contact the publisher, please e-mail epgs-europeanaddedvalue@ep.europa.eu

LINGUISTIC VERSIONS

Original: EN

Manuscript completed in April 2021.

DISCLAIMER AND COPYRIGHT

This document is prepared for, and addressed to, the Members and staff of the European Parliament as background material to assist them in their parliamentary work. The content of the document is the sole responsibility of its author(s) and any opinions expressed herein should not be taken to represent an official position of the Parliament.

Reproduction and translation for non-commercial purposes are authorised, provided the source is acknowledged and the European Parliament is given prior notice and sent a copy.

Brussels © European Union, 2021.

PE 662.630

ISBN: 978-92-846-8013-9

DOI: 10.2861/410733

CAT: QA-02-21-554-EN-N

epgs@ep.europa.eu

<http://www.epgs.ep.parl.union.eu> (intranet)

<http://www.europarl.europa.eu/thinktank> (internet)

<http://epthinktank.eu> (blog)

Executive summary

Associations and nonprofit organisations (NPOs for short, as associations are a specific form of the broader category non-profit organisation) have so far developed in national contexts in terms of policies and regulatory frameworks. However, the completion of the European Single Market means that NPOs, too, enjoy full freedom for cross-border activities. While they play important roles in Member States, and increasingly at the European level, such activities are currently restrained by legal and administrative difficulties as well as by the organisational capacity of NPOs to operate across borders given existing barriers. As a result, their contributions are likely below their potential in a wide range of fields such as education, culture, health care, social services, research, development aid, humanitarian assistance and disaster preparedness. They are also below their potential in adding to the social cohesion among European societies, especially in cross-border regions.

The general topic of a European NPO Statute has a remarkably long, though inconclusive, history in both Parliament and the Commission, spanning over three decades. Already two years before the 1989 Delors Report on an Economic and Monetary Union paved the way for major initiatives and legislative actions in the European Communities, the Fontaine Report proposed to explore a European legal framework for associations. In the years following, various proposals and debates by the Parliament and the Commission tried to advance the recommendations in the Fontaine report. They managed to gain some initial support but encountered significant objections during critical phases. Towards the end, suffering from procedural and other setbacks that repeatedly stalled the process, it came to a standstill first and was finally dropped from the Commission's legislative agenda.

Contributing to these repeated failures were two fundamental flaws that reach back to the beginnings of the initiative. First, proposals suffered from a lack of a broadly shared understanding of what entities are the subject of the Statute, and for what purposes. Across Member States, the area between the market and the state, variously referred to as civil society, third, voluntary, social or nonprofit sector, presents a conceptual tangle with a great diversity of definitions as well as legal and fiscal treatments. Second, the lack of a systematic evidence base was also detrimental, as only few countries have more comprehensive and up-to-date information on the scale and scope of NPO activities, expenditures and revenues.

The poor data situation makes it impossible to determine the economic costs of cross-border barriers in any reliable way. As a result, the exact economic value added if such barriers were removed is also unclear. Irrespective of the paucity of available data, the empirical findings nonetheless point to a significant potential for enhanced cross-border activities and suggest that:

- The great majority of NPO activities are domestic; however, a growing number of NPOs operate across borders
- The amount of cross-border financial flows among NPOs has increased substantially over the last decade but remains well below domestic levels
- All Member States are included in a complex network of NPOs linking citizens via individual and organisational memberships
- Cross-border regional activities are growing in importance but vary significantly in their effectiveness across the EU.

The assumption underlying the premise of a proposed European Statute is that NPOs would be more likely to operate across borders, and even carry out joint actions, if facilitated by enabling

legislation. Unlike in the 1990s and the 2000s, there seems to be a broader interest in strengthening a Pan-European civil society among Member States and around EU institutions. There is also a greater awareness among policymakers as to the potentials NPOs offer in terms of service delivery, civic participation and social innovation.

Yet it has been difficult to translate such recognition into a unanimous agreement towards new regulatory models and policy measures. As a result, the legal, cultural, political and economic differences among Member States continue to make cross-border NPO activities highly complex. The current situation of the administration and tax treatment of cross-border NPO activities, including the practice of comparability for establishing equivalence, amount to higher transaction costs than would be the case domestically. They are also likely to act as disincentives for international NPO activities generally.

The Potential of a European Statute of Associations and Nonprofit Organisations

Could a European Association Statute or some other measures initiated by the European Parliament provide relief? Unfortunately, short of a systematic and representative survey, it is impossible to indicate even roughly what the economic value added might be. However, using a SWOT analysis, it is possible to offer a more qualitative assessment of the European value added.

Strengths. There exists a growing network of cross border NPOs, many with multiple locations in various member states. This network could form the basis for expanded inter-associational structures across borders. There are also indications that the amounts of cross-border financial flows among NPOs as either donors or recipients are increasing, although the data are incomplete. The same upward trend seems to apply to the number of NPOs operations across borders and to volunteering. In addition, there is a growing number of NPOs being established in Brussels to represent various economic, civic, cultural, educational, environmental or regional interests from across all Member States. What is more, many border regions have civil society activities facilitated by NPOs. A Statute would certainly strengthen all these elements.

Weaknesses. The evidence base for NPOs is incomplete; basic statistics are rarely comparable and frequently out-of-date. The same applies to data on actual and potential barriers..

Unless the Statute is accompanied by supporting measures, the tax treatments of NPO cross-border activities and transfers by Member States will remain complex and with relatively high transaction costs. For smaller NPOs or smaller sums, barriers continue to be prohibitive and costs are disproportionate to the intended scale of activities. With fiscal and administrative barriers for cross border activities in place but remain still rather complex, especially given their case-by-case modus. Some Member States seem more and others less willing or interested in removing barriers.

There are few reforms in the field that have been undertaken by Member States domestically in recent years or that are currently underway. The prevailing situation seems that NPO somehow accommodate to both barriers and lacking reforms to find ways to 'muddle through.' As a result, the potential that NPOs offer to the European project goes largely unrealized.

For border regions, cultural differences, language barriers and lack of mutual awareness remain obstacles. For some, economic disparities between different sides of boarder regions are impediments to deeper collaboration.

Opportunities. The greater interest among policymakers could present policy windows for the European Statute. In addition, the experience with comparability tests and related measures points to the possibility of greater adoptions by other Member States, at least gradually. Awareness campaigns could certainly add momentum to such and similar improvements in the context of

administrative and fiscal reform efforts, as would propagating and strengthening cross-border volunteer programs.

Since many membership associations also provide services, there is a potential for a greater NPO role in the fields of health and social care, education and many professional services. This potential, however, has not been explored systematically but could strengthen the case for legislative action to enhance cross-border activities and the social cohesion of border regions in particular. Many best practices for cooperation in such regions have been identified, and solutions developed. A systematic approach to reducing administrative and other barriers in cross-border regions could add significant momentum.

There is also the chance to build a better evidence base NPO activities in Member States and prepare a systematic assessment of their cross-border potential in preparation of legislative actions.

Threats. There is the risk of drafting a Statute and preparing it for legislative and parliamentary processes without the support of an adequate evidence base. In such a case, the Statute could easily be rejected. There is also the risk of creating, should the Statute nonetheless be adopted, an instrument that finds little take-up by NPOs and ultimately fails in meeting legislative objectives.

Even with a better evidence base, as is the case with most such proposals, there may be political, economic and social interest groups opposing the legislation, requesting substantial changes for passage, or otherwise show a lack of interest. What is more, some Member States could be reluctant to make the necessary domestic legal and fiscal changes to accommodate the Statute or other measures. Therefore, it will be important to conduct a systematic stakeholder analysis to gauge positions among Member States and the various factions in the European Parliament early on.

Options

The three landmark decisions by the European Court of Justice (ECJ Cases C-386/04; C-318/07; C-25/10) provide both the legal and the substantive foundations for legislative options. All three judgments point to the critical issues of comparability of public utility status and tax treatment across Member States. However, the burden of proving comparability currently falls on NPOs, which can be a prolonged and costly process, and is often beyond the capacities of smaller organisations. What is more, across Member States different authorities are involved, which typically have wide discretion, require different types of evidence and forms, and operate on a case-by-case basis. As a result, NPOs face significant administrative costs and barriers.

Comparability generally involves three core tests (although some authorities demand more): first, whether both, the domestic and the EU-based NPO pursue a public-benefit purpose according to the laws of the respective Member States; second, whether the public-benefit purpose is exclusive; and third, whether the respective NPO articles of incorporation include a non-distribution constraint whereby revenues cannot be distributed as income but are exclusively dedicated to the public benefit.

How to achieve a more effective and efficient regulatory framework for establishing comparability? From a policy perspective, there are three options:

The first option is to monitor developments of cross-border NPO activities in the hope that the various comparability tests will become more similar and administrative practices less costly and cumbersome over time. While this approach has the advantage of allowing for building a better evidence base, and thereby help prepare the ground for the second and third option below, it risks that NPO contributions continue below their potential, that administrative barriers remain in place, and that both the complexity and the fragmentation of comparability procedures could actually increase rather than decrease.

The second option is to use the regulatory route under Article 352 TFEU and initiate the relevant processes in the European Parliament and the Commission. While this option creates the level playing field required under the Single Market, it is worth mentioning that this option requires unanimity in the Council.

The third option are harmonization measures under Article 114 TFEU to advance the objectives set out in Article 26 TFEU. The European Parliament and the Council can, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee, adopt the measures for establishing and improve the functioning of the internal market. However, since the tax-treatment of NPOs would be a central aspect of the legislative action, using Article 114 might be limiting, as according to clause 2, it does not apply to fiscal provisions.

Assuming the second and third option, the objectives of the Regulation or the harmonization measures are to

- facilitate cross-border activities of NPOs by reducing existing barriers
- enhance NPO contributions to the public good and the social cohesion of the Union
- help create and sustain vibrant European civil societies.

For the purpose of the Regulation or the harmonization measures, NPOs are entities that are

- private, i.e., not part of Member States governments and public administration systems
- formally registered in one or more Member States
- non-profit distributing
- serving a recognized public benefit, and
- self-governing.

NPOs enjoy exemption from specified taxes and levies according to a schedule of public benefit purposes agreed by all Member States. Prominently, these purposes also include pan-European objectives such as contributing to cross-border social cohesion and civic engagement for Europe. The tax-exempt status is contingent on

- near exclusive pursuit of stated public purpose or purposes
- adhering to a European NPO governance code (to be developed)
- public transparency (using a standard set of accounts and annual report format).

The Member States would have to agree on a common

- legal form for registration and administrative requirements
- comparability model for tax and related purposes
- governance code for accountability purposes, and
- set of standard accounts and reporting requirements for transparency purposes.

The actual registration, administrative and regulatory oversight remain with the respective Member States.

Any of the three options could be enhanced by further supporting measures that target specific NPO functions (i.e., service provision, civic engagement and advocacy, financial intermediaries, social innovation) and especially so in cross-border regions. Finally, irrespective of which option is chosen, however, there is an urgent need for a more comprehensive, comparable and up-to-date evidence base on the cross border activities of EU NPOs.

Table of contents

1. Introduction	1
2. Concepts, Forms, Roles and Frameworks	2
3. Empirical Portrait	11
4. Cross Border Aspects and Dimensions	22
5. Previous Policy Initiatives	31
6. Growing Awareness of Potential Amidst Policy Neglect	35
7. Towards a European Statute for Associations and Nonprofit Organisations: Reflections on potential value added	41
8. How to Proceed?	48
9. Proposed Supporting Measures	52
10. Annexes	59
10.1. Annex 1	59
10.2. Annex 2	65

Table of figures

Figure 1: Size of Non-Profit Sector paid vs. volunteer workforce, by country, various years	12
Figure 2: Non-Profit Sector workforce paid vs. volunteers, by field of expenditure, various years	14
Figure 3: Sources of nonprofit revenue, various years	15
Figure 4: Number of INPOs in Europe with a focus on Europe	23
Figure 5: Number of INPO by Member States 2010-2020	25
Figure 6: Number of INPOs by Field of Activity, 2021	25

Table of tables

Table 1: Estimated Number and Types of Foundations in Selected Member States, various years	16
Table 2: Volunteering rates across European Union Countries, as share of adult population, various sources and years	17
Table 3: Participation in formal voluntary activities in Europe, by Member States and sex, 2015	18
Table 4: Membership in NPOs, by type and Member States, 2017-2020	20
Table 5: International Activities as Share of Total FTE Workforce of the Nonprofit Sector, By Member State, various years	22
Table 6: Number of INPOs by Member States, 2000 and latest year available	23
Table 7: SWOT Analysis in View of European Value Added	45

Table of Maps

Map 1: EU based NGOs. HQ of NGOs that have members in all EU Countries	26
Map 2: EU based NGOs. Top 10 number of HQ of NGOs that have members in at least 15 other EU countries	26
Map 3: EU based NGOs. Top 10 number of HQ of NGOs that have members in at least 10 other EU countries	27
Map 4: EU based NGOs. Top 10 number of HQ of NGOs that have members in at least 5 other EU countries	27

Table of Boxes

Box 1: European System of National Accounts definition and treatment of nonprofit organisations and nonprofit sectors	11
Box 2: Country Profiles	13
Box 3: Profiles of larger international nonprofit organisations in Europe	59

1. Introduction

Associations and nonprofit organisations (NPOs for short as associations are a specific form of the broader category non-profit organisation) have so far developed in national regulatory frameworks. Yet the completion of the European Single Market means that NPOs, too, are to enjoy full freedom for cross-border activities. While they play important roles in Member States, NPO activities in terms of cross-border operations are restrained by legal and administrative barriers. As a result, their contributions to the European Project are likely below their potential in a wide range of fields such as education, culture, health care, social services, research, development aid, humanitarian assistance or disaster preparedness. They are also below their potential in adding to the social cohesion among European societies, especially in cross-border regions.

The main objective of this study is to assess if Parliamentary action at EU level could support the role of NPOs and their cross-border activities. Based on an analysis of the scale and scope of NPOs within and across Member States, the study addresses the need for EU legislation for a future European Statute of Associations and Nonprofit Organisations and other relevant measures. Using qualitative and quantitative information, the study examines the potential European added value of the Statute (encouraging cross-border transactions, enhancing social outcomes, and increasing economic contributions) before outlining three policy options in conclusion.

Gaining conceptual clarity, understanding the policy relevance and reviewing the evidence base is critical for exploring and developing options for advancing the positions of NPOs in Europe in general, and the added value of a European Statute of Associations and Nonprofit Organisations in particular. A lack of clarity about what kinds of associations and organisation are the focus of the proposed Statute, the absence of an evidence base, and unclear policy objectives have in the past contributed to the relative failures of previous initiatives to advance the development of a Pan-European civil society and the role of NPOs.

Therefore, this study proceeds in five main steps or parts. The first part introduces the conceptual background to associations and non-profit organisations in terms of definitions, forms, function and policy relevance. The second part presents an overview of their size and scope of their domestic and cross-border activities. This is followed by a summary of the long and inconclusive history of policy approaches in both Parliament and the Commission towards NPOs, spanning the better part of three decades. The fourth part examines the current policy environment of NPOs and attempts to assess the European value added of a potential Statute. Finally, the study outlines three options for legislators as they consider possible next steps.

2. Concepts, Forms, Roles and Frameworks

The area between the market and the state, variously referred to as civil society, third, voluntary or nonprofit sector in the 23 EU languages and across jurisdictions amounts to a massive terminological tangle at the cross-national level, with great diversity of definitions. The terminology is as complex as it can be confusing. Language, tradition, legal and fiscal treatment combine to create easily hundreds of terms and concepts. Yet irrespective of their actual national and international terminologies, there are three basic types of NPOs: associations, corporations and foundations. Specifically:¹

Associations are private membership-based organisations in which membership is non-compulsory. The key idea is to have a form that allows individuals to become members of an organisation that facilitates the pursuit of a common interest. Associations may or may not be formally registered, but like other NPOs, the association should have identifiable boundaries to distinguish members from non-members, be self-governing, and noncommercial in its primary objectives and organisational behavior. The defining governance structure of an association is the relationship between a board and the membership as such. Members form a kind on demos and elect the board which represents their interests and, in turn, is accountable to the members. The formal requirements, the governance structure and the fiscal treatment vary across Member States. Associations are distinct from many nonprofit organisations like hospitals, social service agencies or art museums, which may have a governing board but no membership base.

Corporations are created through the formal act of incorporation, whereby it becomes a legal entity enabling the organisation to behave like legal personality and own property, enter into contracts, and conduct business. Moreover, in contrast to associations, which are structurally defined by the relationship between members and a board, a corporation is based on limited liability in an economic sense. This means that the board is not personally liable but only to the extent of the corporation's assets. The board is typically self-selected. The key idea here is to form an organisation that allows for the pursuit of a public or charitable objective while limiting the liability of those involved. Nonprofit hospitals, social services providers, museums, schools and universities are examples of nonprofit corporations. As is the case for associations, legal requirements, governance and fiscal aspects vary from one member state to the other. Some corporation do in fact have members and allow some membership input, and others apportion voting rights according to board member contributions to base capital. What is more, associations can be the governing body of nonprofit corporations.

Foundations are neither based on membership nor about limiting liability but are essentially owner-less assets, held in trust and dedicated to a specific purpose. The asset can be financial or in the form of property of monetary value. A foundation is established through a deed, i.e., the transfer of an asset from a donor to a separate entity overseen by some kind of governance structure, typically a form of trusteeship. The defining relation here is between the asset and those holding the asset in trust, and the key idea is to provide a protected and independent vehicle for the asset to

¹ See H. K. Anheier and S. Toepler. *Nonprofit Organizations: Approaches, Management, Policy*. London and New York: Routledge, chapter 3, forthcoming.

realize specified set of objectives. The various legal systems define foundations rather differently; and registration, legal practices and oversight regimes vary accordingly. Foundations can be operating entities, which makes them similar to nonprofit corporations. They can also be grant-seeking like fund-raising associations. What is more, associations can have foundations attached to them as can nonprofit corporations, and foundations can control separate corporations.

It is useful to think of these three forms in terms of their basic reference: associations are about common interests, civic engagement and self-organisation and hence constituent of civil society. Nonprofit corporations are largely about service delivery and close to the provision of services in fields such as health care, social services and education. Foundations are about philanthropy and private financial contributions to the public good. The problem, however, is not only that in everyday parlance, legal treatment and policy debates, these forms are often mixed up and used interchangeably. The fundamental issue is that these forms intermingle and are frequently found in various combinations, especially among the larger nonprofit networks.

Thus, while the form distinctions are clear, the terminology in Member States is frequently not as legal and actual terms diverge. For example, the prominent Friedrich Ebert Foundation or Konrad Adenauer Foundation, which operate in several Member States, are registered associations. Caritas Germany is an umbrella organisation registered as an association for some 25,000 separate entities that include foundations, associations and corporations.

What is more, Member States differ in what kinds of entities fall under the nonprofit sector in a broader sense. Importantly, there are forms that in some countries such as France, Belgium or Spain are seen as part of, or close to, associations and nonprofit organisations, in others regarded as part of a separate social economy, and in others yet as part of the market economy:²

Cooperatives are organisations formed freely by individuals to pursue the economic interests of their members. The basic principles of cooperatives include (i) democratic control, i.e., one-person, one-vote; (ii) shared identity, i.e., members are both owners and customers; and (iii) orientation to provide services to members “at cost.”

Mutual societies are, like cooperatives, organized by individuals seeking to improve their economic situation through collective activity. Mutual societies differ from cooperatives in that they are mechanisms for sharing risk, either personal or property, through periodic contributions to a common fund. Examples are retirement, sickness and burial funds, or savings and loan associations.

Social enterprises are related entities as they place service to the organisation’s members or to the community ahead of profit. Unlike associations and nonprofit organisations, they may distribute their profits to members. Unlike for-profit firms, however, the distribution is based on membership rather than contributed capital.

Adding these entities would create an even more complex terminology and complicate any legislative task. So, for the purpose of this study, i.e., to gauge the feasibility of a European Statute of Associations and Nonprofit Organisation, the proposal is to consider the three forms together and with a focus on associations and non-profit corporations, while excluding organisations with a

² Brewer, C. V. (2016). The ongoing evolution in social enterprise legal forms. In Young, D. R., Searing, E. A. M. and Brewer, C. V. (Eds.) *The social enterprise zoo: A guide for perplexed scholars, entrepreneurs, philanthropists, leaders, investors, and policymakers* (pp. 33–64). Edward Elgar Pub.

significant economic objective like cooperatives, mutual societies or social enterprises. They should be addressed separately.³

Legal frameworks. Establishing and registering a NPO is easy in all Member States, although formal requirements vary. Obtaining tax-exempt status, however, is more demanding, and it is here that great differences exist across Member States, as is the case for accountability and reporting requirements. As a result, from a cross-national regulatory perspective, the entire field of nonprofit and civil society activities is characterized by extraordinary legal and fiscal complexity.⁴

Some NPOs employ many thousands of staff and are highly professional organisations that provide social, health care or educational services. They represent a particular cause (e.g., environmental protection) or constituency (e.g., ethnic or religious minorities) or seek to advance a special interest (e.g., professional associations) or set of issues (e.g., humanitarian assistance, human rights). Many provide some service such as welfare provision, health care or education. In economic terms, they are co-producers: as value-based, purpose-driven organisations they offer a service bundled-up or combined with certain value dispositions that can be religious, political, cultural, or humanitarian in nature and reflect some special interest or another. They also advance the ethical beliefs and interests of professions like physicians, teachers, lawyers, scientists or social workers. (They typically lobby on behalf of their members, and provide services in the form of information, continued education etc.)

The expression of values is protected by the basic freedoms in all Member States (freedom of speech), as is the formation of associations and other types of corporations to pursue social interests (freedom of association). International activities and especially funding flows have come under more scrutiny in the aftermath of the 2001 terrorist attacks in the U.S. and the passage anti-terrorist regulation for international financial flows. These measures brought greater accountability and reporting requirements for international funding flows.. More common, and critically, are two regulatory issues: (i) to what extent are surpluses resulting from economic activities linked to the pursuit of the values/interests in question subject to special tax treatment, and if so, according to what criteria; and (ii) to what extent are advocacy activities 'political' in the sense of electioneering and supporting particular parties or candidates, and if so, according to what criteria? The first issue addresses the sectoral 'border' NPOs have with the private, for-profit or business sector, and the second the 'border' with the political system in place, i.e., a democracy within the EU.

All Member States recognize the need to regulate these sectoral border issues. However, they differ in the extent of, and in the criteria for, providing tax exemptions for what kinds of activities, and in the strictness of the distinction between advocacy and politics on the one hand and between private and public utility on the other. In this respect, the EU offers a patchwork of different rules and regulations. Especially the tax treatment has resulted in a complex system of regulations that are in the view of many experts no longer adequate and in need of reform.⁵ For example, German

³ Carlo Borzaga, Giulia Galera, Barbara Franchini, Stefania Chiomento, Rocío Nogales and Chiara Carini, *Social Enterprises and their Ecosystems in Europe: A Comparative Synthesis Report*. European Commission, 2020. European Economic and Social Committee, *Towards an appropriate European legal framework for social economy enterprises (own-initiative opinion)*, INT/871-EESC-2019.

⁴ Hopt, Klaus J., Thomas von Hippel, Helmut K. Anheier, Volker Then, Werner Ebke, Ekkehard Reimer and Tobias Vahlpahl (2009): *Feasibility Study on a European Foundation Statute*, Final Report (for the European Commission). Available at http://ec.europa.eu/internal_market/company/docs/eufoundation/feasibilitystudy_en.pdf.

⁵ Hopt, Klaus J., Thomas von Hippel, Helmut K. Anheier, Volker Then, Werner Ebke, Ekkehard Reimer and Tobias Vahlpahl (2009): *Feasibility Study on a European Foundation Statute*, Final Report (for the European Commission). Available at http://ec.europa.eu/internal_market/company/docs/eufoundation/feasibilitystudy_en.pdf.

tax law (*Abgabenordnung*) discourages NPOs to build up and manage financial reserves as investments, which makes longer-term planning difficult.⁶ Generally, the complex tax treatment of NPO cross-border transfers and transactions present major disincentives, as we will see below.

Functions. NPOs form the infrastructure of civil society, a highly diverse ensemble of many different organisations that range from small local associations to large international NGOs like Greenpeace, and from social service providers and relief agencies to philanthropic foundations commanding billions of Euro. It is an arena of self-organisation of citizens and established interests seeking voice and influence. Located between government or the state and the market, it is, according to Ernest Gellner (1994: 5) that

“set of non-governmental institutions, which is strong enough to counter-balance the state, and, whilst not preventing the state from fulfilling its role of keeper of peace and arbitrator between major interests, can, nevertheless, prevent the state from dominating and atomizing the rest of society.”⁷

For John Keane (1998: 6), civil society is an

“ensemble of legally protected non-governmental institutions that tend to be non-violent, self-organizing, self-reflexive, and permanently in tension with each other and with the state institutions that ‘frame’, constrict and enable their activities.”⁸

Taken together, NPOs express the capacity of society for self-organisation and the potential for peaceful, though often contested, settlement of diverse private and public interests.

Most developed market economies have seen a general increase in the economic importance of NPOs as providers of health, social, educational and cultural services of many kinds. The greater importance is driven, in large measure, by broad policy perspectives that position NPOs in specific ways and allocate certain roles to them:

- First, NPOs are increasingly part of new public management approaches and what could be called a mixed economy of welfare with a heavy reliance on quasi-markets and competitive bidding processes. Expanded contracting regimes in health and social service provision, voucher programmes, and public-private partnerships are examples of this development.⁹ In essence, new public management sees NPOs as more efficient service providers than public agencies, and as more trustworthy than for-profit businesses in markets where monitoring is costly and profiteering likely.¹⁰
- Second, NPOs are seen as central to building, maintaining and rebuilding social cohesion, and for strengthening the nexus between the social capital of citizens and economic development.¹¹ Attempts to revive or strengthen a sense of community and belonging,

Helmut K. Anheier and Stefan Toepler. “Policy Neglect: The True Challenge to the Nonprofit Sector” *Nonprofit Policy Forum* 10 (4), 2019

⁶ Stephan Schauhoff: *Handbuch der Gemeinnützigkeit*. 3. Auflage. Verlag C.H. Beck, München 2010, [ISBN 978-3-406-59794-7](https://www.beck.de/de/ISBN-978-3-406-59794-7).

⁷ Gellner, E. (1994). *Conditions of liberty: Civil society and its rivals*. London: Hamish Hamilton, page 5.

⁸ Keane, J. (1998). *Civil society: old images, new visions*. Stanford University Press, page 6.

⁹ Verschuere, B., Brandsen, T., & Pestoff, V. (2012). Co-production: The State of the Art in Research and the Future Agenda. *VOLUNTAS: International Journal of Voluntary and Nonprofit Organizations*, 23(4), 1083–1101. <https://doi.org/10.1007/s11266-012-9307-8>

¹⁰ Anheier, H. K. (2014). *Nonprofit Organizations: Theory, Management, Policy* (2 Revised edition). Abingdon, Oxon: Taylor & Francis Ltd.

¹¹ See for example <https://civic-europe.eu/civic-europe/>.

enhance civic mindedness and engagement, including volunteering and charitable giving, are illustrative of this perspective. With the social fabric changing in all Member States, civic associations of many kinds are seen as the glue holding diverse societies together. The basic assumption is that people embedded in dense networks of associational bonds are not only less prone to social exclusion of many kinds but also economically more productive and politically more involved.¹²

- Finally, there is the policy perspective that views NPOs as a source of social innovation in addressing diverse public problems.¹³ Indeed, NPOs are assumed to be better at such innovations than governments typically are. Their smaller scale and greater proximity to communities affected and to those concerned makes them creative agents in finding solutions. They are a field for social entrepreneurs. Governments, in turn, are encouraged to seek a new form of partnership with NPOs aimed at identifying, vetting and scaling up social innovations to build more flexible, less entrenched, public responses.

Importantly, these perspectives cast NPOs in strikingly different roles. At one level, they become parallel actors that may substitute, even counteract, state activities. At another, the state and NPOs are part of ever more complex and elaborate public-private partnerships and typically work in complementary fashion with other agencies, public and private. NPOs harbour significant potential in terms of social innovations, resilience, service-delivery and giving voice to diverse interests and communities otherwise excluded.

Put differently, NPOs perform specific functions or roles that allow them to realize their comparative advantages (Kramer 1981):¹⁴

- Service-provider role: substituting or complementing services offered by government and businesses, often catering to minority demands and special needs, and providing trust goods such as long-term care for the elderly or the severely handicapped thereby achieving an overall more optional level of supply;
- Vanguard role: not beholden to the expectations of owners demanding return on investment, not subject to shorter-term political success, and closer to the front lines of many social problems and needs, NPOs can take risks and experiment, thereby increasing the problem-solving capacity of society as a whole;
- Value-Guardian role: fostering and helping express diverse values (religious, ideological, cultural etc.) across a population and within particular groups when governments are either constrained by majority will or autocratically set preferences, thereby contributing to expressive diversity and easing of potential tensions;
- Advocacy role: when governments fail to serve all needs and groups in the population equally well, and when prevailing interests and social structures can disadvantage certain groups while given preference to others, NPOs can serve as public critics and become advocates, thereby giving voice to grievances, reducing potential conflicts and possibly effecting policy change.

¹² Putnam, R. D. (2001). *Bowling alone: The collapse and revival of American community*. Simon & Schuster.

¹³ Helmut K. Anheier, Georg Mildenberger and Gorgi Krlev (eds.). *Social Innovations: Comparative Perspectives*. London: Routledge, 2019.

¹⁴ Kramer, R. M. (1981). *Voluntary agencies in the welfare state*. University of California Press.
H. K. Anheier and S. Toepler. *Nonprofit Organizations: Approaches, Management, Policy*. London and New York: Routledge, chapter 3, forthcoming.

While NPOs can bring advantages, they have inherent weaknesses, too, including:¹⁵

- Resource inadequacy, whereby the goodwill and voluntary contributions cannot generate resources adequate and reliable enough to cope with many of the problems facing Member States.
- Free-rider problems, whereby those who benefit have little or no incentive to contribute.
- Particularism, whereby NPOs focus on particular subgroups only while ignoring others, which can lead to service gaps; conversely, if NPOs serve broader segments of the population, they encounter legitimacy problems.
- Paternalism, whereby NPO services represent neither a right nor an entitlement but are at the discretion of particular interests that may not necessarily reflect wider social needs or the popular will.
- Accountability problems, whereby NPOs, while acting as accountability enforcers and pushing transparency, are themselves inflected by such insufficiencies.

The resulting challenge is clear: how can the advantages NPOs bring be strengthened while minimizing any disadvantages, and while taking differences in form into account? What is the right policy framework and regulatory approach to balance the respective interests of governments and civil society while realizing the potential NPOs offer? Current frameworks seem unable to achieve such a balance without further differentiations.

Frameworks. The main proposal for finding appropriate policy responses to these issues is that a more differentiated approach to NPOs is needed, and one that goes beyond the one-size-fits-all of current regulatory frameworks. These are largely based on some notion of charity and public utility. They are rooted in often outdated notions of how organisations should serve the public good, and they fail to consider the diversity of modern organisational forms and ways of collective action. Instead, frameworks should allow the functional differentiation embodied in the policy models above, considering organisational forms, comparative advantages and drawbacks. As we will see, these differentiations have a direct bearing on future policy action at the EU level when it comes to measures accompanying a potential Statute for Associations and Nonprofit-Organisations.

- **NPOs as service providers.** The first differentiation is for NPOs in the service providing role. A regulatory framework should differentiate entirely charitable, donative NPOs from NPOs that are part of public-private partnerships, those participating in quasi market arrangements with competitive bidding for fee-for-service contracts, and, more generally, from NPOs that operate in competitive fields alongside public agencies and businesses. In the large and growing fields of education, health and social care, NPOs face many fiscal problems and limitation in making business decisions upholding their not-for-profit status, while businesses accuse them of unfair competition due to tax exemption. Most NPOs here are not-for-profit corporations with significant capital requirements; however, because of their very tax status, they have little access to capital markets for investments and cannot compete for talent against businesses able to offer more competitive compensation packages. As a consequence, many NPOs push against regulatory boundaries that may threaten their tax status.¹⁶

¹⁵ Anheier, H. K. (2014). *Nonprofit Organizations: Theory, Management, Policy* (2 Revised edition). Abingdon, Oxon: Taylor & Francis Ltd.

¹⁶ Weisbrod, B. (1998). *To profit or not to profit: The commercial transformation of the nonprofit sector*. Cambridge University Press.

The main regulatory issue is to establish workable ways of oversight in relation to the for-profit / not-for-profit borderline, and hence to facilitate access to capital markets. New hybrid legal forms are currently being devised to solve some of the underlying issues, suggesting the need for a more differentiated system. The Low-Profit Limited Liability Company (L3C) and the benefit corporation in the US or the public benefit corporation in the UK are steps to fix various shortcomings of both the not-for-profit and for-profit forms, as are the social enterprises in Europe.¹⁷ Reflecting this need for differentiation, some observers have proposed the concept of a separate set of private for-public-benefit enterprises (Sabeti 2011)¹⁸ along the lines of the L3C or public benefit corporation. Most Member States, however, have been reluctant to propose policies that would address the shifting boundaries between the public and the private and between the not-for-profit and the for-profit.

NPOs as an expression of civic engagement. A second differentiation addresses the function of NPOs performing the advocacy and value guardian roles, typically in the form of associations. Here the main regulatory issue is between primarily self or member-serving activities, on the one hand, and ensuring accountability on the other. Democratic legitimacy frequently gets called into question when representation issues arise. Many of these issues being raised about both local and international NPOs have to do with membership and community representation.¹⁹ NPOs seeking to advance specific member interests frequently confront charges of putting their particular benefit above others and see their beneficial tax treatment questioned and their motives challenged. This has been a particularly salient issue for non-profit corporations with a strong value base, often religious. Regulatory framework are to recognize different degrees of “publicness” versus “privateness” of the interest pursued: primarily public-serving objectives should be treated in a beneficial way, while member-serving ones may not. Many interests will fall in between, and these should only receive partial benefits. Importantly, financing of political parties should not be regarded as part of NPO regulation and treated separately, including the activities of political action committees and similar vehicles that channel private funds to the world of politics. Beyond the problems resulting from interspersing party politics and NPOs, the regulation of political activities defined broadly, such as advocacy and lobbying, is another major area of regulatory concern.

Civic engagement also places NPOs in the role of social accountability enforcers.²⁰ Needed here are a higher degree of accountability standards, including transparency for themselves.²¹ Most regulatory regimes in the EU emphasize fiscal accountability

Toepler, S. (2004). Conceptualizing nonprofit commercialism: A case study. *Public Administration and Management: An Interactive Journal*, 9(4), 240–253.

¹⁷ Brewer, C. V. (2016). The ongoing evolution in social enterprise legal forms. In Young, D. R., Searing, E. A. M. and Brewer, C. V. (Eds.) *The social enterprise zoo: A guide for perplexed scholars, entrepreneurs, philanthropists, leaders, investors, and policymakers* (pp. 33–64). Edward Elgar Pub.

¹⁸ Sabeti, H. (2011). The for-benefit enterprise. *Harvard Business Review*, 89, 98–104.

¹⁹ Brechenmacher, S., & Carothers, T. (2018, May 2). Examining Civil Society Legitimacy. Retrieved May 4, 2018, from <https://carnegieendowment.org/2018/05/02/examining-civil-society-legitimacy-pub-76211>.

²⁰ Fox, J. A. (2015). Social accountability: What does the evidence really say? *World Development*, 72: 346–361. <https://doi.org/10.1016/j.worlddev.2015.03.011>

²¹ Gugerty, M. K., & Prakash, A. (Eds.). (2010). *Voluntary Regulation of NGOs and Nonprofits: An Accountability Club Framework* (1 edition). New York, NY: Cambridge University Press.

towards the tax authority but require little if no public accountability such as annual reports that address a wider group of stakeholders and interested parties. What is more, the profound changes in conventional media and the cacophony of social media resulted in a loss of standards and professionalism and brought with them a weakening of the public sphere in many countries, as well as a loss of trust in some institutions. Here, regulation is needed that establishes minimum public transparency and accountability requirements while aiming at improving the quality of the public sphere.²²

- **NPOs as financial intermediaries.** A third differentiation is about *private support for the public good*, which foregrounds the roles and potential contributions of philanthropic foundations. Foundations endowed with income-generating assets are generally considered to be among the most unconstrained institutions in society, as they are neither beholden to market expectations nor to the electoral booth. Foundations can take a long-term view and operate without regards to shorter term expectations of market returns or political support. Accordingly, foundations are primed to pursue a set of special societal roles, including pursuing change and innovation, redistributing wealth, building up societal infrastructure and complementing, or substituting for, government action.²³ Unfortunately, governments often fail to understand appropriate foundation roles and primarily look to them as mere 'cash machines' to fill emerging gaps in public budgets²⁴ or tend to overregulate them.²⁵ Prewitt has argued that foundations in liberal societies allow attaching private wealth to the pursuit of public goods with only limited interference in economic choice and political freedoms.²⁶ Striking a balance between the two is a key regulatory challenge.
- **NPOs as social innovators.** The fourth differentiation is about *social innovation*, and applies to corporations, associations and foundations alike. NPOs do function as innovators and vanguards yet they face fundamental problems in terms of replicability, diffusion and scaling up.²⁷ There is no systematic screening and vetting of social innovations, and many fail due to inadequate dissemination and information-sharing. As a result, the potentials of too many social innovations go unnoticed, and 'wheels are being reinvented,' so to speak. And, even those innovations that do find resonance, do so in the absence of a social investment market. Many innovations in civil society can harbour significant profitability for

²² AbouAssi, K. & Bies, A. (2018) Relationships and resources: then isomorphism of nonprofit organizations' (NPO) self-regulation, *Public Management Review*, 20(11), 1581-1601. <https://doi.org/10.1080/14719037.2017.1400583>

²³ Anheier, H. K., & Hammack, D. C. (Eds.). (2010). *American Foundations: Roles and Contributions*. Washington, D.C.: Brookings Institution Press.

Anheier, H. K., & Leat, D. (2018). *Performance Measurement in Philanthropic Foundations: The Ambiguity of Success and Failure*. Oxford: Routledge.

²⁴ Toepler, S. (2018). Public Philanthropic Partnerships: The Changing Nature of Government/Foundation Relationships in the US. *International Journal of Public Administration*, 41(8), 657-669. <https://doi.org/10.1080/01900692.2017.1295462>.

²⁵ Leat, D. (2016). *Philanthropic foundations, public good and public policy*. Springer.

²⁶ Prewitt, K. (2006). American foundations: what justifies their unique privileges and powers. In K. Prewitt, M. Dogan, S. Heydemann, & S. Toepler (Eds.), *Legitimacy of Philanthropic Foundations: United States and European Perspectives* (pp. 27-48). New York, NY: Russell Sage Foundation.

²⁷ Helmut K. Anheier, Georg Mildenberger and Gorgi Krlev (eds.). *Social Innovations: Comparative Perspectives*. London: Routledge, 2019.

investors and owners as well as significant potential for the wider public – but in what direction the potential of a particular innovation will be realized in terms of replicability and scalability – and for whom – is often uncertain. Unlike in the case of technological innovations, there is no pool of investors eagerly standing by to help grow social innovations. Impact bonds and related measures are a step in the right direction,²⁸ but more is needed. Therefore, a platform or clearinghouse to assess any such potentials is needed, and a regulatory frame that would help social innovations to be tested. The organisational form and legal status of a platform or agency can be varied but should aim at establishing a social investment market next to the investment and venture capital markets for businesses.

In summary, irrespective of the need for a European Statute for associations and nonprofit organisations, there are serious policy challenges facing this set of organisations in most Member States. In many ways, NPOs push against their 19th century charity-framing and present a growing and diverse group of private organisations dedicated to a public purpose along the functions and differentiations described.

²⁸ Albertson, K., Fox, C., O'Leary, C. and Painter, G. (2018). *Payment by results and social impact bonds: Outcome-based payment systems in the UK and US*. Policy Press.

3. Empirical Portrait

Data on NPOs in Member States are rather patchy, frequently misleading and often outdated. Most importantly, NPOs are not fully covered in the European System of Accounts (ESA) on a regular basis, and there are few efforts to measure the comparative scale and scope of nonprofit activities. Box 1 offers the definition and treatment of both nonprofit organisations and the nonprofit sector in the ESA, which leads to a residual sector as many NPOs are allocated to other institutional accounts such as government, financial and nonfinancial corporation or households. Given both definition and treatment, most statistical offices in Member States have little incentive to invest in measuring NPOs more fully. Very few Member States have developed satellite accounts for the nonprofit sector, and none updates them regularly.

More comprehensive data on the economic size of the NPOs and nonprofit sectors are mostly from various research projects, most prominently the Johns Hopkins Comparative Nonprofit Sector Project.²⁹ Data on giving, volunteering and membership reported in this section are mostly from various population surveys that use varying definitions and are not conducted regularly.

Box 1: European System of National Accounts definition and treatment of nonprofit organisations and nonprofit sectors

“Non-profit institutions (associations and foundations) recognised as independent legal entities are classified as follows:

- (a) those which are market producers and principally engaged in the production of goods and non-financial services: in sector S.11 (nonfinancial corporations);
- (b) those principally engaged in financial intermediation and auxiliary financial activities: in sector S.12 (financial corporations);
- (c) those which are non-market producers:
 - (1) in sector S.13 (general government), if they are public producers controlled by general government;
 - (2) in sector S.15 (non-profit institutions serving households), if they are private producers.”

ESA 2010: 48).

Non-profit institutions serving households (S.15)

Definition: the non-profit institutions serving households (NPISHs) sector (S.15) consists of non-profit institutions which are separate legal entities, which serve households and which are private non-market producers. Their principal resources are voluntary contributions in cash or in kind from households in their capacity as consumers, from payments made by general government and from property income.

Where such institutions are not very important, they are not included in the NPISH sector, but in the households sector (S.14), as their transactions are indistinguishable from units in that sector. Non-market NPISHs controlled by general government are classified in the general government sector (S.13).

The NPISHs sector includes the following main kinds of NPISHs that provide non-market goods and services to households:

1. (a) trade unions, professional or learned societies, consumers’ associations, political parties, churches or religious societies (including those financed but not controlled by governments), and social, cultural, recreational and sports clubs; and
2. (b) charities, relief and aid organisations financed by voluntary transfers in cash or in kind from other institutional units.

Sector S.15 includes charities, relief or aid agencies serving non-resident units and excludes entities where membership gives a right to a predetermined set of goods and services.

Source: <https://ec.europa.eu/eurostat/documents/3859598/5925693/KS-02-13-269-EN.PDF/44cd9d01-bc64-40e5-bd40-d17df0c69334>

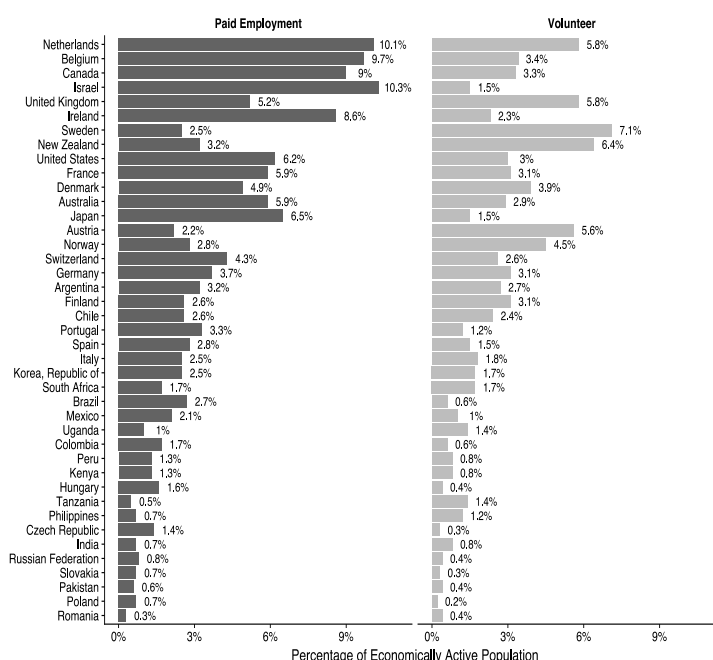
²⁹ Helmut K. Anheier, Markus Lang, and Stefan Toepler „Comparative Nonprofit Sector Research: A Critical Assessment” In: Patricia Bromley and Walter W. Powell (eds.). *The Nonprofit Sector: A Research Handbook* (3rd Ed.), 2020, pp. 648-676

Even with an incomplete evidence base, there are a number of core findings grouped under several categories: economic size, composition, revenue, giving and philanthropy, volunteering and membership.

Economic Size. As Figure 1 shows, the relative size of the non-profit sector measured as a share of the economically active population for 41 European and non-European countries as of 2016.³⁰ Non-profit sector size varies between 15.9% in the Netherlands and 0.7% in Romania.³¹ To arrive at these percentages, the data sum up both the share of both full-time equivalent paid employees and volunteers working in the non-profit sector relative to the economically active population (e.g., 10.1% + 5.8% in the case of the Netherlands; 0.3% + 0.4% in Romania).

There are a few countries in the sample in which the non-profit sector so measured is below 1% of the economically active population (e.g., Romania, Poland and Slovakia). By contrast, there are also few countries in which the size of the non-profit exceeds 10% (e.g., Netherlands, Belgium). For the average OECD country, the nonprofit sector is about 5-6% of GDP, which is about the same share as finance & insurance or the car industry. For some Member States, more detailed information is available, as Box 2 presents.

Figure 1: Size of Non-Profit Sector paid vs. volunteer workforce, by country, various years



Source: based on data reported in Salamon et al. 2017, pp. 276-279.

There are three distinct groups among Member States in terms of the economic size of the nonprofit sector: in the social democratic countries, exemplified by Sweden and most other Nordic Member States, the state's role in financing and delivering social welfare services directly is so significant that it leaves little room for the type of service-providing NPOs so prominent elsewhere. Taken together, NPOs have less economic weight but perform other functions such as value-guardian or advocacy roles. In Sweden, a very substantial network of volunteer-based advocacy, recreational and hobby organisations exist alongside a highly developed system of public sector service provision.

³⁰ The compilation of these figures is based on available employment and wage statistics to which estimates of the volunteer component was added. The economically active population comprises the population between 16 and 65 performing economic activities outside the household and irrespective of formal work contracts – a modification necessary to take the informal economic sector into account that in some countries represents a significant share of the economy.

³¹ Unless otherwise indicated, the data in this section are based on Salamon, L. M., Sokolowski, S. W., & Haddock, M. A. (2017). *Explaining Civil Society Development*. Baltimore: John Hopkins University Press.

In most other “older” Member States, there are various systems of state-sponsored welfare provision that include a substantial role for NPOs, many of them religiously or otherwise ideologically affiliated.³² In the Netherlands, it is the system of pillarization, in Germany it is the subsidiarity principle, and in France networks like *Séjour Catholique* and *Séjour Populaire* that offer welfare services of many kinds, supported to a significant degree by public funds. In southern Europe, we find versions of such public-private partnerships, though somewhat less developed. In the accession countries of Central and Eastern Europe, both government social welfare spending and nonprofit activity remain limited. Nonetheless, both have increased since joining the Union but are not at the level of other Member States.

Box 2: Country Profiles

France.³³ In 2017, there were 1,500,000 registered associations in France. Since 2011, their number increased by an average of 2.4% per year. However, most of the new associations established in this period were small and volunteer-run. In 2017, only 11% of all associations had paid staff. The nonprofit sector generated €113 billion in 2017, contributing 3.3% to French GDP. In total, 1,758,500 people work for nonprofits, while 31,272,000 did volunteer work for the equivalent of 1,425,000 FTE. Public sector grants represent 20% of nonprofit budgets (2017) but have decreased significantly in the last years because of an overall reduction of public spending. Other large sources of revenue are fees and charges (42%), public sector contracts (24%) and membership fees (9%). The most common organisation types are sports (24%), culture (23%), leisure (2%), humanitarian/social/health (14.1%), and defense of rights and causes (11.5%). However, in terms of expenditure, social services, health care and education dominate.

Germany. The German nonprofit sector employed 3.7 million people in 2016, or 9.9% of total employees in terms of head count, which represents an increase from 9.5% in 2007.³⁴ There is a large range of legal designations for nonprofits in Germany, with a total of over 650,000 organisations (602,602 associations, 21,806 foundations, 25,300 corporations). These contributed over 4.1% to the German economy in 2007.³⁵ The most common organisation types are sport (23%), education (18%), and culture/media (16%). Associations derive their revenue primarily from membership fees (38.6%), self-generated revenue (20.1%), donations (18.8%), and public funding (11%).³⁶ For nonprofit corporations, however, the share of public funding is much higher at over 60%: many are part of a decentralized welfare system where health and social services are delivered by nonprofit organisations supported by public funds. Indeed, some of the largest private employers in Germany are nonprofit conglomerates like *Caritas* or *Diakonie*.

Italy. The Italian nonprofit sector consists of 359,574 organisations (Italian Institute of Statistics 2020). In 2018, there were 853,476 employees or 6.9% of the workforce. The growth in nonprofits is largely due to small organisations: the number of entities has grown at about 2% per year for the last several years, but nonprofit

³² On cross-national differences see Salamon, L. M. and Anheier, H.K. (1998). *Social Origins of Civil Society: Explaining the Nonprofit Sector Cross-Nationally*. *Voluntas: International Journal of Voluntary and Nonprofit Organizations*, 9(3), 213 - 247.

Helmut K. Anheier, Markus Lang, and Stefan Toepler „Comparative Nonprofit Sector Research: A Critical Assessment” In: Patricia Bromley and Walter W. Powell (eds.). *The Nonprofit Sector: A Research Handbook* (3rd Ed.), 2020, pp. 648-676

³³ ²Data on France are from V. Tchernonog (2018). “Les Associations: État des lieux et évolutions?” https://www.associations.gouv.fr/IMG/pdf/tchernonog_associations_fcc_2018.pdf.

³⁴ Priemer et al. (2019). “Organisierte Zivilgesellschaft.” In Krimmer, H (ed.) *Datenreport Zivilgesellschaft, Bürgergesellschaft und Demokratie*. Springer VS, Wiesbaden. https://doi.org/10.1007/978-3-658-22958-0_3.

³⁵ Statistisches Bundesamt (2012). “Die wirtschaftliche Bedeutung des Dritten Sektors.” https://www.destatis.de/DE/Methoden/WISTA-Wirtschaft-und-Statistik/2012/03/wirtschaftliche-bedeutung-3-sektor-032012.pdf?__blob=publicationFile.

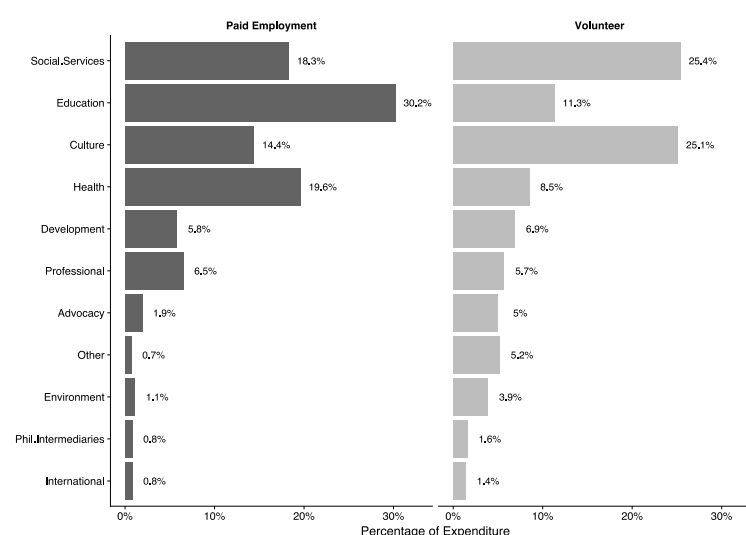
³⁶ Priemer et al. (2019). “Organisierte Zivilgesellschaft.” In Krimmer, H (ed.) *Datenreport Zivilgesellschaft, Bürgergesellschaft und Demokratie*. Springer VS, Wiesbaden. https://doi.org/10.1007/978-3-658-22958-0_3.

share of employment has remained steady. Over 5.5 million people volunteered in 2018.³⁷ The vast majority of nonprofits in Italy involve culture, sport and recreation (64.3%). The next most common purposes include social assistance and civil protection (9.3%), trade union relations and representation of interests (6.5%), religion (4.7%), education and research (3.9%), healthcare (3.5%), protection of rights and political activity (1.6%), and environment, (1.5%).³⁸

Sweden.³⁹ In 2017, there were 257,572 nonprofit organisations in Sweden, 99,854 of which were “economically active.” Total output was SEK 251 billion, or 3.0% of Sweden’s GDP. A total of 202,136 people were employed in the sector, equaling 3.8% of Sweden’s workforce. Additionally, 2,600,000 million people volunteered in Sweden in 2017 (SCB 2019). The most common organisational types were housing, social and societal development (29%), recreation and culture (26%), opinion formation and politics (9%), education and research, (3%), social security (3%), religious activities (3%), and industry/professional organisations and trade unions (3%) (SCB 2019). Swedish nonprofits have the highest share of membership fee revenue of any European country, combined with a very low dependence on government funding.⁴⁰

Composition. Figure 2 shows the distribution of nonprofit activity across different fields.⁴¹ To distinguish further between paid and volunteer work, the graph displays dark grey and light grey bars. Looking at the dark grey bars, expenditure-intensive fields like “education and research”, “health” and “social services” make up the largest share of paid non-profit activity (68%). By contrast, all other fields make up only 31% of paid activity. The light grey bars include the estimates for the substitution value of volunteer activity. Expenditure on culture, which predominantly includes recreational activities and amateur sports, turns out to be substantially higher with volunteers included (25%) than without (14%).

Figure 2: Non-Profit Sector workforce paid vs. volunteers, by field of expenditure, various years



N= 22 countries

Source: based on data reported in Salamon et al. 1999, pp. 478-482.

³⁷ Forum Terzo Settore (2020). “Continua a crescere il settore non profit in Italia. I nuovi dati Istat (anno 2018).” <https://www.forumterzosettore.it/2020/10/12/continua-a-crescere-il-settore-non-profit-in-italia-i-nuovi-dati-istat-anno-2018/>.

³⁸ Italian Institute of Statistics (2020). “Tavole Nonprofit 2018.” <https://www.istat.it/it/files/2020/10/Tavole-nonprofit-2018.xlsx>.

³⁹ Data on Sweden are from SCB (2019). “Presentation of results for non-profit organizations, excluding Swedish Church SEK million. Year 2013 – 2018.” https://www.statistikdatabasen.scb.se/pxweb/en/ssd/START_NV_NV0117_NV0117B/CivSamHIO/

⁴⁰ “Global Civil Society: an overview.” The Johns Hopkins Comparative Nonprofit Sector Project. http://ccss.jhu.edu/wp-content/uploads/downloads/2011/09/Book_GCSOverview_2003.pdf.

⁴¹ Salamon, L. M., Anheier, H. K., List, R., Toepler, S., & Sokolowski, S. W. (Eds.). (1999). *Global Civil Society: Dimensions of the Nonprofit Sector*. Baltimore: The Johns Hopkins Center for Civil Society Studies.

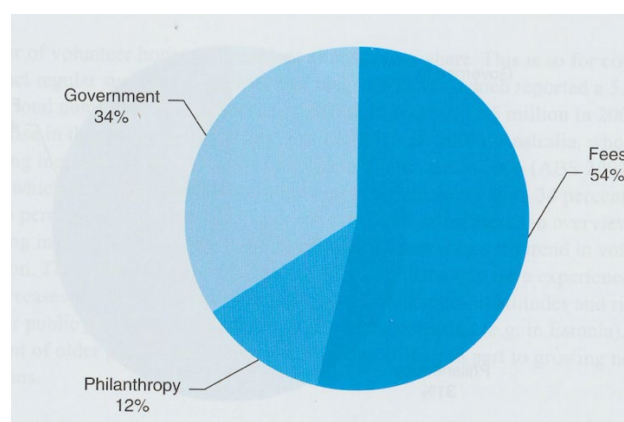
In some countries like the Netherlands (30%), health care activities absorb a significant share of the nonprofit workforce (paid and volunteer), while education commands the largest share in Ireland (43%). Furthermore, in Germany, France, Italy and Spain, social services employ the largest portion of the nonprofit workforce, though less than a third (26% to 30%) of the total.⁴²

By contrast, the civic engagement functions of the nonprofit sector are far more prominent than the service ones in the Nordic countries and in Central and Eastern Europe. For example, 45% of the Swedish nonprofit workforce is in the areas of culture and recreation. By the same token, the share of nonprofit employees and volunteers in Central Europe ranges from 32% in Poland to 37% in Slovakia.⁴³ This is most likely a reflection of the more dominant role the state has played in providing social welfare services in these countries; and, in the Scandinavian context, the vibrant heritage of citizen-based social movements and citizen engagement in advocacy, sports, and related expressive fields.

Revenue. Private giving and philanthropy are rarely the principal source of income for the nonprofit sector. In fact, among the 34 developed and developing countries on which comparable revenue data were available, about half of all revenue on average comes from fees and charges (see Figure 3).⁴⁴ By comparison, public sector payments amount to 34% of the total, and private philanthropy—from individuals, corporations, and foundations combined—a much smaller 12%. In Germany, France, the Netherlands and Belgium, up to two-thirds of all nonprofit sector revenue are from the state, which reflects their prominent role in social services and health care.

When volunteer time is factored into the equation and treated as a part of philanthropy, the picture of nonprofit sector finance changes significantly. In fact, giving and philanthropy, whose share of total revenue increases from 12% to 31%, becomes the second most important source of nonprofit sector income, displacing public sector support. This is an indication of the significance of contributions of time to the support base of NPOs.

Figure 3: Sources of nonprofit revenue, various years



N=34 European and non-European countries

Source: Salamon et al. 2004a

Giving and Philanthropy. In Europe, according to a report by the Charities Aid Foundation,⁴⁵ if we look at individual giving as a percentage of Gross Domestic Product (GDP), Italy and the Netherlands, each with 0.30%, have the highest share among Member States, followed by Ireland and Germany

⁴² Lester M. Salamon, S. Wojciech Sokolowski and Associates (2004) *Global Civil Society: Dimensions of the Nonprofit Sector*, Volume Two. Bloomfield, CT: Kumarian Press, Table A3.

⁴³ Lester M. Salamon, S. Wojciech Sokolowski and Associates (2004) *Global Civil Society: Dimensions of the Nonprofit Sector*, Volume Two. Bloomfield, CT: Kumarian Press.

⁴⁴ Lester M. Salamon, S. Wojciech Sokolowski and Associates (2004) *Global Civil Society: Dimensions of the Nonprofit Sector*, Volume Two. Bloomfield, CT: Kumarian Press.

⁴⁵ Charities Aid Foundation. *International Comparison of Charitable Giving*. London: Charities Aid Foundation (2016:7). https://www.cafonline.org/docs/default-source/about-us-publications/1950a_wqi_2016_report_web_v2_241016.pdf

with 0.17%, and Sweden with 0.16% of GDP. Importantly, the report finds no correlation between taxation rates and the amount given to charity.

In recent decades, Europe experienced a veritable foundation boom, with the majority of its estimated 110,000 foundations having been created in the last two decades of the 20th century.⁴⁶ In 2019, there were over 23,000 foundations in Germany alone.⁴⁷ There is great variation among countries in the number of foundations (see Table 1), ranging from a high of more than 23,000 in Germany, roughly 13,700 in Sweden, and over 8,000 in Spain to lows of some 700 in Austria, fewer than 500 in Portugal (excluding foundations registered under canonical law) and in Belgium. The data suggest an average of around 400 foundations per million inhabitants.⁴⁸ The priority fields for European foundations education (28%), human services (23%) poverty alleviation as well as arts and culture with 17% each, and the balance across a wider range of purposes.⁴⁹

Table 1: Estimated Number and Types of Foundations in Selected Member States, various years

Country	Number	Relative share of grant-making foundation	Relative share of operating foundations	Mixed type
Austria	3,390			Majority
Belgium	665	Few		Majority
Denmark	14,000			
Estonia	638			
Finland	2,600	50%	30%	20%
France	1,226		Majority	
Germany	22,230	~50%	~25 %	~25 %
Greece	489	Few	Majority	Few
Ireland	107	27%	70%	3%
Italy	6,220	20%	50%	30%
Netherlands	~6000	Majority		
Portugal	485		Majority	
Spain	14,120	25.4%	69.4%	5.2%
Sweden	14,500			

Sources: Bundesverband Deutscher Stiftungen, 2020; Others from chapters cited in special issue on philanthropy, *American Behavioral Scientist*, 2017

As also shown in Table 1, the economic weight of operating institutions, programs and projects tends to be more important than actual grant-making activities among many European

⁴⁶ Helmut K. Anheier. "Philanthropic Foundations in Cross-National Perspective: A Comparative Approach" *American Behavioral Scientist* 62 (12), pp. 1591–1602, 2018.

⁴⁷ <https://www.stiftungen.org/stiftungen/zahlen-und-daten/grafiken-zum-download.html>

⁴⁸ Hopt, Klaus J., Thomas von Hippel, Helmut K. Anheier, Volker Then, Werner Ebke, Ekkehard Reimer and Tobias Vahlpahl (2009): Feasibility Study on a European Foundation Statute, Final Report (for the European Commission). Available at http://ec.europa.eu/internal_market/company/docs/eufoundation/feasibilitystudy_en.pdf.

⁴⁹ Johnson, Paula. [Global Philanthropy Report: Perspectives on the Global Foundation Sector](#). Cambridge: Harvard Kennedy School, 2018, page 25.

foundations. For example, France, Greece, Ireland, Spain, Italy, and Portugal all have more operating foundations than grant-making foundations.⁵⁰

Asset estimates are the most difficult data to obtain on foundations, especially cross-nationally, given the influence of different valuation measures and techniques and availability of information. Irrespective of these difficulties, available estimates reveal significant cross-national variations. Estimates of the assets of German foundations are EUR 67.9 billion, over EUR 46.1 billion for foundations in Italy, and EUR 2.9 billion in Sweden.⁵¹

Volunteering. A report on volunteering in the European Union demonstrates the complexity of comparing this form of engagement across countries.⁵² Based on a Europe-wide survey, it found that that 24% of the adult population over the age of 15 in the 27 Member States had engaged in volunteer work.⁵³ Behind this average rate are wide ranges, reflecting the differences in traditions and stage of nonprofit sector development. Austria, the Netherlands and Sweden are consistently featured as having very high rates of volunteering, i.e., above 40% of the population (see Table 2). Another group of countries, including Denmark, Finland, Germany and Luxembourg, have also been found to have high volunteering rates above 30%. By contrast, countries such as Poland, Portugal and Spain consistently rank among those with the lowest volunteering engagement.

Table 2: Volunteering rates across European Union Countries, as share of adult population, various sources and years

Level	Based on National Studies	Eurobarometer 2006	Eurostat 2013*
Very high (>40%)	Austria, Netherlands, Sweden,	Austria, Denmark, Finland, Germany, Ireland, Luxembourg, Netherlands, Sweden	Netherlands, Sweden, Finland, Slovenia, Poland, Denmark
High (30%-39%)	Denmark, Finland, Germany, Luxembourg	Belgium, Czech Republic, France, Italy, Slovakia, Slovenia	Ireland, Luxembourg
Medium (20%-29%)	Estonia, France, Latvia	Cyprus, Estonia, Malta, Latvia,	Germany, Latvia, Austria, Estonia, Belgium, France, Portugal
Relatively Low (10%-19%)	Belgium, Cyprus, Czech Republic, Ireland, Malta, Poland, Portugal, Slovakia, Romania, Slovenia, Spain	Bulgaria, Greece, Hungary, Lithuania, Poland, Portugal, Romania, Spain	Greece, Hungary, Lithuania, Spain, Italy, Slovakia, Croatia
Low (<10%)	Bulgaria, Greece, Italy, Lithuania		Bulgaria, Romania, Cyprus, Hungary, Malta

⁵⁰ Helmut K. Anheier. "Philanthropic Foundations in Cross-National Perspective: A Comparative Approach" *American Behavioral Scientist* 62 (12), pp. 1591–1602, 2018.

Anheier, H., & Daly, S. (Eds.). (2006). *The politics of foundations: A comparative analysis*. London: Routledge.

⁵¹ <https://www.efc.be/knowledge-hub/data-on-the-sector/>

⁵² https://www.europarl.europa.eu/doceo/document/A-7-2013-0348_EN.html?redirect

⁵³ Unless otherwise indicated, data reported in this section are from: Eurostat 2015 (https://ec.europa.eu/eurostat/statistics-explained/index.php/Social_participation_and_integration_statistics#Formal_and_informal_voluntary_activities); Annette Angermann and Birgit Sittermann. *Volunteering in the Member States of the European Union – Evaluation and Summary of Current Studies*. Frankfurt: Observatory for Sociopolitical Developments in Europe. 2010.

*Formal and informal volunteer activities, whichever is higher

Source: Based on GHK 2010: 65-6; Eurostat 2015 (https://ec.europa.eu/eurostat/statistics-explained/index.php/Social_participation_and_integration_statistics#Formal_and_informal_voluntary_activities)

Sport and recreation are by far the most favored type of organisation for engaging as a volunteer in these European countries. 24% volunteered in a sports club, while 20% did so at a cultural, educational or artistic organisation. Of course priorities vary between European countries. Sports clubs were top choices in Ireland, Denmark and Germany, while cultural associations were mentioned the most in Italy, Greece, France, Austria and Portugal, and charitable organisations were popular in Luxembourg, Poland, and Spain.

In terms of who is engaged, adults in the 35-49 age group had the highest rate of volunteering. In several Eastern European countries such as Bulgaria and the Czech Republic, young people aged 16-24 are the most active in volunteering. In yet another set of countries including Germany, the Netherlands and the UK, there appears to be no significant difference in volunteering rates among age groups.

In terms of gender, the volunteering balance is quite mixed throughout Europe. Across the EU27, slightly more men than women volunteer (Table 3). Most countries have either higher levels of male volunteer engagement or no significant difference, with the Netherlands, Lithuania, and Estonia being among the few countries with higher rates of female volunteering.⁵⁴ Importantly, there is a strong association between education attainment and volunteering in all the European countries covered (Eurostat 2015), with the better educated more likely to volunteer.

Table 3: Participation in formal voluntary activities in Europe, by Member States and sex, 2015

Geographical Area	Total	Males	Females
European Union - 27 countries	18.9	19.6	18.2
Belgium	20.4	22.1	18.7
Bulgaria	5.2	5	5.5
Czechia	12.2	13.8	10.7
Denmark	38.7	40.7	36.7
Germany	28.6	30.7	26.6
Estonia	16.4	15.1	17.4
Ireland	29	30.7	27.8
Greece	11.7	10.8	12.5
Spain	10.7	9.8	11.7
France	23	24.4	21.8
Croatia	9.7	9.4	10
Italy	12	11.8	12.1
Cyprus	7.2	6.7	7.6

⁵⁴ Annette Angermann and Birgit Sittermann. Volunteering in the Member States of the European Union – Evaluation and Summary of Current Studies. Frankfurt: Observatory for Sociopolitical Developments in Europe. 2010, page 69; Jochum, V., E. Brodie, N. Bathi, and K. Wilding. 2011. *Participation: Trends, Facts and Figures*. London: NCVO, page 27.

Latvia	7.3	5.9	8.3
Lithuania	16.3	12.2	19.7
Luxembourg	36.7	38.8	34.6
Hungary	6.9	6.3	7.4
Malta	8.7	8.6	8.9
Netherlands	40.3	39.7	40.8
Austria	28.3	32.9	24
Poland	13.8	14	13.6
Portugal	9	8.9	9.2
Romania	3.2	2.9	3.4
Slovenia	30.4	34.1	26.9
Slovakia	8.3	8.2	8.3
Finland	34.1	35.8	32.5
Sweden	35.5	37.2	33.7

Source: Eurostat 2015 [https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Social participation and integration statistics](https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Social_participation_and_integration_statistics)

Furthermore, Angermann and Sittermann⁵⁵ suggest a general though modest upward trend in volunteering in the EU. The majority of EU Member States covered by the study have experienced at least modest increases in rates of volunteering as a result of changes in attitudes and rising concern for public problems, initiatives to promote volunteering (e.g., Estonia), increased involvement of older people, and increased need due at least in part to growing numbers of organisations.

Membership. As volunteering rates vary, so do membership rates (i.e., the proportion of individuals who are active or inactive members in at least one organisation) vary across the Union. Perhaps not surprisingly, Sweden ranks at the top in terms of membership rate among the countries in which the World Values Survey was conducted.⁵⁶ Almost every Swede (96%) is a member of at least one organisation, although nearly nine of ten members in such organisations are inactive.

⁵⁵ Annette Angermann and Birgit Sittermann. Volunteering in the Member States of the European Union – Evaluation and Summary of Current Studies. Frankfurt: Observatory for Sociopolitical Developments in Europe. 2010, page 66.

⁵⁶ WVS wave 7 (2017-2020): Haerpfer, C., Inglehart, R., Moreno, A., Welzel, C., Kizilova, K., Diez-Medrano J., M. Lagos, P. Norris, E. Ponarin & B. Puranen et al. (eds.). 2020. World Values Survey: Round Seven – Country-Pooled Datafile. Madrid, Spain & Vienna, Austria: JD Systems Institute & WWSA Secretariat [Version: <http://www.worldvaluessurvey.org/WVSDocumentationWV7.jsp>].

Table 4: Membership in NPOs, by type and Member States, 2017-2020

Member States	Church or religious organisation	Sport or recreational organisation	Art, music or educational organisation	Labor Union	Political party	Environmental organisation	Professional association	Humanitarian or charitable organisation	Consumer organisation	Self-help group, mutual aid group	Women's group
Austria	32%	27%	14%	12%	7%	4%	7%	9%	2%	4%	
Czechia	12%	38%	19%	8%	5%	12%	10%	10%	5%	7%	
Denmark	59%	43%	13%	52%	5%	13%	11%	19%	6%	5%	
Germany	34%	43%	20%	13%	4%	9%	12%	13%	1%	8%	
Greece	6%	12%	9%	6%	5%	3%	6%	4%	2%	4%	2%
Hungary	17%	12%	10%	4%	2%	5%	6%	5%	1%	3%	
Italy	5%	7%	5%	3%	1%	2%	2%	5%	0%	1%	
Poland	8%	5%	5%	5%	1%	2%	3%	5%	0%	2%	
Romania	20%	12%	10%	11%	10%	5%	7%	8%	5%	5%	5%
Slovenia	35%	35%	23%	13%	4%	13%	14%	23%	4%	11%	
Spain	6%	11%	9%	6%	4%	5%	5%	8%	2%	2%	
Sweden	29%	40%	16%	42%	7%	13%	11%	23%	11%	4%	

Source: **WVS wave 7 (2017-2020)**: Haerpfer, C., Inglehart, R., Moreno, A., Welzel, C., Kizilova, K., Diez-Medrano J., M. Lagos, P. Norris, E. Ponarin & B. Puranen et al. (eds). 2020. World Values Survey: Round Seven – Country-Pooled Datafile. Madrid, Spain & Vienna, Austria: JD Systems Institute & WWSA Secretariat [Version: <http://www.worldvaluessurvey.org/WVSDocumentationWV7.jsp>].

In most countries where membership rates are at least above 50% of the population, sport is consistently among the top three most favored types of organisations. Art, music, and educational activities also rank high among members, as do charitable and humanitarian organisations. Labor unions are among the favored organisations mainly in the Nordic countries, such as Sweden, Norway and Finland. There is a close relationship between membership and volunteering, as members are often expected to volunteer.

In summary, the main empirical findings suggest that:

- The nonprofit sector is major economic force in Western and Southern Member States, by virtue of its role of service provider, but less so in Northern, Central and Eastern Europe.
- The value-guarding and advocacy role is pronounced mostly in the Nordic countries followed by Western Member states, and less in Central and Eastern Europe.
- Giving and philanthropy are also significant, though to varying degree, and the number of foundations has been growing, most in the Western Member States.
- Volunteering and membership rates vary, too, and they are higher in the north and the West than in the South and East.
- More than three decades after the fall of state socialism, subsequent EU actions such as the PHARE program and the Aquis Communautaire to prepare for membership, and nearly two decades after the Eastern expansion, Central and Eastern European countries continue to lag behind when it comes to the size, scope and indeed relevance of the nonprofit or civil society sector.
- The few data on the growth of NPOs suggest that they are expanding in numbers and are gaining in economic and social importance.

4. Cross Border Aspects and Dimensions

So far, we looked at the non-profit sector in Member States from a domestic perspective. What can we say about international and cross-border activities? For the Statute to have legitimacy, it is important to show that there are such activities, that they are growing and have potential in terms of the functions identified above such as service delivery, value-guardian and advocacy. Unfortunately, the data situation is even less encouraging when it comes of cross-border activities than it was for domestic ones. Nonetheless, it is possible to explore three dimensions: first the share of international activities of the total NPO sector; cross-border donation flows; the number of NPOs per country that engage in Europe over time and by field, and the trans-European NPO networks created.

Table 5: International Activities as Share of Total FTE Workforce of the Nonprofit Sector, By Member State, various years

Member State	Share of FTE Total Workforce in %
Austria	0.4
Belgium	0.4
Czech Republic	1.4
Finland	0.4
France	2.4
Germany	1.6
Hungary	1.0
Ireland	0.4
Italy	0.6
Netherlands	1.2
Poland	1.0
Slovakia	0.9
Spain	2.6
Sweden	2.3

For several Member States data are available for the share of international activities as the share of total non-profit FTE employment based on data from the Johns Hopkins projects. As Table 5 shows, that share tends to be relatively small and ranges between 2.6% in Spain to .4% in Austria or Belgium and is much less than the respective shares for health care, social services or education, which, depending on the country, range between 20 and 30% each. However, the shares significantly undercount the true scale of international activity. According to the European System of National Accounts, operations of NPOs in another Member State are counted as “domestic” actors if they have ongoing and formally registered presence there. For example, the various Caritas operations across Europe would not be part of Caritas Germany or Caritas International but included in the domestic non-profit sector in the respective Members States. Put differently, what the data in Table 5 report are the “core” staff engaged domestically in activities abroad. However, as the portraits of

several NPOs operating in several Member States in Box 3 clearly indicates: many NPOs have de facto become major European actors – but not *je jure*.

A recent survey by the European Foundation Centre⁵⁷ finds that 64% of its members work internationally, 38% have offices in more than one country and provide funding internationally, and every second (48%) funds across borders while not having offices abroad. Figures collected by Transnational Giving Europe and reported by Surmatz⁵⁸ show that in 2019 some 13.9 million Euro were donated by foundations and individual philanthropists across borders involving 6,630 separate donations to 420 beneficiaries in 21 countries. The amounts given have increased from between 2 to 4 million Euro for the period 2007-2010 to between 11 and nearly 14 million Euro since then.

A different perspective is to look at the number of international NPOs (INPOs) listed by the Union of International Organisations with a thematic focus in Europe.⁵⁹ This focus can range from professional and economic interests over advocacy for a particular cause to research, be it the environment or many other concerns to academia or culture, to service delivery and research activities (see also Figure 6). They have in common that they pursue these themes and activities in a European context. As Figure 4 shows, this number has been on the increase from 3,815 in 2010 to just under 5,000 in 2020, suggesting that on average the number INPOs with a European focus grows by about 100 each year.

Figure 4: Number of INPOs in Europe with a focus on Europe

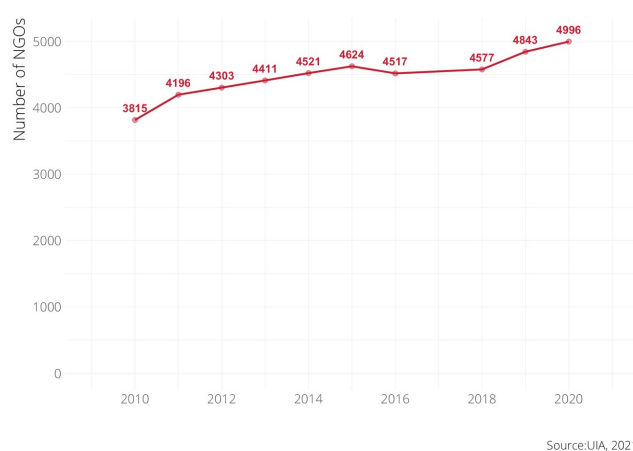


Table 6: Number of INPOs by Member States, 2000 and latest year available

Member State	Number of INPO in 2000	Number of INPOs in latest year available	Latest year available	Absolute growth 2000 – latest year available	Relative growth 2000– latest year available
Austria	104	129	2018	24%	25
Belgium	643	811	2020	26%	168
Bulgaria	5	9	2012	80%	4
Croatia	13	16	2012	23%	3

⁵⁷ <https://efc.issuelab.org/resource/key-facts-about-european-philanthropy-working-internationally.html>

⁵⁸ Hanna Surmatz „How to ease tax effective cross-border philanthropy within the European Union and beyond?“ presentation at the Taxation and Philanthropy conference, Geneva, Switzerland, 26 November 2020.

⁵⁹ Figures reported in this section are based on data published by the Union of International Organisations, Brussels, Belgium (<https://uia.org>).

Cyprus	3	3	1990	0%	0
Czech Rep	27	29	2012	7%	2
Denmark	72	85	2016	18%	13
Estonia	6	8	2007	33%	2
Finland	50	56	2012	12%	6
France	326	377	2018	16%	51
Germany	338	401	2018	19%	63
Greece	31	36	2006	16%	5
Hungary	26	29	2012	12%	3
Ireland	24	24	1999	0%	0
Italy	149	181	2016	21%	32
Latvia	4	8	2012	100%	4
Lithuania	6	11	2017	83%	5
Luxembourg	24	27	2016	13%	3
Malta	4	4	1992	0%	0
Netherlands	212	255	2018	20%	43
Poland	15	19	2015	27%	4
Portugal	33	37	2015	12%	4
Romania	17	20	2011	18%	3
Slovakia	8	8	1991	0%	0
Slovenia	14	15	2011	7%	1
Spain	111	140	2015	26%	29
Sweden	89	101	2012	13%	12
EU Total	2354	2839		21%	485

Source: based on UIA 2021

For some of these INPOs, information is available at the Member State level and over time. As Table 6 presents the distribution of INPOs by Member State for the years 2000 and 2020. In the twenty-year period, the number of INPOs increased by 21%, which is likely an undercount as many Member States have not reported more recent figures yet. Belgium, Germany, France, the Netherlands and Italy have the largest number of INPOs, followed by Spain, Austria and Sweden, a ranking that has not changed during the period under consideration. The prominent figures for Belgium are clearly a result of the “EU-effect” and the agglomeration of INPOs in Brussels.

This effect can also be seen in Figure 5 which takes a longer time frame and shows that until the foundation of the European Project in the 1950s, France had the absolute and relative highest number of INPOs. Already by the 1960s, Belgium overtook France, as did Germany after unification in the 1990s. Figure 5 also demonstrates that in the course of the nearly seven decades after the Treaty of Rome, four countries (Belgium, Germany, France, the Netherlands and in that order) consistently show higher growth rates and numbers than any other Member States.

Looking at the fields of activities INPOs engage in, Figure 6 shows three dominant areas: research and science, commerce and business, and health and health related, followed by infrastructure and communication, and social affairs. Less frequent fields are law, culture and the arts, and agriculture. In terms of thematic clusters, these findings suggest that INPOs are about “future proofing” (knowledge, business, communications and infrastructure) first and foremost, and in the sense that such activities benefit the advancement of their respective societies and Europe as a whole. This is followed by “welfare”

Figure 5: Number of INPO by Member States 2010-2020

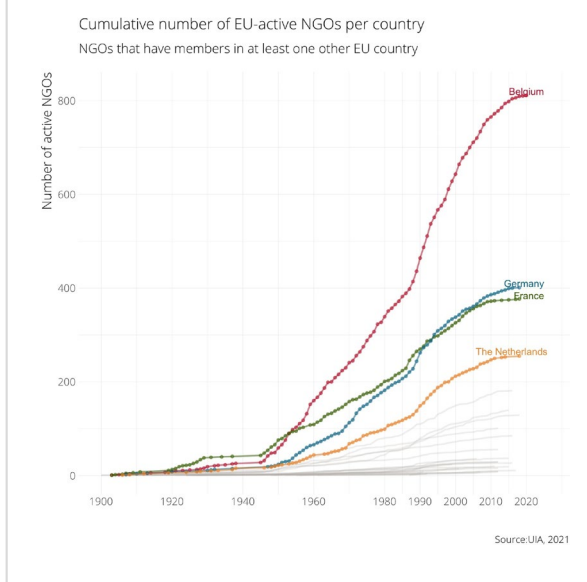
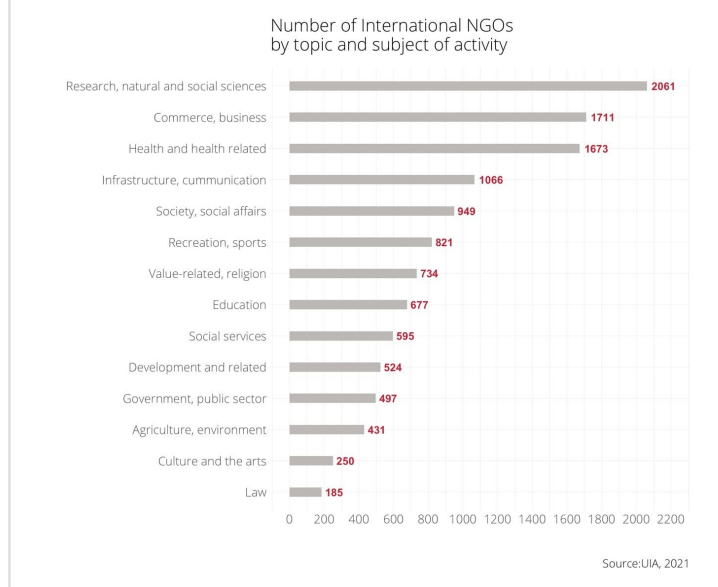


Figure 6: Number of INPOs by Field of Activity, 2021



(health, social affairs, education, and social services), in other words, activities linked to service delivery as well as welfare-related policies. Sports and recreation are next and then value-related (often humanitarian and pro-European) and religious purposes. The latter purposes contribute to social cohesion and the creation of mutual understanding along like-minded interests.

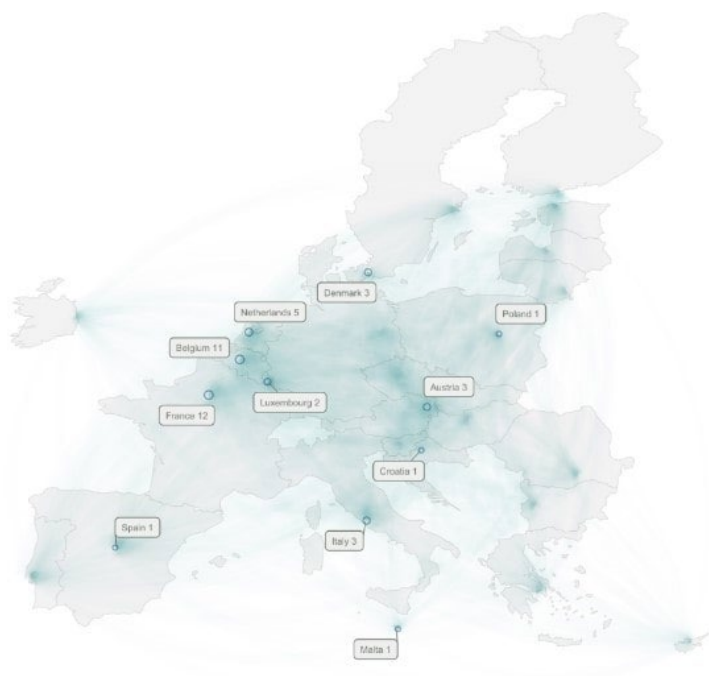
Important for the assessment of the current and future potential of cross-border NPOs are the affiliation networks they create among Member States. These networks involve joint members, either individuals or organisational, flows of information, goods and services

as well as people (volunteers, staff) and finance (donations, grants and contracts). Unfortunately, no reliable and systematic information is available on these network flows; however, it is possible to construct the network for organisational and individual memberships based on data by the Union of International Associations.

Map 1: EU based NGOs. HQ of NGOs that have members in all EU Countries

EU based NGOs

HQ of NGOs that have members in all EU countries

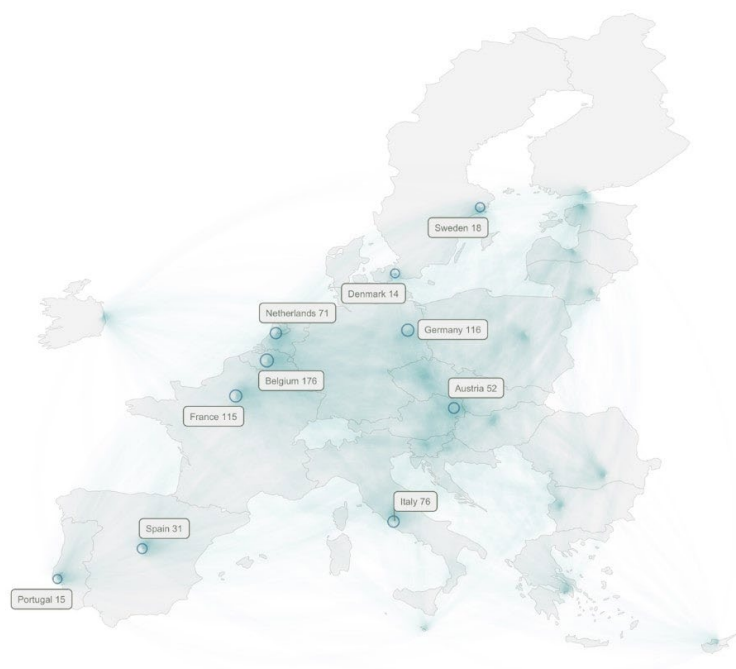


data: UIA, 2021

Map 2: EU based NGOs. Top 10 number of HQ of NGOs that have members in at least 15 other EU countries

EU based NGOs

Top 10 number of HQ of NGOs that have members in at least 15 other EU countries

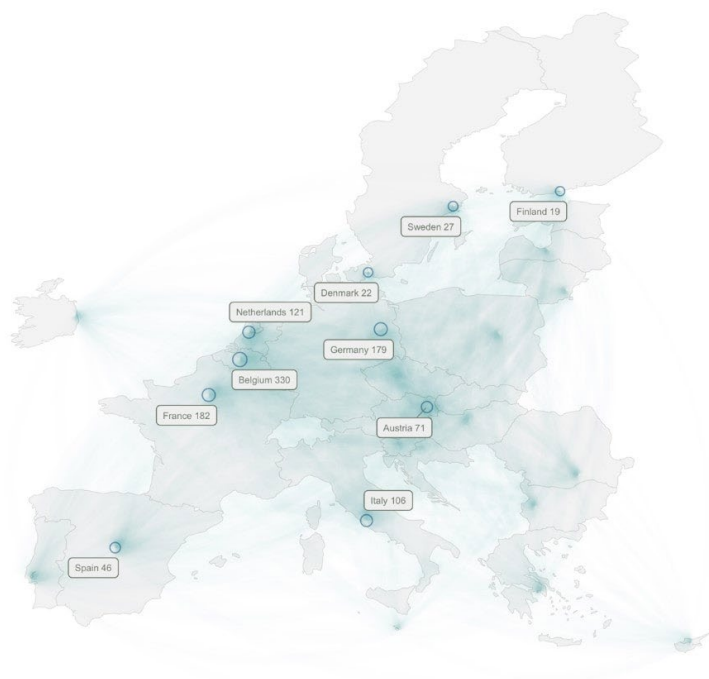


data: UIA, 2021

Map 3: EU based NGOs. Top 10 number of HQ of NGOs that have members in at least 10 other EU countries

EU based NGOs

Top 10 number of HQ of NGOs that have members in at least 10 other EU countries

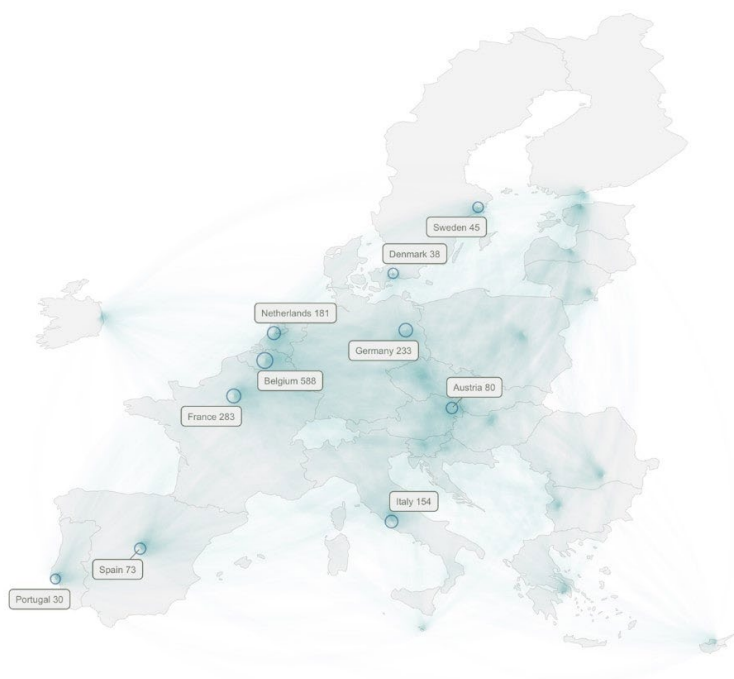


data: UIA, 2021

Map 4: EU based NGOs. Top 10 number of HQ of NGOs that have members in at least 5 other EU countries

EU based NGOs

Top 10 number of HQ of NGOs that have members in at least 5 other EU countries



data: UIA, 2021

The result of these membership links across borders is a complex and inclusive European INPO network, visualized in Maps 1 to 4, where the darker colours indicate denser relations:

- Map 1 shows the headquarters of the 43 INPOs that have members in all other Member States: France, Belgium, Netherlands, Austria, Italy, Denmark, Poland, Luxembourg, Croatia, Malta, and Spain.
- Map 2 presents the headquarters of INPOs that have members in at least 15 but not all Member States
- Map 3 offers view of the headquarters of INPOs with members in between 10 and 14 Member States; and
- Map 4 those INPOs with between 5 and 9 members, by the country where the headquarter is located.

A look of the network from the perspective of each Member State is presented in Maps 5 to 33 in the Appendix. It reports the number of individual and organisational members INPOs from one Member State have in another Member State and vice versa, in addition to the number of INPOs resident in the country. For example, according to UIA data, 149 INPOs from Austria have members in Germany (76), Hungary (62), Italy (77) and Czechia (59), perhaps long-standing relations that reflect the history of the country. Croatia shows prominent membership links with Hungary, Slovenia, Italy and Austria. The Austrian and Croatian network patterns are rather typical for other countries as well: dense relationship with countries in the immediate neighbourhood as well as dense relationships with the larger EU countries and “Brussels,” and less frequent links to other Member States. This is the case for the Scandinavian countries, the Baltic states, and in south-eastern Europe with Bulgaria, Romania and Greece.

An average INPO in the UIA data base has members in nine other Member States. Note that the membership network is not symmetric and when clustered reveals the centrality of the larger Member States (individuals and organisations from smaller Member States are more like to join INPOs in larger Member States than vice versa). Yet this does not mean that the individual Member States are excluded or that the resulting network is not inclusive. All Member States are included in this network. The inclusiveness is also suggested by the low centrality score of 0.04 for the network as a whole, indicating that no single country dominates to a significant degree. Nonetheless there are five countries which clearly emerge as the most closely connected: Belgium, France, Germany, the Netherlands and Italy – a pattern also replicated in Maps 1 to 4. Austria, Spain, Sweden and Denmark are also relatively well connected.

Cross-Border Regions (CBRs or Euro-regions). Member States and three of the EFTA countries — Norway, Switzerland and Liechtenstein — share some forty land borders, creating 448 different border regions (NUTS-3 territories) that together have about 150 million inhabitants, or approximatively one third of the entire EU population. These regions have become a substantial focus of EU policymaking in recent years, with significant effort going toward strengthening cross-border cooperation (CBC).⁶⁰ However, there have been large discrepancies in success levels for integrating CBRs, including fostering civil society collaboration across borders.⁶¹ Broadly speaking,

⁶⁰ see https://ec.europa.eu/regional_policy/en/policy/cooperation/european-territorial/cross-border/

⁶¹ On cross-border regions see:

Lawrence, R. (2011). Deriving collaborative aims and outcomes: A case-study of CROSS-BORDER cooperation in central and Eastern Europe. *Evaluation*, 17(4), 365-382. doi:10.1177/1356389011421927.

Lopez-Arceiz, F. J., Bellostas, A. J., & Moneva, J. M. (2020). Accounting standards for european non-profits. reasons and barriers for a harmonisation process. *Accounting in Europe*, 1-32. doi:10.1080/17449480.2020.1795215.

Western European CBRs and organisations have seen better CBC than those in other parts of Europe. Below are some examples of success and challenges of CBC and the role of NPOs within that process.

- Saxony-Czech region. A 2018 report finds that German and Czech NPOs played very different roles in CBC initiatives due to different regulatory, funding, and institutional setups.⁶² In Saxony, NPOs are relatively well-funded (albeit dependent on state funding) and seen as a partner of public institutions. On the Czech side, they are also dependent on government support but are far more financially unstable, lack long-term strategies, and are not viewed as equal partners to public bodies.⁶³ The different treatment of NPOs on either side of the border has made CBC on projects more challenging.
- Danube, Körös, Maross and Tisa Region. Looking at cross-border collaboration in this region, Lawrence⁶⁴ finds that NPOs focused mostly on people-to-people interactions, but had difficulties with visas, specifically the costs and impact on labor mobility. Although governments supported cross-border infrastructure projects, the NPOs were focused on “European integration from below,” and had more challenges with spreading funding across borders and facilitating small-scale interactions.
- Vienna and Bratislava. Analyzing the region, Sohn and Giffinger⁶⁵ find a lack of NPO participation in efforts to foster cross-border governance between Vienna and Bratislava. Similar to the Czech-Saxon case, there is a mismatch in the influence and resources of NGOs on either side of the border, making it difficult to match up partners for specific projects. On the Austrian side, the non-profit Europaforum Wien is highly influential, but has no comparable counterpart on the other side of the border. The mismatched institutional setup inhibited cooperation, as Slovak authorities were wary of the alleged hegemony of Austrian organisations.
- Meuse-Rhine Region. Compared to border regions in east and central Europe, the Meuse-Rhine region is well-integrated and has a long history of cooperation, with its title as a Euroregion coming first in 1976.⁶⁶ Non-profit cooperation is extensive, with a specific organisation (Eifel – Ardennes Marketing EEIG) set up to develop a joint tourism strategy between Germany and Belgium.
- The organisation Groß/Grande Region coordinates governmental and non-governmental activities. The EU Interreg program contributes 20% of its €140 million budget in the region to education and social inclusion in the region.⁶⁷

Noferini, A., Berzi, M., Camonita, F., & Durà, A. (2019). Cross-border cooperation in the EU: Euroregions amid MULTILEVEL governance And re-territorialization. *European Planning Studies*, 28(1), 35-56. doi:10.1080/09654313.2019.1623973.

Perkmann, M. (2007). Policy entrepreneurship and multilevel governance: A comparative study of european cross-border regions. *Environment and Planning C: Government and Policy*, 25(6), 861-879. doi:10.1068/c60m.

Sohn, C., Reitel, B., & Walther, O. (2009). Cross-Border metropolitan integration in Europe: The case of Luxembourg, Basel, and Geneva. *Environment and Planning C: Government and Policy*, 27(5), 922-939. doi:10.1068/c0893r.

⁶² Spaček, M. (2018). Multilevel cross-border governance in The Czech-Saxon borderland: Working together or in parallel? *Administrative Culture*, 18(2), 175-202. doi:10.32994/ac.v18i2.161.

⁶³ Spaček, M. (2018). Multilevel cross-border governance in The Czech-Saxon borderland: Working together or in parallel? *Administrative Culture*, 18(2), 175-202. doi:10.32994/ac.v18i2.161, page 187.

⁶⁴ Lawrence, R. (2011). Deriving collaborative aims and outcomes: A case-study of CROSS-BORDER cooperation in central and Eastern Europe. *Evaluation*, 17(4), 365-382. doi:10.1177/1356389011421927.

⁶⁵ Sohn, C., & Giffinger, R. (2015). A policy network approach to Cross-Border METROPOLITAN governance: The cases of Vienna and Bratislava. *European Planning Studies*, 23(6), 1187-1208. doi:10.1080/09654313.2014.994089.

⁶⁶ Interreg Euregio Maas-Rhein. (n.d.). “Projekte | Interreg Euregio Maas-Rhein.” Retrieved from: <https://www.interregemr.eu/home-de>.

⁶⁷ Groß/Grande Region. (n.d.). “The Greater Region at a Glance.” Retrieved from: <http://www.granderegion.net/en>.

- Starmans et al. identify health care as a particularly important aspect of CBC. He argues that while cross-border patient admission is higher than other areas (still at only 1%), “regulations for cross-border care at the EU level generally constrain this type of care for publicly insured patients.”⁶⁸ In 2018, the WHO still identified “differences in legislation, (public) health-care systems and structures across the Euroregion” as challenges to health care cooperation in the Meuse-Rhine area.⁶⁹ During the COVID-19 pandemic, cross-border healthcare cooperation was funded with €4.55 million.⁷⁰ Dieperink (2009) has also found effective regional NPO cooperation in order to protect water quality in the Rhine.⁷¹
- Trinational Eurodistrict of Basel. The trinational region around Basel is another well-established CBR, which was made official with the establishment of the non-profit Trinational Eurodistrict Basel (TEB) organisation in 2007. Its activities include promoting mobility, development, and cultural exchange. In 2009, the TEB released a paper on territorial cohesion that encouraged NPO participation, arguing that “involvement of the relevant protagonists from the fields of the social services, voluntary organisations, associations and non-governmental organisation is very much to be welcomed.” The TEB funds cross-border projects in civil society. In 2019, it spent over 70,000 euros on regional projects including photography exhibitions, multi-lingual videos, and a relay race. The EU Interreg program will spend €1,585,000 on the region in 2021.⁷²

Resumé. In summary, and irrespective of the paucity of data available, the empirical findings suggest that:

- The great majority of NPO activities are domestic; however, a growing number of NPOs operations across borders.
- The amount of cross-border financial flows among NPOs as donors and recipients has increased substantially over the last decade but remains well below domestic flows.
- The purposes or fields of INPOs are different from the domestic, welfare oriented NPO profile, with greater emphases on science, business and infrastructure.
- All Member States are included in a complex INPO network linked by individual and organisational membership.
- Belgium, Germany, France, the Netherlands and Italy are the most integrated in the European INPO network.
- Cross-border regional activities are growing in importance and harbor great potential but vary significantly in their effectiveness across the EU.

⁶⁸ Starmans, B., Leidl, R., & Rhodes, G. (1997). A comparative study on Cross-border hospital care in the Euregio Meuse-Rhine. *The European Journal of Public Health*, 7(Suppl 3), 33-41. doi:10.1093/eurpub/7.suppl_3.33.

⁶⁹ WHO. (2019). “Meuse-Rhine Euroregion.” Retrieved from: https://www.euro.who.int/_data/assets/pdf_file/0008/373157/rhn-meuse-rhine-eng.pdf.

⁷⁰ Maastricht University. (n.d.). “PANDEMERIC explores the benefits of Euregional cooperation during (health) crises.” Retrieved from: <https://www.maastrichtuniversity.nl/news/pandemic-explores-benefits-euregional-cooperation-during-health-crises-item>.

⁷¹ Dieperink, C. (2000). Successful international cooperation in the Rhine catchment area. *Water International*, 25(3), 347-355. doi:10.1080/02508060008686842.

⁷² ETB. (2009). “Statement from the Trinational Eurodistrict Basel (TEB) on the Green Paper on Territorial Cohesion.” Retrieved from: https://ec.europa.eu/regional_policy/archive/consultation/terco/pdf/4_organisation/152_teb_en.pdf.

5. Previous Policy Initiatives

The general topic of a European association and nonprofit organisation has a remarkably long, though inconclusive history in both Parliament and the Commission, spanning the better part of three decades.⁷³ Already two years before the 1989 Delors Report on an Economic and Monetary Union paved the way for major initiatives and legislative actions in the European Communities, the Fontaine Report proposed to explore a legal framework for European Associations. In the years following, various proposals and debates by the Parliament and the Commission as well as other actors tried to advance the recommendations in the Fontaine report. They managed to gain some initial support but encountered significant objection during critical phases. Towards the end, suffering from procedural and other setbacks that repeatedly stalled the process, it came to a standstill first and was finally dropped from the Commission's legislative agenda. Specifically:

The 1987 'Fontaine Report'. As mentioned, the initial process began with the *Report on Non-Profit Making Associations in the European Community*.⁷⁴ It called among others for abolishing any form of discrimination based on nationality for citizens to join any associations in Member States, the mutual recognition of national associations within the then EC, and a common legal framework for the status of a European Association.

1987: European Parliament 'Resolution on non-profit-making associations in the European Communities'. Following up on the Fontaine Report, the European Parliament adopted the *Resolution on non-profit-making associations in the European Communities* in March 1987 by suggesting to the European Commission "to draw up a proposal for a regulation incorporating a Community-wide statute for associations covering the requirements of associations operating in more than one Member State and national associations wishing to act in concert at European level".⁷⁵ The European Commission responded positively and began the preparations for a first draft of a future Statute of European Associations.

1991: The first proposal of the Commission. The policy momentum created in 1987 was crowded out by the political developments following the Fall of the Berlin Wall and the disintegration of the Warsaw Pact. It was not until four years later, in December 1991, that the European Commission presented a first *Proposal for a Council Regulation on the Statute for a European association* along with a *Proposal for a Council Directive Supplementing the Statute for a European association with regard to the involvement of employee*.⁷⁶

1993: First Reading in European Parliament. The European Economic and Social Committee issued a supportive opinion, and two years later, or some six years after the Fontaine Report, the European Parliament held the first reading of the draft proposals in January 1993. The Parliament approved the Proposals with some amendments.

1993: The amended proposals of the Commission. In the same year, the Commission issued amended proposals.⁷⁷ Yet unlike in the Parliament, several Member States voiced strong opposition and advanced essentially four criticisms. The first challenged the EU competence for the Statute as such and argued that, based on the principle of subsidiarity, legislation in the field of associations

⁷³ Tim Wöffen, European Associations: The Political Debate and Basic Legal Questions. Blog post, We Are Europe, October 2018.

⁷⁴ [RESOLUTION on non-profit-making associations](#) in the European Communities, 1987.

⁷⁵ <https://uia.org/archive/legal-status-4-12>

⁷⁶ Opinion on : — [the proposal for a Council Regulation \(EEC\) on the Statute for a European Association](#), and — the the Statute for a European Association with regard to the Involvement of Employees, 1992.

⁷⁷ [EUR-Lex - 1991_386-EN - EUR-Lex \(europa.eu\)](#)

should remain the sole jurisdiction of Member States. The second questioned the need for a Statute, unconvinced of its added value. The third line of criticism saw the proposed Statute at odds with national laws and tax regulations, and in particular the distinction between ideal or charitable activities on the one hand and economic activities on the other. Finally, the proposal was criticized for placing high administrative burdens on associations in terms of financial auditing and publicly disclose.

1994-2002: MEPs continued to demand progress while process remained dormant. In profound ways, the proposal for a European Association Statute never fully recovered from this barrage of criticisms, and in the absence of a coalition strong enough as well as willing to invest political capital for overcoming them, the initiative lost momentum. Nonetheless, over the next decade Members of the European Parliament from across different parties and Member States, yet mostly independently of each other, brought up the topic and demanded progress.

2005: The Commission withdraws the proposal. In September 2005, the Commission decided to withdraw the proposal of the European Association Statute as part of its 'Better Regulation' initiative. The proposed Statute was among 67 other legislative proposals withdrawn on the grounds that not sufficient progress had been made.⁷⁸ In response to this decision, some thirteen NGOs filed a complaint against the European Commission via the European Ombudsman, and some but few Members of the European Parliament supported this initiative and demanded that the withdrawal be rescinded.

2006: European Economic and Social Committee calls for action. In 2006, the European Economic and Social Committee re-emphasized its support for a European Association Statute, and pointed to the then proposed and debated Statute of European Political Parties.⁷⁹ However, not much followed from this suggestion in the years following.

2011: Manifesto and Resolution of the European Parliament. That year saw a coordinated civil society approach as some 39 signatories, many of them umbrella organisations of national and international associations and nonprofit organisations, signed a '*Manifesto for a European Statute of the European Association*'⁸⁰ calling, among other demands, for the "official recognition of the legitimacy and the relevance of European associations' collective voice in a more participatory European democracy;" and to "lay the foundations for the development of a genuine European civil dialogue along with the provisions of the Lisbon treaty".

In March 2011, the European Parliament adopted a '*Declaration on establishing European statutes for mutual societies, associations and foundations*', stating that "while associations, mutual societies and foundations have so far developed in a primarily national context, they need to improve cross-border access in order to maximise their entrepreneurial potential in the EU." The Declaration saw "a need to create a 'level playing field' that provides associations, mutual societies and foundations with instruments and opportunities equivalent to those available to other organisational legal structures, thereby giving a European dimension to their organisation and activities," and called on the Commission to take the necessary steps.⁸¹

⁷⁸ [EUR-Lex - 52005DC0462 - EN - EUR-Lex \(europa.eu\)](#).

⁷⁹ see <https://www.europarl.europa.eu/legislative-train/theme-union-of-democratic-change/file-jd-statute-and-financing-of-european-political-parties-and-foundations>.

⁸⁰ <http://www.acc.eu.org/uploads/Manifesto for a European Statute of the European Association.pdf>.

⁸¹ [Texts adopted - Establishing European statutes for mutual societies, associations and foundations - Thursday, 10 March 2011 \(europa.eu\)](#).

Between 2011 and 2015 focus shifted to the possibility of a European Foundation Statute, and the Statute of European Association, long withdrawn, received little attention. The European Commission adopted a legislative proposal for a European Foundation Statute on 8 February 2012. However, as a unanimous Council decision seemed unachievable, the Foundation Statute was withdrawn 2015.

2015: Opinion of the European Economic and Social Committee. Six years after the adoption of the Lisbon Treaty, the European Economic and Social Committee issued an opinion on the implications of the Treaty calling for measures to strengthen European civil society, which brought the issues of cross-border forms of engagement, participation and associations back on the agenda.⁸²

2015: Question to the European Commission. In 2015, a Member of the European Parliament formally asked the Commission why the proposal regarding the European Statutes of Associations had been withdrawn. The Commission responded that *“further reflection on the need for a European statute for non-profit-making associations is possible only after the adoption of the proposed European Foundation Statute.”* However, with that proposal having been withdrawn, calls to take up the proposal for a European Association Statute seemed mute. The Commission further stated: *“The endorsement of such an initiative by the Council which, similarly to all other Regulations in the social economy area, can be achieved only by unanimity, seems, at present, unlikely”*.⁸³

2017-2018: European Economic and Social Committee reiterates calls for a European legal framework. In another opinion, and in the context of financing civil society organisations by the EU, the European Economic and Social Committee demanded that *“a political and legal framework should be put in place at European and national level to nurture the development of European civil society, whose activities are an integral part of values anchored in fundamental rights.”*⁸⁴

In 2017 and 2018, public petitions were launched in Germany⁸⁵ and Luxembourg⁸⁶ with the goal to remind national legislators to push the European Commission to make progress with new proposals for a European Statute of Associations. In June 2018, the French Assemblée Nationale and the German Bundestag issued a joint parliamentary position paper that included a specific reference addressing the need for a Statute: *“In order to enable the establishment of cross-border associations, a German-French, if possible European legal status will be created for associations.”*⁸⁷

However, as Brexit, the immigration crisis, and a change in the Commission delayed action at the EU-level, it was not until 2020 that the Parliament took up the issue again.

Assessment

From a policy-analytic perspective several factors contributed to the “fate” of the European Statute over time:⁸⁸

⁸² EESC- 2015-03264-00-01-AC-TRA.

⁸³ [Answer to Question No E-015971/15 \(europa.eu\)](#).

⁸⁴ SOC/563-EESC-2017-01953-00-01-ac-tra.

⁸⁵ [Financing of CSOs by the EU \(own-initiative opinion\) | European Economic and Social Committee \(europa.eu\)](#).

⁸⁶ [Chambre des Députés du Grand-Duché de Luxembourg \(chamber.lu\)](#).

⁸⁷ Joint French-German parliamentary position paper for the renewal of the Elysée-Tratety, 2018.

⁸⁸ See also Charrad, Kristina (2014), ‘Why Is There No Statute for a European Association?’ in M. Freise, T. Hallmann (eds.), *Modernizing Democracy*, DOI 10.1007/978-1-4939-0485-3_16, Berlin and New York: Springer Science+Business Media.

- Policy windows for the initiative in the late 1980s and after the Lisbon Treaty closed rather quickly, and work on the Statute was crowded out as events such as fall of state socialism in 1989-90, the global financial crisis in 2009, the Euro crisis in 2011, the migration crisis in 2015 and Brexit post 2016 took over.
- While this also affected other legislative initiatives, it was additionally the absence of a strong cross-party and cross-Member States coalition willing to drive the process forward and convince hesitant voices in the Commission and the Council of the Statute's value.
- It was in particular the failure to address four criticisms in a systematic way that hampered progress: evoking the principle of subsidiarity to question EU competence; unclear added value; frictions with national laws, tax regulations, and the treatment of economic activities; and the question of regulatory administrative burdens.
- In hindsight, there were also procedural complications arising from the decision to make the proposed Statute contingent upon the passage of the European Foundation Statute, which complicated matters and created additional delays.
- It is also worth noting that the alternative of a European Directive and the Enhanced Cooperation Mechanism as set out in Article 20 TEU was never systematically pursued. While this Mechanism does not require unanimity in the European Council, it applies, once implemented only to participating Member States. At least nine Member States are required, which means that the Mechanism could involve a minority only.

Underlying these factors were two fundamental flaws that reach back to the beginnings of the initiative. First, a lack of a common understanding of what entities are covered by, or the focus of, the Statute. Should it cover all non-profit entities and include, next to endowed foundations also co-operatives and mutuals? Or should it address membership-based associations only, and leave other asset-based forms such as foundations or limited liability corporation to be dealt with in separate statutes, even though they are all tax-exempt entities? Identifying the exact purposes of the Statute, and how they address need needs of the different kinds of NPOs as discussed above, were also neglected.

Next to this conceptual confusion is the absence of a systematic evidence base of the scale and scope of associations, non-profit organisations and foundations in terms of purpose, activities, expenditures and revenues as well as contributions to the public good. As we have seen, only a few countries had and continue to have more systematic and up-to-date information, and comparative data remain all too rare.

6. Growing Awareness of Potential Amidst Policy Neglect

The assumption underlying the premise of the proposed European Statute is that associations and organisations with experience in cross-border initiatives partnerships would be more likely to carry out joint actions if facilitated by enabling legal forms and regulations. On the basis of the literature, documents and data, this section will discuss the possible European added value of a statute for European cross-border NPOs or other legislative and policy actions.

Unlike in the 1990s and 2000s, there seems to be a broader interest in strengthening civil society in Member States across Europe as well as in “Brussels.” There is also a greater awareness among policymakers as to the potentials NPOs offer in terms of the functional differentiation proposed above.⁸⁹

At the same time, there is the legacy of policy neglect and sometimes decades of regulatory passivity if not inaction – not only among Member States but well beyond.⁹⁰ The clearest case of such policy neglect are the efforts of the inter-governmental Financial Action Task Force to control international money laundering and financing of terrorism via “philanthropic” channels and NPO networks. Despite clarification that not all NPOs should be considered potentially high risk, the rules have effectively hindered or even cut off access by many organisations especially in the Global South to banking and other financial services, with significant consequences for internationally active NPOs.⁹¹ Yet countries remained passive in correcting the negative consequences of anti-terrorist measures on NPO cross-border transactions and transfers.

Furthermore, the implementation of new public management approaches, even if not directly focused on NPOs, has had an arguably profound effect, especially on service providers. The pressures of competing in quasi-markets and the intricacies of contracting arrangements have led to commercialization and professionalization and have brought into question the identity and autonomy of many service-providing organisations.

⁸⁹ See for example:

European Philanthropy Manifesto (2019): https://www.philanthropyadvocacy.eu/wp-content/uploads/2019/03/20190321-Philanthropy-Manifesto_420x210_WEB.pdf.

Boosting cross-border philanthropy in Europe (2017): <https://www.efc.be/uploads/2019/03/Boosting-Cross-Border-Philanthropy-in-Europe-Towards-a-Tax-Effective-Environment.pdf>.

Taxation of cross-border philanthropy in Europe after Persche and Stauffer (2014): <http://efc.issue4lab.org/resources/18545/18545.pdf>. Taxation Roadmap Contribution

(2020): <https://www.philanthropyadvocacy.eu/wp-content/uploads/2020/07/Taxation-Consultation-contribution.pdf>.

<https://www.efc.be/uploads/2019/03/Enlarging-the-Space-for-European-Philanthropy.pdf>.

<https://efc.issue4lab.org/resource/comparative-highlights-of-foundation-laws-the-operating-environment-for-foundations-in-europe-2015.html>.

ECNL/PA Handbook (2020): <https://ecnl.org/sites/default/files/files/EU-Law-Handbook.pdf>.

<https://www.alliancemagazine.org/blog/why-european-funders-need-to-be-vigilant-to-keep-their-space-open/>.

<https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/european-philanthropy-untapped-potential-exploratory-opinion-request-romanian-presidency>.

[https://www.europarl.europa.eu/RegData/etudes/STUD/2017/583123/IPOL_STU\(2017\)583123_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2017/583123/IPOL_STU(2017)583123_EN.pdf)

<https://www.mckinsey.com/industries/public-and-social-sector/our-insights/reimagining-european-philanthropy>.

⁹⁰ Helmut K. Anheier and Stefan Toepler. “Policy Neglect: The True Challenge to the Nonprofit Sector” *Nonprofit Policy Forum* 10 (4), 2019.

⁹¹ Eckert, S., K. Guinane, and A. Hall. 2017. *Financial Access for U.S. Nonprofits*. Washington: Charity & Security Network. Daigle, D., S. Toepler, and S. Smock. 2016. *Financial Access for Charities Survey 2016: Data Report to the Charity and Security Network Version 1.1*. Arlington, VA: George Mason University.

These changes and the pressures they imply on NPOs are complicated by a lack of reforms generally. An example is Germany, where public benefit laws designed for the realities of the late 19th and early 20th centuries seem increasingly outdated⁹², and reform efforts to modernize the current system, though on the political agenda for two decades, have resulted in minor changes only.⁹³ The regulatory and administrative complexity of income-generating activities remain burdensome for NPOs in many countries as does the thin line between advocacy and politics. In Italy, for example, though some measures have been taken to legally recognize new organisational forms such as social enterprises, the bureaucratic requirements for most NPOs have not been reduced and continue to strain organisational capacities.⁹⁴

This passivity, however, is no isolated case. Anheier et al⁹⁵ consulted civil society experts across the G20 countries (which include three Member States) and found that

- few countries have open, proactive dialogues in place to review NPO–government relations; the most common pattern is the absence of any policy engagement;
- even fewer countries have reform efforts under way, even though a general sense of reform needs prevails among expert opinions;
- most countries seem to do little to stem the gradual erosion of civil society space, perhaps out of unawareness, lack of civil society activism and organisational capacity to find a common voice, or the absence of political will on behalf of governments.

Among Member States, France seems to be the exceptions to this general assessment. The French government has been actively advancing a reform agenda pursuing supply and demand side tools as well as improved regulations, to encourage NPOs and social enterprises. On a more modest scale, in 2020, Germany passed minor improvement in the tax treatment of NPOs, also widening the scope of tax-exempt purposes. Thus, irrespective of the greater awareness among policymakers at the EU and Member State level currently, there is nonetheless the legacy of policy neglect.

The situation, therefore, is somewhat counter-intuitive, as greater awareness of the potential of NPOs offer for Europe, happens against the background of a long-lasting passivity in trying to improve the regulatory framework and the operating conditions for them. The passivity to improve regulatory frameworks and conditions coincides with a longstanding neglect to develop a more comprehensive and comparable evidence base of NPOs in Member States that would include basic economic and social statistics.

At the EU level, NPOs play a role in various policy fields but are treated as national actors primarily, usually in service-delivery, consultation or advocacy contexts. Many NPOs close to EU institutions, such as think-tanks, advocacy and interest entities, are established according to Belgian and not EU law. They are not European actors similar to the *Societas Europaea*,⁹⁶ the European economic interest

⁹² Helmut K. Anheier and Stefan Toepler. "Policy Neglect: The True Challenge to the Nonprofit Sector" *Nonprofit Policy Forum* 10 (4), 2019.

⁹³ Rupert Strachwitz. 2018. Bekommen wir endlich eine Reform des Gemeinnützigkeitsrechts? *Newsletter für Engagement und Partizipation in Deutschland* 11/2018 2018.

⁹⁴ Helmut K. Anheier, Stefan Toepler, and Markus Lang. "Civil Society in Times of Change: Shrinking, Changing and Expanding Spaces and the Need for New Regulatory Approaches." *Economics: The Open-Access, Open-Assessment E-Journal* 13, 2019.

⁹⁵ Helmut K. Anheier, Stefan Toepler, and Markus Lang. "Civil Society in Times of Change: Shrinking, Changing and Expanding Spaces and the Need for New Regulatory Approaches." *Economics: The Open-Access, Open-Assessment E-Journal* 13, 2019.

⁹⁶ https://europa.eu/youreurope/business/running-business/developing-business/setting-up-european-company/index_en.htm.

grouping or *the Societas Cooperativa Europaea*.⁹⁷ Given the failed attempts to establish a legal form for associations and foundations (see above) over several decades, we basically have a case of judicial governance when it comes to the treatment of cross-border NPO activity, resulting in costly and fragmented practices at the level of Member States.

European Court of Justice Decisions. It is against this background that we need to consider the relevance of landmark decisions by the European Court of Justice (ECJ) and their implications for the proposed European Association Statute. In brief, the cases are:

ECJ Case C-386/04, *Centro di Musicologia Walter Stauffer v. Finanzamt München für Körperschaften* or “the Stauffer case” is about tax-exemption for foreign organisations.⁹⁸ The Centro Di Musicolica is a NPO located in Italy that awards scholarships to Swiss music students. The NPO received income from its real-estate property in Germany, which would normally be tax-exempt. However, the German tax authorities rejected the tax-exemption on the grounds that according to the German corporate income tax law, such exemptions are only granted to German tax-resident entities.

The ECJ argued that rental income is protected under the free movement of capital, and that according to settled case law, restrictions on the fundamental freedoms are only permissible if (1) they are applied in a non-discriminatory way, (2) are justified by overriding reasons in the public interest, (3) are an appropriate means to achieve the objective that they pursue, and (4) do not go beyond what is necessary and reasonable to achieve this objective. Thus, in the view of the ECJ, the less favourable treatment of foreign EU-based NPOs is not justifiable according to these criteria. The decision by the German tax authorities is therefore invalid, and German corporate income tax law is in violation of EU law.

ECJ Case C-318/07, *Heinz Persche v. Finanzamt Lüdenscheid* or “the Persche case” is about tax incentives for cross-border giving.⁹⁹ A German donor, Mr. Persche, made an in-kind contribution to a Portuguese nonprofit care home. Under German income tax law, such charitable donations are tax-deductible. However, the tax authorities rejected the claim arguing that only donations to domestic NPOs are deductible for German taxpayers.

The ECJ ruled that donations (including in-kind donations) are protected under the free movement of capital. The ECJ made reference to the Stauffer judgement and declared the rule based on German tax law as invalid. A denial of tax incentives would be permissible only in the concrete case that the Portuguese organisation were not (notwithstanding its seat) comparable to a German NPO. Thus, German income tax law is in violation of EU law.

ECJ Case C-25/10, *Missionswerk Werner Heukelbach eV v. État Belge*, or the “Missionswerke case” is about gift and inheritance tax treatment of cross-border activities. Missionswerk is a NPO registered in Germany.¹⁰⁰ Mrs Renardie, a Belgian citizen, who had lived her whole life in Belgium, died on 12 June 2004 in Malmedy, Belgium, having appointed Missionswerk as her heir. The Belgian regional tax authority applied inheritance tax at a rate of 80% rather than 7%. The tax authority rejected the request by Missionswerk for the application of the reduced tax rate on the grounds that it was only to be applied to foreign EU-based NPOs if the testator had lived or worked in the country where the receiving organisation is legally based.

⁹⁷ https://ec.europa.eu/growth/sectors/social-economy/cooperatives/european-cooperative-society_en.

⁹⁸ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62004CJ0386>.

⁹⁹ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62007CJ0318>.

¹⁰⁰ <https://curia.europa.eu/juris/liste.jsf?language=en&num=C-25/10>.

For the ECJ, legacies are protected under the free movement of capital. Referring to its ruling the *Stauffer* and *Persche* cases, the ECJ came to the conclusion that the Belgian regional tax authorities were in conflict with EU law: a restriction on tax incentives would be permissible only in the concrete case that the German association were not (notwithstanding its seat) comparable to a Belgian NPO.

All three judgments¹⁰¹ point to the critical issues of comparability, which is also the case in *European Commission v. Austria* (C-10/10) (23).¹⁰² Austrian tax law only allowed tax deductibility for donations to institutions with research and teaching activities in cases where those institutions had their registered seat in Austria, was in conflict with the free movement of capital within the EU. The ECJ re-emphasized that transfers are protected under the free movement of capital. Restricting tax incentives only to donations made to domestic entities cannot be justified on the grounds of overriding reasons of domestic public interest as it conflicts with the goals of EU policy in the fields of research and technological development. According to the Treaty on the Functioning of the EU legal and tax obstacles to research co-operation should be removed. Austria amended its laws to the effect that such restrictions only be applied if the foreign-based research institution were not comparable to an Austrian research institution, and irrespective of its legal seat.

Comparability Test for Establishing Equivalence. The relevant ECJ cases and rulings are basically about tax-related issues. Given that taxation is a matter of Member States, the question becomes how to coordinate or harmonize the different tax treatments of NPOs and in two ways: first, to avoid conflicts with EU law, essentially the four freedoms; and second, how to support or incentivize cross-border activities by reducing if not minimizing transaction costs and administrative burdens. This is where the quest for establishing comparability and equivalence becomes central.

A few years after the above landmark ECJ decisions, a 2014 study by the European Foundation Centre considered the performance of the comparability test across Member States and concluded:

“In the majority of Member States, no formal or uniform approach to the comparability test is foreseen: Usually it is the competent tax authority which decides on a case-by-case basis whether a foreign [charity] is considered comparable to a domestic one. In around 10 Member States, however, at least in certain cases we find formal procedures which set out the binding framework for determining whether a foreign [charity] is comparable to a domestic one”.¹⁰³

By 2015, nine Member States were non-compliant with the *Stauffer* ruling, six with the *Persche* ruling, and six with the *Missionenwerk* ruling. By 2020, there are still Member States like Spain and Germany that do not fully comply.¹⁰⁴ However, the overall result is a patchwork of procedures. Already in 2014, the Wellcome Trust (then located in the UK, now with a major office in Berlin), which operates in several Member States remarked:

“[N]o two countries have the same procedure. The supporting documents that are required may include certificates of tax residence, withholding tax vouchers, audited accounts, governing

¹⁰¹ Oonagh B. Breen. “Regulating European Philanthropy: Lessons from the Scholarly Legacy of Evelyn Brody” De Gruyter | 2020 *Nonprofit Policy Forum Volume 11 Issue 3*. DOI: <https://doi.org/10.1515/npf-2020-0021> <https://www.degruyter.com/document/doi/10.1515/npf-2020-0021/html>.

¹⁰² <https://curia.europa.eu/juris/document/document.jsf?text=&docid=80237&doclang=EN>.

¹⁰³ European Foundation Centre (EFC) and Transnational Giving Europe (TGE), Taxation of Cross-Border Philanthropy in Europe After *Persche* and *Stauffer*. From landlock to free movement? 2014, <http://efc.issuelab.org/resources/18545/18545.pdf>, page 5.

¹⁰⁴ Hanna Surmatz „How to ease tax effective cross-border philanthropy within the European Union and beyond?” presentation at the Taxation and Philanthropy conference, Geneva, Switzerland, 26 November 2020.

documents (constitution, statutes, articles, etc.), evidence of receipt of income and its application to public benefit activities - with translation and notarisation where appropriate".¹⁰⁵

What is more, the burden of proving comparability falls on the foreign charity, which can be a prolonged and costly process, and beyond the capacities of smaller NPOs. It even challenges large actors like the Wellcome Trust (EFC and TGE 2014, p. 45):

"States that impose withholding tax in breach of EU law will not voluntarily refund the tax to foreign charities and the European Commission cannot require them to do so. It is up to each foundation to prove its case under the relevant national law procedure . . . The total costs to date incurred by Wellcome for filing claims, comparability analysis, claim validation, appeals and litigation costs in the ten countries concerned total around £900,000. This compares favourably with total refunds to date of over €8 million from the four states that have settled our claims in full and the prospect of further refunds from the other countries that continue to dispute our claims."¹⁰⁶

Of course, larger NPOs like Wellcome Trust are not as easily deterred as smaller organisations that have neither the capacity nor the resilience to engage tax authorities abroad. According to Philanthropy Advocacy,¹⁰⁷ the current situation for comparability tests across the EU sums up as follows, and with the perverse effect that experts seem to advise NPOs not to operate across borders:

- Different types of evidence and forms required
- Different authorities responsible
- Authorities have wide discretion
- Recognition may be awarded on a case-by-case only
- There are significant administrative costs and barriers (translation, notarization etc.)

What are needed, then are user-friendly models with low transaction costs offering reliable procedures and timely outcomes. At present, comparability models in two Member States hold promise in these regards, even though they are still relatively complex and pose barriers in terms of costs:

In the Netherlands, NPOs from outside the country can obtain tax-exempt (ANBI) status¹⁰⁸ with the Tax Authority by submitting the following:¹⁰⁹

- Legal form in home country
- Public benefit purposes in home country, which must represent 90% of activities
- Proof that board and staff comply with Dutch integrity requirements
- Statement that in case of dissolution assets go to similar purposes
- Proof of reasonable remuneration of board members

¹⁰⁵ European Foundation Centre (EFC) and Transnational Giving Europe (TGE), Taxation of Cross- Boarder Philanthropy in Europe After Pershce and Stauffer. From landlock to free movement? 2014, <http://efc.issuelab.org/resources/18545/18545.pdf>, page 23.

¹⁰⁶ European Foundation Centre (EFC) and Transnational Giving Europe (TGE), Taxation of Cross- Boarder Philanthropy in Europe After Pershce and Stauffer. From landlock to free movement? 2014, <http://efc.issuelab.org/resources/18545/18545.pdf>, page 45.

¹⁰⁷ Philanthropy Advocacy (2020) <https://www.philanthropyadvocacy.eu/wp-content/uploads/2020/07/Taxation-Consultation-contribution.pdf>

¹⁰⁸ ANBI is the non-profit tax designation issued by the Tax Office (*Belastingdienst*) in accordance with the general tax laws (*Uitvoeringsregeling Algemene Wet Rijksbelastingen 1994*). ANBI stands for (*Algemeen Nut Beogende Instelling*). (<http://www.anbi.nl/#ANBI>).

¹⁰⁹ http://www.belastingdienst.nl/rekenhulpen/giften/anbi_zoeken/.

- Proof of reasonable administration costs (overheads)
- Proof of regular publication of annual reports
- Copies of statutes, byelaws and equivalent document
- The names and address of the board members
- Document presenting organisational plans, and, if possible, a financial forecast
- Copy of the similar status as the ANBI-status in home country, including a declaration of the tax authorities and the equivalent national chamber of commerce registration
- A copy of the ID of the person signing the application form
- A copy of the relevant legal provisions of the home country

The documents have to be submitted in Dutch, which adds to transaction costs. It is a case-by-case decision and takes between four to six weeks once all documents are provided. Although NPOs are not charged any fees when applying for the ANBI-status, the administrative burden of a case-by-case review is nonetheless substantial.

The Luxembourg model is somewhat different and has two steps: first, the tax declaration of the Luxembourg-based and resident donor states that the receiving organisation in another Member State meet the requirements of Luxembourg's tax law, typically by providing proof that the organisation is recognized by other Member State as a public-benefit body and entitled to receive tax-deductible donations and exempt from income and wealth tax. The second step asks the recipient organisation in the other Member State to sign a model certificate by meeting four requirements:¹¹⁰

- Date of establishment of the organisation in accordance of the laws of the respective Member State (proof of formal registration)
- Direct and exclusive focus on one or more of the following nine purposes according to the Luxembourgian categories of recognized purposes: art, education, philanthropy, worship/religion, science, social issues, sports, tourism or development cooperation (proof of recognized purpose)
- Recognition of purpose as eligible for receiving tax incentives in the respective Member State (proof of recognized purposes)
- The organisation is exempt from income tax and wealth tax in the respective Member State (proof of tax status).

As in the Dutch case, the responsible tax authority performs the comparability test only for specific cases, and not for the organisations involved generally.

At the core of comparability tests are three issues: First, both the domestic and the EU-based NPO pursue a public-benefit purpose according to the laws of the respective member states. While the list of purposes may vary across Member States (e.g., the Luxembourg list is shorter than the German one), they basically pertain to the promotion of activities in the interest of the public at large rather than to the interests of either a small or closed circle of beneficiaries. Second, the pursuance of the public-benefit purpose has to be exclusive or at least account for the great majority of all organisational activities. This means that business activities unrelated to the public-benefit purpose are not allowed. Third, the statutes or bylaws of the organisation must include a non-distribution constraint whereby revenues cannot be distributed as income but are exclusively dedicated to the public benefit. Board members can be compensated for costs only, salaries must be reasonable, and administration costs not excessive. In case of dissolution, any remaining assets are allocated to the same or a similar public benefit purpose.

¹¹⁰ http://www.impotsdirects.public.lu/legislation/legi10/Circulaire_L_I_Rn112-2_du_7_avril_2010.pdf.

7. Towards a European Statute for Associations and Nonprofit Organisations: Reflections on potential value added

Breen states that “it would be fair to say that the EU treaties have made it difficult to date to develop bespoke legal vehicles to advance philanthropy per se on a pan-European basis. Civil law and common law differences matter when it comes to drafting enabling regulation for philanthropy.”¹¹¹ The same could be said for nonprofit associations and corporations. Despite a EU level consensus and repeated recognition of the substantial contributions NPOs make,¹¹² it has been difficult to translate the consensus into some unanimous agreement on new regulatory models and legal tools. The legal, cultural, political and economic differences among Member States make both cross-border NPO activities and the development of new models and tools highly complex from technically legal perspective and extremely challenging politically.

The current tax treatment of cross-border NPO activities clearly yields to higher transaction costs than would be the case for domestic activities. Could a European Association Statute or some other legislative action provide relief? If the task here is to arrive at quantitative estimates of the economic value-added, the problematic data situation presented above should make clear that such estimations remain difficult given the incomplete evidence base at hand. For estimating the economic impact of the proposed European Association Statute in particular, it would be necessary to have adequate data, assessments or estimates of:

- how many NPOs of what form (associations, corporations, foundations) and in what functional role (service-provider, advocate, financial intermediary, accountability, innovation) are active across borders or likely to show an interest in such a Statute, given:
 - experienced and anticipated barriers to cross-border activities
 - factors influencing cross-border activities and the incentives as well as disincentives involved
 - the cost and revenue aspects of cross-border activities using concrete and comparable examples as test cases
 - the objectives of cross-border activities and how they relate to domestic activities also in terms of potential crowd-in and crowd-out effects
- What expectations NPOs have of the proposed Statute in view of the above
- What alternative proposals or options they foresee, and what their cost and benefit implications might be in removing barriers or in providing additional incentives.

In other words, short of a systematic and representative survey, it is impossible to indicate even roughly what the value added might be. There is also a note of caution in recalling that the Feasibility Study for a European Foundation Statute attempted to estimate the cost implications of cross-border barriers. These estimates were quickly criticized in terms of validity and the representativeness of the sample, and they ended up not being supportive for advancing the

¹¹¹ Oonagh B. Breen. “Regulating European Philanthropy: Lessons from the Scholarly Legacy of Evelyn Brody”. De Gruyter | 2020 [Nonprofit Policy Forum Volume 11 Issue 3](#). DOI: <https://doi.org/10.1515/npf-2020-0021>.

¹¹² European Commission. 2012. Proposal for a Council Regulation on the Statute for a European Foundation. COM. (2012).

proposal at that time. Specifically, the Feasibility Study on a European Foundation Statute Final Report concluded:

“There are legal barriers to cross-border activities of foundations of the Member States both in civil law and in tax law. As in company law, most of the barriers can be overcome, but this leads to compliance costs. The calculable cost of barriers against cross-border activities of European foundations ranges from an estimated €90,000,000 to €101,700,000 per year. Additionally, there are incalculable costs (costs of foundation seat transfer, costs of reduplication, psychological costs, costs of failure, etc.) which are certainly higher.”¹¹³

Recent estimates by the European Foundation Centre suggest that there are about 150,000 foundations in Europe (which include UK and Swiss foundations). These foundations manage 511 billion euros in assets and donate an estimated 60 billion euros annually. However, donations also include operating expenditure since the estimates cover next to conventional grant-seeking foundations also mixed and operating foundations that are very similar to nonprofit corporations and are active mostly in education, health care and social services, and corporate foundations that control significant shares of larger for-profit enterprises.¹¹⁴ The extent of cross-border activities of these foundations is not known, but past research has shown that the great majority of European foundations are small, local and regional entities.¹¹⁵ This is different for the larger entities, many of which are members of the European Foundation Centre in Brussels. As mentioned above, according to a recent survey by the European Foundation Centre 38% of members maintain offices in more than one country, while 48% operate from a single country but do fund in others.¹¹⁶

Since the estimated number of foundations in Europe are fewer than either nonprofit associations and nonprofit corporations, which jointly number in the millions, one could assume an estimated range for costs barriers at least ten times higher in to range between 1 and 1.5 billion euros. However, such an estimation assumes that the other types of NPOs have similar size distributions in terms of operating expenditures, are equally likely to engage in cross-border activities and at about the same scale in terms of transfers and service-provisions, and face similar barriers. All these assumptions are questionable and cannot be substantiated by evidence unless more systematic and representative data become available. For these reasons, the case for the proposed statute and other legislative action will rest mostly on principle considerations and qualitative assessments as to their potential in terms of roles and functions NPOs perform.

Challenges and Potentials. If NPOs were to enjoy the full benefits of the four freedoms under the single market, they could, at least theoretically, realize several options in terms of cross-border activities:

- operate in Member States outside their state of formation (i.e., home state) as a foreign NPO and engage in service provision, advocacy work, member acquisition, fund-raising etc.;
- operate in other Member States through independent subsidiaries (e.g., an association, a nonprofit corporation, a foundation or any combinations of these forms);
- operate in other Member States through representatives or agents, and maintain branches and extension offices or services;

¹¹³ Hopt, Klaus J., Thomas von Hippel, Helmut K. Anheier, Volker Then, Werner Ebke, Ekkehard Reimer and Tobias Vahlpahl (2009): Feasibility Study on a European Foundation Statute, Final Report (for the European Commission). Available at http://ec.europa.eu/internal_market/company/docs/eufoundation/feasibilitystudy_en.pdf.

¹¹⁴ <https://www.efc.be/knowledge-hub/data-on-the-sector/>.

¹¹⁵ Helmut K. Anheier. “Philanthropic Foundations in Cross-National Perspective: A Comparative Approach” *American Behavioral Scientist* 62 (12), pp. 1591–1602, 2018.

¹¹⁶ <https://efc.issuelab.org/resource/key-facts-about-european-philanthropy-working-internationally.html>.

- merge with, or acquire, NPOs or establish franchises in other Member States;
- transfer their center of administration and operations from one Member State to another;
- transfer their statutory seat from their home Member State to another.

Given these options, the fuller implications become clear when considering four critical issues, based on the functional differentiation discussed above, that underlie any estimation of the European value added of the proposed legislation:

NPOs as cross-border service providers. Should NPOs participate in quasi-market arrangements across borders with competitive bidding for fee-for-service contracts alongside with public agencies and businesses? Should they engage in public-private partnerships other than with the domestic public sector, for example in education, health and social care or environmental protection?

If so, NPOs could soon face fiscal problems in upholding their not-for-profit status, limitations in access to capital needed as well as to talent in the face of more competitive compensation packages business can offer. In turn, businesses could accuse NPOs of unfair competition due to tax exemption, and domestic governments of accountability deficits when entering into partnership in other jurisdictions.

NPOs as cross-border expressions of civic engagement. Should NPOs perform advocacy and value guardian roles across borders? Should they bring together likeminded individuals from different Member States for either primarily member-serving or other-serving activities? Should they also advocate for advancing particular issues like climate change and immigration, or demand public accountability of governments?

If so, given that some governments in power in Member States vary in the extent to which they welcome “outside” actors, the democratic legitimacy of such NPOs will soon be called into question, and representation issues are likely to arise quickly. Advocacy-oriented NPOs might align with social and political movements and help advance a European public sphere; NPOs representing professional or business interest would help strengthen the position of their stakeholders across borders, whereas more expressive and leisure-oriented NPOs in the field of culture or sports would contribute to social cohesion and mutual understanding.

NPOs as cross-border financial intermediaries. Grant-making foundations can act as the “banks” of civil societies. Endowed with income-generating assets, they are among the most independent institutions in society. Should foundations fund NPOs pursuing policy changes across borders, support service-providing NPOs in different Member States, and fund social innovations abroad? In other words, should they be able to make grants to recipients in any Member State?

If so, grant-making foundations would soon run up against existing fiscal regulations and face higher transaction costs. What is more, their motives could easily be questioned by governments and other groups that find it politically opportune to criticize “outsiders,” especially when supporting controversial activities or seeking to advance sensitive topics.

NPOs as cross-border social innovators. Should NPOs be recognized as major innovators – social innovations with the potential to benefit citizens across the Union? Should the many

innovations in civil society that are linked to, or brought about by, NPOs and that potentially harbour significant potential for the wider European public be treated similar to technological and business innovations? Should they be equally vetted and tested in terms of replicability and scalability, and with appropriate ways and means for diffusion and adaptation?

If so, NPOs would soon find that there is no systematic screening and vetting of social innovations, and that many innovations either go unrecognized or fail due to inadequate dissemination and information-sharing. In the absence of a social investment market, incentives for innovation diffusion and scaling-up are low, as there are no investors standing by to help grow social innovations, and there is no clearinghouse to assess them and share information.

For each of these issues and types on NPO functions, the value added could be brought about in various ways:

- Regulatory action by the European Parliament and the Commissions such as a potential European Statute, actions to remove or reduce existing barriers, or establishing dedicated agencies for facilitating cross-border NPO activities for any of the specific functions above;
- Member States themselves by engaging in joint policy reviews and enacting reforms as needed; prominently among these are actions for mutual recognition of NPOs from other Member States, including comparability tests for tax treatment; and
- NPOs themselves by trying to find internal solutions to cross-border barriers, also in cooperation with other NPOs as well as in partnership with business and public agencies in ad hoc or bottom-up ways, for example intermediary platforms managing cross-border giving on behalf of donors and recipients.

At this stage, and against the background of the NPO functions and the actors involved, three aspects are important to keep in mind:

- First, the opportunities and challenges for greater cross-border NPO activities go well beyond those of membership-based associations alone but are shared by all non-profit forms, although to somewhat different degrees; as a consequence, in view of both challenges and potentials, a singular focus on associations would not only be rather limited in its scale and scope but also confusing as argued below.
- Second, the purpose of the proposed European Statute for Association and Nonprofit Organisations cannot be seen in isolation of other regulatory actions and reforms needed if NPOs are to fully function within the common market.
- Third, neither the European Parliament nor the European Commission are the sole actors in bringing about greater cross-border NPO activities. The role of Member States in terms of overcoming the legacy of policy neglect and push for reforms is equally vital, as is that of the NPOs and their representative bodies themselves.

Assessing the Current Situation. What are the prospects of regulation to establish a European Statute of Associations and Nonprofit Organisations against the background of current situation characterized by a legacy of policy neglect and a complex legal and fiscal environment on the one hand, and the promise of significant potential to contribute to the European Project on the other? The SWOT analysis in Table 7 offers a synopsis from the perspective of a European value added for such a statute.

Table 7: SWOT Analysis in View of European Value Added

Strengths	Weaknesses
Existing networks of major cross border NPOs, many with multiple locations in various member states	Evidence base for all aspects of cross-border activities of NPOs is incomplete and out-of-date
All Member States are included in this NPO network, and linked by individual and organisational membership	Few reforms domestically currently and the legacy of policy neglect
Many cross-border regions involve civil society connections facilitated by NPOs	Legal, legal and fiscal barriers for cross border activities remain; comparability tests are cumbersome
A growing number of NPOs operations across borders	Some Member States are unwilling or uninterested in removing barriers
The amount of cross-border financial flows among NPOs as donors and recipients is increasing	Interest in a European Association Statute as such remains limited
Cross-border membership and interest in international volunteering is increasing	Economic disparities between different sides of boarder regions are impediments to deeper collaboration
	Cultural differences in terms of participation and civic engagement persist
	Language barriers
Opportunities	Threats
Comparability test models more widely accepted	Creation of a statute with limited uptake
Statute could encourage other reform efforts and bring social innovation push	Some Member States and major players may oppose
Potential for social markets in health, education and social services	Lack of interest among relevant parties
Volunteer programs to encourage cross-border engagements	Member States reluctant to adopt comparability models
Sharing cross-border best practices could increase cross-border cohesion	Illiberal tendencies suppress civil society
Awareness campaigns	Rekindled nationalisms and micro nationalism

Strengths. As seen in the various maps presented above, there exists a network of cross border NPOs, many with multiple locations in various member states. All Member States are included in this complex network linked by individual and organisational membership. This network linking mostly capital locations across Member States could form the basis for expanded inter-associational structures across borders.

There are also indications that the amount of cross-border financial flows among NPOs as donors and recipients seems to be increasing, although the data are incomplete. The same upward trends apply to the number of NPOs operations across borders as cross-border memberships and volunteering.

In addition, there is a growing number of NPOs being established in Brussels to represent various economic, civic, cultural, educational, environmental or regional interests. What is more, many cross-border regions involve civil society activities facilitated by NPOs. They complement the national networks above at many regional levels.¹¹⁷

Weaknesses. The evidence base for all aspects of cross-border activities of NPOs is incomplete and basic statistics are rarely comparable and frequently out-of-date. The same applies to data on actual and potential barriers. There is an acute risk of embarking on reform efforts the premises of which can easily be challenged by opposing parties.

The tax treatments of NPO cross-border activities and transfers by Member States are complex and come with relatively high transaction costs. For smaller NPOs or smaller sums, they may well be prohibitive and stand in no proportion to the intended scale of activities.

With legal, fiscal and administrative barriers for cross border activities remaining, the various comparability models and tests provide some relief but remain still rather complex, especially given their case-by-case modus. Some Member States seem less willing or interested in removing barriers than others.

There are few reforms in the field that have been undertaken domestically in recent years or that are currently underway. The prevailing situation seems that NPOs somehow accommodate to both barriers and lack of reform and find ways to “muddle through.” As a result, the potential NPOs offer to the European project goes largely unrealized.

At the regional level, cultural differences, language and lack of awareness remain barriers, although much has been achieved in recent decades. However, for some cross-border regions, economic disparities between different sides of border regions are impediments to deeper collaboration. As a recent report observes: “Cross-border cooperation is still hindered in some borders, mainly as a result of legal and administrative frameworks implemented at national level. In most cases, these follow a national logic that itself does not always take into consideration the specificities of border regions and their growing inter-connections with their neighbours — whereas these are important for Member States themselves”.¹¹⁸

Opportunities. The greater interest among policymakers and the current role of NPOs in the EU may present policy windows for the European Statute. In addition, the experience with comparability tests and related measures points to the possibility of greater adoptions by other Member States. Awareness campaigns could certainly add momentum to such and similar improvements in the context of tax treatment, as would propagating and strengthening cross-border volunteer programs.

Since many membership associations also provide services, there is a potential for social markets in health, education and professional services that cross-border activities could provide. This link has not been explored systematically but could strengthen the case of legislative action to enhance cross-border activities.

¹¹⁷ European Commission, 2017. Communication *Boosting Growth and Cohesion in European Border Regions* (COM(2017)534).

¹¹⁸ Association of European Border Regions and European Union, 2020, *B-solutions: solving border problems: Compendium of 43 cases*, Luxembourg.

Many best practices for cross border cooperation have been identified, and solutions to many cross-border cooperation been developed, a systematic approach to reducing administrative and other barriers could add significant momentum.

There is also the chance to build a better evidence base NPO activities in Member States and prepare a systematic assessment of their cross-border potential in preparation of legislative actions.

Threats. There is the risk of drafting a Statute and preparing it for legislative and parliamentary processes without the support of an adequate evidence base. In such a case, the Statute could easily be rejected. There is also the risk of creating, should the Statute nonetheless be adopted, a stillborn or vacuous instrument that finds little adaption among NPOs and ultimately fails in meeting legislative objectives.

Even with a better evidence base, as is the case with most such proposals, there may be major players opposing the legislation, requesting substantial changes for passage, or otherwise show a lack of interest. What is more, some Member States could be reluctant to make the necessary domestic legal changes to accommodate the Statute or other measures. Therefore, it will be important to conduct a systematic stakeholder analysis to gauge positions among Member States and the faction in the European Parliament early on.

Finally, there are also risks coming from suppressing civil society or target specific kinds of NPOs, and usually those operating across borders. These tendencies coincide with rekindled nationalisms and micro-nationalisms at regional levels which could affect activities in some cross-border regions in particular.

8. How to Proceed?

The past thirty years have seen several attempts to create new European legal vehicles to facilitate cross border activities of NPOs. These have included proposals for the European Association, the European Foundation, and the European Mutual Society. In each case, the process of adoption has either been officially suspended or interrupted.

As Breen concludes¹¹⁹, the common factor shared by these European initiatives – and that led to their downfall – has been the reliance on Article 352 TFEU (formerly Article 308 TEC) as the legal basis.¹²⁰ One should recall that Member States differ substantially when it comes to proposed characteristics of the European Association Statute. These include the definition of “public benefit,” tax exemption criteria, minimum requirements, and regulatory and supervisory aspects. In the past, Art 352’s requirement of European Council unanimity and the failure to respond adequately to the concerns of some Member States made in infeasible to accommodate these differences.

¹¹⁹ Breen, O.B. 2014. “The European Foundation Statute Proposal: Striking the Balance between.

Supervising and Supporting European Philanthropy?” *Nonprofit Policy Forum* 5 (1): 5–43.

Breen, O.B. 2016. “European Non-profit Oversight: The Case for Regulating from the Outside In.” *Chicago-Kent Law Review* 91 (3): 991–1020.

Breen, O.B. 2018. *Enlarging the Space for European Philanthropy*. 1–70. Brussels: European Foundation Centre and DAFNE.

¹²⁰ Article 352 states:

1. If action by the Union should prove necessary, within the framework of the policies defined in the Treaties, to attain one of the objectives set out in the Treaties, and the Treaties have not provided the necessary powers, the Council, acting unanimously on a proposal from the Commission and after obtaining the consent of the European Parliament, shall adopt the appropriate measures. Where the measures in question are adopted by the Council in accordance with a special legislative procedure, it shall also act unanimously on a proposal from the Commission and after obtaining the consent of the European Parliament.

2. Using the procedure for monitoring the subsidiarity principle referred to in Article 5(3) of the Treaty on European Union, the Commission shall draw national Parliaments' attention to proposals based on this Article.

3. Measures based on this Article shall not entail harmonisation of Member States' laws or regulations in cases where the Treaties exclude such harmonisation.

4. This Article cannot serve as a basis for attaining objectives pertaining to the common foreign and security policy and any acts adopted pursuant to this Article shall respect the limits set out in Article 40, second paragraph, of the Treaty on European Union.

In the face of these challenges, a number of legal scholars and policy analysts explore various possibilities, and propose various alternatives¹²¹, most prominently Article 114 TFEU¹²² to advance the objectives set out in Article 26 TFEU.¹²³

¹²¹ See Hopt, Klaus J., Thomas von Hippel, Helmut K. Anheier, Volker Then, Werner Ebke, Ekkehard Reimer and Tobias Vahlpahl (2009): Feasibility Study on a European Foundation Statute, Final Report (for the European Commission). Available at http://ec.europa.eu/internal_market/company/docs/eufoundation/feasibilitystudy_en.pdf. Breen, O.B. 2014. "The European Foundation Statute Proposal: Striking the Balance between Supervising and Supporting European Philanthropy?." Nonprofit Policy Forum 5 (1): 5–43. Breen, O. B. 2016. "European Non-profit Oversight: The Case for Regulating from the Outside In." Chicago-Kent Law Review 91 (3):991–1020. Breen, O.B. 2018. Enlarging the Space for European Philanthropy. 1–70. Brussels: European Foundation Centre and DAFNE.

¹²² 114 TFEU Article 114 (ex Article 95 TEC) states:

1. Save where otherwise provided in the Treaties, the following provisions shall apply for the achievement of the objectives set out in Article 26. The European Parliament and the Council shall, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee, adopt the measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market.

2. Paragraph 1 shall not apply to fiscal provisions, to those relating to the free movement of persons nor to those relating to the rights and interests of employed persons.

3. The Commission, in its proposals envisaged in paragraph 1 concerning health, safety, environmental protection and consumer protection, will take as a base a high level of protection, taking account in particular of any new development based on scientific facts. Within their respective powers, the European Parliament and the Council will also seek to achieve this objective.

4. If, after the adoption of a harmonisation measure by the European Parliament and the Council, by the Council or by the Commission, a Member State deems it necessary to maintain national provisions on grounds of major needs referred to in Article 36, or relating to the protection of the environment or the working environment, it shall notify the Commission of these provisions as well as the grounds for maintaining them.

5. Moreover, without prejudice to paragraph 4, if, after the adoption of a harmonisation measure by the European Parliament and the Council, by the Council or by the Commission, a Member State deems it necessary to introduce national provisions based on new scientific evidence relating to the protection of the environment or the working environment on grounds of a problem specific to that Member State arising after the adoption of the harmonisation measure, it shall notify the Commission of the envisaged provisions as well as the grounds for introducing them.

6. The Commission shall, within six months of the notifications as referred to in paragraphs 4 and 5, approve or reject the national provisions involved after having verified whether or not they are a means of arbitrary discrimination or a disguised restriction on trade between Member States and whether or not they shall constitute an obstacle to the functioning of the internal market.

In the absence of a decision by the Commission within this period the national provisions referred to in paragraphs 4 and 5 shall be deemed to have been approved.

When justified by the complexity of the matter and in the absence of danger for human health, the Commission may notify the Member State concerned that the period referred to in this paragraph may be extended for a further period of up to six months.

7. When, pursuant to paragraph 6, a Member State is authorised to maintain or introduce national provisions derogating from a harmonisation measure, the Commission shall immediately examine whether to propose an adaptation to that measure.

8. When a Member State raises a specific problem on public health in a field which has been the subject of prior harmonisation measures, it shall bring it to the attention of the Commission which shall immediately examine whether to propose appropriate measures to the Council.

9. By way of derogation from the procedure laid down in Articles 258 and 259, the Commission and any Member State may bring the matter directly before the Court of Justice of the European Union if it considers that another Member State is making improper use of the powers provided for in this Article.

10. The harmonisation measures referred to above shall, in appropriate cases, include a safeguard clause authorising the Member States to take, for one or more of the non-economic reasons referred to in Article 36, provisional measures subject to a Union control procedure.

¹²³ Article 26 TFEU (ex Article 14 TEC) states:

1. The Union shall adopt measures with the aim of establishing or ensuring the functioning of the internal market, in accordance with the relevant provisions of the Treaties.

2. The internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaties.

Specifically, the option are harmonization measures under Article 114 TFEU to advance the objectives set out in Article 26 TFEU. The European Parliament and the Council can, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee, adopt the measures for establishing and improve the functioning of the internal market. However, since the tax-treatment of NPOs could be a central aspect of the legislative action, using Article 114 might also be problematic, as according to clause 2, it does not apply to fiscal provisions.

Of course, from a policy perspective, the regulatory route under Article 352 TFEU to initiate the relevant processes in the European Parliament and the Commission remains a valid option, too. However, given the unanimity requirement in the Council, this option carries a risk of failure, as we have seen in the past. It should, therefore, be pursued with caution and in anticipation of past criticisms that evoked the principle of subsidiarity, questioned EU competence in the matter, or mentioned frictions with tax regulations and incompatible treatments of economic activities.

Irrespective of either sets of challenges, the objectives of either the Regulation or the harmonization measures are to

- facilitate cross-border activities of NPOs by reducing existing barriers
- enhance NPO contributions to the public good and the social cohesion of the Union
- help create vibrant European civil societies.

For the purpose of the Regulation or the harmonization measures, NPOs are entities that are

- private, i.e., not part of Member States governments and public administration systems
- formally registered in one or more Member States
- non-profit distributing
- serving a recognized public benefit, and
- self-governing.

NPOs enjoy exemption from specified taxes and levies according to a schedule of public benefit purposes agreed by all or the group of participating Member States. Prominently, these purposes also include pan-European objectives such as contributing to cross-border social cohesion and civic engagement for Europe. Main areas for inclusion in the schedule are in alphabetical order:

- amateur sport
- animal welfare
- arts, culture, heritage
- citizenship and civic engagement
- conflict resolution and reconciliation
- education, science and research
- environment and climate change

3. The Council, on a proposal from the Commission, shall determine the guidelines and conditions necessary to ensure balanced progress in all the sectors concerned.

- European cooperation and understanding among Europeans from the various parts of the Union
- health and health-related
- housing
- human rights
- humanitarian assistance, disaster relief and preparedness
- prevention and relief of poverty
- social cohesion and community development
- social services and needs

The tax-exempt status is contingent on

- near exclusive pursuit of stated public purpose or purposes
- adhering to a European NPO governance code (to be developed)
- public transparency (using a standard set of accounts and annual report format).

The Member States would have to agree on a common

- legal form for registration and administrative requirements
- comparability model for tax and related purposes
- governance code for accountability purposes, and
- set of standard accounts and reporting requirements for transparency purposes.

The actual registration, administrative and regulatory oversight remain with the respective Member States. However, a NPO so registered would not have to register within the “domestic” legal and administrative framework again, nor would it be subject to “double” accountability and reporting requirements. Accountability would remain a domestic matter.

Very likely, for cross-border purposes, NPOs established under the Statute would operate under a less complex oversight system and less burdensome tax treatment than national NPOs. This could offer Member States incentives for domestic reforms and modernize NPO regulations. Over time, the legal, tax and administrative differences between the European NPOs and the national NPOs may converge and open the way for further supporting action to enhance cross-border activities.

9. Proposed Supporting Measures

To avoid fragmentation and dilution of legislative intent, the Statute should apply to all NPO functions and independent of their legal nonprofit form, and focus on common characteristics while addressing functional specificities in separate measures. Given the need for such additional measures, a Statute alone may be insufficient if the objective is to enhance civil society and its contributions to the Union as a whole, to Member States, and the various pressing public problems they collectively face.

Next to the Statute, other measures could target the specific functions certain types of NPOs fulfil. They can be approached in parallel to the implementation of the Statute or later. The latter might be preferable as the Statute could create a momentum and open up policy windows.

NPOs as cross-border service providers. This set of NPOs represents the great majority of the economic weight and employment of the non-profit sector. They operate mostly in education and research, health and social care, housing and environmental protection. Common cross-border problems these NPOs face are access to capital markets, capacity to participate in competitive bidding for fee-for-service contracts, and joining public-private partnerships. Measures could include establishing a European agency (also as part or branch of an existing agency) that serves as a financial institution for such NPOs and provides credit guarantees and investment capital for cross-border activities. Other measures could build up organisational capacity to help prepare NPOs for participation in the emerging social, health, education or research “markets” across the Union and beyond.

NPOs as cross-border expressions of civic engagement. This set of NPOs have most members and volunteers; they are less important in plain economic terms but vital for social cohesion, mutual understanding and social capital. As civil society actors they constitute a sphere of self-organisation, representing and enacting the diversity values and interests across the Union. Most are small organisations and, depending on their purpose and geographical scope could benefit from the Statute, especially in cross-border regions. However, it is not a level playing field as some interests are more powerful and some voices heard more prominently. Measures could regulate the cacophony of interests and voices with a light touch and make sure that no particular ones dominate and overpower others in terms of their capacity for advocacy, interest politics, and political influence.

Other measures could enhance cross-border volunteer and visitation programs, for example in cross-border regions. For these regions, a wide range of proposals for enhancing cross-border cooperation are available; however, they need more focus on civil society actors and could benefit from better dissemination.

NPOs as cross-border financial intermediaries. Grant-making foundations have their own income-generating assets. Depending on their deed and objectives, their far-reaching independence makes them in principle ideal for buttressing cross-border activities of NPOs. They can do so in a variety of ways: by supporting service-delivery to disadvantaged groups abroad, civic engagement by linking citizens groups from different Member States or by helping with the dissemination of social innovations across borders.

Grant-making foundations would clearly benefit from the Statute by lowering transaction costs of cross-border giving. Yet there are other measures that could help

with the development of European philanthropy such as exploring the role of foundation in the emerging social investment markets, including social impact bonds, as well as other financial instruments to support public benefit projects by mixing public and private capital.

NPOs as cross-border social innovators. NPOs are often the first line of defence when it comes to persisting, changing and newly emerging public problems of many kinds. As social innovators they carry the potential to benefit citizens from across the Union, even though they may not think of themselves other than small, local or regional actors. For these NPOs, the advantages the Directors brings are less relevant, their innovations, however, are of critical importance. Unfortunately, there is no systematic screening and vetting of social innovations, and, as a result, many innovations either go unrecognized or fail due to inadequate dissemination and information-sharing.

For the European Union to harvest the potential of the many social innovations from across Member States, it would be important to establish a European clearing house charged with the systematic collection, vetting, dissemination and scaling up of such innovations. What is more, there could be links to the emerging social investment markets as well as close cooperation with other agencies dealing with technological and business innovations.

REFERENCES

- AbouAssi, K. & Bies, A., Relationships and resources: then isomorphism of nonprofit organisations' (NPO) self-regulation, *Public Management Review*, 20(11), 2018.
- Albertson, K., Fox, C., O'Leary, C. and Painter, G., Payment by results and social impact bonds: Outcome-based payment systems in the UK and US, Policy Press, 2018.
- Angermann, A. and B. Sittermann, Volunteering in the Member States of the European Union – Evaluation and Summary of Current Studies, Frankfurt: Observatory for Sociopolitical Developments in Europe, 2010.
- Anheier, H. K. and S. Toepler, Policy Neglect: The True Challenge to the Nonprofit Sector, *Nonprofit Policy Forum* 10 (4), 2019.
- Anheier, H. K., & Hammack, D. C. (Eds.), *American Foundations: Roles and Contributions*, Washington, D.C.: Brookings Institution Press, 2010.
- Anheier, H. K., & Leat, D., *Performance Measurement in Philanthropic Foundations: The Ambiguity of Success and Failure*, Oxford: Routledge, 2018.
- Anheier, H. K., M. Lang, and S. Toepler, Comparative Nonprofit Sector Research: A Critical Assessment, In: Patricia Bromley and Walter W. Powell (eds.), *The Nonprofit Sector: A Research Handbook* (3rd Ed.), 2020.
- Anheier, H. K., *Nonprofit Organisations: Theory, Management, Policy* (2 Revised edition), Abingdon, Oxon: Taylor & Francis Ltd., 2014.
- Anheier, H. K., *Philanthropic Foundations in Cross-National Perspective: A Comparative Approach*, *American Behavioral Scientist* 62 (12), 2018.
- Anheier, H. K., S. Toepler, and M. Lang, Civil Society in Times of Change: Shrinking, Changing and Expanding Spaces and the Need for New Regulatory Approaches, *Economics: The Open-Access, Open-Assessment E-Journal* 13, 2019.
- Anheier, H.K. and S. Toepler, *Nonprofit Organisations: Approaches, Management, Policy*, London and New York: Routledge, forthcoming.
- Anheier, H.K. and S. Toepler, Policy Neglect: The True Challenge to the Nonprofit Sector, *Nonprofit Policy Forum* 10 (4), 2019.
- Anheier, H.K., & Daly, S. (Eds.), *The politics of foundations: A comparative analysis*. London: Routledge, 2006.
- Anheier, H.K., G. Mildenberger and G. Krlev (eds.), *Social Innovations: Comparative Perspectives*, London: Routledge, 2019.
- Association of European Border Regions and European Union, *B-solutions: solving border problems: Compendium of 43 cases*, Luxembourg, 2020.
- Barford, V., and G. Holt, Google, Amazon, Starbucks: The Rise of 'tax Shaming', *BBC News Magazine*, May 2013.
- Boosting cross-border philanthropy in Europe (2017) : <https://www.efc.be/uploads/2019/03/Boosting-Cross-Border-Philanthropy-in-Europe-Towards-a-Tax-Effective-Environment.pdf>.
- Borzaga, C., G. Galera, B. Franchini, S. Chiomento, R. Nogales and C. Carini, *Social Enterprises and their Ecosystems in Europe: A Comparative Synthesis Report*. European Commission, 2020.
- Brechenmacher, S., and Carothers, T., Examining Civil Society Legitimacy, Retrieved May 4, 2018, from <https://carnegieendowment.org/2018/05/02/examining-civil-society-legitimacy-pub-76211>, 2018, May 2.
- Breen, O. B., *European Non-profit Oversight: The Case for Regulating from the Outside In*, *Chicago-Kent Law Review* 91 (3), 2016.
- Breen, O. B., *Regulating European Philanthropy: Lessons from the Scholarly Legacy of Evelyn Brody*, *De Gruyter, Nonprofit Policy Forum Volume 11 Issue 3*, 2020.

- Breen, O.B., *Enlarging the Space for European Philanthropy*, Brussels: European Foundation Centre and DAFNE, 2018.
- Breen, O.B., *The European Foundation Statute Proposal: Striking the Balance between Supervising and Supporting European Philanthropy?*, *Nonprofit Policy Forum* 5 (1), 2014.
- Brewer, C. V., *The ongoing evolution in social enterprise legal forms*, In Young, D. R., Searing, E. A. M. and Brewer, C. V. (Eds.) *The social enterprise zoo: A guide for perplexed scholars, entrepreneurs, philanthropists, leaders, investors, and policymakers*, Edward Elgar Pub, 2016.
- Brewer, C. V., *The ongoing evolution in social enterprise legal forms*. In Young, D. R., Searing, E. A. M. and Brewer, C. V. (Eds.) *The social enterprise zoo: A guide for perplexed scholars, entrepreneurs, philanthropists, leaders, investors, and policymakers* (pp. 33–64). Edward Elgar Pub. 2016.
- Brinkerhoff, D. W., and A. Wetterberg, *Gauging the Effects of Social Accountability on Services, Governance, and Citizen Empowerment*, *Public Administration Review* 76 (2), 2016.
- Charities Aid Foundation. *International Comparison of Charitable Giving*. London: Charities Aid Foundation (2016:7).
- Charrad, K., *Why Is There No Statute for a European Association?*, in M. Freise, T. Hallmann (eds.), *Modernizing Democracy*, Berlin and New York: Springer Science+Business Media, 2014.
- Daigle, D., S. Toepler, and S. Smock, *Financial Access for Charities Survey 2016: Data Report to the Charity and Security Network Version 1.1*. Arlington, VA: George Mason University, 2016.
- Dieperink, C., *Successful international cooperation in the Rhine catchment area*, *Water International*, 25(3), 2000.
- Eckert, S., K. Guinane, and A. Hall, *Financial Access for U.S. Nonprofits*, Washington: Charity & Security Network, 2017.
- ECNL/PA Handbook (2020): <https://ecnl.org/sites/default/files/files/EU-Law-Handbook.pdf>.
- ETB, *Statement from the Trinational Eurodistrict Basel (TEB) on the Green Paper on Territorial Cohesion*, 2009.
- European Commission, *Communication Boosting Growth and Cohesion in European Border Regions COM(2017)534*, 2017.
- European Commission, *Proposal for a Council Regulation on the Statute for a European Foundation. COM. (2012) 35*, 2012
- European Economic and Social Committee, *Towards an appropriate European legal framework for social economy enterprises (own-initiative opinion)*, INT/871-EESC-2019.
- European Foundation Centre (EFC) and Transnational Giving Europe (TGE), *Taxation of Cross- Boarder Philanthropy in Europe After Pershce and Stauffer. From landlock to free movement?* 2014.
- European Philanthropy Manifesto (2019) : https://www.philanthropyadvocacy.eu/wp-content/uploads/2019/03/20190321-Philanthropy-Manifesto_420x210_WEB.pdf.
- Eurostat 2015 (https://ec.europa.eu/eurostat/statistics-explained/index.php/Social_participation_and_integration_statistics#Formal_and_informal_voluntary_activities).
- Forum Terzo Settore, *Continua a crescere il settore non profit in Italia. I nuovi dati Istat (anno 2018)*, 2020.
- Fox, J. A., *Social accountability: What does the evidence really say?*, *World Development*, 72, 2015.
- Gellner, E., *Conditions of liberty: Civil society and its rivals*, London: Hamish Hamilton, 1994.
- Groß/Grande Region. (n.d.), *The Greater Region at a Glance.*, Retrieved from: <http://www.granderegion.net/en>.
- Gugerty, M. K., & Prakash, A. (Eds.), *Voluntary Regulation of NGOs and Nonprofits: An Accountability Club Framework* (1 edition), New York, NY: Cambridge University Press, 2010.

Haerpfer, C., Inglehart, R., Moreno, A., Welzel, C., Kizilova, K., Diez-Medrano J., M. Lagos, P. Norris, E. Ponarin & B. Puranen et al. (eds.), World Values Survey: Round Seven – Country-Pooled Datafile, Madrid, Spain & Vienna, Austria: JD Systems Institute & WWSA Secretariat, 2020.

Hopt, K. J., T. von Hippel, H. K. Anheier, V. Then, W. Ebke, E. Reimer and T. Vahlpahl, Feasibility Study on a European Foundation Statute, Final Report (for the European Commission). 2009.

http://www.acc.eu.org/uploads/Manifesto_for_a_European_Statute_of_the_European_Association.pdf

http://www.belastingdienst.nl/rekenhulpen/giften/anbi_zoeken/.

http://www.impotsdirects.public.lu/legislation/legi10/Circulaire_L_I_R_n112-2_du_7_avril_2010.pdf.

<https://curia.europa.eu/juris/document/document.jsf?text=&docid=80237&doclang=EN>.

<https://curia.europa.eu/juris/liste.jsf?language=en&num=C-25/10>.

https://ec.europa.eu/growth/sectors/social-economy/cooperatives/european-cooperative-society_en.

https://ec.europa.eu/regional_policy/en/policy/cooperation/european-territorial/cross-border/.

<https://efc.issuelab.org/resource/comparative-highlights-of-foundation-laws-the-operating-environment-for-foundations-in-europe-2015.html>.

<https://efc.issuelab.org/resource/key-facts-about-european-philanthropy-working-internationally.html>.

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62004CJ0386>.

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62007CJ0318>.

https://europa.eu/youreurope/business/running-business/developing-business/setting-up-european-company/index_en.htm.

<https://uia.org/archive/legal-status-3-7>.

<https://uia.org/archive/legal-status-4-12>.

<https://www.alliancemagazine.org/blog/why-european-funders-need-to-be-vigilant-to-keep-their-space-open/>.

<https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/european-philanthropy-untapped-potential-exploratory-opinion-request-romanian-presidency>.

<https://www.efc.be/knowledge-hub/data-on-the-sector/>.

<https://www.efc.be/knowledge-hub/data-on-the-sector/>.

<https://www.efc.be/uploads/2019/03/Enlarging-the-Space-for-European-Philanthropy.pdf>.

https://www.europarl.europa.eu/doceo/document/A-7-2013-0348_EN.html?redirect.

<https://www.europarl.europa.eu/legislative-train/theme-union-of-democratic-change/file-jd-statute-and-financing-of-european-political-parties-and-foundations>.

[https://www.europarl.europa.eu/RegData/etudes/STUD/2017/583123/IPOL_STU\(2017\)583123_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2017/583123/IPOL_STU(2017)583123_EN.pdf).

<https://www.mckinsey.com/industries/public-and-social-sector/our-insights/reimagining-european-philanthropy>.

<https://www.stiftungen.org/stiftungen/zahlen-und-daten/grafiken-zum-download.html>.

ICNL, Civic freedom resources, International Center for Nonprofit Law, 2018.

Interreg Euregio Maas-Rhein. (n.d.), Projekte | Interreg Euregio Maas-Rhein, Retrieved from: <https://www.interregemr.eu/home-de>.

Italian Institute of Statistics, Tavole Nonprofit 2018, 2020.

Jochum, V., E. Brodie, N. Bathi, and K. Wilding, Participation: Trends, Facts and Figures, London: NCVO, 2011.

Johnson, P., Global Philanthropy Report: Perspectives on the Global Foundation Sector, Cambridge: Harvard Kennedy School, 2018.

Keane, J., Civil society: old images, new visions, Stanford University Press, 1998.

Kramer, R. M., Voluntary agencies in the welfare state, University of California Press, 1981.

- Lawrence, R., Deriving collaborative aims and outcomes: A case-study of CROSS-BORDER cooperation in central and Eastern Europe, *Evaluation*, 17(4), 2011.
- Leat, D., *Philanthropic foundations, public good and public policy*, Springer, 2016.
- Lopez-Arceiz, F. J., Bellostas, A. J., & Moneva, J. M., Accounting standards for european non-profits reasons and barriers for a harmonisation process, *Accounting in Europe*, 1-32, 2020.
- Maastricht University. (n.d.), PANDEMERIC explores the benefits of Euregional cooperation during (health) crises, Retrieved from: <https://www.maastrichtuniversity.nl/news/pandemic-explores-benefits-euregional-cooperation-during-health-crises-item>.
- Malena, C., R. Forster, and J. Singh, *Social Accountability an Introduction to the Concept and Emerging Practice*, Social Development Paper No. 76. Washington: World Bank, 2004.
- Noferini, A., Berzi, M., Camonita, F., & Durà, A., Cross-border cooperation in the EU: Euroregions amid MULTILEVEL governance And re-territorialization, *European Planning Studies*, 28(1), 2019.
- Perkmann, M., Policy entrepreneurship and multilevel governance: A comparative study of european cross-border regions, *Environment and Planning C: Government and Policy*, 25(6), 2007.
- Philanthropy Advocacy (2020). <https://www.philanthropyadvocacy.eu/wp-content/uploads/2020/07/Taxation-Consultation-contribution.pdf>.
- Prewitt, K., American foundations: what justifies their unique privileges and powers, In K. Prewitt, M. Dogan, S. Heydemann, & S. Toepler (Eds.), *Legitimacy of Philanthropic Foundations: United States and European Perspectives*, New York, NY: Russell Sage Foundation, 2006.
- Priemer et al., *Organisierte Zivilgesellschaft*, In Krimmer, H (ed.) *Datenreport Zivilgesellschaft, Bürgergesellschaft und Demokratie*, Springer VS, Wiesbaden, 2019.
- Putnam, R. D., *Bowling alone: The collapse and revival of American community*, Simon & Schuster, 2001.
- Sabeti, H., The for-benefit enterprise, *Harvard Business Review*, 89, 2011.
- Salamon, L. M. and Anheier, H.K., Social Origins of Civil Society: Explaining the Nonprofit Sector Cross-Nationally, *Voluntas: International Journal of Voluntary and Nonprofit Organisations*, 9(3), 1998.
- Salamon, L. M., Anheier, H. K., List, R., Toepler, S., & Sokolowski, S. W. (Eds.), *Global Civil Society: Dimensions of the Nonprofit Sector*, Baltimore: The Johns Hopkins Center for Civil Society Studies, 1999.
- Salamon, L. M., Sokolowski and Associates, *Global Civil Society: Dimensions of the Nonprofit Sector*, Volume Two. Bloomfield, CT: Kumarian Press, 2004.
- Salamon, L. M., Sokolowski, S. W., & Haddock, M. A., *Explaining Civil Society Development*, Baltimore: John Hopkins University Press, 2017.
- Salamon, L. M., Sokolowski, S. W., & List, R., *Global Civil Society: an overview*, The Johns Hopkins Comparative Nonprofit Sector Project, 2003.
- SCB, Presentation of results for non-profit organisations, excluding Swedish Church SEK million. Year 2013 – 2018, 2019.
- Schauhoff, S., *Handbuch der Gemeinnützigkeit*, 3. Auflage. Verlag C.H. Beck, München, 2010.
- Sohn, C., & Giffinger, R., A policy network approach to Cross-Border METROPOLITAN governance: The cases of Vienna and Bratislava, *European Planning Studies*, 23(6), 2015.
- Sohn, C., Reitel, B., & Walther, O., Cross-Border metropolitan integration in Europe: The case of Luxembourg, Basel, and Geneva, *Environment and Planning C: Government and Policy*, 27(5), 2009.
- Spáček, M., Multilevel cross-border governance in The Czech-Saxon borderland: Working together or in parallel?, *Administrative Culture*, 18(2), 2018.
- Starmans, B., Leidl, R., & Rhodes, G., A comparative study on Cross-border hospital care in the Euregio Meuse-Rhine, *The European Journal of Public Health*, 7(Suppl 3), 1997.
- Statisches Bundesamt, *Die wirtschaftliche Bedeutung des Dritten Sektors*, 2012.

Stone, J., EU condemns rescue boats picking up drowning refugees in Mediterranean as leaders side with populists: The European Union has backed the policy of Italy's new populist government on the vessels, *The Independent*, 29 June 2018.

Strachwitz, R., Bekommen wir endlich eine Reform des Gemeinnützigkeitsrechts?, Newsletter für Engagement und Partizipation in Deutschland 11/2018, 2018.

Surmatz, H., How to ease tax effective cross-border philanthropy within the European Union and beyond?, presentation at the Taxation and Philanthropy conference, Geneva, Switzerland, 26 November 2020.

Taxation of cross-border philanthropy in Europe after Persche and Stauffer (2014): <http://efc.issuelab.org/resources/18545/18545.pdf>.

Taxation Roadmap Contribution (2020): <https://www.philanthropyadvocacy.eu/wp-content/uploads/2020/07/Taxation-Consultation-contribution.pdf>.

Tchernonog, V., Les Associations: État des lieux et évolutions?, 2018 https://www.associations.gouv.fr/IMG/pdf/tchernonog_associations_fcc_2018.pdf.

Toepler, S., Conceptualizing nonprofit commercialism: A case study, *Public Administration and Management: An Interactive Journal*, 9(4), 2004.

Toepler, S., Public Philanthropic Partnerships: The Changing Nature of Government/Foundation Relationships, *US. International Journal of Public Administration*, 41(8), 2018.

Verschuere, B., Brandsen, T., & Pestoff, V., Co-production: The State of the Art in Research and the Future Agenda, *VOLUNTAS: International Journal of Voluntary and Nonprofit Organisations*, 23(4), 2012.

Weisbrod, B., *To profit or not to profit: The commercial transformation of the nonprofit sector*, Cambridge University Press, 1998.

WHO, Meuse-Rhine Euroregion, 2019, Retrieved from: https://www.euro.who.int/data/assets/pdf_file/0008/373157/rhn-meuse-rhine-eng.pdf.

Wöffen, T., European Associations: The Political Debate and Basic Legal Questions, Blog post, *We Are Europe*, October 2018.

10. Annexes

10.1. Annex 1

Box 3: Profiles of larger international nonprofit organisations in Europe

Greenpeace

- Headquarters: Amsterdam, Netherlands (founded in Vancouver, CA)
- Nature of work: Environmental activism
- Locations: 55 countries, including a dedicated [EU Unit](#) based in Brussels.
- Key figures (2019): about 4,000 staff, over 50,000 volunteers, and a 2016 budget of 342 million euros. The EU unit itself had a budget 2018 of 1,8 million euros.
- EU activities: 53.6% of staff is based in Europe (which includes Russia and the UK), up from 48% in 2018. In addition to the Amsterdam HQ and Brussels EU office, it has country offices in nearly every EU country. Some of these are substantial, for example 316 employees are based in Germany. Greenpeace is part of EU Green 10, an informal association of environmental NGOs working at EU level. It is also a signatory to the Alliance for Lobbying Transparency and Ethics Regulation in the EU.

Greenpeace location map



Doctors Without Borders

- Headquarters: Geneva, Switzerland (founded in Paris)
- Nature of work: Humanitarian + medical
- [Activities](#): 72 countries. There are five operational centres, all based in Europe (Amsterdam, Barcelona-Athens, Brussels, Geneva and Paris).
- [Key figures](#): 2019 expenditures over 1.6 billion euros, roughly 40,00 employees.
- EU activities: While the 5 operations centres and HQ are all in Europe, only 4% of projects are in Europe. However, they protest EU migration policies intensely, arguing that “European states have implemented brutal containment and pushback policies and in 2019.” In the same year, MSF resumed their search and rescue work in the Mediterranean, rescuing 1,373 people. They are also active with migrants in the Balkans and have lobbied regarding an EU-India trade pact that would limit access to medicines.

Map of MSF Projects (2019) Expenditures in Europe



Transparency International

- Headquarters: Berlin
- Nature of work: Combatting global corruption
- Activities: over 100 countries.
- Key figures: 2019 expenditure of 26,7 million euros, partner support of 13 million (40% from Europe and Central Asia).
- **EU activities:** Key projects include Advocacy and Legal Advice Centres in South East Europe, Integrity Watch Europe: Online tools for the [fight against political corruption in Europe](#), [whistleblower protection](#), civil control mechanisms for [safeguarding EU funds](#), as well as other projects in non-EU SE Europe and Central Asia. They have successfully lobbied the Commission on issues such as "golden visas." Within the Europe and central Asia region there are 41 national chapters, 2 chapters in formation, 2 partner organisations and a EU office in Brussels.

Map of countries with Transparency International chapters

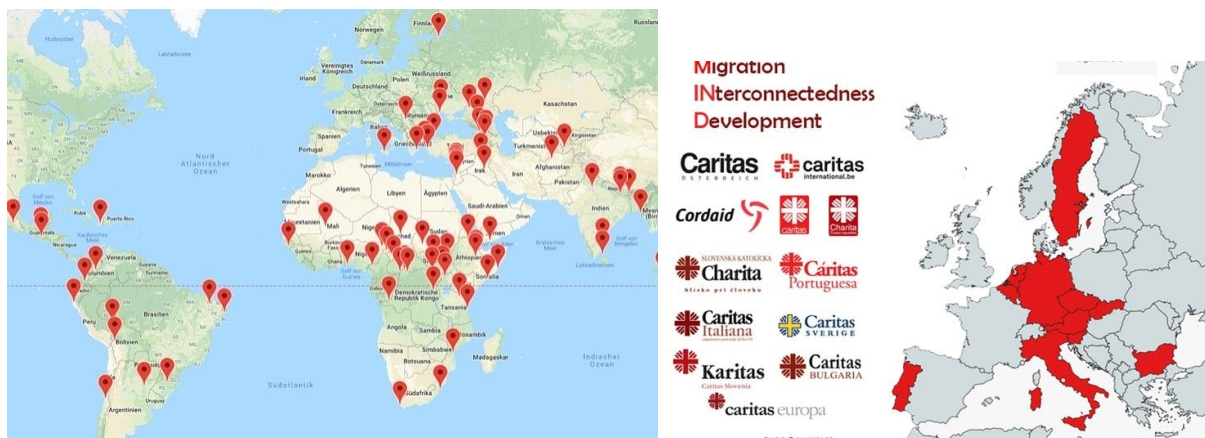
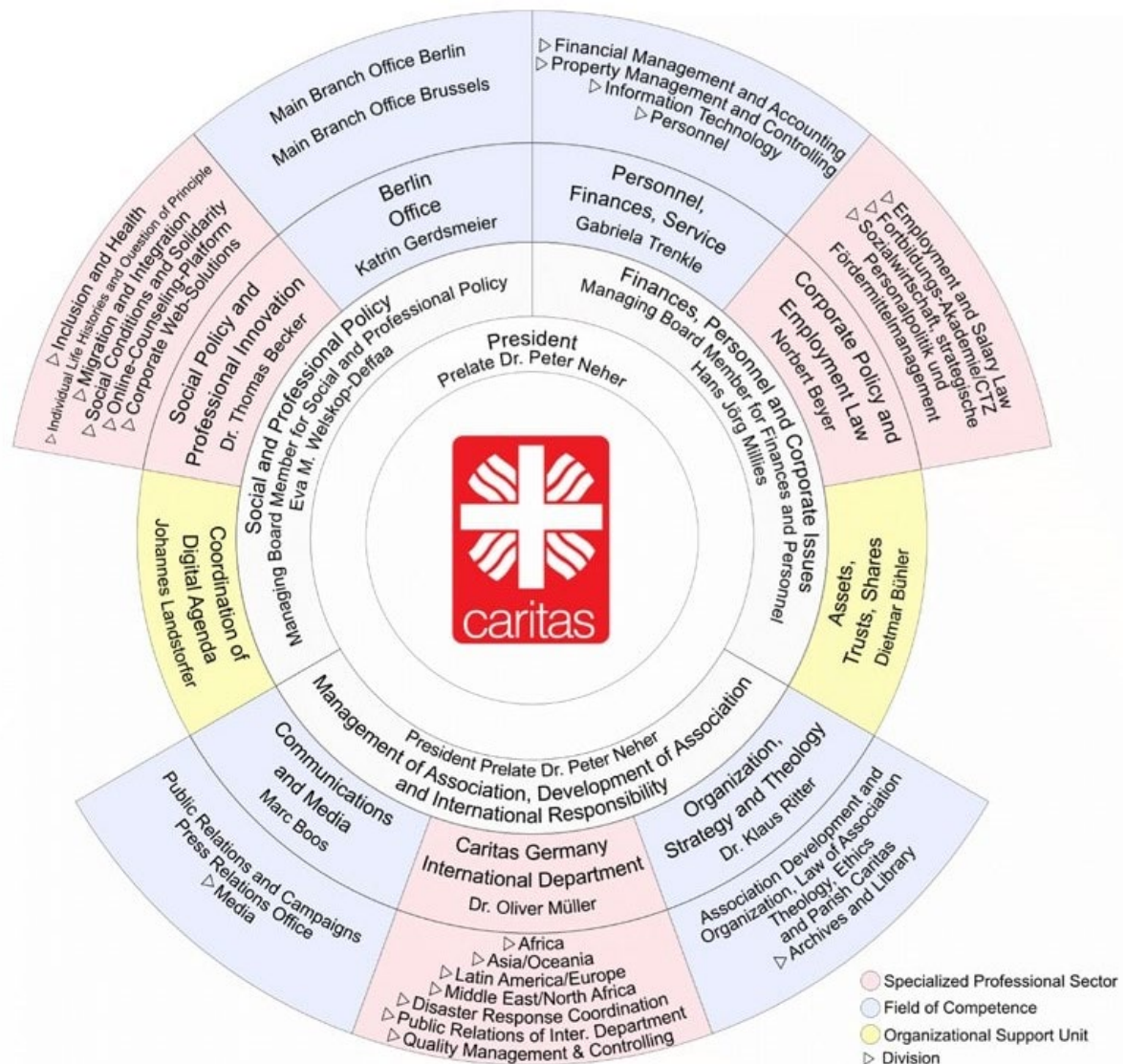


During 2019, the Secretariat and TI-EU jointly implemented ten projects, which originated the following intragroup transactions:

RELATED PARTY TRANSACTIONS between the Secretariat and TI-EU				
Project	01-Jan-19	Cash		31-Dec-19
	Receivable/(payable) to TI-EU	paid/(received)	(Expenditure)	Receivable/(payable) to TI-EU
<i>all amounts are stated in Euros</i>				
Core support	(175,000)	175,458	(100,458)	(100,000)
Preventative Anti-Corruption for REDD+	19,872			19,872
Integrity Pacts Phase I	(13,961)	13,961		-
Integrity Pacts Phase II	(19,793)	51,064	(35,654)	(4,383)
Golden Visa campaign - Global Anti-Corruption Consortium (GACC)	-	24,400	(24,400)	-
Engage business in advancing global standards to stop corrupt money flows	(11,617)	875	(39,587)	(50,329)
Toward an EU Directive on Whistleblowing	(17,083)	50,638	(33,555)	-
Integrity Watch: online tools for the fight against political corruption in Europe	-	128,499	(64,815)	63,684
Financial Transparency Coalition Brussels Advocacy	8,176	33,756	(40,480)	1,452
Anti-Corruption Advocacy for Sustainable Development	(87,436)	112,151	(18,328)	6,387

Caritas (Germany and International)

- Headquarters: Berlin (International HQ in Vatican City)
- Nature of work: Relief, humanitarian, development
- Activities: Over 6,000 institutions in Germany, in addition to 160 organisations in 200 countries, Caritas Europa is active in 46 European countries. There are also regional offices in 7 other areas worldwide.
- [Key Figures](#): The umbrella association of Caritas DE has expenditure of about 195 million euros in 2019, and a overall budget running to several billion Euro with nearly 700k employees many volunteers. It is the largest private employer in Germany.
- EU Activities: In addition to Caritas International and Germany, there is Caritas Europa, based in Brussels. It has 49 organisations that are working in 46 European countries. They work closely with the Commission on the [CARES II](#) program and [SHARE Integration](#) initiative, and [MIND](#) (Migration. Interconnectedness. Development.) Project.



European Cultural Foundation

- Headquarters: Amsterdam (founded in Geneva)
- Nature of work: Social cohesion and cultural advancement in Europe
- [Key figures](#): 2019 expenses of 5,431,507 euros. 30 staff of 13 nationalities are listed on the website.
- EU activities (including funding streams): Robert Bosch Foundation (€96,298) and Open Society Foundation Europe (€68,169) were the two of the largest 3rd party funders. Governments contributed €261,399. They have a range of projects, including the [Culture of Solidarity Fund](#), which cooperates with Beisheim Stiftung, Allianz Kulturstiftung, Fondazione CRC, Fondazione CRT, Mercator, OSF.

Pro-Democracy “European Balcony Project” Locations: EU funding commitments



Allocation ECF Commitments by Funders / Contractual Obligations 2019

LIABILITIES		
THIRD PARTY	CONTRIBUTIONS TO SPEND	CONTRACTUAL OBLIGATIONS
European Commission (Culture for Solidarity)	73,524	-
European Commission (MediaActivism)	363,100	-
Compagnia di San Paolo	15,000	-
Open Society Institute	68,169	-
Trans Europe Halles	113,345	-
MitOst	-	206,188
Partners Displaced in Media (Erasmus+)	-	4,139
Partners Culture for Solidarity	-	12,409
Partners Media Activism	-	369,220
Various Publications	-	1,990
Various R&D	-	17,500
	633,138	611,446

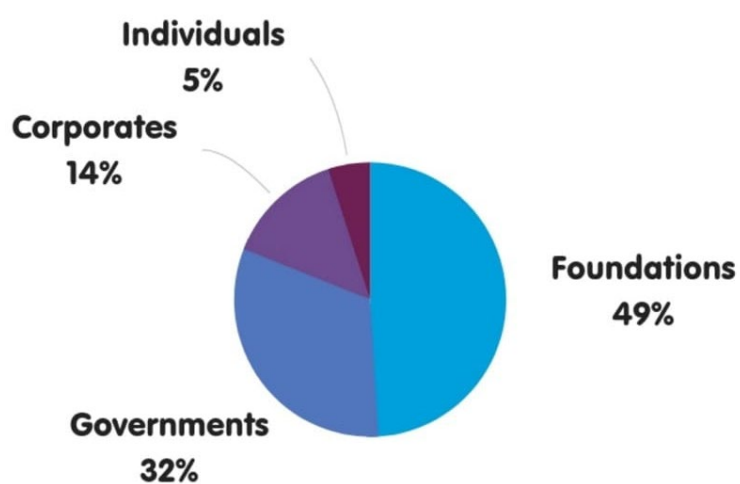
ASSETS	
THIRD PARTY	COMMITMENTS BY FUNDERS
European Commission	100,000
Fondazione Cariplo	25,000
Trans Europe Halles	96,008
Open Society Institute	68,169
Compagnia di San Paolo	25,000
EU Funds through Goethe-Institut	42,628
Erasmus +	300,000
Partners Culture for Solidarity	-
MitOst	-
Various R&D	-
Various Operations	-
	656,805

European Council of Foreign Relations

- Headquarters: London
- Nature of work: Foreign policy research and advocacy

- Key figures: 2017 revenue of roughly 9 million euros. A full third of this comes from OSF, other large donors include Mercator, NATO, and large corporations like Daimler and Microsoft.
- EU activities: offices in Berlin, Madrid, Paris, Rome, Sofia and Warsaw. Their Council consists of 19 heads of state and government, 31 EU officials, 29 foreign ministers, 7 commissioners, 41 parliamentarians. Much of their funding comes from EU Member State Governments and large European foundations, which is in turn spent in campaigns and offices in several EU capitals.

ECFR funding sources



Governments / Public Bodies

Embassy of Japan in Poland
 Embassy of the Netherlands in France
 Embassy of the Netherlands in the UK
 Embassy of Slovakia in France
 Embassy of the UK in Russia
 European External Action Service
 JETRO
 Ministry of Foreign Affairs of Belgium
 Ministry of Foreign Affairs of Denmark
 Ministry of Foreign Affairs of Finland
 Ministry of Foreign Affairs of France
 Ministry of Foreign Affairs of Germany
 Ministry of Foreign Affairs of Japan
 Ministry of Foreign Affairs of Latvia
 Ministry of Foreign Affairs of Norway
 Ministry of Foreign Affairs of Portugal
 Ministry of Foreign Affairs of Slovakia
 Ministry of Foreign Affairs of Spain
 Ministry of Foreign Affairs of Sweden
 Ministry of Foreign Affairs of the Netherlands
 UK Cabinet Office

Individuals

Giampiero Auletta Armenise
 Claude Kandiyloti
 Bjorn Saven
 Coen van Oostrom

Foundations

Associazione Diplomatici
 Atlantic Council
 Arcadia – a charitable fund of Lisbet
 Rausing and Peter Baldwin
 Aydin Dogan Foundation
 Bertelsmann Stiftung
 Bill & Melinda Gates Foundation
 Calouste Gulbenkian Foundation
 Compagnia di San Paolo
 Konrad-Adenauer-Stiftung
 Open Society Foundations
 Robert Bosch Stiftung
 Rockefeller Brothers Fund
 Stiftung Mercator
 Svenskt Näringsliv
 UN Foundation
 VDMA e.V.

Corporations

BBVA
 Enagas
 Estudios Política Exterior
 European Bank for Reconstruction
 and Development
 Japan Bank for International Cooperation
 Meridiam
 Microsoft
 Repsol
 Santander
 Telefonica
 Thales
 Total
 UBS

10.2. Annex 2

149 NGOs in Austria have members in other EU countries

The map shows 10 countries that have the highest number of members



data: UIA, 2021)

905 NGOs in Belgium have members in other EU countries

The map shows 10 countries that have the highest number of members



data: UIA, 2021)

12 NGOs in Bulgaria have members in other EU countries

The map shows 10 countries that have the highest number of members



data: UIA, 2021)

16 NGOs in Croatia have members in other EU countries

The map shows 10 countries that have the highest number of members



data: UIA, 2021)

3 NGOs in Cyprus
 have members in other EU countries

The map shows 10 countries that have the highest number of members



data: UIA, 2021)

0 NGOs in Czechia
 have members in other EU countries

The map shows 10 countries that have the highest number of members



data: UIA, 2021)

97 NGOs in Denmark
 have members in other EU countries

The map shows 10 countries that have the highest number of members



data: UIA, 2021)

9 NGOs in Estonia
 have members in other EU countries

The map shows 10 countries that have the highest number of members



data: UIA, 2021)

60 NGOs in Finland have members in other EU countries

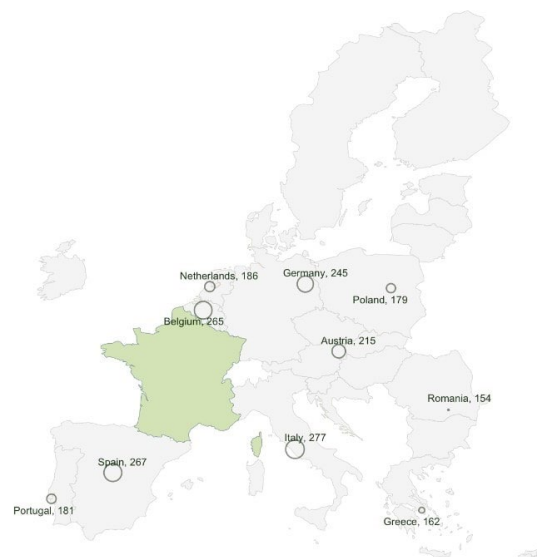
The map shows 10 countries that have the highest number of members



data: UIA, 2021)

412 NGOs in France have members in other EU countries

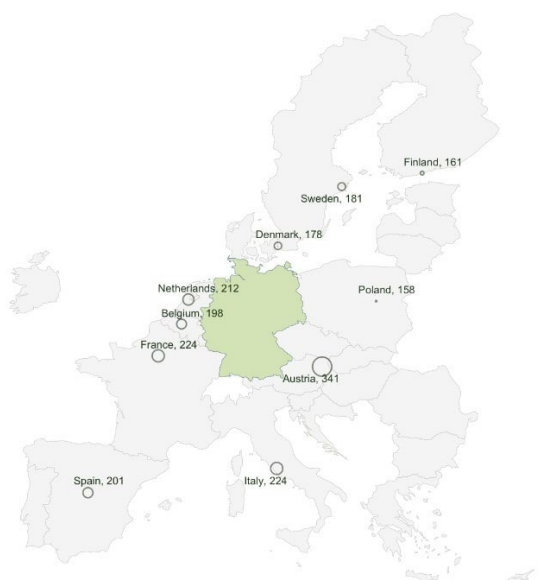
The map shows 10 countries that have the highest number of members



data: UIA, 2021)

440 NGOs in Germany have members in other EU countries

The map shows 10 countries that have the highest number of members



data: UIA, 2021)

40 NGOs in Greece have members in other EU countries

The map shows 10 countries that have the highest number of members



data: UIA, 2021)

**32 NGOs in Hungary
have members in other EU countries**

The map shows 10 countries that have the highest number of members



**28 NGOs in Ireland
have members in other EU countries**

The map shows 10 countries that have the highest number of members



**195 NGOs in Italy
have members in other EU countries**

The map shows 10 countries that have the highest number of members



**9 NGOs in Latvia
have members in other EU countries**

The map shows 10 countries that have the highest number of members



12 NGOs in Lithuania have members in other EU countries

The map shows 10 countries that have the highest number of members



data: UIA, 2021)

29 NGOs in Luxembourg have members in other EU countries

The map shows 10 countries that have the highest number of members



data: UIA, 2021)

4 NGOs in Malta have members in other EU countries

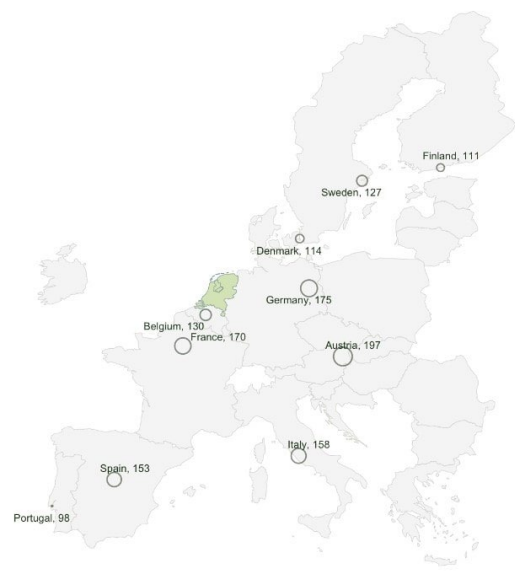
The map shows 10 countries that have the highest number of members



data: UIA, 2021)

279 NGOs in Netherlands have members in other EU countries

The map shows 10 countries that have the highest number of members



data: UIA, 2021)

23 NGOs in Poland have members in other EU countries

The map shows 10 countries that have the highest number of members



data: UIA, 2021)

41 NGOs in Portugal have members in other EU countries

The map shows 10 countries that have the highest number of members



data: UIA, 2021)

21 NGOs in Romania have members in other EU countries

The map shows 10 countries that have the highest number of members



data: UIA, 2021)

10 NGOs in Slovakia have members in other EU countries

The map shows 10 countries that have the highest number of members



data: UIA, 2021)

18 NGOs in Slovenia have members in other EU countries

The map shows 10 countries that have the highest number of members



data: UIA, 2021)

151 NGOs in Spain have members in other EU countries

The map shows 10 countries that have the highest number of members



data: UIA, 2021)

124 NGOs in Sweden have members in other EU countries

The map shows 10 countries that have the highest number of members



data: UIA, 2021)

So far, nonprofit organisations (NPOs) have been developing in the context of the EU Member States' or other countries' national regulatory frameworks, yet with the completion of the European single market they too will be able to take full advantage of the opportunity to engage in cross-border activities. This assessment reviews the current situation of NPOs in the EU and the challenges that limit their development across national borders. It then proceeds to identify avenues for EU action, including specific policy options. Drawing on qualitative and quantitative information, the study examines the potential EU added value of each policy option (encouraging cross-border transactions, enhancing social outcomes and increasing economic contributions) and its drawbacks. The assessment furthermore highlights supporting non-legislative measures that could promote specific NPO functions in the EU, such as service provision, civic engagement and advocacy, financial intermediation and social innovation.

This is a publication of the European Added Value Unit
EPRS | European Parliamentary Research Service

This document is prepared for, and addressed to, the Members and staff of the European Parliament as background material to assist them in their parliamentary work. The content of the document is the sole responsibility of its author(s) and any opinions expressed herein should not be taken to represent an official position of the Parliament.



PDF ISBN 978-92-846-8013-9 | doi:10.2861/410733 | QA-02-21-554-EN-N