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## TEXTS ADOPTED

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### **P9\_TA(2022)0044**

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

**European Parliament resolution of 17 February 2022 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 ("TFEU"),
- having regard to Articles 114 and 352 TFEU,
- having regard to Article 11 of the Treaty on 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 opinion<sup>1</sup> on the Commission proposal for a Regulation on the Statute for a European association<sup>2</sup>,
- having regard to its resolution of 13 March 1987 on non-profit-making associations in the European Communities<sup>3</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<sup>4</sup>,
- having regard to its Declaration of 10 March 2011 on establishing European statutes for mutual societies, associations and foundations<sup>5</sup>,

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<sup>1</sup> Legislative resolution embodying the opinion of the European Parliament on the Commission proposal for a Council Regulation (EEC) on the statute for a European association (OJ C 42, 15.2.1993, p. 89).

<sup>2</sup> Commission proposal for a Council Regulation (EEC) on the Statute for a European association (COM(1991)0273 - SYN 386).

<sup>3</sup> OJ C 99, 13.4.1987, p. 205.

<sup>4</sup> OJ C 395, 29.9.2021, p. 2.

<sup>5</sup> OJ C 199 E, 7.7.2012, p. 187.

- having regard to the EESC Opinion on “European Philanthropy: an untapped potential (Exploratory opinion at the request of the Romanian Presidency)”,
  - 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 opinion of 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 (A9-0007/2022),
- A. whereas Article 63 TFEU together with Articles 7, 8 and 12 of the Charter of Fundamental Rights of the European Union (the 'Charter') enshrines the freedom of association at all levels and protects non-profit organisations against discriminatory, unnecessary and unjustified restrictions regarding the financing of their activities;
- B. whereas the term “non-profit organisation“ should, for the purpose of this resolution, be understood to reflect the multitude of forms of non-profit organisations in the Union, both membership and non-membership based, for example associations, philanthropic organisations, organisations whose assets are allocated to the pursuit of a specific aim, such as foundations, and other, similar organisations;
- C. whereas the European Court of Human Rights has recognised 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, *Ouranio Toxo and Others v. Greece*<sup>1</sup>, 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<sup>2</sup>, 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 an association to act in the meantime;
- D. whereas non-profit organisations are fundamental to representing the interests of citizens and civil society, including by providing services in often unprofitable areas of the social sector, encouraging participation in social life and defending the rights of minorities; whereas, furthermore, they play a key role in anticipating and tackling socio-economic challenges as well as in closing the gaps in services and economic activities, alongside national, regional and local governments;
- E. whereas non-profit organisations often make use of and promote the freedom of expression, in particular in relation to promoting the public interest, support active participation in democratic life, and function as schools of democracy;
- F. whereas the COVID-19 crisis has highlighted the vital role of non-profit organisations in helping people face the many difficulties, thereby guaranteeing social cohesion; whereas,

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<sup>1</sup> Judgment of the European Court of Human Rights of 21 October 2005, *Ouranio Toxo and Others v. Greece*, n. 74989/01, ECLI:CE:ECHR:2005:1020JUD007498901.

<sup>2</sup> Judgment of the Court of Justice of 18 June 2020, *Commission v Hungary*, C-78/18, ECLI:EU:C:2020:476, par. 113.

however, their status has been shaken by the COVID-19 crisis notably due to it interrupting their activities and also creating new needs and missions;

- G. whereas European democracy depends on civil society and representative organisations being able to function freely and across borders; whereas the essential role of civil society and representative organisations in contributing to democracy is considered a fundamental value of the Union, as recognised, in particular by Article 11 of the Treaty on European Union ('TEU'), and requires the existence of an open, transparent and structured dialogue;
- H. whereas non-profit organisations are an integral part of the Union's civil society and include philanthropic organisations, such as foundations that contribute to and facilitate the work of individuals, and non-profit organisations for the public interest;
- I. whereas reliable statistical information on non-profit organisations is scarce or not readily available;
- J. whereas the European statutes for European Companies, European Cooperative Societies or European Parties are not suitable for enabling non-profit organisations to co-operate cross-border;
- K. whereas businesses, commercial undertakings and economic interest groupings have the possibility of forming a European Economic Interest Grouping;
- L. whereas public bodies can create a European Grouping of Territorial Cooperation;
- M. whereas a European Statute for Association should be open to organisations and persons that want to engage in exchanges and mutual learning across borders;
- N. whereas Parliament's call for national statistical registers for social economy actors does not cover organisations outside the social economy;
- O. whereas many non-profit organisations play a full part in the economy and in the development of the internal market, by engaging in some economic activity on a regular basis; whereas the volume of cross-border financial flows between associations or non-profit organisations has increased considerably in the last decade;
- P. whereas nowadays the awareness among policymakers and civil society about the potential of non-profit organisations in terms of provision of services, citizen engagement and social innovation has increased; whereas their potential is probably untapped in a wide range of areas such as education, culture, health care, social services, research, development aid, humanitarian assistance and disaster preparedness;
- Q. whereas the socio-economic potential of non-profit organisations in the European Union is constantly increasing, with employment opportunities being created in a wide range of sectors;
- R. whereas non-profit organisations play a key role in supporting individuals to actively participate in democratic life;
- S. whereas the vast majority of the activities of non-profit organisations are carried out at national level, although an increasing number of non-profit organisations are operating across borders, thereby strengthening the social cohesion between Member States at a societal level, especially in border regions which comprise nearly 40 % of Union territory;

- T. whereas cross-border non-profit organisations, in particular, contribute greatly to the achievement of the Union's objectives and develop many and varied activities of general interest with a transnational relevance which benefit the general interest in different fields; whereas this includes but is not limited to the protection and promotion of fundamental rights and values, environmental protection, education, culture, social work and development aid;
- U. whereas, despite the burgeoning numbers of cross-border non-profit organisations in the European Union, there is no harmonised pan-European legislative framework allowing them to operate and organise themselves properly at cross-border level;
- V. whereas, at present, in the absence of Union regulation of non-profit organisations, their cross-border activities are characterised by cultural, judicial and political disparities deriving from national law;
- W. whereas Parliament stressed as early as 1987 the need to introduce an appropriate European Regulation for European non-profit organisations in its resolution of 13 March 1987 on non-profit-making associations in the European Communities;
- X. whereas any organisation benefiting from a European statute or from European common minimum standards should act in favour of the promotion and the implementation of the Union's common values and objectives enshrined in the Treaties and in the Charter;

### ***Current situation***

1. Notes that non-profit organisations 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 a legal form at Union level has long been established;
2. Observes that legal, cultural, political and economic differences between Member States continue to make the cross-border activities of non-profit organisations very complex, and that the current administrative and fiscal treatment of the cross-border activities of such organisations results in higher transaction costs than at national level;
3. Emphasises that the current legal framework at Union and national level is insufficient to establish and 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 the establishment, transparency, accountability and governance of a European association;
4. Underlines the importance of ensuring coordination at Union level, avoiding fragmentation and supporting a harmonised approach across the Union with regard to the European Association, through a designated European Associations Board; to this end, calls on the Commission to examine the different options and put forward a proposal for the most appropriate form and status for such a European Associations Board, in which all Member States are represented and which has well-defined decision-making powers;
5. Believes that Union legislation supporting non-profit organisations is also needed for the completion of the internal market;
6. Stresses that, even though the freedom of movement and of establishment is enshrined in the Treaties, the fundamental right of association is still not fully supported and promoted

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, which, on the one hand, hinders transnational activities and projects, cross-border missions and the mobility of civil society, and, on the other hand, causes legal uncertainty;

7. Regrets the lack of an instrument to further facilitate the freedom of movement for non-profit organisations, regardless of the Member State in which they have been established, or where their members reside, in particular by removing legal and administrative hurdles;
8. Stresses that, due to the lack of approximation of practices, non-profit organisations that operate across the Union often face unjustified restrictions such as fees, formalities, and administrative and other hurdles, which put their day-to-day activities at risk and discourage such organisations from extending their missions across borders; underlines that such hurdles also lead to a significant increase of workload due to the need to follow many different administrative procedures in more than one Member State;
9. Deplores the fact that, in a number of Member States, non-profit organisations were left out of pandemic-response relief schemes;
10. Stresses that the lack of approximation of practices also leads to an uneven playing field due to the different market conditions and other obstacles that non-profit organisations face in different Member States, for example when opening bank accounts, raising and accounting for foreign funds, accessing public benefit measures and schemes, benefitting from certain kinds of financial or tax treatment, or hiring staff, in particular when hiring across borders, which should be facilitated in line with the freedom of movement of workers;
11. Calls on the Commission to look into the different forms under which non-profit organisations operate in the Member States and to draw up a comparative analysis;
12. Points out that non-profit organisations contribute to innovation, research, economic development, and job creation, in particular in the social, entrepreneurial, technology and cultural sectors;
13. Recognises the contributions of non-profit organisations to certain strategic goals of the Union, such as combating the climate crisis, tackling the digital transformation, and recovering from the COVID-19 pandemic; underlines that achieving those goals will be impossible without the contribution of civil society promoting those issues throughout Europe, in particular with regard to the implementation of the necessary policies at local, regional, national, and Union levels, while respecting the interests and rights of those affected;
14. Regrets that data are scarce or outdated; requests the Member States to regularly provide disaggregated data and the Commission to create reliable and frequently updated statistical resources, based on established methodology ensuring transparency and comparability, and to make it possible for such data to be included in Eurostat, on cross-border activities and contributions; points out that, according to the 2017 study commissioned by the EESC, “Recent evolutions of the social economy in the European Union”, out of a total of 13,6 million paid posts in cooperatives, mutual societies, associations, foundations and similar entities in the European Union, 9 million stemmed from employment in associations and foundations, making them the leading source of

employment in that sector; highlights the fact that this also shows the importance of the availability of more data that concern a field greater than the social economy;

15. Regrets that the Commission and the Member States have not brought forward legislation to secure an enabling environment in which it is possible for non-profit organisations to contribute to the functioning of the internal market, and to ensure free flow of capital across borders, and that a statute for a European Association has not been established despite several attempts, and numerous calls by civil society and by Parliament;
16. Welcomes the upcoming Social Economy Action Plan and considers that, as only certain non-profit organisations are operating in the social economy, that Action Plan needs to include recommendations on how to overcome cross-border barriers, and needs to be complemented by separate legislative initiatives aimed at supporting non-profit organisations;
17. Considers that, due to their particular character, the proposed legal instruments must not have an impact on the regulation of 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 whose values and aims are informed by a religious, philosophical or non-confessional belief, such as faith-based, charitable non-profit organisations, from benefitting from the scope of those proposed instruments; points out that trade unions in several Member States are given a special beneficial status and that trade unions should therefore be excluded from the proposed instruments; points out that persons wishing to set up an association are free to make use of the provisions under the proposed regulation and take up the form of a European Association; notes that the proposed Directive on minimum standards is to apply to all non-profit organisations in the Union;

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

18. Expresses its concern at the hindrances faced by non-profit organisations across the Union, and at disparities deriving from national laws, regulations or administrative practices or policies; points out that this may negatively affect civil society, unduly restrict fundamental rights, especially the freedom of association, of expression, and of information, and dissuade non-profit organisations from extending their activities across borders;
19. Duly takes into account the possibilities that digitalisation and the internet provide to facilitate the exercise of the right to freedom of association, for example by making registration and the formation of non-profit organisations easier and readily available online;
20. Emphasises that non-profit organisations are instrumental for democracy and policy making at all levels: they promote and work for the public good, they are part of the checks and balances necessary for the rule of law, and they are drivers for civic engagement; welcomes civil society engagement in public interest advocacy, activism, and as part of active social life;
21. Reiterates that non-profit organisations have the freedom of participation in matters of political or public debate through their objectives or activities; condemns attempts to restrict civic space on political grounds, and the denial, refusal or challenging of their

status as public benefit organisations, based on perceived or real political activity, where their activities are not meant to benefit any single particular party or substitute party politics; considers such cases to be dangerous for European democracy;

22. Stresses the importance of the independence of non-profit organisations and the need to ensure an enabling environment for non-profit organisations, respecting their plurality and understanding organisations for the public benefit as contributing to both providing services on the ground, but also advocating for the public good and monitoring public policies;
23. Recalls the importance of independent, impartial, professional and responsible journalism as regards providing information on the activities of non-profit organisations 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 non-profit organisations, in several Member States by elected officials, public bodies or publicly controlled entities as well as by private individuals and entities; highlights the fact that Parliament adopted a resolution on SLAPPs on 11 November 2021<sup>1</sup>;
24. Maintains that a legal framework regulation will only benefit European civil society if non-profit organisations can make use of adequate and easily accessible funding both at national and at European level; points out that public financing, as well as private financing of non-profit organisations, is important since they have less access to income from profit-making activities; underlines, in this context, the existence of the Citizens, Equality, Rights and Values programme, which is aimed, inter alia, at non-profit organisations; points out that, pursuant to Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council<sup>2</sup>, Union grants are to involve co-financing which may be provided in the form of own funds, income generated by the action or work programme, or financial or in-kind contributions from third parties; takes the view that, in particular in the case of non-profit organisations with very limited financial resources, a limit for the own funds requirement should be evaluated and non-monetary contributions counted as such, provided that such treatment would not disrupt competition when accessing funding; notes that often Union funds available for non-profit organisations require co-financing, which in turn means that the beneficiary needs to raise a share of the required funds from other sources; points out that requiring too high a share of own resources would be detrimental to non-profit organisations, as they may not be able to raise such funds, leading to some organisations being excluded; believes, therefore, that a limit to the share of co-financing should be evaluated and that different means which could be monetarised need to be taken into account, such as volunteer time or contributions in kind;

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<sup>1</sup> European Parliament resolution of 11 November 2021 on strengthening democracy and media freedom and pluralism in the EU: the undue use of actions under civil and criminal law to silence journalists, NGOs and civil society ([2021/2036\(INI\)](#)).

<sup>2</sup> Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).

25. Points out that it is important for non-profit organisations to provide relevant information to the public; further draws attention to the fact that transparency in respect of financing is to be considered a public interest where non-profit organisations have a significant influence on public life and public debate;
26. Considers that the introduction of a status for European Associations will provide an opportunity for national and local organisations to engage more closely on European matters, to engage in mutual learning and exchanges across borders, and that it will support them in accessing Union-level funding; calls on the Commission and the Member States to make adequate funds available for civil society actors, increase the accessibility of funds and further simplify the procedures to facilitate the access of civil society actors to funds, including small and local organisations;
27. Considers, furthermore, that the legislation proposed needs to be complemented by measures to support a regular, meaningful and structured dialogue with civil society and representative organisations, in line with Article 11 TEU; calls in this respect on the Commission to assess the possibility of developing a participatory status for public benefit organisations at Union level;
28. Highlights the fact that arbitrary and politically motivated discrimination based on the objectives and the activities of non-profit organisations, as well as on the sources of funding, hinders the freedom of association and therefore is a threat to the freedom of expression;

#### ***Recognising associations, non-profit organisations and public benefit across the Union***

29. Recognises that different approaches exist in legislation at national level and in the Member States' legal traditions to defining or recognising member-based and non-member-based non-profit organisations, as well as to defining, recognising and granting public benefit status; underlines that, despite such differences, there is a common understanding of the need for European minimum standards and to provide non-profit organisations with the possibility of acquiring legal personality;
30. Calls on the Commission to recognise and promote the public benefit activities of non-profit organisations by harmonising the public benefit status within the Union, stresses that the national laws and administrative practices regulating non-profit organisations, including on their formation, registration, operations, financing, financial and tax treatment or tax relief measures, as well as cross-border activities, should not discriminate based on the place of establishment of the organisation or against any group or individual on any ground;
31. Calls on the Commission to consider adopting a proposal to facilitate the mutual recognition of public benefit tax-exempt organisations, including philanthropic organisations, in every Member State, if recognised as public benefit tax-exempt in one of the Member States for tax purposes;
32. Highlights the fact that Union-level regulation of the statute and minimum standards for non-profit organisations can help create a level playing field, thereby facilitating the completion of the internal market;



33. Urges the Commission to develop a dedicated, comprehensive strategy to strengthen civil society in the Union, including by introducing measures to facilitate the operations of non-profit organisations at all levels;
34. Requests the Commission to submit, on the basis of Article 352 TFEU, a proposal for a Regulation establishing a statute for a European Association, following the recommendations set out in this resolution and in Part I of the Annex hereto;
35. Requests the Commission to submit, on the basis of Article 114 TFEU, a proposal for a Directive on common minimum standards for non-profit organisations in the Union, with a view to creating a level playing field for non-profit organisations by establishing minimum standards, enabling civil society to benefit from freedoms and fundamental rights, as well as to contributing to strengthening European democracy, following the recommendations set out in this resolution and in Part II of the Annex hereto;
36. Requests the Commission to use the results of the comparative analysis carried out pursuant to paragraph 11 to accompany the proposal for a Regulation contained in Part I of the Annex hereto and the proposal for a Directive contained in Part II of the Annex hereto appropriately with a list of national forms of organisations that should be considered covered pursuant to Article 3(2) of the proposal contained in Part I of the Annex and to Article 1 of the proposal contained in Part II of the Annex;

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

**ANNEX TO THE RESOLUTION  
RECOMMENDATIONS AS TO THE CONTENT OF THE PROPOSAL REQUESTED**

**PART I**

Proposal for a  
COUNCIL REGULATION  
on a statute for a European Association

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 Articles 11 and 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 are the glue which holds our society together. They play a key role in helping, encouraging and empowering individuals to actively participate in the democratic and social life of the Union, particularly those that are facing exclusion and discrimination, and they can play a crucial part in the process of developing Union policies.
- (6) The Union should provide associations, which are a form of organisation generally recognised in all Member States, with an appropriate legal instrument capable of fostering their transnational and cross-border activities, as well as contributing to civil dialogue at Union level.
- (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) 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 or 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. In line with the judgment of the Court of Justice of the European Union of 18 June 2020 in case C-78/18, *Commission v Hungary*<sup>1</sup>, restrictions should only be imposed for legitimate aims, such as in the interest of national security, public safety or public order, and should be proportionate to the objective of protecting such interests, and the least intrusive means of achieving the desired objective. This concerns, among other things, 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>, and 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

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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).

(EEC) No 2137/85<sup>1</sup>, does allow certain activities to be carried out in common, while nevertheless preserving the independence of its members. However, the EEIG does not meet the specific needs of civil society associations.

- (12) It is therefore necessary to establish at Union level an appropriate harmonised regulatory framework and rules which will permit the creation of European associations with their own legal personality, and govern the cross-border formation and operation of such associations.
- (13) Political parties and trade unions, as well as churches and other religious communities and philosophical or non-confessional organisations should be excluded from the scope of this Regulation due to the lack of Union competence to regulate their status, and due to them having a particular status within national law. For these reasons, they should be treated differently from other associations lacking such status, such as faith-based, charitable non-profit organisations or organisations fighting discrimination including within the labour market.
- (14) This Regulation should be without prejudice to workers' and trade union rights, including existing rights and protections in the context of insolvency and restructuring procedures, mergers, transfers of undertakings, and concerning information and wages. Employers should meet their obligations regardless of the form under which they are operating.
- (15) It is important to ensure that there is coordination at Union level, to avoid fragmentation and support a harmonised approach across the Union for the application of this Regulation. In this regard, this Regulation should provide for the designation of a European Associations Board, within or linked to the Commission and/or relevant institutions, bodies, offices and agencies of the Union.
- (16) The European Associations Board should invite a representative of the Fundamental Rights Agency to its meetings when they touch upon the freedom of association or the freedom of expression, in line with Article 2 of Council Regulation (EC) No 168/2007<sup>2</sup>.
- (17) This Regulation should introduce specific periods for administrative procedures, including with regard to registration and the process of granting public benefit status. When assessing the implementation and application of this Regulation, the Commission should in particular look at how such periods are applied in practice.
- (18) For the purpose of verifying the requirements laid down in Article 6, the national associations bodies might ask for the names and addresses of the founding members. The identity of founders and members of non-profit organisations that are natural persons can constitute sensitive information, therefore Member States should ensure that any requirements leading to the processing of such personal data is without prejudice to Regulation (EU) 2016/679 of the European Parliament

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<sup>1</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).

<sup>2</sup> Council Regulation (EC) No 168/2007 of 15 February 2007 establishing a European Union Agency for Fundamental Rights (OJ L 53, 22.2.2007, p. 1).

and of the Council<sup>1</sup> (General Data Protection Regulation), and in particular Article 9 thereof.

- (19) 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.
- (20) As the scope of this Regulation is limited to non-profit associations, the TFEU does not provide any other legal basis than the one laid down in Article 352.
- (21) Since the objectives of this Regulation, 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,

HAS ADOPTED THIS REGULATION:

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<sup>1</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

## *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 be such as to 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 purposes of this Regulation, the following definitions apply:

- (a) 'non-profit' means not having as a primary aim the generation of a profit, even though economic activities might be carried out. Where a profit is generated by a non-profit organisation, 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 for considering an organisation to have a non-profit nature. However, where public benefit status is granted, the purpose of the organisation shall be regarded as non-profit;
- (b) 'independent' means, with regard to associations, being free from any undue State

interference and not being part of a government or administrative structure. In this respect, neither receiving governmental funding nor participating in a consultative body to the government shall 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 or participation;

- (c) 'self-governed' means, with regard to associations, having an institutional structure allowing the exercise of all internal and external organisational functions, and allowing the making of essential decisions to be carried out independently;
- (d) 'public benefit' means an improvement in the welfare of society or part of it, thus benefiting the general interest of society;
- (e) 'cross-border' means, with regards to associations, the pursuit of the objective of transnational cooperation or cooperation across borders within the Union, or that an association's founding members come from at least two Member States, implying they are citizens or residents of a Member State if they are natural persons, or have their registered office in a Member State if they are legal persons;
- (f) 'member' means a natural or legal 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 a conversion or merger, the willingness of membership may be conclusively assumed.

### *Article 3*

#### ***Rules applicable to European Associations***

1. European Associations shall be governed by this Regulation and by their statutes. For matters not dealt with by this Regulation, a 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 associations body***

1. Member States shall designate an independent public authority (the 'national associations body') and shall inform the European Associations Board referred to in Article 5 and the Commission thereof. The national associations body shall be responsible for the registration of European Associations, in accordance with Article 10 and for monitoring the application of this Regulation in full compliance with the fundamental rights and freedoms of European Associations as provided for in the Treaties and under the Charter.

2. Each national associations body shall contribute to the consistent application of this Regulation throughout the Union. For such purpose, the national associations bodies shall cooperate with each other, including within the framework of the European Associations Board in accordance with Articles 5 and 22.

#### *Article 5*

#### ***European Associations Board***

1. The European Associations Board is hereby designated.
2. The European Associations Board shall be assisted by a secretariat.
3. The European Associations Board shall be composed of a representative of each national associations body and three representatives of the Commission.
4. The European Associations Board shall act independently when performing its tasks and exercising its powers.
5. In order to ensure that this Regulation is applied in a consistent manner, the European Associations Board shall:
  - (a) develop, in cooperation with the Commission and the national associations bodies, common forms or other tools to support the electronic registration of European Associations in accordance with Article 10;
  - (b) set up and manage the digital database of European Associations at Union level as a tool for information and for statistical purposes, as well as for supporting structured civil dialogue on Union matters;
  - (c) 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;
  - (d) assess the adequacy of the identification of the comparable legal entities by the Member States pursuant to Article 3(2);
  - (e) receive, examine and follow up on complaints concerning the application of this Regulation, without prejudice to the tasks of the national associations bodies;
  - (f) decide on appeals, where relevant through its appeals committee in accordance with Articles 10 and 11;
  - (g) examine any question relating to the application of this Regulation and consult with the parties concerned and relevant stakeholders and experts, on its own initiative or at the request of one of its members or of the Commission,
  - (h) issue guidelines and recommendations, and identify best practices for national associations bodies and European Associations in order to ensure that this Regulation



is applied in a consistent manner;

- (i) provide opinions and recommendations to the Commission, on its own initiative, or at the request of one of its members or of the Commission, and after consulting relevant parties, stakeholders and experts, on any issue related to European Associations or to measures resulting from the Minimum Standards Directive;
  - (j) provide opinions and recommendations to the Commission regarding structural and operational funds aimed at financing civil society, the organisation of civil dialogue, as well as protecting and promoting Union rights and values as enshrined in the TEU, the TFEU and the Charter, with a view to sustaining and furthering the development of open, rights-based, democratic, equal and inclusive societies based on the rule of law;
  - (k) promote cooperation, and the effective bilateral and multilateral exchange of information and best practices, with and between national associations bodies;
  - (l) promote common training programmes and facilitate personnel exchanges between national associations bodies.
6. The European Associations Board shall be accountable to the European Parliament and to the Council, and shall report annually about its activities to the European Parliament, the Council and the Commission.
  7. The discussions of the European Associations Board and its members shall be governed by Regulation (EC) No 1049/2001 of the European Parliament and of the Council<sup>1</sup>.
  8. The European Associations Board shall adopt its own rules of procedure and organise its own operational arrangements.
  9. The European Associations Board may invite representatives of relevant European Agencies and independent experts, in particular from academia and civil society, to its meetings and consult with them on a regular basis.

## ***Chapter II***

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

#### ***Article 6***

##### ***Formation***

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<sup>1</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).

1. A European Association shall be formed:
  - (a) by agreement of at least three founding members; the founding members shall come from at least two Member States, implying they are citizens or residents of a Member State if they are natural persons, or have their registered office in a Member State if they are legal persons; or
  - (b) as the result of a conversion into a European Association of an existing entity formed under the law of a Member State, which meets the same conditions as in point (a) and which has its registered office within the Union; or
  - (c) as the result of a merger between at least two existing European Associations; or
  - (d) as the result of a merger between at least one existing European Association and at least one entity belonging to the categories identified pursuant to Article 3(2); or
  - (e) as the result of a merger between at least two entities identified pursuant to Article 3(2), formed under the law of Member States and which have their registered office within the Union, provided that together these entities have at least three members and that those members come from at least two different Member States.
2. A Member State may provide that an entity among those identified pursuant to Article 3(2) and whose registered office is not in the Union may participate in the formation of a European Association, provided that such entity is formed in accordance with the law of a Member State, has a registered office in that Member State and has a demonstrable and continuous economic, social or cultural link with that Member State.
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 and duly verified if such verification is required by national law for the formation of associations.
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, point (a).
5. The formation of a European Association or any restructuring processes shall not be used to undermine workers' or trade union rights or working conditions. In line with applicable collective agreements and national and Union law, the obligations regarding employees and creditors shall continue to be fulfilled and employees, volunteers, trade unions and workers' representatives shall be duly informed and consulted. Collective agreements and workers' board-level representation rights shall be respected and maintained, where applicable.

## *Article 7*

### ***Membership***

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 each category of members, in particular as regards their right to vote.

## *Article 8*

### *Statutes*

1. The founding members shall draw up and sign the statutes of the European Association at the time of its formation or at its constitutive meeting.
2. The statutes shall contain at least the following information concerning the European Association:
  - (a) its name, preceded or followed by the abbreviation 'EA';
  - (b) a precise statement of its objectives, its non-profit nature and, where applicable, a description of its public benefit purposes;
  - (c) the address of its registered office;
  - (d) its assets at the time of its formation;
  - (e) the name and the address of the registered offices of its founding members, where these are legal persons;
  - (f) the conditions and procedures for the admission, expulsion and resignation of its members;
  - (g) the rights and obligations of its members, and the different categories of members, if any, and the rights and obligations of the members in each category;
  - (h) the provisions governing the number of members of its Board of Directors, the composition, appointment and dismissal of the Board of Directors, the conditions for the initiation, on the association's behalf, of proceedings against members of the Board of Directors, as well as the provisions governing the functioning of the Board of Directors, its powers and its responsibilities, including the powers of representation in dealings with third parties;
  - (i) the provisions governing the functioning, powers and responsibilities of its General Assembly, as referred to in Article 16, including majority and quorum requirements;
  - (j) the provisions concerning the rights and obligations of members, including voting rights and rights to submit motions;
  - (k) the grounds and procedures for its voluntary dissolution;
  - (l) its explicit commitment to respect the values of the Union as enshrined in Article 2

TEU;

(m) whether or not it disposes of founding capital and, if so, the amount of such capital;

(n) the frequency with which its General Assembly shall be called; and

(o) the date of adoption of the statutes and the procedure for amending them.

#### *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 or the principal place of activity in the Union.
2. In the event of the formation of a European Association by conversion pursuant to Article 6(1), point (b), its members shall decide whether the European Association's registered office is to remain in the Member State where the original entity was registered, or is to be moved to another Member State.
3. In the event of formation of a European Association by merger pursuant to Article 6(1), points (c), (d) or (e), its 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. The founding members of a European Association shall, within 30 days of the date of the European Association's formation as provided for in Article 6(3), submit an application for registration to the national associations body.
2. The national associations body shall, after verifying the applicants' compliance with the requirements laid down in this Regulation, take a decision on the registration of the European Association, within 30 days of receiving the application.
3. Member State shall not impose further requirements for registration than those laid down in this Regulation.
4. If the application is accepted by the national associations body, it shall register the European Association in the appropriate national registry and communicate its decision within 15 days to the European Associations Board, which shall proceed to include the European Association in the digital database of European Associations established pursuant to Article 5(5), point (b). Within the same timeframe, the national associations body shall also communicate its decision to the Publications Office of the European Union, which shall then ensure that the information is published without delay in the *Official Journal of the European Union*.
5. If, within 30 days of the submission of the application for registration, the application has

been rejected or has not been decided upon, the applicant may, within 15 days of receipt of the rejection decision or upon the expiry of the 30-day period for taking a decision, appeal to the Appeals Committee established under Article 11.

The Appeals Committee shall take a decision on the application for registration within 30 days of the appeal.

If the Appeals Committee approves the application for registration or fails to deliver a decision within 30 days, the national associations body shall proceed with the registration within 15 days of such decision or failure to act.

Any decision to reject an application for registration shall be communicated to the applicants, and shall include duly substantiated grounds for the rejection.

6. Upon inclusion in the appropriate national registry pursuant to paragraph 4, the registration of a European Association shall take effect throughout the Union.
7. Registration shall occur via the common registration forms or other tools referred to in Article 5. The registration procedure shall be electronic and accessible 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. Registration fees shall not be higher than those applicable to the entities referred to in Article 3(2) and shall not exceed the administrative costs or constitute an undue financial burden, subject to the principle of proportionality. The national associations bodies shall make it possible to register by non-electronic means.
8. Upon receipt of an application by a European Association for the granting of public benefit status, the national associations body shall assess the application in relation to the requirements laid down in this Regulation. The national associations body shall not impose any requirements other than those laid down in this Regulation.
9. The national associations body shall, within 15 days of receipt of the application for public benefit status, 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 or the opinion of the European Associations Board is requested. The national associations body shall inform the European Association immediately of the duration of, and the grounds for, any extension of the initial 15-day period.
10. If the application for public benefit status is accepted by the national associations body, it shall register that decision in the appropriate national registry and communicate its decision within 15 days to the European Associations Board, which shall proceed to include the public benefit status of the European Association in the digital database of European Associations established pursuant to Article 5(5), point (b). Within the same timeframe, the national associations body shall also communicate its decision to the Publications Office of the European Union, which shall then ensure that the information is published without delay in the *Official Journal of the European Union*.
11. Upon inclusion in the appropriate national registry pursuant to paragraph 10, the decision adopted regarding the public benefit status shall take effect throughout the Union.
12. Where the application for public benefit status has been rejected or has not been decided upon within the period referred to in paragraph 9, the applicant may, within 15 days of receipt of the rejection decision, appeal to the Appeals Committee, or, at the expiry of the

period for taking a decision, refer the application to the Appeals Committee established under Article 11.

The Appeals Committee shall take a decision within 15 days of the appeal or of referral of the application, or within 30 days in duly motivated cases.

If the Appeals Committee approves the application for public benefit status or fails to deliver a decision within the period provided for in the first subparagraph, the national associations body shall proceed to grant the public benefit status within 15 days of such decision or failure to act.

Any decision to reject an application for registration shall be communicated to the applicants, and shall include duly substantiated grounds for the rejection.

13. The founding members of a European Association may decide to simultaneously submit an application for registration and public benefit status, in which case the decision on both shall be dealt with as one and the longer periods shall be applicable.

### *Article 11*

#### ***Appeals Committee***

1. By ... [... months after the date of entry into force of this Regulation], the European Associations Board shall set up an Appeals Committee, composed of one representative per Member State, plus one representative of the Commission. The representative of the Commission shall be the chair.
2. The Commission shall provide the secretariat for the European Associations Board.
3. The Appeals Committee shall be convened by its chair and its decisions shall be adopted by absolute majority of its members.

### *Article 12*

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

1. The registered office of a European Association may be transferred to another Member State in accordance with this Article. Member States shall ensure that no obstacles exist for the transfer of assets and documents belonging to the European Association transferring its registered office. Such transfer shall not result in any changes in the statutes of the European association other than those provided for in this Article, or in the European Association being wound up, or in the creation of a new legal person, nor shall such transfer affect any rights and obligations existing before the transfer, apart from those inherently linked to the transfer.
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 transfer proposal drawn up under paragraph 2 shall include details of:
  - (a) the intended registered office and proposed name in the destination Member State;
  - (b) the name and address in the Member State of origin;

- (c) the proposed amended statutes, including the new name of the European Association, where applicable;
  - (d) the timetable proposed for the transfer; and
  - (e) the expected legal and economic consequences of the transfer.
4. No decision to transfer shall be taken for two months after the publication of the proposal. The decisions to transfer shall be governed by the conditions laid down for the amendment of the European Association's statutes.
  5. The creditors and holders of other rights vis-à-vis the European Association that predated the 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 incurred by the European Association with public entities prior to the date of transfer.
  6. The 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.
  7. 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 its statutes shall take effect on the date on which the transfer is registered pursuant to Article 10.
  8. A Member State may, in respect of European Associations having their registered office on its territory, refuse the transfer of the registered office, in the event a formal objection is lodged by a designated competent authority within the period of two months specified in paragraph 6. Such objection may only be lodged if founded on grounds of public security, and shall be communicated to the national associations body of the destination Member State and to the European Associations Board.
  9. If the transfer of the registered office is refused pursuant to paragraph 8, the European Association may, within 15 days of receipt of the rejection decision, appeal to the Appeals Committee established under Article 11. The Appeals Committee shall take a decision within 15 days, or within 30 days in duly motivated cases where the assessment of the application requires further examination.
  10. If the Appeals Committee approves the transfer or fails to do so within the period provided for in paragraph 11, the national associations body of the competent Member States shall approve the transfer within 15 days of such decision or failure to act.

Any decision to refuse a transfer shall be communicated to the applicants and be accompanied by duly substantiated grounds for the decision.

11. If the transfer of a registered office has become final, the national associations body of the Member State in which the European Association had its registered office prior to the transfer shall communicate that information within 15 days to the national associations body of the Member State to which the European Association intends to transfer its registered office and to the European Associations Board. No later than 15 days after receiving this information, the national associations body of the destination Member State

shall include the European Association in the appropriate national registry. The European Associations Board shall ensure that details of the transfer are published in the digital database of European Associations as well as in the *Official Journal of the European Union* no later than 15 days after receiving the communication from the Member State in which the European Association had its registered office prior to the transfer. The transfer of the registered office of the European Association shall take effect and may be relied on against third parties as of the date on which the European Association is included in the national registry of the Member State of its new registered office.

12. A European Association which is the subject of dissolution, winding-up, liquidation, insolvency, suspension of payments or other such procedures may not transfer its registered office.

### *Article 13*

#### ***Legal personality***

1. A European Association shall acquire legal personality in all Member States upon its registration as a European Association in the appropriate national registry.
2. Following the notice of registration but prior to the inclusion in the appropriate national registry, 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 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 formation.
3. As from ... [date of entry into force of this Regulation], only European Associations formed and registered pursuant to this Regulation may include the denomination “European Association” in their name, in the official language or languages of the Member State in which they are established. They shall be allowed to do so upon inclusion in the appropriate national registry pursuant to Article 10(4).
4. 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) and formed in conformity with the law of the Member State in which the European Association has its registered office.
5. As a consequence of its acquisition of legal personality, a European Association shall acquire the right and capacity to:
  - (a) conclude contracts and perform other legal acts, including acquiring movable and immovable property;
  - (b) raise funds to support its non-profit activities;
  - (c) receive donations and legacies;



- (d) employ staff;
- (e) be a party to legal proceedings; and
- (f) access financial services.

#### *Article 14*

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

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

#### *Article 15*

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

1. The Board of Directors 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 of Directors shall be appointed by the General Assembly, in accordance with the statutes. Information on the composition of the Board of Directors shall be made available to the national associations body within 6 months of the date of its election. The national associations body shall inform the European Associations Board thereof. Any changes to the composition shall be made available in the same manner. Such information shall be made publicly available by the European Association.
3. A person shall be ineligible to become a member of the Board of Directors, 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 Union or national law applicable to that person;
  - (b) the Union or national law applicable to the legal entities identified pursuant to Article 3(2) in the Member 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 of Directors shall have the same rights and obligations.
5. The Board of Directors 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 for the exercise of such delegation.
6. The Board of Directors may hold ordinary and extraordinary meetings. Within the framework of its ordinary meetings, the Board of Directors shall meet at intervals laid down by the European Association's statutes, and at least twice a year, to discuss the accounts, the activities and the foreseeable prospects of the European Association's projects.
7. The Board of Directors shall, once a year, draw up a report on the accounts and activities of the European Association, which it shall transmit to the national associations body and to the European Associations Board. Such annual report shall also be made publicly available by the European Association.
8. Without prejudice to Article 22(2) and insofar as it applies to the entities referred to in Article 3(2), the Board of Directors shall, once a year, draw up a financial statement on the European Association's accounts, including an indication of the income generated by economic activities, and funds such as credits and bank loans, and donations or uncompensated receipt of cash or property during the previous calendar year, as well as a budget estimate for the forthcoming financial year. In accordance with national law, Member States may require the Board of Directors to disclose the financial statement to the competent authority and to the members of the association. In such case, members may ask the Board of Directors to provide further information, including on the sources of funding. Members may only do so where, following the examination of the annual financial statement, it is necessary for the purposes of transparency and accountability, and on condition that it is proportional. To that end, the European Association shall be required to keep full and accurate records of all financial transactions, as referred to in Article 23(1).
9. The members of the Board of Directors 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.
10. Any acts performed by members of the Board of Directors 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 of Directors by the applicable law, or lawfully conferred on the Board of Directors by the statutes of the European Association.

## *Article 16*

### ***General Assembly***

1. The European Association's general meeting, gathering all members, shall be referred to as the General Assembly.

2. The Board of Directors shall convene the General Assembly in accordance with the European Association's statutes.
3. Members shall be informed of a General Assembly no later than 15 days before the date set for the General Assembly.
4. A General Assembly may be convened by the Board of Directors 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 General Assembly may be held with members physically present, present online, or as a combination of both, without that affecting the validity of the General Assembly, or the validity of the decisions adopted. The Board of Directors shall decide on which of the three forms is used for each General Assembly, unless a majority of the association's members proposes another form.
6. The request for a General Assembly 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 General Assembly.
8. Every member shall have the right to participate in the General Assembly, to speak and to submit motions.
9. Members' right to vote and to submit motions in the General Assembly shall be exercised in accordance with the European Association's statutes, in accordance with Article 8(2), point (j).
10. Members may appoint another member to represent them in a General Assembly prior to the assembly, pursuant to a procedure to be established in the European Association's statutes. A member may not represent more than two other members.
11. Decisions by the General Assembly on ordinary matters shall be adopted, unless otherwise provided, by a majority of the votes of the members present or represented. Votes shall be distributed in accordance with the rules laid down in the European Association's statutes.

#### *Article 17*

##### ***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 the requirements of their statutes.
2. The Board of Directors of a European 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 chapters or members to implement projects under their jurisdiction as lead actors of a European Association.

#### *Article 18*

### ***Amendments of the statutes***

1. Any amendments to the European Association's statutes shall be discussed at a General Assembly convened for that purpose.
2. Members shall be notified of General Assemblies aimed at discussing and deciding upon proposed amendments of the European Association's statutes at least 30 calendar days before the date set for the assembly. The notification shall 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.
6. The text of the adopted statutes shall be made available within 6 months of the date of their adoption to the national associations body, which shall inform the European Associations Board thereof. Such information shall be made publicly available by the European Association and communicated to the European Associations Board for inclusion in the European database referred to in Article 5(5), point (b).

### ***Chapter III***

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

##### ***Article 19***

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

1. Any discriminatory treatment of European Associations shall be prohibited.
2. European Associations shall receive the same treatment as equivalent national entities identified in accordance with Article 3(2).

##### ***Article 20***

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

1. European Associations may be granted public benefit status if the following cumulative conditions are met:
  - (a) the organisation's purpose and 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, except where that purpose and those activities are systematically and directly aimed at

benefitting the structures of a specific political party. The following purposes, inter alia, shall be considered to be oriented towards a public benefit objective:

- (i) arts, culture or historical preservation;
  - (ii) environmental protection and climate change;
  - (iii) the promotion and protection of fundamental rights and Union values, including democracy, the rule of law, and the elimination of any discrimination based on gender, race, ethnicity, religion, disability, sexual orientation or any other grounds;
  - (iv) social justice, social inclusion and poverty prevention or relief;
  - (v) humanitarian assistance and humanitarian aid, including disaster relief;
  - (vi) development aid and development cooperation;
  - (vii) protection of, assistance to and support for vulnerable sections of the population, including children, the elderly, people with disabilities, persons seeking or benefitting from international protection and people in a situation of homelessness;
  - (viii) protection of animals;
  - (ix) science, research and innovation;
  - (x) education and training and youth involvement;
  - (xi) the promotion and protection of health and well-being, including the provision of medical care;
  - (xii) consumer protection; and
  - (xiii) amateur sports and their promotion.
- (b) any surplus from any economic or other income-earning activity generated by the organisation is used solely to promote the organisation's public benefit objectives;
- (c) in the event of dissolution of the organisation, statutory safeguards guarantee that all assets will continue to serve public benefit objectives; and
- (d) members of the organisation's governing structures that are not employed as staff are not eligible for remuneration beyond adequate expense allowances.
2. European Associations may apply to the national associations body 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 national associations body shall take a decision on the application for public benefit status following the procedure set out in Article 10(8) and (9).

4. Member States shall treat a European Association that is granted public benefit status in the same manner as legal entities that have been granted a corresponding status under their jurisdiction.

#### *Article 21*

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

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

#### *Article 22*

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

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

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

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

#### *Article 23*

##### ***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 and in third countries.
2. European Associations shall be subject to the provisions of Union and applicable national law concerning taxation, 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) in the Member State in which they have their registered office.
3. European Associations shall be subject to reporting and public disclosure obligations in accordance with national law, including with regard to the composition of the Board of Directors, provisions of the statutes, financing and financial statements, insofar as such obligations meet the general interest objective of ensuring that European Associations operate transparently and are accountable and provided such obligations are necessary and proportional.

Compliance with the obligations referred to in the first subparagraph shall not result in

European Associations being made subject to stricter rules than those applicable to equivalent national entities identified pursuant to Article 3(2) and to for-profit entities. Such reporting and public disclosure obligations shall not lead to any difference of treatment or limitation of the rights and obligations of the European Association regardless of the desirability of its purpose or sources of financing.

#### *Article 24*

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

1. European Associations shall keep full and accurate records of all financial transactions.
2. European Associations shall draw up at least once a year:
  - (a) their annual accounts;
  - (b) their consolidated accounts, if any;
  - (c) a budget estimate for the forthcoming financial year; and
  - (d) an annual activity report.

The Board of Directors shall transmit the annual activity report and the financial statement to the national associations body pursuant to Article 14(7) and (8).

3. The annual activity report shall contain at least:
  - (a) information on the activities of the European Association in the year of reference;
  - (b) information on foreseeable prospects, if available; and
  - (c) a description of how the public benefit purpose was promoted during the previous year, if the corresponding status was granted to the European Association.
4. The annual accounts of 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) in the Member State in which the European Association concerned has its registered office. The audit shall be carried out at least once every four years and no more than once every two years.
5. The report resulting from the audit referred to in paragraph 4 shall be disclosed in the manner provided for by the law of the Member State in which the European Association has its registered office.
6. Member State authorities shall not require European Associations to provide access to information on members of theirs who are natural persons, unless necessary for the purpose of a public criminal investigation concerning criminal offences punishable by a maximum custodial sentence of a maximum of at least one year and following a decision by an independent court or tribunal.

7. The national associations body shall provide a bi-annual overview with relevant information about all audits referred to in paragraph 4 to the European Associations Board, which shall provide for the publication of the report in the *Official Journal of the European Union* as well as on its website.
8. 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>1</sup> or Directive 2013/34/EU of the European Parliament and of the Council<sup>2</sup>.
9. This Article shall be apply without prejudice to more favourable corresponding national provisions in the Member State of the registered office.

## *Chapter V*

### *Cooperation with Member States and liability*

#### *Article 25*

##### *Cooperation with Member States*

1. The national associations body of the registering Member State shall consult in a timely manner the national associations bodies of other Member States on any substantial issues regarding the lawfulness and liability of a given European Association, and shall inform the European Associations Board thereof.
2. Unless otherwise provided for by this Regulation, the national associations bodies shall communicate, on an annual basis, an overview of any relevant information regarding decisions concerning European Associations on the territory of their Member State. This shall include a list of cases where criminal investigations were launched against European Associations, including where the disclosure of information on members was requested pursuant to Article 24(6).
3. If the European Associations Board considers that a national associations body has failed to comply with this Regulation, it shall provide the Commission with all relevant information. The Commission shall assess that information and take action as appropriate.
4. Effective remedies shall be available to European Associations to challenge decisions taken by the national associations body concerning them, including the possibility of obtaining judicial review of any such decisions.

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<sup>1</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>2</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).



*Article 26*

***Liability of European Associations and of the members of its Board of Directors***

1. The liability of European Associations shall be governed by the provisions applicable to the legal entities identified pursuant to Article 3(2) in the Member State in which the European Association has its registered office.
2. The members of the Board of Directors of a European Association shall be jointly and severally liable for loss or damage sustained by a 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, on behalf of the European Association, against members of the Board of Directors.

***Chapter VI***

***Dissolution, insolvency, liquidation***

*Article 27*

***Voluntary dissolution***

1. A European Association may be dissolved voluntarily:
  - (a) by decision of the Board of Directors pursuant to provisions in the European Association's statutes, with the agreement of the General Assembly; or
  - (b) by decision of the General Assembly; such decision may be withdrawn by the General Assembly before the dissolution or liquidation of the European Association formally takes effect.
2. The European Association shall inform the national associations body of any voluntary dissolution decision taken pursuant to paragraph 1 no later than 15 days after such decision has been adopted.
3. The national associations body shall immediately remove the European Association from the appropriate national register and inform the European Associations Board as well as the Publications Office of the European Union of the dissolution of the European Association pursuant to paragraph 1, no later than 15 days after it has become aware of the dissolution. Immediately after such notification, the European Associations Authority shall publish a notice of dissolution of the European Association Board in the *Official Journal of the European Union* and remove the European Association from the digital database of the Union, and the Publication Office shall publish a notice of dissolution of the European Association in the *Official Journal of the European Union*.

4. The dissolution of the European Association shall take effect throughout the Union from the date of the removal of the association from the appropriate national register.

#### *Article 28*

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

1. A European Association may only be dissolved by a final decision of a competent court or tribunal of the Member State in which the European Association has or last had its registered office, if:
  - (a) the registered office of the European Association is to be or 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 security.
2. Where a decision on dissolution is taken pursuant to paragraph 1, point (a) or (b), the European Associations Authority shall grant the European Association a reasonable period to regularise its position before the decision takes effect.
3. Applicants shall have access to effective remedies to appeal a decision on dissolution before competent appeal courts or tribunals.
4. The national associations body shall immediately remove the European Association from the appropriate national register and inform the European Associations Board as well as the Publications Office of the European Union of the involuntary dissolution of the European Association, no later than 15 days after the decision has become final. Immediately after such notification, the European Associations Board shall, remove the European Association from the digital database of the Union and the Publication Office shall publish a notice of dissolution of the European Association in the *Official Journal of the European Union*.
5. The dissolution of the European Association shall take effect throughout the Union from the date of the removal of the association from the appropriate national register.

#### *Article 29*

##### ***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) 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 13, until

its liquidation is concluded.

### *Article 30*

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

By ... [five years after the date of 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 this Regulation and proposals for amendments, where appropriate.

### ***Chapter VII***

### *Article 31*

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

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

## PART II

Proposal for a

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

on common minimum standards for non-profit organisations in the Union (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, recognised by the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU), by the Charter of Fundamental Rights of the European Union (the 'Charter'), and by Member States' constitutions and it is crucial for the functioning of democracy, as it constitutes an essential condition for the exercise of other fundamental rights by individuals, including the right to freedom of expression.
- (2) Non-profit organisations enjoy protection of certain rights, including fundamental rights, in their own capacity, based on relevant case law of the Court of Justice of the European Union (CJEU) and of the European Court of Human Rights.
- (3) Non-profit organisations make a key contribution to the achievement of goals that are in the public interest and to achieving the Union's objectives, including by promoting active participation in the economic, democratic and social activities of our societies.
- (4) Today, non-profit organisations, in pursuing their aims, play a full part in our economies and in the development of the internal market, including by engaging in various activities of both a 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>1</sup>.
- (6) Non-profit organisations are a major actor in the development and implementation

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<sup>1</sup> <https://cordis.europa.eu/project/id/613034/reporting>.

of Union 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 Food Supply Chain.

- (7) Reports, including from the EU Agency for Fundamental Rights, point to numerous hindrances deriving from national laws, regulations or administrative practices regulating the formation, registration, operations, financing and cross-border activities of non-profit organisations, which affect 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) The European Economic and Social Committee has called on the Member States to establish an enabling environment for philanthropy in line with the Union freedoms and fundamental rights, which encourages philanthropic and citizen action, private giving to public benefit causes and the creation of philanthropic organisations<sup>1</sup>. Strengthening the complementarity between the work of public institutions and philanthropic organisations and ensuring that national legislation and Union policy facilitate the donation of private resources for the common good through the free flow of capital coupled with the principle of non-discrimination and equal fiscal treatment of European philanthropic organisations is thus important as regards untapping the potential of cross-border donations and investments for the common good.
- (9) Despite the burgeoning numbers of cross-border associations and non-profit organisations in the Union, there is currently no harmonised pan-European legislative framework allowing them to operate and organise themselves properly at cross-border level.
- (10) Given the importance of non-profit organisations, it is vital that their formation and operations are effectively facilitated and protected in Member States' legislation.
- (11) In 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 have 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 laid down the minimum standards to be respected concerning the creation, management and the general activities of such organisations.
- (12) 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 for the transposition of international human rights standards on the right to freedom of association into domestic laws.

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<sup>1</sup> Opinion of the European Economic and Social Committee, European philanthropy: an untapped potential, SOC/611.

- (13) It is necessary at Union level to build on existing standards, in line with the freedom of association and the free flow of capital, 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 such organisations can contribute unhindered to the functioning of the internal market.
- (14) This Directive should approximate the laws of the Member States as regards certain aspects of the formation, registration, operations, financing, reporting and cross-border activities of non-profit organisations.
- (15) This Directive should not affect Member States' rules on the taxation of non-profit organisations established, registered or operating in their territory. When transposing 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.
- (16) This Directive should not affect Member States' criminal law. When transposing 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.
- (17) This Directive should apply to non-profit organisations established in the Union that are intended as voluntary associations of natural or legal persons, as well as to organisations that are not based on membership and whose assets are allocated to the pursuit of a specific aim, such as foundations, set up for an indefinite period of time, which pursue a primary aim other than 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.
- (18) When determining whether an organisation has a non-profit character in accordance with this Directive, the direct beneficiaries of organisations aimed at providing care services for individuals with specific social needs or health conditions, should not be considered to be private parties.
- (19) 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.
- (20) Trade unions and associations of trade unions should be excluded from the scope of application of this Directive. This exclusion should not be used by Member States to justify a limitation of trade union prerogatives and rights recognised in national, Union or international law or human rights instruments, in particular the Council of Europe's European Social Charter and the relevant Conventions and Recommendations of the International Labour Organization and the related case law;

- (21) This Directive should be without prejudice to the competence of Member States regarding the status of religious, philosophical and non-confessional organisations as referred to in Article 17 TFEU. In this regard, organisations with primarily a religious, philosophical and non-confessional aim, such as churches, religious or non-religious communities, should be excluded from the application of this Directive. This however should not be used by Member States to exclude from the scope of application of this Directive other organisations whose values and aims are informed by a religious, philosophical or non-confessional belief, such as faith-based, charitable non-profit organisations.
- (22) There should be a presumption of the existence of a legitimate interest in having access to a complaint mechanism and to an administrative and judicial remedy for persons who are or were directly involved with a non-profit organisation, such as their founders, directors, staff members, but also for all persons who have standing in relation to proceedings concerning the activities of the non-profit organisation. That presumption should also exist for beneficiaries of the activities of the non-profit organisation where such beneficiaries might not be members, but where they receive or have received services, or are or were subject to decisions of the organisation that affected their daily lives, such as patients or residents of facilities or shelters run by non-profit organisations, or recipients of charitable donations like food or clothing.
- (23) National Human Rights Institutions are independent institutions established by law and in compliance with the Paris Principles adopted in 1993 by the General Assembly of the United Nations, and they are mandated to protect and promote human rights at the national level in accordance with international human rights norms and standards.
- (24) The freedom for non-profit organisations to determine objectives and activities derives from international and regional human rights standards. This also implies the freedom for such organisations to determine the scope of their operations, whether local, regional, national or international, and to become members of other organisations, federations and confederations of organisations.
- (25) Information on the identity of founders and members of non-profit organisations that are natural persons can constitute sensitive information. Member States should therefore ensure that any requirements leading to the processing of such personal data is without prejudice to Regulation (EU) 2016/679 of the European Parliament and of the Council<sup>1</sup> (General Data Protection Regulation), and in particular Article 9 thereof;
- (26) 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

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<sup>1</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

application of penalties or restrictive measures, unless it is a consequence of the enforcement of criminal laws.

- (27) Rules concerning non-profit organisations should be in accordance with the principle of non-discrimination. This includes the obligation for Member States 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.
- (28) The implementation of rules concerning non-profit organisations should be undertaken by regulatory authorities that act in an impartial, independent 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.
- (29) Simplifying and easing bureaucracy and regulatory requirements, respecting the self-governing nature of non-profit organisations, 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.
- (30) Non-profit organisations contributing to the public benefit play a particularly important role and should therefore be granted favourable treatment in all Member States under uniform conditions.
- (31) In line with the principle of necessity and proportionality of restrictions on the right to association, 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.
- (32) A set of rules on equal treatment, cross-border conversions and mergers concerning non-profit organisations should be established with the aim of facilitating mobility of non-profit organisations across the Union.
- (33) The freedom of association is a fundamental right, and while Member States' legislation might not recognise associations that are not formally established, that should not affect the right of such associations to exist and operate within their territory.
- (34) Non-profit organisations enjoy the right to exist and be active in accordance with the European Convention on Human Rights and the Charter, even when their registration has been arbitrarily refused by authorities of their Member State of establishment.
- (35) 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 having 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 concerning non-profit organisations' access to foreign funding. In addition, philanthropic organisations have reported difficulties in providing donations or grants in some cases. It is therefore necessary to establish principles and standards concerning 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 the rules on free movement of capital laid down in the Treaties.

- (36) Article 63 TFEU and Articles 7, 8 and 12 of the Charter protect non-profit organisations against discriminatory, unnecessary and unjustified restrictions on 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. In line with the judgment of the CJEU of 18 June 2020 in case C-78/18, *European Commission v Hungary*<sup>1</sup>, restrictions may only be imposed in the interests of public policy or public security, and should be proportionate to the objective of protecting such interests and the least intrusive means of achieving the desired objective. This concerns, inter alia, 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 should not apply unreasonable, overly intrusive or disruptive measures, including reporting requirements placing an excessive or costly burden on organisations. With a view to responding to the public interest in providing transparency, particularly with regard to organisations that have an influence on public life and public debate, non-profit organisations should be subject to reporting and public disclosure obligations as regards their representatives and the members of their governing bodies, the provisions of their statutes and their financing. Such reporting and public disclosure obligations should not lead to any limitation of the rights and obligations of non-profit organisations.
- (37) In its case law, the CJEU recognises the application of the principle of free movement of capital to objectives in the public interest and it has interpreted the fundamental freedoms enshrined under the TEU and the TFEU as requiring that the principle of non-discrimination be applied to donors and public benefit organisations in the Union, including as regards the tax treatment of public benefit entities and their donors<sup>2</sup>. Therefore, where national law continues to discriminate or apply costly and burdensome procedures to non-national organisations, it conflicts with Union law.

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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> Stauffer: C-386/04 Centro di Musicologia Walter Stauffer/Finanzamt München für Körperschaften [2006] ECR I-8203; Hein-Persche: C-318/07 Hein Persche/Finanzamt Lüdenscheid [2009] ECR I-359 and Missionswerk: C-25/10 Missionswerk Werner Heukelbach eV/Belgien [2011] 2 C.M.L.R. 35.

- (38) 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 applies 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 prohibit any forms of surveillance of non-profit organisations outside the criminal law framework.
- (39) Non-profit organisations should be consulted in a timely and meaningful way about the introduction, review and implementation of any legislation, policies and practices that affect their operations, including with regard to transposition and implementation of this Directive's provisions. To that end, a regular and transparent civil dialogue should be established at all governmental levels.
- (40) This Directive is without prejudice to workers' rights, including existing rights in the context of insolvencies and concerning wages. Employers are required to meet their obligations regardless of the form under which they are operating.
- (41) 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.
- (42) Under Article 26(2) TFEU, the internal market is 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.
- (43) This Directive respects, promotes and protects the fundamental rights and principles that bind the Union and its Member States pursuant to Article 6 TEU, as recognised in particular by 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.
- (44) 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 TEU. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives,

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 create an enabling environment in which it is possible for such organisations to contribute to the functioning of the internal market. It seeks to approximate the laws, regulations and administrative provisions of the Member States as regards certain aspects of the objectives and activities, registration, operations, financing, reporting and cross-border activities of non-profit organisations.

#### *Article 2*

##### *Scope*

1. This Directive applies to non-profit organisations established in the Union.
2. Under this Directive, the term ‘non-profit organisation’ refers to voluntary and permanent associations of natural or legal persons with a common interest, activity or purpose, as well as to organisations that are not based on membership and whose assets are allocated to the pursuit of a specific aim, such as foundations, which, irrespective of the form in which the associations or organisations are established:
  - (a) pursue a primary aim other than 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 must be invested for the pursuit of its objectives;
  - (b) are independent, in the sense that the organisation is not part of a government or administrative structure and is free from any undue interference by the state or by commercial interests. Governmental funding shall not preclude an organisation being

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

- (c) are 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 by 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 registered or granted legal personality under the law of the Member State in which they are based.
  4. Political parties are excluded from the scope of this Directive.
  5. Trade unions and associations of trade unions are excluded from the scope of this Directive.
  6. Organisations with primarily a religious, philosophical and non-confessional aim are excluded from the scope of this Directive. However, that exclusion does not apply to other organisations without such a specific aim, whose values and aims are informed by a religious, philosophical or non-confessional belief.

### *Article 3*

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

1. Member States shall apply the provisions of this Directive in compliance with the rules of the Treaties on the freedom of establishment and the free movement of services and with the relevant Union acts governing the exercise of such rights, including Directive 2006/123/EC of the European Parliament and of the Council<sup>1</sup> on services in the internal market.
2. This Directive is without prejudice to Union and national law on the protection of personal data, in particular Regulation (EU) 2016/679 and the corresponding provisions of national law.

### ***Chapter II***

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

### *Article 4*

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<sup>1</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 only be made if they are necessary and proportionate as regards meeting objectives of general interest recognised by Union law or as regards the need to protect the rights and freedoms of others.
3. This Directive shall be without prejudice to the right of 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.

### ***Article 5***

#### ***Non-discrimination***

1. Member States shall ensure that their laws and administrative practices regulating non-profit organisations, including as regards their formation, registration, operations, financing, financial and tax treatment or tax relief measures and cross-border activities, do not discriminate based on the place of establishment of the non-profit organisation.
2. Member States shall ensure that national laws, regulations or administrative practices regulating non-profit organisations, including as regards 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 simplify, to the extent possible, national laws, regulations or administrative practices regulating the formation, registration, operations, financing, reporting obligations and cross-border activities of non-profit organisations, in order to ensure the freedom of association is protected at all levels and to eliminate any obstacles and unjustified discrimination that affect the ability of legal or natural persons or groups of such persons, regardless of their nationality, to establish, register or operate in the Member State's territory a non-profit organisation, including, for example, by enabling access to banking and financial services, as well as guaranteeing safe and secure channels for cross-border donations and asset allocations, both within and outside the Union.
2. Member States shall ensure that non-profit organisations established, registered or

operating on their 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>1</sup> (eIDAS Regulation).

## *Article 7*

### ***Right to 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, reporting obligations and cross-border activities of non-profit organisations established, registered or operating in their territory is undertaken by a designated regulatory authority whose powers and functions shall be clearly defined by law and exercised in accordance with the right to 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, reporting obligations and cross-border activities of non-profit organisations are provided with adequate notice about the alleged violation and are given ample opportunity to remedy 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 are 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 that 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 registration of non-profit organisations is undertaken by designated supervisory authorities whose powers and functions shall be clearly defined by law and exercised with independence in accordance with the right 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 accessible and understandable information is available to the public concerning the national laws, regulations or administrative practices regulating the formation, registration, operations, financing, reporting obligations and cross-border activities of

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<sup>1</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).

non-profit organisations established, registered or operating in their territory, as well as the competence, procedures and functioning of the competent regulatory and supervisory authorities.

#### *Article 8*

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

1. Member States shall ensure that all persons with a legitimate interest related to the formation, registration, operations, financing, reporting obligations and cross-border activities of non-profit organisations established, registered or operating in a Member State's 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, and 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. Such persons shall include non-profit organisations, their founders, directors, staff members, and beneficiaries of the activities of the non-profit organisations.
2. 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 on such decision, unless such suspensive effect results in preventing the enforcement of criminal law provisions.
3. Member States shall take all the measures necessary to ensure that non-profit organisations with legal personality are granted legal standing before national courts, including, where relevant, for submitting third party testimony in judicial proceedings.
4. 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 ensure that the freedom for non-profit organisations operating in their territory to determine their objectives and to carry out the activities necessary for the pursuit of such objectives can only be limited for exceptional reasons of public security. They shall remove any obstacles or restrictions affecting the ability of non-profit organisations to pursue such objectives and carry out such activities.

2. Member States shall ensure that non-profit organisations in their territory are free to determine the scope of their operations, be it local, regional, national or international.
3. Member States shall ensure that any formalities governing the formation and operations of a non-profit organisation on their territory, as provided for in national law, regulations or administrative practices, do not constitute an undue financial and administrative burden. This shall include, in the case of non-membership-based organisations, the possibility of legally establishing such organisations by way of gift or bequest.
4. 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, where possible in view of its legal form, of a non-profit organisation established, registered or operating in their territory, in accordance with that organisation's statutes and constitutions, and that they may freely exercise membership rights subject to the organisation's statutes and regulatory limitations.
2. Member States shall ensure that no penalties or restrictive measures are applied as a consequence of the membership of a non-profit organisation established, registered or operating in their territory pursuant to national laws, regulations or administrative practices, except when such consequences are the result of the enforcement of criminal law provisions.
3. Member States shall ensure that non-profit organisations established, registered or operating in their territory are free to decide upon the composition of 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 appointing 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 and address (registered office);
  - (b) the organisation's objectives and activities;
  - (c) the organisation's governance rules, the powers of its governing bodies and, where applicable, the designation of persons who are entitled to act in its name;
  - (d) the rights and obligations of the organisation's members;
  - (e) the date when the statutes were adopted and the name and address of the registered office of the founding members if they are legal persons;
  - (f) the procedure applicable for changing the statutes; and
  - (g) the procedures applicable for dissolving the organisation or merging it with another non-profit organisation.
3. Non-profit organisations may be required to disclose and make public, in their statutes or by means of annual reporting, further information on their operations, their functioning, the members of their governing bodies, their representatives and their financing, insofar as this meets the objective of general interest, with regard to the objectives and activities of the organisation.

## *Article 12*

### ***Legal personality***

1. Member States shall ensure that a non-profit organisation on their territory is free to decide whether to acquire legal personality, notwithstanding the fact that Member States may stipulate which forms of organisation have 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 the corresponding legal capacity.
5. Member States shall ensure that groups of natural or legal persons that cooperate and that have not sought 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 thereby regulating or affecting 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.

### *Article 13*

#### ***Registration***

1. Member States shall ensure that formal registration is not a precondition for or an obstacle to the formation or operations of non-profit organisations established or operating in their territory.
2. Member States shall ensure that the procedures for registration of non-profit organisations on their 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 their 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 application for registration 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. Member States shall take the measures necessary to ensure that non-profit organisations established in their territory can be registered by electronic means, while ensuring that registration is also possible using non-electronic means.
6. Member States shall ensure that appearing in person before a court or other competent national authority for the purpose of registration of a non-profit organisation is required only 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 before a court or other competent national authority for the purpose of registering a non-profit organisation can do so before 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 non-profit organisations 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.

*Article 14*

***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 can be granted a corresponding status as provided for 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 adopt the national laws, regulations or administrative practices necessary to 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 the public good, except where such pursuit is systematically and directly aimed at benefitting the structures of a specific political party. The following purposes, inter alia, shall be considered as oriented towards the public benefit:
    - (i) arts, culture or historical preservation;
    - (ii) environmental protection and climate change;
    - (iii) the promotion and protection of fundamental rights and Union values, including democracy, the rule of law, the elimination of any discrimination based on gender, race, ethnicity, religion, disability, sexual orientation or any other grounds;
    - (iv) social justice, social inclusion and poverty including prevention of or relief from poverty;
    - (v) humanitarian assistance and humanitarian aid, including disaster relief;
    - (vi) development aid and development cooperation;
    - (vii) 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;
    - (viii) protection of animals;
    - (ix) science, research and innovation;
    - (x) education and training and youth involvement;
    - (xi) promotion and protection of health and well-being, including the provision of medical care;

- (xii) consumer protection;
  - (xiii) amateur sports and their promotion.
- (b) the 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 event of dissolution of the non-profit organisation, statutory safeguards guarantee that all of its assets will continue to serve public benefit objectives;
  - (d) members of the organisation's non-staff governing structures are not eligible for remuneration beyond adequate expense allowances.
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 have such status revoked where the competent regulatory authority has produced sufficient evidence that the non-profit organisation no longer fulfils the conditions laid down in paragraph 2.

#### *Article 15*

##### ***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 may only occur as the consequence of infringements of national law that cannot be rectified or remedied.
3. Member States shall 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 security as recognised by Union law.
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 that is tantamount to dissolution.

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

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

### *Article 16*

#### ***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 in the same manner as non-profit organisations established or registered in their 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 the public good in the Member State.
2. For the purpose of paragraph 1, Member States shall not require non-profit organisations established or registered in another Member State but operating in their jurisdiction to provide any proof other than evidence of establishment or registration as a non-profit organisation in another Member State.

### *Article 17*

#### ***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 unjustified discrimination based solely on the political desirability of an organisation's purpose, on its field of activities or on its sources of financing.

### *Article 18*

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

1. Member States shall eliminate any obstacles which affect the exercise by 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 their territory. This is without prejudice to Member States' prerogative to require, in order for a non-profit organisation to be granted a formal status, that the organisation has acquired legal personality or is included in a national register, in line with the law of the Member State where it has been established and/or seeks to operate.
2. Member States shall take the measures necessary to ensure that a non-profit organisation registered in another Member State has the right to:
  - (a) move its registered office to their territory without the necessity of founding or incorporation as a new legal person;
  - (b) have access to a simplified registration procedure which recognises the information and documentation already provided by the non-profit organisation to the Member

State in which it was previously registered.

### *Article 19*

#### ***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 is 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 is to 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.
5. Member States shall ensure that neither cross-border conversions nor mergers have the effect of undermining workers' or trade union rights, or working conditions. They shall ensure that, in line with applicable collective agreements and Union and national law, employers' obligations regarding employees and creditors continue to be fulfilled and that employees, volunteers, trade unions and workers' representatives are duly informed and consulted. Collective agreements and workers' board-level representation rights shall be respected and maintained, where applicable.

### ***Chapter V***

#### ***Financing***

### *Article 20*

#### ***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 they 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.
4. Member States shall minimise the administrative burden with regard to asset allocation across borders and enable non-profit organisations to generate profits for reinvestment in charitable projects.

#### *Article 21*

##### ***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 shared management, subject to the provisions of Regulation (EU) 2021/1060 of the European Parliament and of the Council<sup>1</sup>.

#### *Article 22*

##### ***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 consequence of soliciting or receiving funding from natural or legal persons residing or established in the Union or in the EEA, but 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 consequence of providing

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<sup>1</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).

funding to non-profit organisations established, registered or operating outside their territory.

### *Article 23*

#### ***Economic activities***

Member States shall ensure that non-profit organisations established, registered or operating in their territory are free to engage in any lawful economic, business or commercial activities, provided that such activities directly or indirectly 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.

### *Article 24*

#### ***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 are not unnecessarily burdensome and are 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. Pursuant to Article 11(3), non-profit organisations shall report annually on the accounts of the non-profit organisations and shall make those reports public. Those reports shall include information on the funding received during the previous calendar year, information on the origin and value of funding, credits, bank loans and donations or uncompensated receipt of cash or property.
4. 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 of such organisations or to any limitations on their rights or obligations, based on the sources of the organisations' funding, their objectives or their activities.

### ***Chapter VI***



## ***Confidentiality***

### *Article 25*

#### ***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 in relation to members who are natural persons may only be accessed by a competent authority where such access is necessary for the purpose of a public criminal investigation concerning criminal offences punishable by a custodial sentence of a maximum of at least one year, and following a decision by an independent court or tribunal.

### *Article 26*

#### ***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 confidential and sensitive information such as personal data relating to the organisation's staff, volunteers, members, founders or donors.
2. Member States shall ensure that non-profit organisations established, registered or operating on their 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 the 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 27*

#### ***Surveillance***

Member States shall ensure that non-profit organisations are not subject to unjustified and disproportionate surveillance, in particular of their operations or communications, or of 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 28*

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

1. Member States may introduce or retain provisions which afford more favourable treatment to non-profit organisations established, registered or operating in their territory than that prescribed by this Directive.
2. The implementation of this Directive shall not 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 29*

##### ***Transposition***

1. By ... [1 year after the date of entry into force of this Directive] Member States shall adopt and publish the measures necessary to comply with this Directive. They shall immediately inform the Commission thereof.
2. Member States shall consult non-profit organisations already established, registered or operating in their territory in a timely, transparent and meaningful manner about the transposition and implementation of the provisions of this Directive.

#### *Article 30*

##### ***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 present a report to the European Parliament and the Council on the implementation and application of this Directive no later than three years after the deadline for its transposition.
2. The Commission shall, taking into account its report submitted pursuant to paragraph 1, present a report to the European Parliament and to the Council on the impact of national law transposing this Directive, no later than three years after the deadline for its transposition. 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 harmonising national law applicable to non-profit organisations.

3. The Commission shall make the reports referred to in paragraphs 1 and 2 above publicly available and easily accessible.

*Article 31*

***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*.