



**SSE Contribution to the EC call for evidence
on an EC proposal for a legislative initiative on cross-border activities of associations**

[Social Services Europe](#) (SSE) is a **network of eight European umbrella organisations** – comprising [Caritas Europa](#), [CEDAG](#), [E.A.N.](#), [EASPD](#), [EPR](#), [Eurodiaconia](#), [FEANTSA](#) and the [Red Cross EU Office](#) – representing over **200,000 not-for-profit social and health care organisations**. We are active in a sector employing over **11 million people**, of which about half are employed by social economy organisations. This also means that **more than a third of the (estimated) 13.8 million paid jobs in the social economy is in the sector of social services**.

SSE on 10 February 2022 issued the [SSE Position and Briefing Note “Statute for European Cross-Border Associations and Non-Profit Organisations”](#). On the same day SSE co-signed the [“Joint Civil Society Position Paper on the European Parliament Proposal for a European Association Statute”](#) with Civil Society Europe (CSE), PHILEA, CEDAG and the European Center for Not-For-Profit Law¹.

SSE welcomes the new impetus aiming at adopting common minimum standards for non-profit organisations in the EU and a European Statute for European Associations, supported by the [Resolution of the European Parliament \(EP\) of 17 February 2022](#) which called for such a statute. SSE also welcomes the European Commission’s (EC) commitment to respond to the EP Resolution with a legislative act and the related EC [call for evidence](#) for an impact assessment launched on 5 August 2022. Our contribution looks into the four aspects set out there on p. 3.

I) Need for EU action

The [comparative legal analysis of associations laws and regimes in the EU](#) – commissioned by the EC – points out² that **non-profit organisations (NPOs), such as associations, exist in all EU Member States (EU MS)**. Whereas cooperatives as a rule work for the sustainable development and (economic and social) well-being of their communities, NPOs are providers of public good, serving either public or mutual benefits³. The (respective) legislation on associations in all MS defines minimum requirements for the governance system of associations (and other NPOs)⁴.

The “profit non-distribution constraint” – also called “asset lock” – that characterised NPOs is the precondition for NPOs to carry out economic activities, while at the same time guaranteeing the delivery

¹ Since the first consultation for the Committee on Legal Affairs of the European Parliament, SSE has been cooperating closely with Civil Society Europe ([CSE](#)), Philanthropy Europe Association ([Philea](#)) and the European Platform for National Non-Profit Umbrella Organisations and for National Associations of General Interest ([CEDAG](#)). This cooperation led to the elaboration of joint positions, including for this EC consultation and the co-signing of a letter with CSE, PHILEA and CEDAG dated 4 May 2022. The co-signatories had asked Commissioner Breton for a meeting on the proposal for a European Association Statute and related topics which took place on 1 July 2022. The aim of the cooperation is to reinforce the needs and interests of all non-profit organisations and to convince the EC and EP to pursue a comprehensive approach including both associations and foundations.

² p. 9

³ *ibid.*, pp. 25 and 26

⁴ *ibid.*, p. 30

of services of general (economic) interest⁵.

SSE particularly welcomes one key aspect of the EC legislative proposal in line with the letter sent by the EC to the EP on 11 May 2022, namely the **facilitation of the cross-border activities of (national) associations in the internal market by addressing and overcoming barriers which hinder those activities**. This is an important objective in itself fully supported by SSE:

- A [survey](#) run in September and October 2022 by Civil Society Europe (CSE) – shared by SSE with its members – read together with existing literature and insights from the recently published [comparative legal analysis of associations laws and regimes in the EU](#) helped to identify the following **challenges or barriers for NGOs which exist in the internal market and/or in specific EU MS compared to commercial enterprises**: 1) recognition of legal personality; 2) moving seat of an organisation, 3) cross merger of foundations, 4) relocation of employees by NGOs to another country, 5) access to bank accounts or financial services, 6) restrictions to receiving funding from abroad, 7) ensuring the same tax treatment for associations for donors from abroad as for donors from the country of establishment of the organisation as well as 8) a diverging interpretation of EU competition rules relevant for the above-listed items from one EU MS to another. There also seems to be evidence that preferential VAT rates to associations providing services of general interest to disadvantaged publics have been challenged by EU authorities.
- **Future adapted regulations addressing those existing barriers would be an improvement considered useful and important by SSE**, too. Looking into the issues mentioned above is thus positive, but not sufficient for SSE.

SSE urges the EC to show more ambition. Both the EC call for evidence on an EC proposal for a legislative initiative on cross-border activities of associations of 5 August 2022 and the letter sent by the EC to the EP on 11 May 2022 **fall short of proposing legislative action to improve the formal recognition of the key contribution of associations (and general-interest foundations, as well as other actors of the social economy, such as work integration social enterprises) to social inclusion and social cohesion, the realisation of objectives of social, health, employment and education policies, and more generally to the European Social Model (ESM)**⁶:

- SSE would like to see in the forthcoming legislative proposal **a stronger focus on and a better recognition of the double function of many associations in the field of social services across Europe**. They are both 1) **providers of services of general (economic) interest** in which they play an important role for the lives and well-being of millions of European residents, for the welfare states and social protection systems in the EU and at the same time 2) and **promoters, facilitators, key actors and defenders of effective civil dialogue and participatory democracy**. They also offer opportunities for volunteering.
- In their **first function** associations are important catalysts for the social and labour market inclusion of vulnerable or disadvantaged persons and/or groups. They offer care, support, guidance, education, and training services⁷. They address barriers and situations of discrimination with the aim to empower the people relying on their support. This is often done through integrated approaches in partnership with public authorities and other service

⁵ *ibid.*, p. 29

⁶ This ESM is backed up, i.a., by a number of EU-level policy frameworks, such as the EPSR (and the related EPSR AP), the European Disability Rights Strategy, the European Platform for Combating Homelessness, the Social Economy Action Plan and – most recently – the European Care Strategy.

⁷ The national members of SSE support millions of people in various stages in life, such as children, the elderly, persons with disabilities, people at risk of or experiencing poverty and social exclusion, people experiencing homelessness, migrants, refugees, and asylum seekers, LGBTIQ+, and other groups in situations of vulnerability. SSE members all recognise the many intersectionalities that people who require care.

providers. Social services are a core part of national social protection systems and are services of general interest.

- In their **second function**, associations are promoters of volunteering and civic engagement as well as schools of democracy and participation. They are key actors in the civic space of our European societies and in civil dialogue within the EU Member States and on EU level. Associations traditionally have also been actors and promoters of a human and social rights-based and solidarity- and social justice-oriented European integration project.

II) Planned options to solve the identified problems & III) their expected impact

For SSE, a Regulation on a statute for European cross-border associations and non-profit organisations (building both on art. 352 TFEU and art. 114 TFEU as legal bases, to be considered more in detail with legal experts) and a Directive on common minimum standards for non-profit organisations (having as main legal basis art. 114 TFEU) in the EU would **fill the legislative gap for an EU-wide regulatory framework supportive of and better facilitating than actually their transnational activities:**

- Since 2003, cooperatives have the possibility to make use of the European Cooperative Society as an EU-level legal framework. A similar instrument, however, is lacking for the other three pillars of the social economy, i.e., associations, foundations and mutuals. The Statute for a European Company has already existed since 2001.
- For SSE, having a **statute for European cross-border associations and non-profit organisations** would be an **important tool to guarantee a level playing field in the internal market** – and in this context to enable associations to fully benefit from the freedoms of the internal market and from the fundamental rights as enshrined by the Charter of Fundamental Rights of the EU⁸ –, to raise the visibility and recognition of associations at EU level, to **emphasise the specific capacity of associations to act in the general interest of the citizens of the EU** and to acknowledge their contribution to the European Social Model. It would also bring about a positive definition of a not-for-profit/non-profit organisation.
- For SSE, a **European Statute for Associations would help clarifying one of their key features, the so-called full asset lock**, i.e., their obligation to use their financial reserves and any possible profit only in accordance with their specific purpose (as laid down in the statutes). This feature, in turn, in most cases and not least in the social services sector, is closely linked to the realisation of the general interest. Services of general economic interest (SGEI) also provided by associations, including those operating in the field of social services, are recognised in the Article 14 of the Treaty on the Functioning of the European Union (TFEU) and complemented by the Protocol (No. 26) on Services of General Interest.
- SSE would **not like to see dismissed already before the start of a legislative process the ambitious project of a European Statute for cross-border Associations, but to test its feasibility**, thus taking up the request of the EP. The legislative proposal should incorporate text elements of the EP Resolution. An earlier version was withdrawn in 2013 by the EC from the list of pending legislative proposals. Again 10 years earlier an earlier version got support from 12 of the back then 15 EU MS while only 3 had general reservations, to our understanding mainly linked to provisions for tax reductions of associations when pursuing objectives recognised as being in the general interest (of/in the country in question).

Regarding the **material scope of the future legislative initiative**, SSE believes that **any EC proposal should both include general interest associations⁹ and foundations** with a view to creating a single

⁸ The [Social Economy Action Plan](#) identifies this point as challenge (p. 19) and explicitly recognises difficulties encountered by foundations and associations “in enjoying the full benefits of the Single Market” (p. 7).

⁹ In this context it is essential for SSE that any EU-level legislative initiative would abstain from a differentiated

market for public-benefit action. This is needed to enable public-benefit associations and foundations to address the current and future societal challenges in the context of the EU and also in order to remove or reduce barriers for their cross-border operation in the context of the internal market. Another good reason for such an encompassing approach is that recent developments linked to the shrinking civil society space in some EU MS have also addressed the civil society sector as a whole and not separately for associations and public-benefit foundations.

SSE welcomes that both the proposal for a Regulation on a statute for European cross-border associations and non-profit organisations and the proposal for a Directive on common minimum standards for non-profit organisations in the EU – as covered by the Resolution of the European Parliament of 17 February 2022 – contain **suggestions, concrete tools and procedures for an improvement of civil dialogue and of fora supportive of the direct participation of citizens in EU-level policy/decision making**. During the legislative process on the Directive on common minimum standards for non-profit organisations in the EU would need to be made more precise, in close cooperation and exchange with EU-level civil society organisations (CSOs), and also to be regulated in a way to involve them in the future monitoring of the effectiveness of the rules.

Regarding the second element of the Resolution of the European Parliament of 17 February 2022, **SSE does not support a harmonisation of common minimum standards for cross-border operations across the EU MS, but rather the definition – on EU level – of key principles on which national law should be developed in full respect of the fundamental rights and freedoms**. In line with proposals by CSE and PHILEA, they could cover issues such as the registration of an association, rules for its governance, rules for assembly and for the freedom of expression, including in online and offline space.

For SSE, the **text adopted by the of the EP on 17 February 2022 includes most of the key points relevant for our members and for social services throughout Europe. It reads largely well as to the wording of a number of points¹⁰**. The first aspect can be illustrated by points such as 1) the definition of requirements regarding a precise statement of the European Association’s objectives, its non-profit nature and, where applicable, a description of public benefit purposes, 2) unequivocal stipulations on workers’ rights, trade unions’ rights, working conditions, employers’ obligations and workers’ information, representation and board level representation right and 3) relatively light reporting and public disclosure obligations. The second aspect refers, e.g., to 1) the protection of the denomination “European Association”, and to 2) wording on “non-profit”, a “public benefit status”, “public benefit”, “member” and “non-profit organisation” in line with the vision, mission and values of SSE. **SSE would thus expect these points are being taken up in the EC legislative initiative in line with the spirit and aims of the Resolution of the European Parliament of 17 February 2022.**

While SSE supports the elaboration of a European Statute for Associations as a new legal form at EU level as first option – to be followed in the near future by a European Statute for Foundations –, **SSE would support, if and only if the first option cannot be realised and as complementary option, the establishment of a legal form for associations in national law enabling mutual recognition for them**

treatment between associations which (also) exercise an economic activity – as most providers of social services –and other associations, including national and EU-level umbrella organisations, which are not doing this. This type of associations of “non-economic nature” plays a role, e.g., as a “school for democracy”, a “vehicle for promoting social citizenship”, a “space for the active engagement and expression of European citizens, including of vulnerable and disadvantaged persons/groups”, a “facilitator of volunteering” or as a “framework for advocacy work”.

¹⁰ The full list is presented on pp. 3 and 4 of the SSE Position and Briefing Note “Statute for European Cross-Border Associations and Non-Profit Organisation” of 18 January 2022.

when operating across borders in the EU¹¹¹². In this context SSE would like to highlight that our members still have quite some questions on how this proposal made by the EC in the letter sent by the EC to the EP on 11 May 2022 and in the EC call for evidence on an EC proposal for a legislative initiative on cross-border activities of associations of 5 August 2022 could or should take shape. And what such a legal instrument would imply and contain as added value compared to the current situation for the EU MS, but also for the associations interested in cross-border activities and cooperation. SSE and its members are not clear about the advantages, effects and preconditions of an instrument such as a single member private limited liability company in national law (as stipulated in Directive 2009/102/EC), also mentioned by the EC. To clarify the scope and impact of such legislative option, experts in EU laws and NPOs could shed some light with the support of SSE, its members and its partner organisations.

SSE would like to see any EU-level legal initiative to be formulated in a way to **respect and maintain the diversity of existing legal frameworks for associations and public-benefit foundations at national level**, as long as they are in compliance with the EU-level fundamental rights and civic freedoms, and open for a system of mutual recognition of a new legal form as described in the paragraph above.

Should the EC proposal for a new legal form either on EU-level or on MS level, include the wider non-profit sector pursuing a public service mission or public benefit purpose, it could be a **building block for the recognition of the existence of a third legal form in EU law next to private and public entities**.

IV) Input on any further issues to consider in developing this policy field

The EC announces in the Social Economy Action Plan (cf. p. 3) to issue (likely in 2023) **“guidance on relevant taxation frameworks for social economy entities (including associations and foundations)”** as well as **“guidance clarifying existing rules on the tax treatment of cross-border public benefit donations affecting foundations and associations”**.

For SSE, this reads as if this exercise will be used to also integrate ECJ case law into this guidance. This could likely turn into a similar exercise than EC guidance on state aid and public procurement (as of about 2010) or on socially responsible public procurement (2021). These documents reflect the EC view and are mainly concerned with issues related to the effective functioning of the internal market.

Having such guidance – which would focus, in line with EU competence, on indirect taxes – could on the one hand be beneficial for national members of SSE to help clarify unclarity and if it helps to, e.g., be able to easier obtain donations from abroad which receive the same (preferential) tax treatment than donations received from organisations or persons in the same country.

SSE, however, sees the risks that if the guidance is elaborated without the input and involvement of relevant stakeholders, it could further push the whole “dossier” of associations – here in relation to their tax treatment – even stronger into the “internal market realm” than currently. Such a development would paradoxically be initiated by the Social Economy Action Plan, which, for SSE, should be used as a springboard to get a better recognition of the needs and specificities of the organisations of the social economy, their services and the service users.

¹¹ One fall-back option for the legal form of “association” to be possibly explored after the above-mentioned initiatives would fail, is the instrument of enhanced cooperation of at least 9 EU MS to start things off.

¹² Another fall-back option is the use of the Belgian AISBL model, a well-developed “reference legislation”, to be recognised by other EU MS.