OPINION

of the Committee on Civil Liberties, Justice and Home Affairs

for the Committee on Legal Affairs

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

Rapporteur for opinion: Anna Júlia Donáth

(Initiative – Rule 47 of the Rules of Procedure)
SUGGESTIONS

The Committee on Civil Liberties, Justice and Home Affairs calls on the Committee on Legal Affairs, as the committee responsible, to incorporate the following suggestions into its motion for a resolution:

A. Whereas non-profit organisations (NPOs) are increasingly involved in economic activities and contribute to the rapid development of the social economy, including by engaging with citizens to better understand their needs and empower them, thereby bringing societal benefits with respect to citizen welfare, education, health, the fight against climate change, inclusive employment of quality at local, national and European level, including for persons with disabilities and persons belonging to marginalised communities, and the fight against social exclusion and discrimination; whereas the development of the social economy directly contributes to the strengthening of the single market and the wellbeing of the population;

B. Whereas the COVID-19 pandemic demonstrated NPOs’ central role in providing information and support to citizens, and highlighted their important role in providing care, including medical and social care, especially to vulnerable and marginalised people and communities;

C. Whereas NPOs play a central role in democracy by exercising public oversight over political power as an essential component of a rule of law ecosystem of healthy democracies, articulating and relaying to policy makers the aspirations and interests present in society, carrying out advocacy, contributing to informed policy-making with their expertise and knowledge of what goes on at the ground and fostering active and responsible citizenship, thus promoting active public participation in the democratic process and governance, increasing transparency at Union and Member State level, and fostering public debate and pluralism in society; whereas, to this end, it is crucial that NPOs benefit from an environment that allows them to thrive throughout the Union;

D. Whereas the Statute for European Associations should focus on cross-border issues while also addressing civic space issues, as both are essential for a well-functioning democracy;

E. Whereas Article 11 of the Treaty on European Union acknowledges the role of NPOs in democratic life and specifies that Union institutions shall give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action, and that the Union institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society;

F. Whereas Article 12 of the Charter of Fundamental Rights guarantees the right to freedom of association at all levels; whereas that right is guaranteed in national legislations throughout the Union; whereas, according to the case-law of the European Court of Human Rights, freedom of association constitutes one of the essential bases of a democratic and pluralist society inasmuch as it allows citizens to act collectively in fields of mutual interest; whereas barriers to the exercise of cross-border civic action limit the attainment of freedom of association;

G. Whereas restrictions of civic space have been reported by NPOs throughout the Union, related to the regulatory environment under which they operate and to (changes in) legislation that affect their work, finances and funding, and their right to participation with increasing difficulties in accessing decision-makers and contributing to policymaking and legislation, and to an unsafe environment with increasingly worrying attacks and harassment, including negative discourse aimed at delegitimising and stigmatising NPOs as well as recourse to strategic litigation against public participation (SLAPPS) which can lead to the point where NPOs cease...
their critical work;

H. Whereas NPOs play important roles in Member States and at Union level, while in several cases their activities are hindered by legal and administrative obstacles and by the limits placed on NPOs' organisational capacity to operate across borders, making their potential under-used, especially in cross-border regions;

I. Whereas the European Court of Human Rights has recognized that the State has a positive obligation to secure the enjoyment of the right to freedom of association and found in its judgment of 21 October 2005 on Application no. 74989/01, Ouranio Toxo a.o. v. Greece, that “genuine and effective respect for freedom of association cannot be reduced to a mere duty on the part of the State not to interfere”; whereas in its judgment in Case C-78/18, the Court of Justice of the European Union (CJEU) held that freedom of association does not only include the ability to create or dissolve an association but also covers the possibility for that association to act in the meantime;

J. Whereas the Court of Justice of the European Union (CJEU) has made concrete case law on the principles of non-discrimination and free movement of capital applied to cross-border donations and to organisations established in another Member State; whereas those principles are recognised by judgements of the CJEU but are still not applied in all Member States and whereas concrete measures are expected from the Commission to address this issue beyond the series of infringement procedures already opened on the subject;

K. Whereas one third of the Union population lives in regions close to internal borders between Member States with an increasing number of cross-border initiatives which are, however, often limited by discrepancies in the regulatory environment and development of the non-profit sector on different sides of a border;

1. Calls on the Commission to put forward a legislative package creating a Statute for European Associations and laying down common rules and minimum standards for NPOs to exercise the right to freedom of association and to remove the barriers precluding NPOs from playing their fundamental role in society and contributing to the strengthening of the single market;

2. Highlights that the definition of common standards for NPOs will enable coherent judicial review at Union level and lay down the foundations for potential future case law that will help strengthen Union-wide standards and the protection of fundamental rights which are an essential part of Union law;

3. Considers that the long-overdue creation of a Statute for European Associations is a crucial step in fostering civic space at Union level, cross-border cooperation and dialogue, exchanges between citizens and reflection on common history and values; points out that such a Statute would assist Union civil society in structuring itself, in particular by facilitating the development of European networks, thereby enabling European Associations to play a more important role in enhancing civic participation in Union policy-making;

4. Stresses that, in light of the growing number of threats which transcend national boundaries,

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1 Judgment of the Court of Justice of 18 June 2020, Commission v Hungary, C-78/18, ECLI:EU:C:2020:476, par. 113.
such as the climate emergency, environmental damages, pandemics, the misuse of digital
technologies and the dismantling of the rule of law in several Member States, but also with
regard to the many successful cross-border projects, the potential of cross-border NPO activities
should be unlocked in order for them to best harness their expertise at local, national and Union
level so as to further strengthen their role in the protection and promotion of fundamental rights,
the fight against discrimination and the support of citizens, especially marginalised and
vulnerable people; emphasises that cross-border activities should both mean activities or
cooperation carried out in more than one Member State and activities furthering the Union’s
objectives or contributing to the promotion and safeguarding of its values;

5. Deplores the number of legal and administrative barriers faced by NPOs when engaging in
cross-border activities which may dissuade them from expanding their activities beyond their
national borders; emphasises that minimum standards for NPOs set at Union level are key for
the development of the social economy across the Union and for creating a level playing field
that will harness the power of the single market;

6. Deplores that, in a number of Member States, NPOs were left out of pandemic-response relief
schemes;

7. Is aware that the framework for action currently available to independent civil society in some
Member States is seriously limited; considers that NPOs cannot thrive at Union level if the
space in which they operate is being eroded or deliberately restricted in a number of Member
States; considers therefore that the setting of common minimum standards for rules and
procedures applying to NPOs will also help to provide a minimum level of protection
throughout the Union from breaches of the law or from practices which affect the freedom of
association and to spread best practices; calls in particular for ensuring that reporting and
transparency requirements imposed on NPOs respect the principles of necessity and
proportionality so as to enable public scrutiny without imposing unduly burdensome
requirements;

8. Emphasizes that public advocacy and activities of NPOs should be recognised as being in the
public interest as long as they are not systematically and directly aimed to benefit a specific
political party or specific individuals involved in electoral campaigns;

9. Stresses the utmost importance of NPOs in cross-border regions and Euroregions; highlights
that while in many cross-border regions NPOs plays an important role in facilitating
connections involving civil society, and a growing number of NPOs operate across borders,
legal and fiscal barriers remain;

10. Urges the Commission to develop a dedicated and comprehensive strategy to strengthen civil
society in the Union, including by introducing measures to facilitate the operations of
associations and non-profit organisations at all levels of governance; suggests that, where
relevant, the Commission should complement the legal acts requested in this report with
guidelines to assist Member States in their implementation; invites the Commission to consider
a proposal for an interinstitutional agreement on civil dialogue as well as a proposal for a
participatory status for NPOs, taking an example from the status granted to NPOs by the
Council of Europe and the United Nations; calls on the Commission to investigate ways to
harness the full potential of the Civil Dialogue Group that is part of the Citizens, Equality,
Rights and Values programme;

11. Stresses that under no circumstances should the definition of minimum standards at Union level
for NPOs result in a lowering of standards in any Member State; asks the Commission to
include suggestions for legal redress for NPOs in the legal act requested in this report;
12. Recognises the importance of NPOs complying with national rules in the field of taxation and the fight against money laundering; stresses, nevertheless, that the rules in the field of taxation and the fight against money laundering, as well as rules on transparency of funding in general, must not be abused to obstruct activities of NPOs and create a chilling effect affecting their members and donors;

13. Highlights that arbitrary and politically motivated discrimination based on the objectives and activities of organisations, as well as based on the sources of their funding, hinders freedom of association and is, therefore, a threat to freedom of expression; notes in this respect that the creation and registration of NPOs at Union and national level must not be hindered by such discrimination;

14. Recalls the importance of independent, impartial, professional and responsible journalism for informing on the activities of NPOs both in the private and public media as well the importance of access to pluralistic information as key pillars of democracy; is concerned by smear campaigns and abusive litigation used against actors engaging in public participation, including NPOs, in several Member States by elected officials, public bodies or publicly controlled entities as well as by private individuals and entities; highlights that Parliament is currently working on an own-initiative report on the subject of SLAPPs;

15. Asks the Commission to provide adequate and enabling funding for NPOs at Union level and to facilitate NPOs’ access to such funding; calls in this respect for unlocking the full potential of the Citizens, Equality, Rights and Values Programme and other sources of Union funding; underlines that funding should be made available at all levels, from local to Union level; notes that often Union funds available for NPOs require co-financing, meaning that the beneficiary needs to raise a share of the required funds from other sources, and, in that light, recommends the evaluation of giving the possibility to monetarise various means of alternative resources such as volunteer time or contributions in kind;

16. Maintains that Member States should not introduce or apply criminal law provisions restricting or otherwise adversely affecting the registration, operations, financing and cross-border movements of NPOs; is concerned in that respect by the interpretation of Union provisions in the field of migration by some Member States which lead to criminalisation of NPOs’ activities in the field of search and rescue and assisting asylum seekers;

17. Emphasises that national bodies designated for registration and oversight of NPOs for the purpose of the implementation of the legal act called for in this report must be legally distinct and functionally independent of their respective governments and of any other public or private body;

18. Calls on the Commission to consider the designation of a Union body or of an internal administrative entity to be tasked with ensuring the implementation of the Statute for European Associations and monitoring the transposition of minimum rules for NPOs as called for in this report; underlines the importance of transparency for that body or entity and its modus operandi; suggests that it could also be the focal point for NPOs that report possible violations of the minimum standards and rights conferred upon NPOs by Union law;

19. Considers that the definition at Union level of minimum standards for NPOs to receive public benefit status should enable mutual recognition across Member States and facilitate equal treatment in terms of benefits awarded; emphasises that donors to a public benefit NPO in a Member State that receives public benefit status in another Member State should enjoy the same benefits as if they were donating to a domestic organisation;

20. Underlines the importance of having a unified Union definition of ‘public benefit’ which would
enable all NPOs operating under the Statute for European Associations to equally enjoy the concomitant advantages;

21. Suggests the use of carefully calibrated, Union law compliant, definitions to clarify the meaning of key concepts that otherwise risk remaining too vague; underlines the need for clarity on which types of associations that will be covered the Statute for European Associations and which ones will not.
INFORMATION ON ADOPTION IN COMMITTEE ASKED FOR OPINION

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<td>Substitutes present for the final vote</td>
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<td>Clara Aguilera, Claudia Gamon, Martin Hojsík, Antonius Manders, Alin Mituța, Maria Noichl, Janina Ochojska, Michaela Šojdrová, Ivan Štefanec</td>
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### Final Vote by Roll Call in Committee Asked for Opinion

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Key to symbols:
+ : in favour
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0 : abstention