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## **DRAFT REPORT**

with recommendations to the Commission on A statute for European cross-border associations and non-profit organisations  
(2020/2026(INL))

Committee on Legal Affairs

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(Initiative – Rule 47 of the Rules of Procedure)

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## MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

### **with recommendations to the Commission on a statute for European cross-border associations and non-profit organisations (2020/2026(INL))**

*The European Parliament,*

- having regard to Article 225 of the Treaty on the Functioning of the European Union,
  - having regard to Articles 114 and 352 of the Treaty on the Functioning of the European Union,
  - having regard to the Charter of Fundamental Rights, and in particular Article 12 thereof,
  - having regard to article 11 of the European Convention on Human Rights,
  - having regard to its report (PE A3-1/93) on the proposals relating to the proposals for a Regulation on the Statute for a European Association (COM(91)273 final),
  - having regard to its resolution of 13 March 1987 on non-profit-making associations in the European Communities (OJ No C 99, 13.4.1987, p. 205)<sup>1</sup>,
  - having regard to its resolution of 7 October 2020 on the establishment of an EU Mechanism on Democracy, the Rule of Law and Fundamental Rights (2020/2072(INI))<sup>2</sup>,
  - having regard to its Declaration of 10 March 2011 on establishing European statutes for mutual societies, associations and foundations<sup>3</sup>,
  - having regard to the Joint Guidelines on Freedom of Association (CDL-AD(2014)046) adopted by the European Commission for Democracy Through Law (Venice Commission) and the OSCE Office for Democratic Institutions and Human Rights (ODIHR),
  - having regard to Rules 47 and 54 of its Rules of Procedure,
  - having regard to the opinions of the Committee on Employment and Social Affairs, the Committee on Culture and Education and the Committee on Civil Liberties, Justice and Home Affairs,
  - having regard to the report of the Committee on Legal Affairs (A9 0000/2020),
- A. whereas Article 63 TFEU together with Articles 7, 8 and 12 of the Charter of Fundamental Rights protects non-profit organisations (NPOs) against discriminatory,

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<sup>1</sup> [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:JOC\\_1987\\_099\\_R\\_0184\\_01](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:JOC_1987_099_R_0184_01)

<sup>2</sup> [https://www.europarl.europa.eu/doceo/document/TA-9-2020-0251\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2020-0251_EN.html)

<sup>3</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52011XP0101>

- unnecessary and unjustified restrictions regarding the financing of their activities<sup>4</sup>;
- B. whereas associations and NPOs are fundamental to representing the interests of citizens and civil society;
  - C. whereas European democracy depends on civil society being able to function freely and across borders;
  - D. whereas NPOs are an integral part of the EU's civil society and include philanthropic organisations such as foundations that contribute to and facilitate the work of individuals, associations and NPOs for the public interest;
  - E. whereas reliable statistical information on associations and NPOs is scarce or not readily available;
  - F. whereas the European statutes for European Companies, European Cooperative Societies or European Parties are not suitable to enable associations and NPOs to cooperate cross-border;
  - G. whereas businesses, commercial undertakings, and economic interest groupings have the possibility of forming a European Economic Interest Grouping;
  - H. whereas public bodies can create European groupings of territorial cooperation;
  - I. whereas the European Parliament's call for national statistical registers for social economy actors does not cover organisations outside the social economy;
  - J. whereas today many associations and NPOs play a full part in the economic life and in the development of the internal market, by engaging in some economic activity on a regular basis;
  - K. whereas associations and NPOs play a key role in supporting individuals to actively participate in the democratic life;
  - L. whereas cross-border associations and NPOs in particular contribute greatly to the achievement of the Union's objectives and develop many and various activities of general interest with a transnational relevance;
  - M. whereas any organisation benefiting from a European statute or from European common minimum standards should not act against the EU's common values enshrined in the Treaties and the Charter of Fundamental Rights;
  - N. whereas the terms “association” and “NPO” should, for the purpose of this report, be understood to reflect the multitude of forms of organisation in the Union, and encompass not only associations, NPOs, but also philanthropical organisations such as foundations, and other, similar organisations;

### ***Current situation***

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<sup>4</sup> ECJ C-78/18

1. Notes that associations and NPOs lack a legal form at Union level to put the representation of civil society interests on an equal footing with that of commercial undertakings and economic interest groups for which legal form at Union level has long been established;
2. Emphasises that the current legal framework at Union and national level is insufficient to support a strong pan-European civil society, the existence of which is necessary for democracy; thus, identifies the need to introduce a new legal form, namely that of European Association, including rules on its establishment, and governance;
3. Believes that Union legislation supporting associations and NPOs is also needed for the completion of the single market;
4. Stresses that the fundamental right of association is still not fully supported under various jurisdictions of the Member States because of the lack of appropriate organisational forms and lack of equal treatment of existing forms throughout the Union, hindering cross-national projects and mobility of civil society, and causing legal uncertainty;
5. Regrets the lack of an instrument to further facilitate the free movement of associations and NPOs, regardless of where in the Union they have been established, or their members reside;
6. Stresses that due to the lack of harmonisation, NPOs that operate across Europe often face fees, formalities, and administrative and other hurdles, in particular when they rely on cross-border financing;
7. Stresses that the lack of harmonisation also leads to an uneven playing field due to the different market conditions and other obstacles that NPOs face in different Member States, for example when opening bank accounts, or hiring staff;
8. Points out that associations and NPOs contribute to innovation, research, economic development, and job creation;
9. Asks the Commission to create reliable and frequently updated statistical resources, to be included in Eurostat;
10. Regrets that the Commission and the Member States have not brought forward legislation to harmonise the situation of associations and NPOs throughout the EU nor established a statute for a European association despite several attempts, and numerous calls by civil society;
11. Considers that, as only certain associations and NPOs are operating in the social economy, the upcoming Social Economy Action Plan, while very much welcomed, needs to be complemented by separate legislative initiatives to cover all associations;
12. Considers that, due to their particular character, the proposed legal instruments are to refrain from regulating political parties; furthermore, recalls that the Union respects the status of churches, religious organisations or communities, as well as philosophical or non-confessional organisations under national law; underlines that this does not

preclude organisations that only draw from a religious, philosophical or non-confessional inspiration such as faith-based charitable NPOs, from benefitting from the scope of these proposals; points out that trade unions in several Member States are given a special beneficial status and should therefore be given a choice to make use of the provisions under the proposed instruments;

### ***Safeguarding civil society and the freedom of association***

13. Is alarmed by the increasing hindrances faced by associations and NPOs across the Union deriving from national laws, regulations or administrative practices or policies,
14. Takes well into account the possibilities digitalisation and the internet provide to facilitate the exercise of the right to freedom of association;
15. Emphasizes that NPOs are instrumental for democracy and policy making at all levels; condemns attempts to depoliticise NPOs, such as by refusing or challenging their status as public benefit organisation where their activities are not meant to benefit one particular party;
16. Maintains that regulation will only benefit European civil society if NPOs can make use of adequate and easily accessible funding both at national and at European level; points out that public financing of NPOs, is important since they have less access to income from profit-making activities; points out that the own funds requirement should be limited and non-monetary contributions of NPOs counted as such.

### ***Recognising associations, NPOs and public benefit across the Union***

17. Recognises that different approaches exist in legislation at national level and legal traditions to defining or recognising various member-based and non-member-based associations and NPOs, as well as to defining, recognising, and granting a public benefit status; underlines that, despite such differences, there is a common understanding of the need for European minimum standards and for providing NPOs the possibility to acquire legal personality;
18. Calls on the Commission to recognise and promote the public benefit activities of associations and NPOs by harmonising the public benefit status across the EU, also with regard to tax benefits for them and their benefactors, where such benefits exist under national legislation;

### ***Common minimum standards for NPOs and a statute for a European Association***

19. Requests the Commission to submit, on the basis of Article 114 of the Treaty on the Functioning of the European Union, a proposal for a Directive on common measures for NPOs in the EU, creating a level playing field for associations and NPOs by establishing minimum standards, following the recommendations set out in this motion, and Annex I hereto;
20. Requests the Commission to submit on the basis of Article 352 of the Treaty on the Functioning of the European Union, a Regulation establishing a statute for a European Association, following the recommendations set out in this motion, and Annex II

hereto;

21. Instructs its President to forward this resolution and the accompanying recommendations to the Commission and the Council.

**ANNEX TO THE MOTION FOR A RESOLUTION:  
RECOMMENDATIONS AS TO THE CONTENT OF THE PROPOSAL REQUESTED**

**PART I**

Proposal for a  
REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF THE  
EUROPEAN UNION  
on a statute for a European Association

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 352 thereof,

Whereas:

- (1) Cross-border projects and other forms of cooperation involving civil society in particular contribute in a decisive way to the achievement of the Union's objectives, including the promotion of its values, and to developing many different activities of transnational relevance which benefit the general interest in numerous fields.
- (2) European cooperation across borders between citizens and representative associations is essential for creating an overarching European civil society, which is an important element of European democracy and European integration in line with Article 11 and Article 15 of the Treaty on European Union.
- (3) In pursuing their objectives, many associations play a significant role in the economy and in the development of the internal market, by engaging on a regular basis in economic activity.
- (4) Directive .../... of the European Parliament and of the Council (the 'Minimum Standards Directive') is aimed at approximating the laws of the Member States to provide minimum standards and an enabling environment, which facilitates non-profit organisations in carrying out their work.
- (5) Associations play a key role in helping and encouraging individuals to actively participate in the democratic life of the Union.
- (6) The Union should provide associations, which are a form of organisation generally recognised in all Member States, with an adequate legal instrument capable of fostering their transnational activities.
- (7) The introduction of a form of organisation at Union level would facilitate all associations in the pursuit of their cross-border objectives and activities in the internal market.



- (8) According to the judgment of the Court of Justice<sup>1</sup>, Article 63 of the Treaty on the Functioning of the European Union (TFEU) and Articles 7, 8 and 12 of the Charter of Fundamental Rights of the European Union (the 'Charter') protect non-profit organisations against discriminatory, unnecessary and unjustified restrictions to access to resources and the free movement of capital within the Union. This also concerns the ability to seek, secure and use resources of both domestic and foreign origin, which is essential to the existence and operation of any legal entity. Restrictions can be imposed for legitimate aims, such as in the interests of national security, public safety or public order, but should be proportionate to the objective of protecting such interests, and the least intrusive means of achieving the desired objective. This concerns, among others, restrictions deriving from rules on combating money laundering and terrorist financing, which are applied in accordance with the principles of necessity and proportionality, having regard in particular to risk-assessment obligations under international and Union law. Therefore, Member States cannot apply unreasonable, overly intrusive or disruptive measures, including reporting requirements placing an excessive or costly burden on organisations.
- (9) Natural and legal persons can create European companies based on Council Regulation (EC) No 2157/2001<sup>2</sup>, European Cooperative Societies based on Council Regulation (EC) No 1435/2003<sup>3</sup>, European parties based on Regulation (EU, Euratom) No 1141/2014 of the European Parliament and of the Council<sup>4</sup>. However, none of those instruments provides for associations to be able to cooperate across borders.
- (10) Regulation (EC) No 1082/2006 of the European Parliament and of the Council<sup>5</sup> provides for the creation of European groupings of territorial cooperation (EGTC). Such groupings are formed mostly by state or local authorities or other entities governed by public law. Thus, non-governmental civil society actors and citizens are not covered.
- (11) The European Economic Interest Grouping (EEIG), as provided for in Regulation (EEC) No 2137/85<sup>6</sup>, does allow certain activities to be carried out in common, while nevertheless preserving the independence of its members. However, the

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<sup>1</sup> Judgment of the Court of Justice of 18 June 2020, *European Commission v Hungary*, C-78/18, ECLI:EU:C:2020:476.

<sup>2</sup> Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE) (OJ L 294, 10.11.2001, p. 1).

<sup>3</sup> Council Regulation (EC) No 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society (SCE) (OJ L 207, 18.8.2003, p. 1).

<sup>4</sup> Regulation (EU, Euratom) No 1141/2014 of the European Parliament and of the Council of 22 October 2014 on the statute and funding of European political parties and European political foundations (OJ L 317, 4.11.2014, p. 1).

<sup>5</sup> Regulation (EC) No 1082/2006 of the European Parliament and of the Council of 5 July 2006 on a European grouping of territorial cooperation (EGTC) (OJ L 210, 31.7.2006, p. 19).

<sup>6</sup> Council Regulation (EEC) No 2137/85 of 25 July 1985 on the European Economic Interest Grouping (EEIG) (OJ L 199, 31.7.1985, p. 1).

EEIG does not meet the specific needs of civil society associations.

- (12) It is therefore necessary to establish at Union level appropriate and rules which will permit the creation of European associations.
- (13) A European Association might wish to distinguish between different categories of members, in order to grant voting rights only to full members, while acknowledging associated members that support the cause, without the right to vote, and/or honorary members exempt from the obligation of paying a membership fee, but with voting rights. The categorisation of members should not lead to unjustified discrimination, in particular on the basis of citizenship.
- (14) As the scope of the Regulation is limited to non-profit associations, the TFEU does not provide any other legal base than the one laid down in Article 352.
- (15) Since the objectives of this Regulation, and namely the establishment of a European Association, cannot be sufficiently achieved by the Member States but can rather, for the reasons set out above, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives,

HAVE ADOPTED THIS REGULATION:

## *Chapter I*

### *Subject matter and general provisions*

#### *Article 1*

##### *Subject Matter*

1. This Regulation lays down the conditions and procedures governing the formation, governance, registration and regulation of legal entities in the form of a European Association.
2. A European Association shall be an independent and self-governed cross-border entity established on a permanent basis within the territory of the Union by voluntary agreement between natural or legal persons for a common non-profit purpose.
3. A European Association shall be free to determine its objectives as well as the activities necessary to pursue them.
4. A European Association's objectives shall respect and support the promotion of the objectives and values on which the Union is founded as laid down in Articles 2 and 3 of the Treaty on European Union.
5. A European Association shall be membership based and free to determine the composition of its membership. This may include the determination of special requirements for members, based on reasonable and objective criteria and subject to the principle of non-discrimination.

#### *Article 2*

##### *Definitions*

For the purpose of this Regulation, the following definitions apply:

1. 'non-profit' means that it is not the primary aim of the association to generate a profit, while it may still exercise economic activities. Where profit is generated, it is invested in the organisation for the pursuit of its objectives, and not distributed among members, founders or any other private parties. The granting of public benefit status pursuant to Article 21 is not a necessary condition to establish the non-profit nature of an association. However, where public benefit status is granted, the purpose of the association shall be regarded as non-profit;
2. 'independent' means free from any undue State interference and not part of a

government or administrative structure. In this respect, receiving governmental funding shall not preclude an association from being deemed independent, as long as the autonomy of the association's functioning and decision making is not affected by such funding;

3. 'self-governed' means that the association has an institutional structure allowing it to exercise all its internal and external organisational functions and to make essential decisions independently;
4. 'public benefit' means an improvement in the welfare of society or part of it, thus benefiting the general interest of society;
5. 'cross-border' means that the association pursues the objective of transnational cooperation or cooperation across borders within the European Union, or that its founding members come from more than one Member State;
6. 'member' means a person that voluntarily and intentionally applied to join an association to support its objectives and activities, and that was admitted into the association based on that association's statutes. Where an association is formed as the result of conversion or merger, the willingness of membership can be conclusively assumed.

### *Article 3*

#### ***Applicable law***

1. For matters not dealt with by this Regulation, the European Association shall be governed by the law of the Member State in which the European Association has its registered office.
2. Member States shall identify the legal entity or the category of legal entities to which a European Association shall be deemed comparable for the purpose of the identification of the applicable law pursuant to paragraph 1, in a manner consistent with the provisions and the objectives of this Regulation.

### *Article 4*

#### ***National supervisory authority***

1. Member States shall designate an independent public authority (the 'supervisory authority') to be responsible for monitoring the application of this Regulation in order to protect the fundamental rights and freedoms of European Associations while acting across borders.
2. Each national supervisory authority shall contribute to the consistent application of this Regulation throughout the Union. For that purpose, the supervisory authorities shall

cooperate with each other within the framework of the European Associations Authority in accordance with Articles 5 and 22 of this Regulation.

3. Member States shall notify the Commission of the authority they designate pursuant to paragraph 1.

## *Article 5*

### ***European Associations Authority***

1. A European Associations Authority () shall hereby be established.
2. The European Associations Authority shall be established as a body of the Union and shall have legal personality.
3. The European Associations Authority shall be represented by a Chair and shall be assisted by a Secretariat.
4. The European Associations Authority shall be composed of the head of the competent supervisory authority of each Member State, or their respective representatives, two members representing European civil society, and two members representing academia. Where more than one supervisory authority is responsible in a Member State for supervising the application of this Regulation, a joint representative shall be appointed in accordance with that Member State's law.
5. The European Associations Authority shall act independently when performing its tasks and exercising its powers. Without prejudice to requests by the Commission referred to in paragraph 6, points (e) and (f), the European Associations Authority shall, in the performance of its tasks or the exercise of its powers, neither seek nor take instructions from any party or source.
6. The European Associations Authority shall ensure that this Regulation is applied in a consistent manner. To that end, the Authority shall in particular:
  - (a) develop the single e-registration procedure for European Associations and manage the digital e-Registry of European Associations at Union level;
  - (b) process notices of registration, dissolution and other relevant decisions concerning European Associations for the purpose of publication in the *Official Journal of the European Union*, as provided for in this Regulation;
  - (c) processes applications for the granting of public benefit status pursuant to Article 19;
  - (d) assess the adequacy of the identification of the comparable legal entities by the Member States pursuant to Article 3(2) of this Regulation on the applicable law;
  - (e) receive, examine and follow-up on complaints concerning the application of this

Regulation, without prejudice to the tasks of national registering and supervisory authorities;

- (f) take binding decisions as provided for by Articles 10, 11, 19, 24 and 25 of this Regulation;
  - (g) examine, on its own initiative, or at the request of one of its members or of the European Commission, and in consultation with interested parties as appropriate, any question relating to the application of this Regulation and issue guidelines, recommendations and best practices for national supervisory authorities and European Associations in order to ensure the consistent application of this Regulation;
  - (h) advise the Commission, on its own initiative, or at the request of one of its members or of the Commission, and in consultation with interested parties as appropriate, on any issue related to European Associations or measures resulting from the Minimum Standards Directive, including on any proposed amendment of this Regulation or of that Directive;
  - (i) consult the Commission regarding structuring and operationalising funds aimed at financing civil society as well as protecting and promoting Union rights and values as enshrined in the TEU and TFEU and the Charter of Fundamental Rights, sustaining and furthering the development of open, rights-based, democratic, equal and inclusive societies based on the rule of law;
  - (j) promote the cooperation and the effective bilateral and multilateral exchange of information and best practices between national supervisory authorities and with the European Associations Authority;
  - (k) promote common training programmes and facilitate personnel exchanges between national supervisory authorities;
  - (l) oversee the activities of European Associations, including through a regular review of their annual reports as referred to in Article 17(8) of this Regulation.
7. The Commission and the European Parliament shall have the right to participate in the activities and meetings of the European Associations Authority, without voting rights. The Commission shall designate up to two representatives, the Parliament shall designate up to five representatives.
8. The discussions of the European Associations Authority shall be confidential where the Authority deems it necessary, in accordance with its rules of procedure. Access to documents submitted to members of the European Associations Authority, experts and representatives of third parties shall be governed by Regulation (EC) No 1049/2001 of the European Parliament and of the Council<sup>7</sup>.

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<sup>7</sup> Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

9. The European Associations Authority shall adopt its own rules of procedure and organise its own operational arrangements.
10. In the case of equality of votes, the Chairman of the meeting shall have a casting vote.
11. The European Associations Authority shall invite independent experts, in particular from academia and civil society to its meetings and consult with them on a regular basis.
12. The Chair of the European Associations Authority shall report annually about the activities of the Authority and the application of this Regulation to the European Parliament, the Council and the European Commission.

## ***Chapter II***

### ***Formation and registration***

#### *Article 6*

#### ***Formation***

1. A European Association shall be formed:
  - a) by agreement of at least three founding members; the founding members can be natural persons that are citizens or residents of at least two Member States, or legal persons that have their registered office in at least two Member States; or
  - b) as the result of a conversion into a European Association of an existing entity formed under the law of a Member State and which has its registered office within the Union; or
  - c) as the result of a merger between at least two entities belonging to the categories identified pursuant to Article 3(2) of this Regulation, formed under the laws of Member States and which have their registered office within the Union, provided that at least two of them are governed by the law of different Member States.
2. A Member State may provide that an entity, among those identified pursuant to Article 3(2) of this Regulation on the applicable law, the registered office of which is not in the Union, may participate in the formation of a European Association provided that entity is formed under the law of a Member State, has a registered office in that Member State and has a demonstrable and continuous link with that Member State economically, socially or culturally.
3. The formation of a European Association shall be executed by a written agreement between all of the founding members or by written minutes documenting the constitutive meeting signed by all founding members.

4. The departure of a founding member from a European Association shall not automatically lead to the European Association being terminated or dissolved, provided that it continues to carry out its activities based on the agreement of at least the number of persons referred to in paragraph 1.

#### *Article 7*

#### ***Membership***

1. European Associations shall be free to distinguish between full members and other categories of members. The statutes of a European Association shall determine the rights and obligations of these categories of members, in particular as regards their right to vote.
2. Mandatory membership fees shall be adjusted to take into account the average income in the Member State of residence of the member.

#### *Article 8*

#### ***Statutes***

1. The founding members shall draw up and sign the statutes of the European Association at the moment of its formation or at its constitutive meeting.
2. The statutes shall contain at least the following information:
  - a) the name of the European Association, preceded or followed by the abbreviation 'EA';
  - b) a precise statement of the European Association's objectives;
  - c) the address of the European Association's registered office;
  - d) the name, address and nationality of the founding members, where these are natural persons;
  - e) the name and the address of the registered offices of the founding members, where these are legal persons;
  - f) the conditions and procedures for the admission, expulsion and resignation of members;
  - g) the rights and obligations of the members, and the different categories of members if any, and the rights and obligations of the members in each category;
  - h) provisions governing the appointment to and removal of members from the Board of Directors, the conditions for the initiation of proceedings against members of the Board of Directors on behalf of the European Association, as well as the Board's functioning, powers and responsibilities, including powers of representation in dealings with third



parties;

- i) provisions governing the functioning, powers and responsibilities of the General Assembly, including majority and quorum requirements;
- j) the grounds and procedures for voluntary dissolution of the European Association;
- k) an explicit commitment by the European Association to respect the values of the Union as enshrined in Article 2 TEU; and
- l) the frequency with which a General Assembly shall be called.

#### *Article 9*

##### ***Registered office***

1. The registered office of a European Association shall be located within the territory of the Union, at the place specified in its statutes. The registered office shall be located at the place where the European Association has its central administration.
2. In the event of formation of a European Association by conversion pursuant to paragraph 2(a) of Article 10, members shall decide whether the European Association's registered office is to remain in the Member State where the original entity was registered, or rather is to be moved to another Member State.
3. In the event of formation of a European Association by merger pursuant to paragraph 2(b) of Article 10, the members shall decide in which of the Member States in which the merging entities are registered the registered office of the European Association is to be located.

#### *Article 10*

##### ***Registration***

1. A European Association shall, within 30 days of the date of the European Association's formation as provided for in Article 6, submit an application for registration in the digital e-Registry of European Associations established pursuant to Article 5(6)(a).
2. Registration shall occur via a standardised registration procedure to be developed and set up by the European Associations Authority. The registration procedure shall be electronic and free of charge and shall allow applicants to use the official language or one of the official languages of the Member State where the European Association has its registered office. The European Associations Authority and national supervisory authorities shall make it possible to register by non-digital means for the citizens who wish to do so.
3. Member States shall designate or establish an authority (the 'registering authority')

competent for processing applications for registration of European Associations that have their registered office in its territory in accordance with this Article. Member States may decide that the registering authority is to be the same as the supervisory authority referred to in Article 4 of this Regulation.

4. Upon notice of the application for registration of a European Association, the registering authority shall assess the application in relation to the requirements laid down in this Regulation. The registering authority shall not impose any requirements other than those laid down in this Regulation.
5. Upon receipt of an application for the granting of public benefit status from a European Association, the registering authority shall assess the application in relation to the requirements laid down in this Regulation. The registering authority shall not impose any requirements other than those laid down in this Regulation.
6. The registering authority shall communicate to the European Associations Authority without delay, and no later than 30 calendar days after the request for registration or for the granting of public benefit status has been made, an opinion concerning the application, based on the assessment conducted pursuant to paragraphs 4 and 5. If the registering authority recommends the rejection of the application, it shall provide substantiated grounds to justify its recommendation.
7. The European Associations Authority shall, within 15 calendar days of receipt of the opinion of the national registering authority, adopt a binding decision on the application. That period may be extended by 15 days in duly motivated cases, where the assessment of the application requires further examination.
8. Applicants shall have the right to request the European Associations Authority to review its decision refusing the application within 15 calendar days after the decision has been communicated to them.
9. The European Associations Authority shall ensure that the publication of the registration in the digital e-Registry of European Associations as well as in the *Official Journal of the European Union* takes place no later than 15 days after the decision has become final.
10. Upon publication pursuant to paragraph 9, the registration of a European Association shall produce effects in the territory of the Union. Member States may provide for the automatic registration of European Associations having their registered office on their territory in the appropriate national registries.

## *Article 11*

### ***Transfer of registered office***

1. The registered office of a European Association may be transferred to another Member State in accordance with paragraphs 2 to 12 of this Article. Member States shall ensure unhindered transfer of assets and documents belonging to the European Association transferring its seat to another Member State. Such transfer shall not result in the European

Association being wound up or in the creation of a new legal person.

2. A transfer proposal shall be drawn up by the Board of Directors of the European Association and shall be published in accordance with the national rules of the Member State in which the registered office is situated.
3. A proposal under paragraph 2 shall include details of:
  - a) the registered office proposed for the European Association;
  - b) the statutes proposed for the European Association including, where applicable, its new title;
  - c) the timetable proposed for the transfer; and
  - d) the expected legal and economic consequences of the transfer.
4. The members and creditors of the European Association shall, at least one month prior to the date of the general assembly called to decide on the transfer, have the right to examine, at the registered office of the European Association, the transfer proposal drawn up by virtue of paragraph 3.
5. Member States may, in respect of European Associations that have their registered office on their territory, adopt provisions to ensure that members who voted as a minority against the transfer are adequately protected.
6. No decision to transfer shall be taken for two months after publication of the proposal. Decisions to transfer shall be governed by the conditions laid down for the amendment of the statutes.
7. The creditors and holders of other rights vis-à-vis the European Association which predated publication of the transfer proposal shall have the right to require the European Association to provide them with appropriate guarantees. The provision of such guarantees shall be governed by the national law of the Member State in which the European Association had its registered office prior to the transfer. Member States may extend the application of this provision to include debts made by the European Association with public entities prior to the date of transfer.
8. A court, notary or other competent authority in the Member State in which the European Association has its registered office shall issue a certificate to acknowledge that the acts and formalities required prior to transfer have been properly completed.
9. The new registration shall not be carried out until the certificate provided for in paragraph 8 has been produced. The transfer of the European Association's registered office and the resulting change of statutes shall take effect on the date on which the transfer is registered pursuant to Article 10.
10. A Member State may, in respect of European Associations having their registered office on its territory, refuse the transfer of the registered office, subject to a formal objection lodged by a designated competent authority within the period of two months specified in paragraph

3. Such objection may only be lodged for reasons of public interest and shall be communicated to the European Associations Authority.
11. The European Associations Authority shall assess the objection lodged pursuant to paragraph 11 and, within 15 calendar days of receipt of the objection, adopt a binding decision approving or refusing the transfer. That period may be extended by 15 days in duly motivated cases, where the assessment of the objection requires further examination.
12. The applicant may request the European Associations Authority to review its decision refusing the transfer within 15 calendar days of the communication of the decision.
13. The European Associations Authority shall ensure that details of the transfer are published in the digital e-Registry of European Associations as well as in the *Official Journal of the European Union* no later than 15 days after the communication pursuant to paragraph 10 of this Article or, where an objection is lodged pursuant to paragraph 11, after the European Associations Authority's decision on the transfer has become final. The new registration of the registered office of the European Association may be relied on against third parties as of the date of that publication.
14. A European Association which is the subject of winding-up, liquidation, insolvency, suspension of payments or other such procedures may not transfer its registered office.

## *Article 12*

### ***Legal personality***

1. A European Association shall acquire legal personality on the day of the publication of its registration as a European Association in the *Official Journal of the European Union*.
2. Following the notice of registration but prior to the publication of the announcement in the *Official Journal of the European Union*, the European Association may exercise its rights as a legal person if it uses “European Association in formation” as part of its name, and in accordance with the national rules on precautionary supervision applicable to domestic associations in the Member State where the European Association has its registered office during the phase of formation. If, prior to acquiring legal personality, actions have been undertaken in the name of the European Association and the European Association does not assume the obligations arising from those actions, the natural or legal persons undertaking those actions shall be jointly and severally liable for them, unless otherwise provided for by applicable national rules of the Member State where the European Association has its registered office during the phase of constitution.
3. As legal persons, European Associations shall have the capacity to exercise, in their own name, the powers, rights and obligations that are necessary for the pursuit of their objectives, under the same conditions as a legal entity among those identified pursuant to Article 3(2) of this Regulation on the applicable law and formed in conformity with the law of the Member State in which the European Association has its registered office.
4. The attributes deriving from the acquisition of the legal personality by a European

Association shall include the right and capacity to:

- a) conclude contracts and perform other legal acts, including acquiring movable and immovable property;
- b) receive donations and legacies, including through funding appeals to the public;
- c) employ staff;
- d) be a party to legal proceedings; and
- e) access financial services.

### *Article 13*

#### ***Governance and Bodies***

1. A European Association shall be free to determine its internal management structures and governance in its statutes, subject to the other provisions of this Regulation.
2. A European Association shall be governed by at least two bodies, the Board of Directors (the 'Board') and the General Assembly.
3. Other governance bodies may be set up by the Board or the General Assembly, under the conditions and in accordance with the procedures laid down in the statutes.

### *Article 14*

#### ***Board of Directors***

1. The Board shall manage the European Association in the interests of the European Association and in pursuit of its objectives, as provided for in the European Association's statutes.
2. The Board shall be elected by the General Assembly, in accordance with the statutes.
3. A person shall be ineligible to be a member of the Board, or have powers conferred on them, or be given responsibilities of management or representation pursuant to paragraph 6 below if they are disqualified from serving on a board, or other similar management or supervisory body of a legal entity by reason of:
  - a) the law applicable to that person;
  - b) the law applicable to the legal entities identified pursuant to Article 3(2) of this Regulation in the Members State in which the European Association has its registered office; or
  - c) a judicial or administrative decision adopted or recognised in a Member State.

4. Within the scope of the functions attributed to them by this Regulation and by the statutes of the European Association, all members of the Board shall have the same rights and obligations.
5. The Board may delegate management powers or responsibilities to committees composed of one or more of the European Association's members. The statutes or the General Assembly shall adopt conditions within which such delegation shall operate.
6. The Board shall meet at intervals laid down by the statutes, and at least twice a year, to discuss the accounts, the activities and the foreseeable prospects of the European Association's affairs.
7. The Board shall, once a year, draw up a report on the accounts and activities of the European Association, which it shall transmit to the national supervisory authority and to the European Associations Authority. Such annual report shall also be made publicly available by the European Association.
8. The members of the Board shall have the power to represent the European Association in dealings with third parties and in legal proceedings, within the limits and under the conditions established in its statutes. Where the authority to represent the European Association in dealings with third parties is conferred on two or more members, those persons shall exercise that authority collectively.
9. Any acts performed by members of the Board on behalf of the European Association shall bind the European Association vis-à-vis third parties, provided that they do not exceed the powers granted to the Board by the applicable law, or lawfully conferred on the Board by the statutes.

#### *Article 15*

#### **General Assembly**

1. The European Association's general meeting, gathering all members, shall be referred to as General Assembly.
2. The Board shall convene a meeting of the General Assembly in accordance with its statutes.
3. Members shall be informed of a General Assembly no later than 15 calendar days ahead of the date set for the meeting.
4. A General Assembly may be convened by the Board at any time, either on its own initiative or at the request of at least one quarter of the members. The statutes may set a lower threshold.
5. The meetings of the General Assembly may be held online without that affecting their validity, or the validity of the decisions adopted.

6. The request for a meeting shall state the reasons for convening it and the items to be included on the agenda.
7. Every member shall have the right to information and obtain access to documents, in accordance with the rules set in the statutes, prior to each meeting.
8. Every member shall have the right to participate in the General Assembly, to speak and to submit motions.
9. Members' right to vote in the General Assembly shall be exercised in accordance with the European Association's statutes.
10. Members may appoint another member to represent them in a General Assembly meeting prior to the meeting in question, pursuant to a procedure to be established in the European Association's statutes. A member may not represent more than two others.
11. Decisions by the General Assembly on ordinary matters shall be taken as a rule by a majority of the votes of the members present or represented. Each member shall have one vote.

#### *Article 16*

##### ***Association chapters and lead members***

1. A European Association may have regional chapters. The chapters shall not be considered as possessing a distinct legal personality, but they may organise and manage activities on behalf of the association, subject to statutory requirements.
2. The Board of Association may appoint chapters or members that are legal persons to be lead actors in executing and implementing projects of the European Association. Member States shall allow for chapters or members to implement projects under their jurisdiction as lead actors of European Association.

#### *Article 17*

##### ***Amendments of the Statutes***

1. Any amendments to the European Association's statutes shall be discussed at a General Assembly meeting convened for that purpose.
2. Members shall be notified of General Assembly meetings aimed at discussing and deciding upon proposed amendments of the European Association's statutes at least 30 calendar days ahead of the date set for the meeting. The notification should include the proposals in question.

3. The General Assembly shall have the power to make amendments to the statutes, if at least half of the European Association's members plus one are present or represented.
4. Amendments to the European Association's statutes shall be adopted, if at least two thirds of the General Assembly's present or represented members vote in favour.
5. Amendments to the stated purpose of the European Association shall be adopted, if at least three quarters of the General Assembly's present or represented members vote in favour.

### ***Chapter III***

#### ***Provisions concerning the treatment of European Associations in Member States***

##### *Article 18*

##### ***Principle of non-discrimination***

1. Any discrimination based on the place where the European Association has its registered office shall be prohibited.
2. Any European Association which has its registered office on the Member State's territory is subject to the provisions applicable to the legal entities identified pursuant to Article 3(2) of this Regulation.

##### *Article 19*

##### ***Public benefit status***

1. A European Association can be granted public benefit status if the following cumulative conditions are met:
  - a) the organisation's purpose and actual activities pursue a public benefit objective which serves the welfare of society or of part of it, and is thus beneficial for the public good, including charitable, purposes, or political activism, except where this is systematically and directly aimed to benefit the structures of a specific political party. The following purposes shall be considered as oriented towards public benefit. although the list shall not be considered as exclusive:
    - (a) arts, culture or historical preservation;
    - (b) environmental protection and climate change;



- (c) the promotion and protection of fundamental rights and Union values, including the elimination of any discrimination based on gender, race, ethnicity, religion, disability, sexual orientation or any other grounds;
  - (d) social justice, including prevention of or relief from poverty;
  - (e) humanitarian assistance and humanitarian aid, including disaster relief;
  - (f) development aid and development cooperation;
  - (g) protection of, assistance to and support for vulnerable sectors of the population, including children, the elderly, people with disabilities, persons seeking or benefitting from international protection and people in a situation of homelessness;
  - (h) protection of animals;
  - (i) science, research and innovation;
  - (j) education and training;
  - (k) the promotion and protection of health and well-being, including the provision of medical care;
  - (l) consumer protection; and
  - (m) amateur sports.
- b) surplus from any economic or other income-earning activity generated by the non-profit organisation is used solely to promote the organisation's public benefit objectives;
  - c) in the case of dissolution of the non-profit organisations, statutory safeguards guarantee that all assets will continue to serve public benefit objectives;
  - d) members of the organisation's governing structures that are not employed as staff are not eligible to remuneration beyond adequate expense allowance.
2. European Associations registered offices shall have the right to apply to the supervisory authority of the Member State where they have their registered office for recognition as contributing to the public benefit, in accordance with the requirements set out in paragraph 1.
  3. The supervisory authority shall communicate without delay, and no later than 30 calendar days after the application has been made, a reasoned opinion concerning such application to the European Associations Authority.
  4. The European Associations Authority shall, within 15 calendar days of receipt of the opinion of the national registering authority, adopt a binding decision on granting the European Association the status of association contributing to the public benefit ('public benefit status'), in accordance with the requirements set out in paragraph 1. That period may

be extended by 15 days in duly motivated cases, where the assessment requires further examination.

5. Applicants shall have the right to request the European Associations Authority to review its decision refusing recognition of the European Association as contributing to the public benefit within 15 calendar days of the decision having been communicated to them.
6. The European Associations Authority shall ensure that the decision on granting the European Association public benefit status is published in the digital e-Registry of European Associations as well as in the *Official Journal of the European Union* no later than 15 days after the decision has become final.
7. As of the date of its publication, the decision adopted by the European Associations Authority pursuant to paragraph 4 may be relied on by the European Association for the purpose of being granted the corresponding status by the competent supervisory authority.
8. Member States shall treat a European Association that is granted public benefit status in the same manner as the legal entities that have been granted a corresponding status under their jurisdiction.

#### *Article 20*

##### ***Principle of national treatment***

A European Association shall be subject to the provisions applicable to the legal entities identified pursuant to Article 3(2) of this Regulation on the applicable law in the Member State in which it has its registered office.

#### *Article 21*

##### ***Principle of non-arbitrary treatment***

A European Association shall not be subjected to differential treatment by Member States based solely on the political desirability of its purpose, field of activities or sources of financing.

### ***Chapter IV***

#### ***Financing and reporting***

#### *Article 22*

##### ***Fundraising and free use of assets***

1. European Associations shall be able to solicit, receive, dispose of or donate any resources, including financial, in-kind and material, and solicit and receive human resources, from or to any source, be it public bodies, private individuals or private bodies, in any Member State of the Union and in third countries.
2. European Associations shall be subject to the provisions of Union and national law concerning customs, foreign exchange, money laundering and terrorist financing, as well as to the rules regulating the funding of elections and political parties, as applicable to the legal entities identified pursuant to Article 3(2) of this Regulation in the Member State in which they have their registered office.

### *Article 23*

#### ***Accounting and auditing***

1. Rules on accounting, including the preparation of budget estimates, annual and consolidated accounts of the European Association, shall be regulated by the statutes, subject to the provisions of this Regulation and to the provisions applicable to the legal entities identified pursuant to Article 3(2) of this Regulation in the Member State in which the European Association has its registered office.
2. Notwithstanding paragraph 1, European Associations shall draw up at least once a year:
  - a) annual accounts;
  - b) consolidated accounts, if any; and
  - c) a budget estimate for the forthcoming financial year.

The information referred to in the first subparagraph shall accompany the annual report on the activities and foreseeable prospects of the European Association's affairs that the Board shall transmit to the national supervisory authority and the European Associations Authority pursuant to Article 14(7) of this Regulation.

3. The annual accounts of the European Associations, and, where applicable, their consolidated accounts, shall be audited pursuant to the provisions applicable to the legal entities identified pursuant to Article 3(2) of this Regulation in the Member State in which the European Association has its registered office. The audit shall be carried out at least once every four years and no more than once every two years.
4. The report resulting from the audit referred to in paragraph 3 shall be disclosed in the manner provided for by the law of the Member State in which the European Association has its registered office. Where European Associations are not subject, under the law of the Member State in which the European Association has its registered office, to a disclosure requirement, they shall at least make the accounting documents available to the public at its registered office.
5. European Associations shall not be required to disclose information on their members, in

particular with regards to the objectives and activities of the association. Disclosing information on members shall not be required unless necessary for the purpose of a criminal investigation concerning criminal offences punishable by a custodial sentence of a maximum of at least one year.

6. The report resulting from the audit referred to in paragraph 3 shall be transmitted by the competent authority to the European Associations Authority without delay. Upon notification, the European Associations Authority shall provide for the publication of the report in the *Official Journal of the European Union* as well as in the digital e-Registry of the European Union.
7. Rules on accounting and auditing applicable to European Associations shall not be less favourable than those applicable to undertakings in application of Directive 2006/43/EC<sup>8</sup> or Directive 2013/34/EU of the European Parliament and of the Council<sup>9</sup>.

## *Chapter V*

### *Supervision and liability*

#### *Article 24*

#### *Supervision*

1. The supervisory authority shall consult in a timely manner the supervisory authorities of other Member States within the framework of the European Associations Authority on any substantial issues regarding the lawfulness and liability of European Associations registered in the Member State's territory.
2. The supervisory authority of the registering Member State shall communicate without delay to the European Associations Authority any recommendation for a decision concerning European Associations on its territory.
3. The European Associations Authority shall review the recommendation communicated pursuant to paragraph 3 within 30 calendar days. Following such review, if it disagrees with the recommendation, the European Association Authority may refer it back to the

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<sup>8</sup> Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC (OJ L 157, 9.6.2006, p. 87).

<sup>9</sup> Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC Text with EEA relevance (OJ L 182, 29.6.2013, p. 19).

supervisory authority with recommendations to reconsider.

4. If the supervisory authority fails to reconsider its recommendation in the light of the European Associations Authority's recommendation, the European Associations Authority may adopt a binding decision requesting the supervisory authority to refrain, or to require a competent authority to refrain, from adopting any decisions which it deems illegal, arbitrary or abusive in the light of provisions of this Regulation or other relevant provisions of Union law, or requesting the supervisory authority, within the limits of its powers, to annul any such decisions.
5. If the supervisory authority fails to comply with a decision taken by the European Associations Authority pursuant to paragraph 7 of this Article, the European Associations Authority shall inform the European Commission, which shall take action as appropriate.
6. Effective remedies shall be available to European Associations to challenge decisions taken by the supervisory authority, including the possibility to obtain judicial review of any such decisions.

#### *Article 25*

##### ***Liability of the European Association and the members of the Board***

1. The liability of the European Association shall be governed by the provisions applicable to the legal entities identified pursuant to Article 3(2) of this Regulation in the Member State in which the European Association has its registered office.
2. The members of the Board shall be jointly and severally liable for loss or damage sustained by the European Association as a result of a breach of the obligations attaching to their functions. The liability shall however not be joint and several for loss or damage sustained by the European Association, where proven to be in breach of specific obligations only attaching to that member's functions.
3. The statutes shall lay down the conditions for the initiation of proceedings against members of the Board on behalf of the European Association.

#### ***Chapter VI***

##### ***Dissolution, insolvency, liquidation***

#### *Article 26*

##### ***Voluntary dissolution***

1. A European Association may be dissolved:

- a) by decision of the Board pursuant to provisions in the European Association's statutes, with the agreement of the General Assembly; or
  - b) by decision of the General Assembly, with a possibility to annul such decision before any dissolution or liquidation of a European Association.
2. The supervisory authority shall inform the European Associations Authority of any dissolution of the European Association pursuant to paragraph 1 no later than 15 calendar days after it has become aware of the dissolution. The European Associations Authority shall, immediately after such notification, publish a notice of dissolution of the European Association in the *Official Journal of the European Union* and remove the European Association from the digital e-Registry of the Union.

#### *Article 27*

#### ***Involuntary dissolution***

1. A European Association may be dissolved by binding decision of the European Associations Authority, taken on its own initiative or at the request of the supervisory authority of the Member State in which the European Association has its registered office, if:
  - a) the registered office of the European Association has been transferred outside the territory of the Union;
  - b) the conditions for the formation of the European Association as set out in this Regulation are no longer fulfilled; or
  - c) the activities of the European Association cease to be compatible with the objectives and values of the Union or pose a serious threat to public policy, public security or public order.
2. For the purposes of paragraph 1, the supervisory authority shall communicate a reasoned opinion concerning the European Association's dissolution to the European Associations Authority. The European Associations Authority shall, within 30 calendar days of receipt of the opinion of the supervisory authority, adopt a binding decision on the European Association's dissolution. That period may be extended by 30 days in duly motivated cases, where the assessment of the application requires such an extension.
3. Where a decision on dissolution is taken pursuant to point (a) or (b) of paragraph 1, the European Associations Authority shall grant the European Association a reasonable period of time to regularise its position before the decision takes effect.
4. Applicants may request the European Associations Authority to review its decision ordering the dissolution of the European Association within 30 calendar days of the decision having been communicated to them.
5. The European Associations Authority shall reflect the decision to dissolve the European

Association in the digital e-Registry of European Associations and publish it in the *Official Journal of the European Union* no later than 15 days after the decision has become final.

6. Upon publication pursuant to paragraph 5, the dissolution of the European Association shall be effective throughout the territory of the Union.

#### *Article 28*

##### ***Liquidation and insolvency***

1. The winding up of a European Association shall entail its liquidation. Such liquidation shall be governed by the law applicable to the legal entities identified pursuant to Article 3(2) of this Regulation in the Member State in which the European Association has its registered office.
2. A European Association shall retain its capacity, within the meaning of Article 15 of this Regulation, until its liquidation is concluded.

#### *Article 29*

##### ***Review and evaluation***

Five years at the latest after the entry into force of this Regulation, the Commission shall forward to the Council and to the European Parliament a report on the application of the Regulation and proposals for amendments, as appropriate.

### ***Chapter VII***

#### *Article 30*

##### ***Final provisions***

This Regulation shall enter into force on the [...] day following that of its publication in the *Official Journal of the European Union*.

Done in Brussels, ...

## PART II

Proposal for a

### DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF THE EUROPEAN UNION

on common minimum standards for non-profit organisations in the EU (Minimum standards Directive)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Freedom of association is a fundamental right that is crucial for the functioning of democracy and an essential condition for the exercise of other fundamental rights by individuals, including the right to freedom of expression.
- (2) Non-profit organizations enjoy protection of certain rights, including fundamental rights, in their own capacity, as it derives from relevant case-law of the Court of Justice of the European Union and of the European Court of Human Rights.
- (3) Non-profit organizations make a key contribution to the achievement of goals that are in the public interest and to achieve the Union's objectives, including by promoting active participation in the economic and democratic life of our societies.
- (4) Today, non-profit organisations, in pursuit of their aims, play a full part in the life of the economy and in the development of the internal market, including by engaging in various activities of a both national and transnational relevance and regularly engaging in economic activities.
- (5) Non-profit organisations are, in particular, key drivers of the development of the third sector, which is estimated to account for around 13% of the workforce across Europe, based on the results of the 2014-2017 project on 'The Contribution of the Third Sector to Europe's Socio-economic Development' coordinated by the Institute for Social Research (ISF) of Oslo<sup>10</sup>.
- (6) Non-profit organisations are a major actor in the development and implementation of EU policies supporting the internal market, as demonstrated by their involvement in a variety of expert groups such as the High-Level Forum for a Better Functioning

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<sup>10</sup> <https://cordis.europa.eu/project/id/613034/reporting>.



## Food Supply Chain.

- (7) Reports, including from the EU Agency for Fundamental Rights, point at numerous hindrances deriving from national laws, regulations or administrative practices regulating the formation, registration, operations, financing and cross-border activities of non-profit organisations affecting the ability of legal or natural persons or groups of such persons, regardless of their nationality, to establish, register or operate non-profit organisations across the Union.
- (8) Given the importance of non-profit organisations, it is vital that their formation and operations are effectively facilitated and protected in Member States' laws and regulations.
- (9) Through recommendation CM/Rec(2007)14 of the Committee of Ministers of the Council of Europe on the legal status of non-governmental organisations in Europe, Member States already recognised the role of non-profit organisations, and in particular non-governmental organisations, as an essential element of civil society's contribution to the transparency and accountability of democratic government and defined the minimum standards to be respected concerning the creation, management and the general activities of such organisations.
- (10) The Joint Guidelines on Freedom of Association (CDL-AD(2014)046) adopted by the European Commission for Democracy Through Law (Venice Commission) and the OSCE Office for Democratic Institutions and Human Rights (ODIHR) provide guidance to legislators to translate international human rights standards on the right to freedom of association into domestic laws.
- (11) It is necessary at Union level to build on existing standards and guidance to establish minimum standards for non-profit organisations, aimed at ensuring a uniform level of protection and a level playing field for all non-profit organisations established in the Union, in order to secure an enabling environment in which these organisations can contribute without hindrances to the functioning of the internal market.
- (12) This Directive approximates the laws of the Member States as regards certain aspects of the formation, registration, operations, financing and cross-border activities of non-profit organisations.
- (13) This Directive does not affect Member States' rules on the taxation of non-profit organisations established, registered or operating in their territory. When implementing its provisions, Member States should be mindful not to introduce or apply provisions in the field of tax law which affect the registration, operations, financing and cross-border movements of non-profit organisations in a way that circumvents the letter or spirit of the rules laid down in this Directive.
- (14) This Directive does not affect Member States' criminal law. When implementing its provisions Member States should be mindful of not introducing or applying criminal law, provisions which specifically regulate or affect the registration, operations, financing and cross-border movements of non-profit organisations in a way that circumvents the letter or spirit of the rules laid down in this Directive.

- (15) This Directive should apply, to non-profit organisations established in the Union, intended as voluntary groupings set up for an indefinite period of time, which pursue a primary aim which is not that of generating a profit and which are independent and self-governed. The fact that an organisation is not granted legal personality should not exclude it from the protection provided for in this Directive.
- (16) Political parties should be excluded from the scope of application of this Directive, insofar as their activities do not only relate to the pursuit of common interests, activities or purposes, but are aimed at collectively achieving and using political power.
- (17) Trade unions and foundations, associations or other non-profit bodies with a trade union aim should be excluded from the application. This exclusion should not in anyway be used by Member States to justify a limitation of Trade Union prerogatives and rights recognised in national, EU, European or international law or human rights instruments;
- (18) This Directive is without prejudice to Member States' competence regarding the status of religious, philosophical and non-confessional organisations as referred to in Article 17 of the Treaty on the Functioning of the European Union. In this regard, organisations with primarily a religious, philosophical and non-confessional aim should be in principle excluded from the application of this Directive. This however should not in any way be used by Member States to exclude from the scope of application of this Directive other organisations that are only inspired by religious, philosophical or non-confessional beliefs.
- (19) The presumption in favour of the lawfulness of the formation of non-profit organisations and of their objectives and activities derives from international and regional human rights standards. This also implies the freedom for such organisations to determine objectives and activities and the scope of their operations, whether local, regional, national or international, and to become members of other organisations, federations and confederations of organisations.
- (20) Every person should be free to decide whether or not to join or remain a member of a non-profit organisation and organisations should be free to determine their rules for membership, subject only to the principle of non-discrimination. Membership in a non-profit organisation should not constitute grounds for the application of sanctions or restrictive measures, unless this is a consequence of the enforcement of criminal laws.
- (21) Rules concerning non-profit organisations should be in accordance with the principle of non-discrimination. This includes the obligation to ensure that any person or group of persons wishing to form an association should not be unduly advantaged or disadvantaged in relation to another person or group of persons.
- (22) The implementation of rules concerning non-profit organisations should be undertaken by regulatory authorities that act in an impartial and timely manner in line with the right to good administration. Decisions and acts affecting the exercise by non-profit organisations of their rights and obligations should be open to independent review, including by a court or tribunal.

- (23) Simplifying and easing bureaucracy and regulatory requirements, ensuring that those requirements are not unduly burdensome, streamlining rules on formation, registration and de-registration, and modernising related procedures and systems is necessary to ensure a conducive environment for the operations of non-profit organisations across the Union and to enhance transparency and trust in the sector. To that effect, general obligations as regards the simplification of administrative rules as well as specific obligations as regards certain aspects of the regulatory framework should be established in this Directive.
- (24) Non-profit organisations contributing to the public benefit play a particularly important role and should be therefore granted a favourable treatment in all Member States under uniform conditions.
- (25) In line with the general principle of necessity and proportionality of restrictions on the right to associations, prohibition and dissolution of non-profit organisations should always be measures of last resort and should never be the consequence of minor infractions that can be rectified or remedied.
- (26) A set of rules on equal treatment, cross-border conversions and mergers should be established with the aim to facilitate mobility of non-profit across the Union.
- (27) Non-profit organisations should have the freedom to seek, receive and use financial, material and human resources, whether domestic, foreign or international, for the pursuit of their activities. Non-profit organisations across the Union have reported increasingly difficult access to resources including public funding and there are concerns in an increasing number of Member States as regards the proportionality of strict rules being adopted on non-profit organisations' access to foreign funding. It is therefore necessary to establish principles and standards on non-profit organisations' financing, including as regards access to and use of private resources and public funding, the pursuit of economic activities and the obligation not to unduly restrict cross-border financing in line with Treaty rules on free movement of capital.
- (28) According to the judgment of the Court of Justice of 18 June 2020 in case C-78/18, *European Commission v Hungary*<sup>11</sup>, Article 63 of the Treaty on the Functioning of the European Union (TFEU) and Articles 7, 8 and 12 of the Charter of Fundamental Rights of the European Union (the 'Charter') protect non-profit organisations against discriminatory, unnecessary and unjustified restrictions to access to resources and the free movement of capital within the Union. This also concerns the ability to seek, secure and use resources of both domestic and foreign origin, which is essential to the existence and operation of any legal entity. Restrictions can be imposed for legitimate aims, such as in the interests of national security, public safety or public order, but should be proportionate to the objective of protecting such interests, and the least intrusive means of achieving the desired objective. This concerns, among others, restrictions deriving from rules on combating money laundering and terrorist financing, which are applied in accordance with the principles of necessity and proportionality, having regard in particular to risk-

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<sup>11</sup> Judgment of the Court of Justice of 18 June 2020, *European Commission v Hungary*, C-78/18, ECLI:EU:C:2020:476.

assessment obligations under international and Union law. Therefore, Member States should not apply unreasonable, overly intrusive or disruptive measures, including reporting requirements placing an excessive or costly burden on organisations.

- (29) Non-profit organisations and their members should fully enjoy the right to privacy and confidentiality. While the protection provided by Union and national rules on the processing of personal data apply to non-profit organisations already, minimum guarantees should be established in particular as regards the confidentiality of non-profit organisations' membership and the public disclosure of confidential and sensitive information. Member States should take measures to refrain from any forms of surveillance of non-profit organisations outside the criminal law framework.
- (30) Non-profit organisations should be consulted in a meaningful way about the introduction and implementation of any legislation, policies and practices that affect their operations. Member States should consult in a timely, transparent and meaningful manner non-profit organisations already established, registered or operating in their territories on the transposition and implementation of the Directive's provisions.
- (31) This Directive sets out minimum standards, and it should be possible for Member States to introduce or maintain provisions that are more favourable to non-profit organisations, provided that such provisions do not interfere with the obligations deriving from this Directive. The transposition of this Directive should, under no circumstances, provide grounds for reducing the level of protection already granted to non-profit organisations under national law in the areas to which it applies.
- (32) In accordance with Article 26(2) of the Treaty on the Functioning of the European Union (TFEU), the internal market needs to comprise an area without internal frontiers in which the free movement of goods and services is ensured. Non-profit organisations increasingly contribute to the development of the internal market, including by engaging in cross-border and transnational activities. Thus, Article 114 TFEU is the appropriate legal basis to adopt the measures necessary for the establishment and functioning of the internal market.
- (33) Since the objectives of this Directive, namely to provide minimum standards for non-profit organisations established in the Union, cannot be sufficiently achieved by the Member States but can rather, by reason of the scale and effects of this Directive, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (34) This Directive respects, promotes and protects the fundamental rights and principles that bind the Union and its Member States pursuant to Article 6 of the Treaty on European Union, as recognised in particular by the Charter of Fundamental Rights of the European Union (the 'Charter'). This Directive is meant to specifically implement Article 12 of the Charter on the right to freedom of association and

Article 11 of the Charter on the right to freedom of expression and information, to be read in light of the corresponding provisions of the European Convention of Human Rights. Accordingly, it is essential that the provisions of this Directive be implemented and applied in accordance with the obligation not to unduly restrict and to facilitate the exercise of the rights to freedom of association and of expression and information, and to ensure full respect of other fundamental rights and principles including, inter alia, the right to protection of personal data, the freedom to conduct a business, the right to non-discrimination, the right to good administration, the right to an effective remedy and the rights of defence,

HAVE ADOPTED THIS DIRECTIVE:

## *Chapter I*

### *General Provisions*

#### *Article 1*

##### *Purpose*

This Directive is aimed at providing a common set of measures for non-profit organisations established in the Union in order to secure an enabling environment in which it is possible for these organisations to contribute to the functioning of the internal market. It approximates the laws of the Member States as regards certain aspects of the objectives and activities, registration, operations, financing and cross-border activities of non-profit organisations.

#### *Article 2*

##### *Scope*

1. This Directive shall apply, to non-profit organisations established in the Union.
2. Under this Directive, non-profit organisation refers to any voluntary and permanent grouping of natural or legal persons with a common interest, activity or purpose, which, irrespective of the form in which it is established:
  - a) pursue a primary aim which is not that of generating a profit, meaning that if any profits are earned from the organisation's activities, they cannot be distributed as such among its members, founders or any other private parties, but shall be invested for the pursuit of its objectives;
  - b) is independent, in the sense that it is not part of a government or administrative structure and is free from any undue interference of the state. Governmental funding may not

preclude an organisation being deemed independent, as long as the autonomy of the organisation's functioning and decision-making is not affected;

- c) is self-governed, in the sense that the organisation has an institutional structure which allows it to fully exercise its internal and external organisational functions and to make essential decisions in an autonomous manner and without undue interference from the state or other external actors.
3. This Directive applies to non-profit organisations meeting the criteria set out in paragraph 2 irrespective of whether or not they are membership-based and, of whether or not they are granted legal personality under the law of the Member State in which they are based.
  4. Political parties shall be excluded from the scope of this Directive.
  5. Trade unions or foundations, associations or other non-profit bodies with a trade union aim, shall be excluded from the scope of this Directive. However, when implementing this Directive, Member States shall ensure that trade unions or foundations, associations or other non-profit bodies with a trade union aim, may decide to fall under the application of parts of the Directive or of the Directive as a whole, if they so wish.
  6. Organisations with primarily a religious, philosophical and non-confessional aim shall be excluded from the scope of this Directive. However, this exclusion shall not apply to other organisations without such a specific aim, but inspired by religious, philosophical or non-confessional beliefs.

### *Article 3*

#### ***Relations with other provisions of Union law***

Member States shall apply the provisions of this Directive in compliance with the rules of the Treaty on the right of establishment and the free movement of services and with relevant Union acts governing the exercise of such rights, including Directive 2006/123/EC of the European Parliament and of the Council<sup>12</sup> on services in the internal market.

### ***Chapter II***

#### ***General obligations***

### *Article 4*

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<sup>12</sup> Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ L 376, 27.12.2006, p. 36).

### *Minimum standards*

1. Member States shall ensure that non-profit organisations established in the Union enjoy the minimum guarantees provided for in this Directive.
2. Limitations on the minimum guarantees provided for in this Directive may be made only if they are necessary and proportionate for meeting objectives of general interest recognised by the Union law or the need to protect the rights and freedoms of others.

### *Article 5*

#### *Non-discrimination*

1. Member States shall ensure that no discrimination based on nationality derives from national laws, regulations or administrative practices regulating non-profit organisations, including their formation, registration, operations, financing and cross-border activities.
2. Member States shall ensure that national laws, regulations or administrative practices regulating non-profit organisations, including their formation, registration, operations, financing and cross-border activities, do not discriminate against any group or individual on any grounds, such as age, birth, colour, gender, sexual orientation, gender identity, health condition, immigration or residency status, language, national, ethnic or social origin, political or other opinion, physical or mental disability, property, race, religion or belief or other status.

### *Article 6*

#### *Simplification of administrative rules*

1. Member States shall ensure the simplification, to the extent possible, of national laws, regulations or administrative practices regulating the formation, registration, operations, financing and cross-border activities of non-profit organisations, in order to eliminate any obstacles which affect the ability of legal or natural persons or groups of such persons, regardless of their nationality, to establish, register or operate in its territory a non-profit organisation.
2. Member States shall ensure that non-profit organisations established, registered or operating on its territory have access to electronic identification schemes for the purpose of carrying out administrative procedures, in accordance with relevant provisions of Regulation (EU) No 910/2014 of the European Parliament and of the Council<sup>13</sup> (eIDAS Regulation).

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<sup>13</sup> Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (OJ L 257, 28.8.2014, p. 73).

## *Article 7*

### ***Principle of good administration***

1. Member States shall take the measures necessary to ensure that the application of national laws, regulations or administrative practices regulating the formation, registration, operations, financing and cross-border activities of non-profit organisations established, registered or operating in its territory is undertaken by a designated regulatory authority whose powers and functions shall be clearly defined by law and exercised in accordance with the principle of good administration, including as regards the right to have one's affairs handled impartially, fairly and within a reasonable time.
2. Member States shall take the measures necessary to ensure that non-profit organisations found to be in violation of national laws, regulations or administrative practices regulating the formation, registration, operations, financing and cross-border activities of non-profit organisations be provided with adequate notice about the alleged violation and be given ample opportunity to correct infractions of an administrative nature.
3. Member States shall take the measures necessary to ensure that regulations and practices on oversight and supervision of non-profit organisations be prescribed by law and proportionate to the legitimate aims they pursue. This shall include ensuring that such regulations and practices are not, as a rule, more exacting than those applicable to private businesses and their implementation does not interfere with the internal management of non-profit organisations and does not result in an undue administrative or financial burden for the organisations concerned.
4. Member States shall take the measures necessary to ensure that oversight and supervision of non-profit organisations is undertaken by designated supervisory authorities whose powers and functions shall be clearly defined by law and exercised in accordance with the right principle to good administration, including as regards the grounds for possible inspections and audits, the procedures, duration and scope of inspections and audits and the powers of inspecting and auditing officers.
5. Member States shall take the measures necessary to ensure that comprehensive and easily understandable information is available to the public as to the national laws, regulations or administrative practices regulating the formation, registration, operations, financing and cross-border activities of non-profit organisations established, registered or operating in its territory, as well as the competence, procedures and functioning of the competent regulatory and supervisory authorities. This shall include making available such information in a language the natural or legal person concerned understands or is reasonably supposed to understand.

## *Article 8*

### ***Right to an effective remedy***



1. Member States shall ensure that non-profit organisations, their founders, directors, staff, members and all persons seeking to exercise rights related to the formation, registration, operations, financing and cross-border activities of non-profit organisations established, registered or operating in its territory have access to effective complaint mechanisms before a competent independent authority such as an ombudsperson or the national human rights institution in order to seek assistance to assert their rights.
2. Member States shall ensure that non-profit organisations, their founders, directors, staff, members and all persons seeking to exercise rights related to the formation, registration, operations, financing and cross-border activities of non-profit organisations established, registered or operating in its territory have access to an effective administrative and judicial remedy in order to seek review of those acts or decisions affecting the exercise of their rights and obligations.
3. Member States shall ensure that any appeal against or challenge to a decision to prohibit or dissolve a non-profit organisation, to suspend its activities or to freeze its assets has, as a rule, a suspensive effect of such decision, unless this has the effect of preventing the enforcement of criminal laws.
4. Member States shall take all the measures necessary to ensure that non-profit organisations with legal personality be granted legal standing before national courts, including, where relevant, for submitting third party interventions in judicial proceedings.
5. Member States shall ensure that non-profit organisations that do not have legal personality can be represented by designated individuals before the competent national authorities and courts for the purpose of accessing the remedies referred to in this Article.

### *Chapter III*

#### *Regulatory framework*

#### *Article 9*

##### *Objectives and activities*

1. Member States shall establish a presumption in favour of the objectives and activities of non-profit organisations, which may be rebutted insofar as they pose a serious threat to public policy, public security or public order.
2. Member States shall ensure that non-profit organisations in its territory be free to determine their objectives as well as the activities necessary for the pursuit of such objectives and shall remove any obstacles affecting the ability of non-profit organisations to pursue such objectives and carrying out such activities.

This shall not affect the application of national rules regulating the exercise of freedoms, the carrying on of an activity or the exercise of a profession, subject to the principles of necessity and proportionality and in accordance with constitutional and international law.

3. Member States shall ensure that non-profit organisations in its territory be free to determine the scope of their operations, be it local, regional, national or international.
4. Member States shall ensure that any formalities governing the formation and operations of a non-profit organisation in its territory, as provided for in national law, regulations or administrative practices, do not constitute an undue financial and administrative burden. This shall include, in case of non-membership-based organisations, the possibility to legally establish such organisations by way of gift or bequest.
5. Member States shall ensure that non-profit organisations in their territory can become members of another non-profit organisation, a federation or confederation established or registered in their territory or in the territory of another Member State, and shall ensure that such membership does not result in any disadvantage for the organisation concerned.

#### *Article 10*

#### ***Membership***

1. Member States shall ensure that any natural or legal person may apply for membership of a non-profit organisation established, registered or operating in its territory according to that organisation's statutes and constitutions, and to freely exercise membership rights subject to the organisation's statutory conditions and regulatory limitations.
2. Member States shall ensure that no sanctions or restrictive measures are applied as a consequence of the membership of a non-profit organisation established, registered or operating in its territory pursuant to national laws, regulations or administrative practices, except when such consequences are the result of the enforcement of criminal laws.
3. Member States shall ensure that non-profit organisations established, registered or operating in their territory be free to determine their membership. This may include the determination of special requirements for members, based on reasonable and objective criteria.

#### *Article 11*

#### ***Statutes***

1. Member States shall ensure that non-profit organisations established, registered or operating in their territory are free to adopt their own statutes, constitutions and rules, including rules determining their internal management structure and electing their boards and representatives.

2. Member States shall ensure that national laws, regulations or administrative practices on the statutes of non-profit organisations do not require non-profit organisations to provide in their statutes any information other than:
  - a) the organisation's name;
  - b) the organisation's objectives and activities;
  - c) the organisation's governance rules and the powers of its governing bodies;
  - d) the procedure applicable for changing the statutes; and
  - e) the procedures applicable for dissolving the organisation or merging it with another non-profit organisation.
3. Notwithstanding paragraph 2, non-profit organisations may be required to disclose and make public, in their statutes or by other means, further information on their operations, functioning or financing, insofar as this is necessary to genuinely meet an objective of general interest, subject to the principle of proportionality in particular with regards to the objectives and activities of the organisation. Disclosing the members lists of membership-based non-profit organizations shall not be required by state authorities, unless required for the purpose of a criminal investigation concerning criminal offences punishable by a custodial sentence of a maximum of at least one year.

## *Article 12*

### ***Legal personality***

1. Member States shall ensure that a non-profit organisation in its territory is free to decide whether to acquire legal personality, notwithstanding that Member States may stipulate which forms of organisation carries legal personality.
2. Where a non-profit organisation has acquired legal personality, Member States shall ensure that the organisation's legal personality can be clearly distinguishable from that of their members, founders or other legal persons linked to such organisation.
3. Member States shall take the measures necessary to ensure that registration, where required, or finalisation of the act of establishment is sufficient for non-profit organisations to acquire legal personality.
4. Member States shall ensure that prior authorisation is never a precondition for the acquisition of legal personality by a non-profit organisation and for the exercise of legal capacity thereof.
5. Member States shall ensure that cooperation between natural or legal persons that did not seek to acquire legal personality are not deemed to constitute a non-profit organisation with legal personality for the sole purpose of subjecting them to national laws, regulations or

administrative practices and so regulate or affect their operations, financing and cross-border activities, unless there are grounds to maintain that the non-profit organisation is a criminal organisation pursuant to national law or this is necessary for the purpose of the investigation or prosecution of criminal offences punishable by a custodial sentence of a maximum of responsibility punished by at least 3 years.

## *Article 13*

### ***Registration***

1. Member States shall ensure that formal registration is not a precondition for the formation or operations of non-profit organisations established or operating in its territory.
2. Member States shall ensure that the procedures for registration of non-profit organisations on its territory are accessible, user-friendly and transparent.
3. Member States shall ensure that the formalities applicable to the registration of non-profit organisations established in its territory pursuant to national laws, regulations or administrative practices do not constitute an undue administrative burden. This shall include providing for a tacit approval mechanism applicable within 30 days following the registration application and refraining from introducing re-registration and renewal requirements.
4. Member States shall ensure that the fees applicable to the registration of non-profit organisations do not exceed the administrative costs thereof, and do not in any case constitute an undue financial burden, subject to the principle of proportionality.
5. Unless this is prevented by objective impediments, Member States shall take the measures necessary to ensure that non-profit organisations established in its territory can be registered by electronic means, while ensuring registration is also possible using non-electronic means.
6. Member States shall ensure that personal appearance in front of a court or other competent national authority for the purpose of registration of a non-profit organisation only is required when necessary to determine the identity of an applicant.
7. Member States shall ensure that applicants who reside or have their registered office in another Member State and who are required to appear in front of a court or other competent national authority for the purpose of registering a non-profit organisation can do so in front of the competent court or other competent authority in the Member State of their residence and that such appearance will be deemed sufficient for the purpose of registration in the registering Member State.
8. Member States shall maintain a database of registered associations that is accessible to the public, including statistical information on the number of accepted and rejected applications with due consideration for data protection principles and the right to privacy.

**Public benefit status**

1. Member States shall ensure that a non-profit organisation established or registered in a Member State of the Union can apply to be recognised as contributing to the public benefit and be granted a corresponding status as foreseen by national laws, regulations or administrative practices, solely based on its declared or factual purpose, structure and activities related to the territory of the status granting Member State.
2. Member States shall take the measures necessary to ensure that national laws, regulations or administrative practices allow non-profit organisations to be recognised as contributing to the public benefit and be granted a corresponding status if the following cumulative conditions are met:
  - a) the organisation's purpose and actual activities pursue a public benefit objective which serves the welfare of society or of part of it and is thus beneficial for public good, including charitable purposes or political activism, except where this is systematically and directly aimed to benefit the structures of a specific political party. The following purposes shall be considered as oriented towards public benefit, although the list shall not be considered as exclusive:
    - (a) arts, culture or historical preservation;
    - (b) environmental protection and climate change;
    - (c) the promotion and protection of fundamental rights and Union values, including the elimination of any discrimination based on gender, race, ethnicity, religion, disability, sexual orientation or any other grounds;
    - (d) social justice, including prevention of or relief from poverty;
    - (e) humanitarian assistance and humanitarian aid, including disaster relief;
    - (f) development aid and development cooperation;
    - (g) protection of, assistance to and support for vulnerable sectors of the population, including children, the elderly, people with disabilities, persons seeking or benefitting from international protection and people in a situation of homelessness;
    - (h) protection of animals;
    - (i) science, research and innovation;
    - (j) education and training;
    - (k) the promotion and protection of health and well-being, including the provision of medical care;

- (l) consumer protection;
  - (m) amateur sports.
- b) surplus from any economic or other income-earning activity generated by the non-profit organisation is used solely to promote the organisation's public benefit objectives;
  - c) in the case of dissolution of the non-profit organisations, statutory safeguards guarantee that all assets will continue to serve public benefit objectives;
  - d) members of the organisation's non-staff governing structures are not eligible to remuneration beyond adequate expense allowance.
3. Member States shall ensure that a non-profit organisation recognised as contributing to the public benefit and granted a corresponding status pursuant to national laws, regulations or administrative practices may only see such status revoked where the competent regulatory authority has produced sufficient evidence that the non-profit organisation does no longer fulfil the conditions referred to in paragraph 2.

#### *Article 16*

##### ***Termination, prohibition and dissolution***

1. Member States shall ensure that the existence of a non-profit organisation may only be terminated by decision of its members or by way of a decision of a court or tribunal.
2. Member States shall ensure that involuntary termination, prohibition or dissolution of a non-profit organisation can only be the consequence of infringements of national law that cannot be rectified or remedied.
3. Member States shall take the measures necessary to ensure that involuntary termination, prohibition and dissolution of a non-profit organisation may only be the consequence of bankruptcy, prolonged inactivity or serious misconduct contrary to public policy, public security or public order as recognized by the Union law accounting to the case-law of the Court of Justice of the European Union.
4. Member States shall ensure that individual wrongdoings of founders, directors, staff members or members of a non-profit organisation, when not acting on behalf of the organisation do not result, as a rule, in the involuntary termination, prohibition and dissolution of the organisation.
5. The protection provided for in this Article shall also apply to the suspension of the activities of a non-profit organisation where such suspension may result in a freezing of the operations of the organisation tantamount to dissolution.

#### ***Chapter IV***

## ***Equal treatment and mobility***

### *Article 17*

#### ***Equal treatment***

1. Member States shall ensure that non-profit organisations operating in their jurisdiction which have been established or registered in another Member State are treated equally to non-profit organisations established or registered in its jurisdiction, including as regards access to services, such as banking services, the granting of authorisations and, where relevant, financial and tax treatment subject to applicable national laws, regulations and administrative practices as well as access to funding for activities taking place in the jurisdiction of the Member State or benefiting public good of the Member State.
2. For the purpose of paragraph 1, Member States may not require non-profit organisations operating in their jurisdiction other proof than the evidence of establishment or registration as a non-profit organisation in another Member State.

### *Article 18*

#### ***Principle of non-arbitrary treatment***

Member States shall ensure that national rules governing non-profit organisations established, registered or operating on their territory do not result in an unjustified discrimination based solely on political desirability of organisation's purpose, field of activities or sources of financing.

### *Article 19*

#### ***Cross-border mobility and continuity***

1. Member States shall eliminate any obstacles, which affect the exercise of non-profit organisations established or registered in another Member State of their right to freedom of establishment, free movement of services and free flow of capital in its territory.
2. Member States shall take the measures necessary to ensure that a non-profit organisation established or registered in another Member State has the right and ability to:
  - a) move its seat to its territory without the necessity of founding or incorporation as a new legal person;
  - b) have access to a simplified registration procedure which will include recognize the information and documentation already provided by the non-profit organisation to the Member State in which it was previously registered.



## *Article 20*

### ***Cross-border conversions and mergers***

1. Member States shall ensure that a non-profit organisation established or registered in their jurisdiction can convert into or merge with another non-profit organisation established or registered in another Member State, without such merger or conversion resulting in the involuntary termination, prohibition or dissolution, or suspension of the activities of the organisation.
2. Member States shall ensure that, in the event of a conversion or merger as referred to in paragraph 1, the converting or merging non-profit organisation be free to set up office or operations in the Member State of destination.
3. Member States shall establish the legal form the converted or merged organisation shall take based on the principle of equivalence.
4. Member States shall ensure that, should the non-profit organisation which results from a conversion or merger referred to in paragraph 1 fail to comply with the conditions and requirements set out in the national laws, regulations or administrative practices of the host Member State, the non-profit organisation is granted a reasonable deadline to take the necessary measures to regularise its position.

## ***Chapter V***

### ***Financing***

## *Article 21*

### ***Fundraising and free use of assets***

1. Member States shall remove any obstacles that affect the ability of non-profit organisations established, registered or operating in their territory to solicit, receive, dispose of or donate any resources, including financial, in-kind and material, or solicit or receive human resources, from or to any source including domestic, foreign or international entities, be it public bodies, private individuals or private bodies.
2. Member States shall ensure that national laws, regulations or administrative practices do not lead to a difference in treatment of non-profit organisations based on their sources or destination of financing.
3. Member States shall ensure that non-profit organisations are entitled to own and freely dispose of property and assets subject to national laws applicable to similar entities under their jurisdiction.

## *Article 22*

### ***Public funding***

1. Member States shall ensure that public funding is made available and allocated to non-profit organisations through clear, transparent and non-discriminatory procedures.
2. Paragraph 1 shall also apply to Union funding disbursed by Member States under the shared management scheme, subject to the provisions of Regulation (EU) 2021/1060<sup>14</sup>.

## *Article 23*

### ***Cross-border funding***

1. In accordance with Union rules on the free movement of capital, Member States shall ensure that non-profit organisations established, registered or operating in their territory suffer no disadvantage as a direct or indirect consequence of soliciting or receiving funding from natural or legal persons outside their territory.
2. In accordance with Union rules on the free movement of capital, Member States shall ensure that natural or legal persons suffer no disadvantage as a direct or indirect consequence of providing funding to non-profit organisations established, registered or operating outside their territory.

## *Article 24*

### ***Economic activities***

Member States shall ensure that non-profit organisations established, registered or operating in their territory be free to engage in any lawful economic, business or commercial activities provided that such activities support their non-profit objectives, subject to the licensing or regulatory requirements generally applicable to the activities concerned pursuant to national laws, regulations and administrative practices.

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<sup>14</sup> Regulation (EU) 2021/1060 of the European Parliament and of the Council of 24 June 2021 laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for Financial Support for Border Management and Visa Policy (OJ L 231, 30.6.2021, p. 159).

## *Article 25*

### ***Reporting and transparency on financing***

1. Member States shall ensure that reporting and transparency obligations applicable to non-profit organisations pursuant to national laws, regulations and administrative practices be not unnecessarily burdensome and be proportionate to the size of the organisation and the scope of its activities, taking into consideration the value of its assets and income.
2. For the purpose of paragraph 1, Member States shall take the measures necessary to ensure that reporting and transparency obligations applicable to non-profit organisations pursuant to national laws, regulations and administrative practices on countering money laundering and terrorist financing, including those implementing Union and international obligations, are based on a targeted and up-to-date risk-based assessment of the sector and of the organisations concerned and do not result in disproportionate requirements or in the undue limitation of non-profit organisations' access to financial services.
3. Member States shall ensure that reporting and transparency obligations applicable to non-profit organisations pursuant to national laws, regulations and administrative practices do not lead to a difference in treatment based on the sources of the organisation's funding, its objectives or activities.

## ***Chapter VI***

### ***Confidentiality***

## *Article 27*

### ***Confidentiality of membership***

1. Where a non-profit organisation is membership-based, Member States shall take the necessary measures to ensure that information concerning members can remain confidential.
2. Member States shall ensure that information concerning membership of a non-profit organisation may only be accessed by a competent authority where such information is necessary for the purpose of the investigation of criminal offences punishable by a custodial sentence of a maximum of at least 3 years.

## *Article 28*

### ***Confidential and sensitive information***

1. Member States shall ensure that national laws, regulations or administrative practices do not have the effect of requiring non-profit organisations established, registered or operating in their territory to publicly disclose their confidential and sensitive information. This may include personal data relating to the organisation's staff, volunteers, members, founders or other private parties relating to it, including members of its governing structures or donors.
2. Member States shall ensure that non-profit organisations established, registered or operating on its territory have access to effective remedies in order to prevent, or obtain redress for, the unlawful acquisition, use or disclosure of their confidential or sensitive information.
3. Member States shall take the measures necessary to ensure that protection against unlawful acquisition, use or disclosure of confidential or sensitive information of non-profit organisations pursuant to this Article applies in relation to inspections, audits and any other supervisory activities carried out by the competent authorities.

#### *Article 29*

#### ***Surveillance***

Member States shall not subject non-profit organisations to unjustified and disproportionate surveillance, in particular of their operations or communications, or those of the organisation's founders, members of its governing structures, other members, staff, volunteers, donors, or other private parties relating to it, unless where justified for purposes of public security.

#### ***Chapter VII***

#### ***Final provisions***

#### *Article 30*

#### ***More favourable treatment and non-regression clause***

1. Member States may introduce or retain provisions which ensure a more favourable treatment for non-profit organisations established, registered or operating in their territory than that set out in this Directive.
2. The implementation of this Directive shall under no circumstances constitute grounds for a reduction in the level of protection already afforded by national, Union or international law, including as regards fundamental rights, in the areas covered by this Directive.

#### *Article 31*

### ***Transposition***

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by one year after its entry into force.
2. Member States shall consult non-profit organisations already established, registered or operating in its territory in a timely, transparent and meaningful manner about the transposition and implementation of the provisions of this Directive.

### ***Article 32***

#### ***Reporting, evaluation and review***

1. Member States shall provide the Commission with all relevant information regarding the implementation and application of this Directive. On the basis of the information provided, the Commission shall, by three years after the date of transposition, submit a report to the European Parliament and the Council on the implementation and application of this Directive.
2. The Commission shall, by three years after the date of transposition, taking into account its report submitted pursuant to paragraph 1, submit a report to the European Parliament and to the Council assessing the impact of national law transposing this Directive. The report shall evaluate the way in which this Directive has functioned and consider the need for additional measures, including, where appropriate, amendments with a view to further harmonise national law applicable to non-profit organisations.
3. The Commission shall make the reports referred to in paragraphs 1 and 2 above public and easily accessible.

### ***Article 33***

#### ***Entry into force***

This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.