
Recharging Advocacy for Rights in Europe

Paving the Way for More Resilient Civil Society Organisations: EU Cross-Border Associations

December 2023

Executive Summary

Recharging Advocacy for Rights in Europe welcomes the European Commission’s proposal for a Directive on European Cross-Border Associations. CSOs that operate in multiple EU member states could create one legal organisation across their “home” and “host” countries. ECBAs would enjoy the free movement of goods, services and capital, and be able to change their home country without creating a new organisational structure or losing assets.

However, the proposal does not address many of the administrative and legal complexities our organisations face. For member states to accept it, and for it to benefit CSOs as much as possible, EU legislators need to ensure the proposal supports EU values, clarifies structural issues and is fully implemented. Once adopted and transposed into national laws across the 27 EU member states, the inclusion of civil society voices in review processes will help ensure the directive is consistently applied in all member states.

We also call on the EU to adopt additional measures to protect and expand civic space, such as a directive on Common Minimum Standards for Non-Profit Organisations, measures to harmonise taxation rules for cross-border donations to nonprofit organisations, and stronger protections for human rights defenders across the EU.

Introduction

[Recharging Advocacy for Rights in Europe](#) – a solidarity alliance of over 50 human rights defenders from 19 EU countries – welcomes the [European Commission’s proposal for a Directive on European Cross-Border Associations](#). Based on the February 2022 European Parliament Report and Resolution and calls from civil society, the directive would help

streamline operations for civil society organisations (CSOs) that work transnationally within the EU.

CSOs provide services, educate communities, advocate on others' behalf, gather data, and hold authorities accountable. Human rights CSOs work to meet the needs of the most vulnerable members of society and uphold their rights. With democratic backsliding in some parts of the EU, fundamental rights and organisations that support them are under threat.¹ Our members have been targeted with smear campaigns, unfounded lawsuits and bureaucratic hurdles, threatened with fines and imprisonment, and even received death threats. This takes time and energy away from our mission – protecting and enforcing our clients' human rights.

We cannot push back on shrinking civic space on our own, especially those of us in member states where the rule of law and civic space are being undermined. We also need support from EU institutions, which are uniquely positioned to politically and financially protect and support CSOs so we can continue our essential work on behalf of citizens.

A new legal form of European Cross-Border Associations will help civil society organisations operate as economic actors with their full set of rights in the EU's single market. Beyond this, ECBAs could be a powerful tool for CSOs in countries where civic space is unnecessarily or disproportionately limited, and strengthen organisations in better-performing democracies. This legal form will help CSOs facing problems in one member country move more easily to another, without losing their organisational form or assets. Until now, organisations like the European Center for Not-for-Profit Law have faced enormous hurdles in moving their registration within member states.²

This directive is a promising step towards stronger protection for and support of civil society. At the same time, as proposed, the directive has serious limitations that will hinder its use in many organisations that need it, particularly smaller CSOs working on human rights and anti-discrimination. We recommend the proposal reflect EU values, clarify the structure of ECBAs and ensure their implementation to make the directive as impactful as possible.

Streamlining CSOs' Transnational Operations within Europe

The draft directive creates a new form of non-profit organisations called European Cross-Border Associations (ECBAs). It would allow CSOs that operate, or want to operate, in multiple EU member states to create one legal organisation across its "home" and "host" countries. Recognising that civic actors are also economic actors operating in the EU's single

¹ The [European Parliament's research services](#), the [Fundamental Rights Agency](#), reports from the UN's Universal Periodic Review, and [academic](#) and [think-tank](#) research confirm shrinking civic space in several EU member states.

² ECNL moved from Hungary to the Netherlands in 2018.

market, ECBAs would enjoy the free movement of goods, services and capital, and be able to change their home country without creating a new organisational structure or losing assets.

We urge the European Parliament and the Council to **adopt the directive as soon as possible**. The text should be clear for member states to agree to it and CSOs to benefit from it. It must reflect EU values, clarify the structure of ECBAs and ensure their implementation is as impactful as possible.

Supporting EU Values

Strengthening civil society's transnational operations will **put the EU's founding values** of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights **into practice**. These Article 2 values should be explicitly stated in the directive – organisations that benefit from ECBA status must embody them.'

So that ECBAs respect and work to promote EU values, in carrying out their duty of ensuring an enabling environment for civil society, member state authorities should strive to ensure compliance with EU core values when they register ECBAs and further on during their operations.

Structuring European Cross-Border Associations

ECBAs may apply for state funding for CSOs in any member state they operate, **expanding access to critical public funding**. This would **primarily benefit larger CSOs** that already operate in multiple countries and have the resources to manage these processes. Few local, grassroots organisations will be able to apply for these funds due to language, legal and administrative barriers.

The proposal states that **members of the executive body** (board of directors/executive committee) **must be EU citizens or residents** (Article 7.2). We recommend broadening the scope of this provision; many of our organisations have board members or founders from outside of Europe.

Similarly, the draft should not discourage or **limit associations from seeking and receiving funds from outside of the EU** (Article 15f may imply this). Diverse funding sources make our organisations stronger and more independent.

It is unclear **where ECBAs would pay taxes**, and to whom they must **disclose their balance sheets and donor lists**. Regimes hostile to CSOs can use these tools to further erode civic space and organisations' ability to operate freely. We must ensure that within the EU, justified transparency requirements are not misused to restrict the operations of a vibrant and diverse civil society.

Implementing the Directive

The directive's impact will depend on how it is implemented. The Commission must be vigilant that it is applied impartially across member states. Progress should be **reviewed regularly with meaningful civil society input**. ECBAs and national CSOs should regularly discuss the state of implementation with the Commission, European Parliament and member states, as well as measures to improve it.

The Commission must ensure **ECBAs are treated the same as nationally-registered associations**. If member states fail to implement the directive or reject ECBA applications, civil society needs **access to simple, affordable and speedy remedies**. How CSOs should go about challenging this must be addressed. Filing a lawsuit in national courts and appealing at the European Court of Justice, for example, requires legal expertise, is expensive, and can take years.

The Commission must ensure that home and host state **agencies allow ECBAs to apply for national funding without discrimination**. Language barriers present a problem for CSOs that needs to be addressed. To receive many types of funding, CSOs also need to be able to **open bank accounts** in their home and host countries (even if no board members reside there).

Protecting Civil Society Requires Comprehensive EU Policies

While the directive is very welcome, creating ECBAs **does not address many of the administrative and legal complexities** our organisations face, including undue administrative burdens, tax complexities (including incentives for donors), and differing laws among member states on employment, taxation and social security contributions, intellectual property, anti-money laundering, and insolvency (Article 4.1). We need additional Union-wide measures to address these member-state laws and practices.

Member states that threaten and intimidate civil society will continue these attempts.

Regimes that attack and persecute our work will not change their tactics, regardless of whether we register as an ECBA. For example, Hungarian authorities could create additional reporting requirements for ECBAs as they have for nationally-registered organisations. Greece could subject ECBAs to additional registration hurdles, just like it has for national CSOs. And nothing in the directive would prevent Italy from criminalising ECBAs' humanitarian efforts to help migrants, as it has for other humanitarian organisations.

We urgently need the EU to take many more steps to help protect and expand civic space.

We call on the EU to adopt the second part of the February 2022 European Parliament proposal for a [directive on Common Minimum Standards for Non-Profit Organisations](#). In addition, we need measures to **harmonise taxation rules for cross-border donations to nonprofit organisations** and **stronger freedom of association standards** across the EU.

Conclusions

Human rights defenders coming together in the Recharging Advocacy for Rights in Europe alliance welcome the Commission's proposal for a directive on European Cross-Border Associations. For CSOs that operate in multiple member states, it will help streamline their operations and increase access to critical funding sources. For those of us registered in member states with hostile civil society environments that work transnationally, the proposal could benefit larger CSOs with EU single market protections.

We call for the directive's adoption and implementation as soon as possible. For member states to accept it, and for it to benefit CSOs as much as possible, the Commission needs to ensure it **supports EU values, clarifies structural issues** for ECBAAs and is **fully implemented**. **Including civil society voices in review processes** will help ensure the directive is consistently applied in all member states.

Civil society is essential to promoting, monitoring and protecting fundamental rights and the rule of law – the very principles the EU is founded upon. To protect and expand civic space, we need additional policies including a directive on Common Minimum Standards for Non-Profit Organisations, harmonised rules on cross-border donations, and stronger freedom of association standards across the EU. The Union is only as strong as its civil society.

Recommendations

The directive should be as clear as possible for member states to accept and adopt it. It must reflect EU values, create clear structures for ECBAAs, and be implemented with regular review by the European Commission and civil society.

EU Values

- The directive should **reflect the EU's founding values** of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, and reference these Treaty on European Union Article 2 values in the text.

ECBA Structures

- **Executive Bodies** – Rather than requiring that *all* members of an ECBA's executive body be EU citizens or residents, we support the [JURI report](#)'s suggestion that at least two members of an ECBA must have links to at least two member states (Article 7.2).
- **External funding** – There should **not be any restrictions on receiving funds from outside the EU** (Article 15 may imply this).
- **Tax obligations** – Clarify if ECBAAs need to pay taxes in their home or host states.

Implementation

- **Funding from host and home countries** – Ensure that public authorities in home and host states allow ECBAs to apply for national, regional and local funding available to non-profits and address language barriers. ECBAs also need to be able to open bank accounts in host and home countries, even when no board members reside there.
- **Sensitive information** – No additional disclosure requirements should be imposed on ECBAs (beyond existing national laws and European standards).
- **Treat ECBAs the same as nationally registered associations during their registration and operations.** In case these safeguards are not applied or are applied discriminately, the remedy in national law must be **simple, speedy and affordable**.
- **Publicise** the new legal form and **help smaller CSOs** set them up. Hold regular informational sessions for CSOs after the directive is adopted.
- **Regular review with CSOs** – We call on the Commission to regularly review the directive's implementation, including holding **meaningful civil dialogue** with representatives of associations (ECBAs and national CSOs) to discuss progress and challenges with the Commission, Parliament and member states, and suggest measures to improve it. We fully support the JURI report's extensive review recommendations.