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# Contribution on the Consultation of the Commission on the Draft Directive on European Cross-Border Associations

5 April 2024

Associations are the most common form of social economy entities in Europe, and it is estimated that there are more than 3.8 million of them.

*France générosités* is the union of public-interest organisations that appeal to the generosity of the public. It represents 144 of the largest French associations and foundations involved in all areas of public interest. It is the primary point of contact for the French public authorities on all issues relating to the business model and the legal and tax framework for non-profit organisations (NPOs). *France générosités* is committed to defending the specific characteristics of non-profit models within the social economy in France and Europe.

The activities of these organisations are not limited to France. Their donors and supporters may be located in other Member States, but above all they may be operational in other Member States: they are actors and citizens of the European Union.

They are also protected by the Charter of Fundamental Rights of the European Union. Indeed, the freedoms of association and the recognition of the role of non-profit organisations are issues that are subject to tension, and therefore deserve ongoing attention.

In response to the European Parliament's own-initiative resolution (on which *France générosités* gave its opinion in 2022) and in line with the Social Economy Action Plan that it adopted in December 2021, the European Commission has published a proposal for a Directive on European Cross-Border Associations (ECAs). *France générosités* welcomes that proposal, which recognises the place of associations in the European Union, their "positive impact in ensuring social fairness and prosperity for EU citizens" and the importance of their role "for growth within the internal market".

*France générosités* has the following comments on that proposal for a directive.

## Europe that gives organised civil society its full rightful place

The legitimacy and confidence in our democracies rely above all on the ability of politicians to meet the needs of everyone in all their diversity and to respect the rights and dignity of each individual. Associations are essential for identifying the real needs of the public and enabling everyone to contribute to building the solutions. They put European values into practice on a day-to-day basis and are the necessary spurs to meeting ever-increasing needs, fostering democratic debate and moving our society forward. Their action in response to the successive crises that we face has reminded us all of their importance. And yet, as illustrated by the annual reports of [Civic Space Watch](#) and other national reports ([the report by the Observatoire des Libertés Associatives in France](#)), signs of deterioration in European freedoms and civic space are emerging in Europe. Therefore, the European Union has a role to play in protecting and expanding that space, in accordance with the European Charter of Fundamental Rights.

On this point, we recognise the contribution of the proposal for a directive, in that it reaffirms the essential nature of the freedom of association<sup>1</sup> for democracy to function properly. More specifically, the rights, principles (such as equal treatment with national organisations, the principle of non-discrimination and the right to judicial review) and prohibited restrictions on the operation of associations, as enshrined in Chapter 2 of the draft directive, represent considerable progress for the non-profit sector and for the protection of associations. That recognition is all the more important in the context of the shrinking democratic and civic space observed in several EU Member States, as described above.

## A text necessary for recognising the place of the non-profit model in Europe

While a Statute for a European Company was adopted in 2001, followed by a Statute for a European Cooperative Society in 2002, initiatives in favour of a statute for a European association or foundation have never come to fruition. Therefore, this proposal for a directive meets a long-standing demand from the non-profit sector. Although it is not based on Article 352 of the Treaty on the Functioning of the European Union (TFEU), which would enable a European legal form to be established, this proposal makes it possible to guarantee respect for national traditions in this area by creating a new statute under national law. We welcome the pragmatism of this option.

Moreover, this draft directive is part of a legislative context that is favourable to the social economy, both in Europe and internationally. At the European level, the Spanish Presidency of the Council has seen the

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<sup>1</sup> Recital (12): "**The freedom of association 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 and information. As recognised in the Charter of Fundamental Rights of the European Union (CFR) and in the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), freedom of association is a fundamental right".

birth of the [European Union's Social Economy Action Plan](#). At the international level, a [UN resolution promoting the social and solidarity economy for sustainable development](#), the [OECD recommendation on the social and solidarity economy and social innovation](#), and the [ILO resolution concerning decent work and the social and solidarity economy](#) are all texts that establish the social economy as a priority for the future. Therefore, this draft directive is in line with those texts.

By virtue of the legal basis chosen, the draft directive on European cross-border associations adopts an approach centred on freedom of establishment (Article 50 TFEU) and the functioning of the internal market (Article 114 TFEU), bringing associations within the scope of competition as of right. This approach specific to Community law is far removed from the French conception of the non-profit sector. Nonetheless, the inclusion in this text of a definition of non-profit, close to the notion of non-profit in French law, allows these two approaches to coexist, and our organisations representing this non-profit sector welcome the introduction of this definition into the text, which will constitute a major precedent for our institutions.

Indeed, this European definition of "non-profit", long-awaited by non-profit actors, clarifies a legal vagueness accentuated by the heterogeneity of actors in the social economy. Although cooperatives and mutual societies share with associations and foundations the democratic nature of their governance and the primacy of people and social and environmental objectives over profit, associations and foundations do not aim to distribute their profits among their members. Such a definition provides a favourable framework for the development of the non-profit sector in Europe. Therefore, we feel it is vital to see to it that this definition is retained in future discussions on this text.

However, in order to strengthen this definition, we suggest including:

- ▶ The principle of "disinterested management": including this concept of disinterested management would make it possible to specify that the non-profit organisation must be managed and administered by people who have no direct or indirect interest in the results of the organisation's activities.
- ▶ The concept of "public interest": it is important to bear in mind the purpose of non-profit organisations, which act for the collective interest in the broad sense. This concept is referred to in the explanatory memorandum but is not included in the body of the directive; it should be clarified in a recital.

Given the great diversity of the non-profit sector in Europe, we also feel it is essential to bear in mind that non-profit associations do not systematically carry out economic activities. Although we welcome the fact that the text secures the right of non-profit associations to carry out economic activities<sup>2</sup>, we believe that the concept of "*non-economic activities*" should appear in the same place as economic activities. Such a rebalancing would make it possible to reaffirm the non-commercial approach of the public-interest activities of European cross-border associations, and more generally, the specificity of that model. This is all the more essential at a time when many abuses have appeared in commercial sector management of social or medico-social activities (management of care homes, day-care centres, etc.).

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<sup>2</sup> Which justifies the reference to Article 114 TFEU

Lastly, we hope that this draft directive can be a first step towards more comprehensive recognition of the non-profit sector, made up of associations and foundations, within the social economy in Europe. To that effect, a similar text, based on the European Cross-Border Association statute, could be proposed for a European cross-border foundation statute.

## A text that removes barriers to cross-border activities

Considering the impact of the activities of associations for the European Union and its citizens, we recognise the progress made in this proposal for a directive with regard to the measures aimed at removing the legal, financial and administrative obstacles that exist in the member States for non-profit organisations that have activities in various EU countries.

The proposed measures will encourage their recognition and development in all EU countries.

Therefore, *France générosités* welcomes the principle of mutual recognition by instituting a single registration for acquiring of legal personality and legal capacity in all Member States, i.e. the ability to form partnerships, to own and manage movable and immovable property, and the ability to receive and solicit donations. In addition, the list of information required for registration is strictly limited.

The proposed directive also makes it possible to transform an existing association into a cross-border association within the same Member State.

*France générosités* is also pleased that the draft directive facilitates the transfer of registered offices which will no longer result in the dissolution of the association or the creation of a new legal entity. Although these problems concern only certain types of associations in Europe, they are real and hamper their ability to operate in several Member States.

## Points to watch regarding the content of the proposed directive

### — LIMITING RESTRICTIONS ON THE OPERATION OF THE EUROPEAN CROSS-BORDER ASSOCIATION

*France générosités* notes that only natural persons who are citizens of the European Union or who are legally resident in the European Union may be members of the executive body of an ECBA (article 7).

That restriction seems excessive in relation to the spirit of the proposed directive, which aims to facilitate the operation of associations, and particularly international associations whose membership is often multinational.

Furthermore, under the democratic principle, Article 8 provides that each member of an ECBA has one vote. By virtue of that same principle and the principle of freedom of association, a certain degree of

flexibility should be guaranteed. The ECBA statutes should not only be able to freely organise the conditions of admission, exclusion or withdrawal of members (article 6, 2, g) but also be able to freely define the categories of members and the rights attached to them. We therefore approve the amendment adopted by the European Parliament on 13 March 2024<sup>3</sup>.

#### — INCREASED RISK OF STRONGER COMPETITION AMONG NON-PROFIT ASSOCIATIONS CONSIDERING THE ROLE OF VOLUNTEERS, A SPECIFIC FEATURE OF THE ASSOCIATION MODEL

As the impact assessment points out, volunteers are a considerable resource for associations<sup>4</sup>, whose resources are limited, and form an integral part of their business model.

By basing this directive on TFEU provisions relating to the internal market, European Cross-Border Associations are placed on the same level as "classic" economic entities organised in the form of a commercial company, for example. The latter could claim that European Cross-Border Associations are unjustifiably undermining competition by using free labour. In addition, Member States could find it difficult to sustain the subsidies granted to public-interest activities carried out by ATEs.

Consequently, this proposal for a directive will have to be accompanied by a corresponding amendment to the GBER in order to take account of the specific nature of the operation of associations and their economic model. That amendment will have to include a framework for exemption from State aid rules for non-profit structures acting in the public interest, but also protect the contribution that the many volunteers make to public-interest activities.

## Conclusion

Therefore, *France générosités* welcomes the proposal for a directive on European cross-border associations as a whole, in that it ensures the effective exercise of freedoms of association as recognised by the founding texts of the European Union and gives full scope to the non-profit economic model promoted by associations for the benefit of citizens and territories.

However, *France générosités* warns of the increased risk of competition among non-profit organisations acting in the public interest. It will be necessary to build protective frameworks for non-profit organisations acting in the public interest, particularly within the existing margins for manoeuvre (*de minimis* rules, GBER).

*France générosités* is at the Commission's disposal to participate in the work necessary to achieve its objectives.

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<sup>3</sup> European Parliament legislative resolution on 13 March 2024, P9\_TA(2024)0147

<sup>4</sup> See Impact Assessment, pages 16-17 and appendices 4 and 7.