

# Removing Obstacles to Cross-Border Philanthropy: The Time Is Now





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IN PARTNERSHIP WITH



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# INTRODUCTION

## Real world impacts of legal and fiscal barriers to cross-border philanthropy

Philanthropic organisations as well as individual and corporate donors across Europe face a range of legal and fiscal barriers when trying to act across borders. With this study, we as Philea and the Transnational Giving Europe (TGE) network aim to demonstrate through concrete examples how these barriers impact philanthropy in the real world, causing ordinary European citizens and societies to miss out. In turn we hope these stories will convince policymakers of the urgent need to break down these barriers.

Through a survey carried out last year, we collected stories from national-level experts in foundation and philanthropy law, as well as members and partners within Philea's and TGE's networks across Europe, concerning barriers individual foundations and donors are facing when trying to engage in philanthropy across borders. In this publication, we present a selection of these stories as concrete examples of how legal and fiscal barriers translate to challenges on the ground for foundations and donors in Europe who want to act across borders. In this way, we bring the legalese down to earth by putting "faces" and names to real foundations confronting real obstacles.

## What you'll find in this report

This publication presents brief case studies of 6 major obstacles to cross-border philanthropy. Each case study includes:

- A **description of the barrier**
- **Examples of impacted foundations** and their (potential) grantees
- The broader **legal and fiscal context** for the barrier

These case studies clearly illustrate the need to remove obstacles to the free movement of philanthropic capital and freedom of association across the EU and beyond. With this in mind, we wrap up by offering **recommendations to policymakers** on ways to dismantle these barriers so that philanthropy in Europe can better fulfil its mission of providing private resources for public good.

*Barriers to cross-border philanthropy are real and cause passionate citizens and public-benefit organisations to struggle to contribute to the public good across borders.*

## Philanthropy and the barriers it faces

Philanthropy and philanthropic organisations are a critical part of democratic and pluralistic societies. Philanthropy in Europe includes more than **186,000 philanthropic organisations** (data from 26 European countries) with an accumulated **annual expenditure of over €54.5 billion** (data from 24 countries),<sup>1</sup> as well as **millions of individual and corporate donors who donate to good causes**. And we are seeing that philanthropic organisations and donors are increasingly working across borders and in collaboration with partners.

According to data collected by the Indiana University Lilly Family School of Philanthropy, in 2020 the European philanthropic sector contributed \$16 billion in cross-border philanthropic outflows (including outflows to other European countries and extra-European countries).<sup>2</sup> Despite this, cross-border philanthropy remains challenged by various administrative, legal and fiscal barriers, as demonstrated by the Indiana University Lilly Family School of Philanthropy Index,<sup>3</sup> Philea's 2021 publication, "Comparative Highlights of Foundation Laws";<sup>4</sup> both organisations' 2022 joint briefing "The Philanthropy Environment in Europe";<sup>5</sup> and the "Guide Towards a Single EU Market for Philanthropy",<sup>6</sup> realised by the King Baudouin Foundation with several partners, including Philea.

**1** [Philea 2023 data](#)

**2** Horvath, K., Murat-Prater, K., Bergdoll, J., & Osili, U. (2023). "Cross-Border Giving in Times of Crises in Europe: New Data from the Global Philanthropy Tracker", working paper presented at the European Research Network on Philanthropy 11th International Conference. Indiana University Lilly Family School of Philanthropy.

**3** [Lilly Family School of Philanthropy Global Philanthropy Indices](#)

**4** ["Comparative Highlights of Foundation Laws"](#), Philea, 2021.

**5** ["The Philanthropy Environment in Europe"](#), Philea and Indiana University Lilly Family School of Philanthropy, 2022.

**6** ["Guide Towards a Single EU Market for Philanthropy"](#), King Baudouin Foundation, 2024.



The barriers faced by philanthropic actors and public-benefit organisations have also been assessed by the European Commission several times. Most recently, in its 2023 Proposal on European cross-border associations (ECBA),<sup>7</sup> the Commission noted that, “... in the Call for Evidence, stakeholders highlighted existing barriers in areas such as providing services in another Member State without registration, problems of recognition in another Member State, access to funding, and different VAT regimes and approaches in different EU countries. In the public consultation, the most recurrent issues were tax-related issues, registration processes, and administrative formalities.”

In the specific case of foundations and philanthropy, which is the focus of this publication, these barriers imply high costs which would otherwise be spent for the public benefit. The Feasibility Study on a European Foundation Statute Final Report, published as far back as 2009, estimated that “The calculable cost of barriers against cross-border activities of European foundations ranges from an estimated € 90,000,000 to € 101,700,000 per year. Additionally, there are incalculable costs (costs of foundation seat transfer, costs of reduplication, psychological costs, costs of failure, etc.).”<sup>8</sup>

## What's needed to unleash the potential of philanthropy

### Philea Manifesto

As the case studies in this publication show, barriers to cross-border philanthropy are real and cause passionate citizens and public-benefit organisations to struggle to contribute to the public good across borders. These examples plainly underpin our asks of policymakers<sup>9</sup> to address existing barriers, namely to:

1. EMPOWER PHILANTHROPY
2. FACILITATE CROSS-BORDER PHILANTHROPY
3. ENGAGE WITH PHILANTHROPY
4. PARTNER WITH PHILANTHROPY FOR PUBLIC GOOD

When we consider the polycrisis currently facing the EU and Europe as a whole, allowing philanthropy to unleash its full potential and contribute to a society that works for people and the planet, and leaves now one behind, is a goal that is more essential than ever.

## Methodology

The examples for the 6 types of legal and fiscal barriers to cross-border philanthropy in this publication were gathered in 2023 via Philea's network of national legal experts and the Philea Legal Affairs Committee, as well as through members and partners from within the Transnational Giving Europe (TGE) network, and other key partners such as Civil Society Europe and the European Center for Not-for-Profit Law (ECNL). A questionnaire was circulated among this core constituency between June and September 2023. Based on the responses to the questionnaire and consultation of additional resources, illustrative examples were selected for the case studies as well as some general conclusions drawn from the entire set of 60 responses.

The case studies which follow incorporate extra EU examples, further illustrating the current needs of cross-border philanthropy within Europe.

<sup>7</sup> [Proposal on European cross-border associations](#), European Commission, 2023.

<sup>8</sup> Hopt, Klaus J et al. “[Feasibility Study on a European Foundation Statute Final Report](#)”, 2009. p.1, Executive Summary.

<sup>9</sup> [European Philanthropy Manifesto](#), Philea, 2024.

# 6 BARRIERS TO CROSS-BORDER PHILANTHROPY

In this section we look at 6 specific areas where philanthropy faces difficulties in acting across borders. For each we provide a brief description, a selection of illustrative examples of real-world cases, and the broader legal and fiscal contexts.



## Discriminatory tax treatment and complex procedures

The barriers most frequently cited by survey respondents were related to donating and/or fundraising, or allocating assets across borders tax-effectively. Despite the fact that the European Court of Justice has recognised the non-discrimination principle on the grounds of nationality as applying to philanthropy, in practice some legislators and authorities still discriminate against comparable foreign EU-based philanthropic players, with the result that they often face a number of tax barriers (see sidebar on p. 5: “Key judgements by the European Court of Justice” for relevant ECJ cases, the Persche case for donations in particular).

Under this barrier, we outline several problematic issues when it comes to discriminatory tax treatment of cross-border philanthropy. For each issue we give real world examples of organisations or donors encountering these barriers.

## 1.1 TAX TREATMENT OF DONORS GIVING ACROSS BORDERS

**FEDORA (The European Circle of Philanthropists of Opera and Ballet)** is a non-profit organisation committed to supporting and contributing to the future of opera and dance in Europe. To achieve its goals, FEDORA raises funds across borders to stimulate innovation in the sector not only on but also behind and beyond the stage, fostering its sustainable, inclusive and digital transformation.

At various events the organisation has advocated for the need to create a Single Market for Philanthropy. With the current legal and tax frameworks being very cumbersome regarding tax-effective cross-border philanthropy, Fedora is using the Transnational Giving Europe (TGE) platform to meet its mission.

**Common Goal** is a pioneering global movement within soccer, encouraging players to extend their generosity beyond the game. Members commit to donating 1% of their income for projects across all continents. The organisation has faced significant fiscal challenges, including difficulties in receiving global donations. Common Goal partners with the TGE network as part of its efforts to navigate the intricate and challenging fiscal landscape of global donations, including across borders within Europe.

**Dog4Life ETS**, an Italian organisation active in training dogs for persons in need of assistance, noted that donors from outside Italy could not receive the fiscal benefits offered by their home countries when donating to the organisation. This naturally resulted in the organisation receiving fewer donations.

**African Parks, a conservation organisation registered in the Netherlands**, complained about complex procedures when receiving donations from other countries. In some cases, this was eased through the TGE mechanism.

**A French donor** who wanted to donate €5,000 to a Romanian organisation active in the field of disadvantaged young people reported having serious difficulties. For the donor to claim the tax credit in France, she had to prove equivalency of the Romanian organisation to a French organisation, which was not accepted.

**A German donor** wanted to deduct a €10,000 donation to a Greek organisation that supports Greek students in the field of classical music. This was rejected because the activities of the organisation did not meet either of Germany's comparability requirements, namely that the organisation supports individuals who have their permanent residence in Germany or that the activities benefit Germany's reputation.

## LEGAL AND FISCAL CONTEXT

Following the European Court of Justice “Persche case”,<sup>10</sup> in most Member States donors get the same tax incentive when they donate across borders, however this is not yet possible in some Member States (e.g. Croatia, Hungary, Lithuania, Romania, Spain, Sweden).

Based on the 2020 data provided to us by national experts, donors donating to comparable organisations located in EU or EEA countries outside of their home countries do get equal tax treatment, however the conditions for determining comparability vary (e.g. Belgium, Finland, Germany, Luxembourg, Poland). The processes around whether a foreign-based organisation is considered comparable to a local one seems quite straightforward in some countries such as the Netherlands with its ANBI status criteria, as well as in Luxembourg, where it is possible for a Luxembourg donor to support a European charity tax efficiently, although access to information and centralisation could be improved. However, in some countries, according to legal reports by Phil-  
lea in 2014/2017/2020, processes are often costly, lengthy and burdensome for users as well as for the authorities.<sup>11</sup>

There have been some recent positive developments: In 2023 Spain eased tax deductibility across borders, and Germany introduced a central register where foreign recipient PBOs can register to be eligible recipients of tax-deductible donations. We welcome these changes and hope other Member States will follow suit.

## Key judgements by the European Court of Justice

In a series of judgements specifically dealing with taxation of PBOs and their donors, the European Court of Justice has developed a general non-discrimination principle as regards tax law in the area of public-benefit activities. The most important cases in this regard are the following:

- **The “Stauffer” judgement**  
ECJ 14.9.2006 - C-386/04,  
Centro di Musicologia Walter  
Stauffer/Finanzamt München für  
Körperschaften.
- **The “Persche” judgement**  
ECJ 27. 1. 2009 - C-318/07,  
Hein Persche/Finanzamt Lüdenscheid.
- **The “Missionswerk” judgement**  
ECJ 10. 2. 2011 - C-25/10,  
Missionswerk Werner Heukelbach  
eV/Belgien.

In a nutshell, with these three judgements, the ECJ has ruled that foreign EU-based PBOs and their donors cannot be excluded from eligibility for tax privileges if, seat aside, they fulfil all requirements of the national public-benefit tax law (ECJ, Persche, para. 46, Missionswerk, paras. 30-31). In cross-border cases, Member States must carry out a comparability test to determine whether or not a foreign EU-based PBO meets the requirements of national tax law. Such tests are to be carried out by the national authorities and courts of the Member State concerned (ECJ, Persche, para. 49, Missionswerk, paras. 33-34).

<sup>10</sup> The key ECJ case here is the “Persche” case (C-318/07). For further information, please refer to Forrest, L. and Surmatz, H. [“Taxation of cross-border philanthropy in Europe after Persche and Stauffer. From landlock to free movement?”](#), European Foundation Centre and Transnational Giving Europe, 2014; and Forrest, L. and Surmatz, H., [“Boosting Cross-Border Philanthropy in Europe: Towards a Tax-Effective Environment”](#), European Foundation Centre and Transnational Giving Europe, 2017.

<sup>11</sup> Ibid.

## 1.2 TAX TREATMENT OF PHILANTHROPIC ORGANISATIONS INVESTING THEIR ENDOWMENT ACROSS BORDERS

For more context on the cases presented in this section, see sidebar on p. 5: “Key judgements by the European Court of Justice” for relevant ECJ cases, the Stauffer case in particular.

**The Volkswagen Foundation**, based in Germany, reported on cumbersome procedures relating to its asset allocation across borders and efforts to claim back withholding tax paid on dividends. The foundation has invested a good 40% of its equities in eurozone countries. The foundation filed refund claims in eight EU Member States – Belgium, Finland, France, Ireland, Italy, Luxembourg, the Netherlands and Spain. Five of the countries – Finland, France, Ireland, the Netherlands and Spain – have fully settled the claims. Belgium, Italy and Luxembourg, on the other hand, have either totally or partially rejected their claims, or the claims are still pending. The following specific problems and obstacles were reported by the Volkswagen Foundation:

### 1. Different legal situations and different documentation requirements

There are no standard requirements across countries for the recognition of a public-benefit organisation as comparable to those in the relevant country. In some countries – for example in the Netherlands – only very few documents must be provided with the refund claims. Unfortunately, in most other countries the supporting documentation required is onerous and many documents must be translated into the national language of the country in question (e.g. in France, Italy and Spain). Sometimes documents must even be certified by a public notary (e.g. in Spain).

### 2. High costs to make refund claims

Due to the different and considerable requirements in various countries, it is necessary to involve specialised tax consultants in order to make refund claims. This means that smaller foundations are thus often excluded from refunds due to the high costs involved in making claims. The Volkswagen Foundation has incurred total costs of approximately €1.4 million since 2006 when the non-discrimination principle was established (See sidebar on p. 5: “Key judgements by the European Court of Justice” for relevant ECJ cases).

### 3. Unreasonable length of time until the refund or final rejection

In some EU countries the period from the filing of the claim until either the refund or the final rejection is excessively long. For example in Italy, the foundation initiated claims in 2007, but the first reaction from the Italian fiscal authorities came only in 2017. Since 2021, the legal proceedings have been before the Italian Supreme Court. In the two lower court instances, the foundation prevailed. The Supreme Court is not expected to rule before 2026, which means that the case will have been running for almost 20 years.

Sibylle Mitscherling from the Volkswagen Foundation stated in her survey response, “In our view, it would help PBOs very much if there would be standard and uniform regulations within the EU with regard to the criteria for the recognition of PBOs as comparable to those in the relevant country. These criteria should be few and practicable.”

The Swedish **Riksbankens Jubileumsfond** had a similar experience with slow tax authority turnaround. The organisation reported, “We have finally given up our claims in Germany for the years 2003-2005. First there has been confusion as to whether the German federal or regional tax authority level was responsible. We then handed in our application for refund at the federal level in 2007 and 9 years [!] later the authority has sent us a letter asking for complementary information. In Spain, however, our case was dragging for a long time but turned out to be successful in the end. But it took 5 years from the day we handed in our claim to the final judgements.”

#### LEGAL AND FISCAL CONTEXT

There are still rules in place which provide that non-resident foundations are denied all or some tax benefits which domestic legislators have granted to resident foundations. The tax benefits are not available in some Member States at all if the foundation does not have its seat in the particular Member State (e.g. Croatia, Cyprus, Estonia, Latvia, Lithuania, Slovenia), and in some others they are available only if the foreign foundation also benefits the public of the particular Member State (e.g. France, Germany).

Generally, for corporate tax income purposes or foreign withholding tax purposes it is a matter of illustrating comparability to a domestic tax-exempt organisation to receive the same tax status, which is often a complex, lengthy and costly process.



### 1.3 TAX TREATMENT OF RESIDENT ORGANISATIONS ACTING ACROSS BORDERS

**An organisation based in France** reported that it had to limit its international activities in order not to lose its tax-exempt status.

**German organisations** reported having to explain their international activities in great detail to avoid losing their tax-exempt status.

#### LEGAL AND FISCAL CONTEXT

Most EU Member States allow tax-exempt public-benefit foundations to engage in activities outside their home country without losing their tax-exempt status in their home countries. However, in some countries, activities carried out abroad can jeopardise the tax status at home under certain conditions (e.g. Austria, France, Germany, Portugal).<sup>12</sup>

### 1.4 INHERITANCE TAX TREATMENT OF CROSS-BORDER LEGACIES

**A German individual** reported having nominated a Spanish public-benefit organisation as her legatee for an amount of €25,000. However, the exemption from inheritance tax did not apply to her case since Spain has not entered into a reciprocity agreement with Germany. Had the legacy been made to a German tax-exempt public-benefit organisation, the donation would not have been taxed.

**A Belgian individual** reported having designated a legacy to a Polish public-benefit foundation working with disadvantaged young people, but the legacy was taxed at a higher rate than the rate applicable to Belgian foundations.

#### LEGAL AND FISCAL CONTEXT

The situation varies in EU Member States when it comes to tax treatment of legacies to non-resident public-benefit foundations. Some countries have not yet implemented the non-discrimination principle.

Some countries apply the rule that donations to foreign foundations may be exempt from inheritance and gift tax if the recipient's country has entered into a reciprocity agreement (e.g. Germany, Greece, Ireland, Luxembourg).

<sup>12</sup> For a detailed list of these conditions, refer to Philea's country profiles on the legal and fiscal landscape for philanthropy: [Analysing the legal environment for philanthropy in Europe](#), Philea.



## Difficulties in accessing banking services and transferring funds across borders

The second-most-cited category of barriers to cross-border philanthropy involves obstacles related to accessing banking services. Other barriers to transferring funds involve donations and grants to entities in sanctioned countries.

**Several organisations encountered difficulties in opening bank accounts in the UK.** Dog4Life ETS, a non-profit organisation based in Italy, wanted to promote a run for the organisation in the UK but was unable to open a bank account in the country. Instead it was forced to use its Italian bank account, which obviously resulted in receiving far fewer donations

**Even organisations based in the UK found it difficult to open a bank account in the country.** Compassiviste Foundation, which pursues multiple charitable goals, found it difficult to open an account after having registered in the UK. More than one bank was reluctant to assist the foundation, sometimes denying services without explanation. Another UK-registered foundation reported on general difficulties in accessing bank services in the UK, ranging from authentication of the organisation, caps on amounts that could be dispersed in one day, and lengthy and burdensome “know your customer” procedures.

**Organisations in several countries reported that banks are delaying the transfer of charitable donations into foreign countries.** Several organisations in the UK reported having successfully used the financial services of CAF Bank,<sup>13</sup> which exists specifically to provide financial and banking products and services to the third sector in the UK.

Another type of barrier to philanthropic giving involves **transfers that are intended to entities in sanctioned countries.** Along with other foundations, the German Maecenata Foundation, which is active in research and teaching on civil society, as well as transnational giving, found it difficult to transfer philanthropic funds to Russia and China due to sanctions.

### LEGAL AND FISCAL CONTEXT

It is not uncommon for foundations, like other non-profit organisations, to struggle in accessing banking services, both in the country where they are registered and in other countries where they wish to carry out their activities. Barriers to accessing banking services may include difficulty in opening bank accounts, sometimes leading to the impossibility of doing so (in certain cases without explanation); excessively lengthy and burdensome “know your customer” procedures; as well as other banking practices – such as caps on amount of funds that can be dispersed in a given period of time, or burdensome authentication procedures – that impose significant hurdles for foundations’ ability to access financial services across their national borders.

<sup>13</sup> [CAF Bank](#), Charities Aid Foundation.



## Lack of legal recognition of foreign foundations

Philanthropic organisations sometimes need to register or create a branch before they may operate in another country in Europe as the legal personality in their home country may not always be recognised abroad.

**One German organisation** reported about the need to register in Belgium before being able to sign contracts there. Several organisations decided to register or create a branch to facilitate their operations in other European countries.

**The Robert Bosch Foundation**, which owns the Bosch company, reported facing legal barriers when registering in other European countries. The challenge for the Robert Bosch Foundation is that many foreign legal systems do not differentiate between the foundation and the Bosch company.

In addition to issues with registration, the foundation reported difficulties in complying with different legal requirements when carrying out charitable activities, including grantmaking and engaging in collaborative projects across borders. The foundation referred to countries with a more restrictive approach regarding the inflow of foreign funding. In several countries they had to operate under the umbrella of existing non-profit organisations. The potential violation with local law has led the foundation to end projects, even though the local law may be in conflict with EU law.

### LEGAL AND FISCAL CONTEXT

According to the data provided to us by the national experts in 2020, several EU Member States require a foreign (EU-based or other) foundation to register a branch in the respective country before it is recognised and can enter into contracts (e.g. Belgium, Croatia, Finland, France, Poland). In Ireland, it is even an offence to carry out charitable activities without being properly registered in Ireland. In Spain, recognition is given to all foundations legally constituted in another country as long as they only carry out occasional activities, but registration is needed when the foundation wants to operate more regularly in Spain.

One attempted instrument towards automatic recognition has been the European Convention on the Recognition of the Legal Personality of International NGOs.<sup>14</sup> However, this was ratified by only 11 countries.<sup>15</sup>

<sup>14</sup> **The Convention** facilitates the recognition by signatory countries of the legal personality and capacity of foreign-based public-benefit organisations established in other signatory countries without further steps, although additional requirements may remain in force in certain cases.

<sup>15</sup> Hopt, Klaus J et al. "**Feasibility Study on a European Foundation Statute: Final Report**", 2009.



## Impossibility of cross-border merger of foundations

Philanthropic entities cannot merge across borders as companies can. In fact, there are no regulations for carrying out a cross-border merger at EU level or at the level of most Member States.

**Two public-benefit foundations with similar purposes**, registered respectively in the Czech Republic and Slovakia, encountered problems when trying to merge as there is no regulation in the legal systems of the Czech Republic or Slovakia for cross-border mergers. Only domestic mergers are regulated in these two countries. In this case, the applicability of the principles of European law to foundations was not clear, and the registry authorities involved deemed that a merger was not possible because the case fell outside of their jurisdictions. The differences in the tax regimes of the two countries were also considered a barrier. In the end, the transaction did not happen. Based on the legal opinion and risks that were described, the foundations ended up solving the situation in a different way.

There are no regulations for carrying out a cross-border merger at national level in the Czech Republic or at EU level. The law of the Czech Republic regulates the transfer of the registered office abroad, but not cross-border mergers. There may also be doubts in Czech law as to whether foreign foundations can be considered as having the same legal form as a domestic foundation, and whether a cross-border merger is therefore not precluded by Section 181 of the Czech Civil Code. When it comes to EU law, there are no comparability criteria for foundations as there are for companies under the Conversion Directive.

### LEGAL AND FISCAL CONTEXT

Unlike companies, philanthropic entities cannot merge across borders. There is no pertinent secondary EU legislation on cross-border mergers between, and acquisitions or restructurings of, foundations. Directive 2017/1132 relating to certain aspects of company law, which regulates the cross-border merger of limited liability companies,<sup>16</sup> applies only to corporations, not to foundations.



## Burdensome process to transfer seat or perform a conversion across borders

There is no legal provision in most countries, nor at EU level, for shifting a philanthropic organisation's headquarters across borders, so this process entails a high degree of legal uncertainty.

**The European Center for Not-for-Profit Law Stichting (ECNL)** was initially established in Hungary as a branch office of the International Center for Not-for-Profit Law (ICNL), with a mission to support the creation of laws on registration and operation of civil society organisations in the emerging democracies of central and eastern Europe. In 2003, it became a separate European organisation based in Budapest, Hungary.

In 2018 ECNL moved its offices to The Hague, Netherlands. This was a complex and costly process. Instead of a simple transfer, ECNL had to establish an entirely new organisation (foundation) in The Hague: The European Center for Not-for-Profit Law Stichting (ECNL). The process included setting up a new governance structure; transferring all human and financial resources and projects from the Hungarian to the Dutch entity; and then finally winding up the Hungarian entity. ECNL also needed to open a new bank account in the Netherlands, a process which was lengthy and not straightforward. ECNL is now recognised as a Public-Benefit Organisation (Algemeen Nut Beogende Instelling - ANBI status) and also holds the Equivalency Determination Certification in the United States.

<sup>16</sup> Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law.

**Two cases in the Netherlands** involved cross-border conversions. An association governed by Belgian law wished to convert into an association governed by Dutch law. Similarly, a foundation governed by Belgian law wished to convert into a foundation governed by Dutch law. The Belgian legal advisor of the entities wishing to perform the cross-border conversions was not comfortable with performing such conversions based on the case law of the European courts. The challenge in these conversions came in determining whether or not the association and foundation involved qualified as companies within the meaning of art. 54 TFEU. Both cases were eventually abandoned due to the difficulty in solving the legal challenges explained above (i.e. the absence of a harmonised legal framework on the matter).

#### LEGAL AND FISCAL CONTEXT

Most Member States apply, with or without variations, general principles of conflict-of-corporate-laws to determine the legal status and the nationality of a foundation. As a general rule, two fundamentally different approaches can be observed in the EU: the “real seat doctrine” and the “state of incorporation doctrine”.<sup>17</sup> Whatever the approach in the country, the legal situation is unclear if a foundation wants to transfer its registered seat from one Member State to another, since the national laws of the Member States generally do not regulate these cases.



## Restrictions on foreign funding

Whereas philanthropic funding should flow freely according to the EU principle of free movement of capital within the internal market, there is a worrying phenomenon of so-called foreign funding/foreign agent restrictions. The legal requirements to register with the State as foreign-funded organisations and to use such labelling in any type of correspondence stigmatise such organisations as foreign-funded agents. The assumed rationale of such laws is a protection of the sovereignty of the State from “foreign influence”.

**An Irish organisation** reported that it was not allowed to receive a charitable donation from an organisation outside of Ireland.

#### LEGAL AND FISCAL CONTEXT

The 2020 data provided to us by national experts revealed that there are a couple of countries having introduced what we classify as foreign funding restrictions:

**Hungary:** Act No. LXXVI of 2017 on transparency of associations and foundations funded from abroad required organisations that receive, directly or indirectly, more than HUF 7,200,000 (~€20,600) per annum from foreign sources to register and declare themselves in any communication as foreign-funded organisations (this law has now been withdrawn following EU infringement procedures).

**Ireland:** An unintended consequence of amendments to the Electoral Acts 1997-2012, as amended, means that a foundation may not receive a political donation from an organisation outside of Ireland, and may not receive a donation from an entity that does not have an office in Ireland from which a principal activity is directed.

**In other European countries,** notably Georgia and Slovakia, similar foreign funding restrictions are moving through the legislative process and/or are being discussed.

<sup>17</sup> The term “real seat” is commonly understood as referring to the place where the fundamental decisions by the foundation’s management are effectively being implemented in day-to-day activities versus the “place in which the entity is incorporated”. The real seat doctrine is based upon the assumption that the state in which an entity has its real seat is typically the state that is most strongly affected by the activities of the entity.

# THE WAY FORWARD

## ➡ Policy moves in the right direction

Although we do have a long way to go to bring down the barriers outlined in this publication, we do see positive developments.

We consider that the following steps together constitute a major move in the right direction in that they have brought some facilitation of cross-border philanthropy, including in the area of taxation: The European Commission proposal for a Council recommendation on developing social economy framework conditions<sup>18</sup> (including the papers on “Relevant taxation frameworks for social economy entities” and “Non-discriminatory taxation of charitable organisations and their donors”), published on 13 June 2023;<sup>19</sup> and the related Council recommendation, released on 27 November 2023.

Among other novelties, the Council recommendation suggests that Member States consider **stimulating tax incentives for the sector**, including corporate tax exemptions and income tax incentives for donors. It gives specific attention to **facilitating public-benefit cross-border donations**, for example by recommending that Member States issue a standardised form of the recipient entity established in another Member State on the amount of the donation, identifying both the recipient and the donor. We also welcome the recent legislative proposal concerning **European cross-border associations (ECBA)** and consider that this would also open the door for a new legislative initiative for foundations.

## ➡ Concrete steps suggested by survey respondents

The two most frequently cited barriers by survey respondents were 1) barriers when wanting to donate and fundraise or invest across borders in a tax-effective way, and 2) problems accessing banking services when acting across borders.

Respondents to the questionnaire suggested several concrete actions for policymakers to pursue, in order to remove these and other barriers:

Many contributors to the questionnaire stressed the need to **mutually recognise the tax status of public-benefit organisations across the European Union**. As stated by one of the organisations, which chose to remain anonymous: “If one country considers an organisation to be a charity, other EU countries’ tax authorities should accept this assessment.”

Almost all respondents insisted on the need to **harmonise tax-efficient giving** in the EU and at least **ease processes for carrying out the comparability test**. Some organisations suggested that Member States issue concrete recommendations setting out clear criteria for a foreign organisation to be considered as comparable to a local one. Respondents also highlighted **practical solutions** which could ease their work: “It would be enough to have a website with **free technical assistance** that provides all the answers on taxation of donations among all countries in the world.”

Several organisations asked for **better banking options for non-profits**. Sistech, an organisation registered in France which supports

*“Please create a European Charity status, so we don’t have to open a charity in every country. We lose time, money and our nerves.”*

From survey response by anonymous foundation

employment for refugee women, pointed out that while companies can easily open bank accounts in another country using one VAT code, public-benefit organisations must open different accounts with different VAT codes when they operate in different countries. Resources spent on this could be better spent on social impact.

Additionally, some respondents emphasised the need for **more awareness raising and better education of policymakers vis-à-vis philanthropy**. To serve this purpose, Philanthropy Ireland noted the importance of sharing the data collected in the present survey with policymakers. We as Philea and TGE agree that the philanthropy sector itself is best placed to tell its own story, share its experience through data, and reach out to policymakers concerning the barriers it faces. Crucially, the **philanthropic sector itself must continue to speak out and urge policymakers to work towards bringing down these barriers to cross-border philanthropy**. Engaging with policymakers and showcasing how foundations and philanthropy operate in different countries will hopefully also increase trust in each other’s systems of checks and balances.

<sup>18</sup> [Proposal for a Council recommendation on developing social economy framework conditions](#), European Commission, 2023.

<sup>19</sup> The Proposal was adopted by the European Commission as part of the implementation of the [Social Economy Action Plan](#), which was presented by the Commission in December 2021.

Several respondents gave **positive feedback on existing support structures such as TGE and its online [Transnational Giving Europe platform](#)** which help to channel grants and donations across borders, including to non-EU countries.<sup>20</sup> However, respondents and TGE itself have expressed that in an ideal world of cross-border free flow, there would be no need for workaround structures such as TGE. But until the Single Market for Philanthropy exists, such workarounds are needed.<sup>21</sup>

## **Philea and TGE call to action**

While it is easy for goods and services to move freely around the European Union, it is still difficult for donors and foundations to operate across borders. Philanthropy also needs enabling frameworks when acting across borders to unleash its full potential. The European Commission proposal on developing social economy framework conditions and the related 2023 Council recommendation, as well as the 2023 proposal for a European cross-border association, are all important policy steps towards a Single Market for Philanthropy: We call on national and EU policymakers to implement them swiftly. These existing policy proposals should move ahead and be further strengthened as outlined by the survey respondents' suggestions and as laid out in the 2024 edition of **Philea's European Philanthropy Manifesto**. The Manifesto includes four key recommendations to establish a Single Market for Philanthropy:

## 1. EMPOWER PHILANTHROPY

by creating enabling frameworks in line with the fundamental rights of the freedom of association and movement of capital.

## 2. FACILITATE CROSS-BORDER PHILANTHROPY THROUGH:

- A Directive on mutual recognition of tax-exempt public-benefit organisations within the EU
- Guidance to Member States on better implementing the non-discrimination principle in a meaningful way and templates to facilitate cross-border philanthropy
- Mutual recognition of the legal personality of philanthropic organisations and enabling cross-border mergers and move of seats
- Swift adoption of the European cross-border association (ECBA) proposal and consideration of a similar legislative initiative for foundations
- Refrain from introducing foreign funding restrictions and counter them using EU law and infringement procedures

## 3. ENGAGE WITH PHILANTHROPY

by creating an open, transparent and regular dialogue with civil society, including philanthropy.

## 4. PARTNER WITH PHILANTHROPY FOR THE PUBLIC GOOD

by creating more opportunities in strategic programme design, co-granting and creating incentives for co-investing from endowments.

As this publication has attempted to show, the philanthropic sector must continue to speak out and engage with policymakers to work towards bringing down barriers to cross-border philanthropy. The time is now for a Single Market for Philanthropy.

<sup>20</sup> For an example of an online donation page set up for one of TGE's European beneficiaries, see [Children Tumour Foundation](#).

<sup>21</sup> [More information on the Transnational Giving Europe platform](#).

# RESOURCES

- [Indiana University Lilly Family School of Philanthropy Global Philanthropy Indices.](#)
- [European Philanthropy Manifesto, Philea, 2024.](#)
- [“Guide Towards a Single EU Market for Philanthropy”, King Baudouin Foundation, 2024.](#)
- [Non-discriminatory taxation of charitable organisations and their donors: Principles, European Commission, 2023.](#)
- [Proposal for a Council Recommendation on developing social economy framework conditions, European Commission, 2023.](#)
- [Proposal on European cross-border associations \(ECBA\), European Commission, 2023.](#)
- [Relevant taxation frameworks for Social Economy Entities, European Commission, 2023.](#)
- [“The Philanthropy Environment in Europe”, Indiana University Lilly Family School of Philanthropy and Philea, 2022.](#)
- [“Comparative Highlights of Foundation Laws”, Philea, 2021.](#)
- [“Cross-Border Tax and Philanthropy: Avoiding the Icebergs in the Sea of Generosity”, Breen, Oonagh B., and Cordery, Carolyn J., Nonprofit Policy Forum journal, 2021.](#)
- [European Commission Social Economy Action Plan, 2021.](#)
- [Country profiles on the legal and fiscal landscape for philanthropy, Philea, 2020.](#)
- [“Taxation and Philanthropy”, OECD, 2020.](#)
- [“Boosting cross-border philanthropy in Europe: Towards a tax-effective environment”, The European Foundation Centre and Transnational Giving Europe, 2017.](#)
- [“Taxation of cross-border philanthropy in Europe after Persche and Stauffer: From landlock to free movement?” The European Foundation Centre and Transnational Giving Europe, 2014.](#)



# ABOUT THE PARTNER ORGANISATIONS

**Philea** nurtures a diverse and inclusive ecosystem of foundations, philanthropic organisations and networks in over 30 countries that work for the common good. With individual and national-level infrastructure organisations as members, it unites over 7,500 public-benefit foundations that seek to improve life for people and communities in Europe and around the world. Philea galvanises collective action and amplifies the voice of European philanthropy, and in all it does, it is committed to enhancing trust, collaboration, transparency, innovation, inclusion and diversity.

[www.philea.eu](http://www.philea.eu)

**Transnational Giving Europe (TGE)** is a partnership of leading European foundations and associations facilitating tax-efficient cross-border giving within Europe. The TGE network enables donors, both corporations and individuals, resident in one of the participating countries, to financially support non-profit organisations in other member countries, while benefiting directly from the tax advantages provided for in the legislation of their country of residence. As part of their core mission, TGE collaborates with philanthropic organisations to advocate for and foster a Europe of generosity and borderless giving.

[www.transnationalgiving.eu](http://www.transnationalgiving.eu)

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