Non-profit organisations (NPOs) and single market - consultation on 2025 Rule of Law report

2025 Rule of Law Report - additional consultation on single market dimension

Safeguards to ensure legal certainty, the stability of the legal framework and non-discrimination.

The non-profit sector is not recognised at the EU-level, which creates several problems of legal certainty, difference of treatment and stability of the legal framework when non-profit organisations (NPOs) want to operate in a Member State different than the country of their establishment.

Since there is no automatic recognition of the NPO-s within the Single Market, when extending activities to new countries, it is difficult for NPOs to understand registrations and legal requirements, and bureaucratic procedures need to be repeated in each country in which the organisation aims to operate. These procedures, although often similar, are never the same. Moreover, currently, rules are further developed at the regional and/or local level, thus adding one more layer of complexity. The administrative procedures and requisites to be met in each country need to happen in the local language (which in the case of some regions may not even be the national language of the country).

Some Member States require the creation of a local branch of a foreign Association to operate in that country such as, for instance, to employ staff. Nonetheless restrictions remain and it may be subject to specific administrative requirements.

Some Member States administrative practices prevent Associations from organising their activities in another (EU) country (e.g. requesting that the general assembly modifying statutes takes place in the country where they are based, while it is practice that European organisations organise these meetings in different EU countries).

Often NPOs have to rely on a local partner when organising activities abroad that require the signature of commercial contracts, as providers require the use of a local

VAT number. Partners have then to make advance payments and deal with all the administrative burden.

As a consequence of incorrect transposition or overly restrictive interpretation of EU anti-money laundering (AML) and counterterrorism legislation, many banks apply derisking practices to civil society organisations. We have several instances of bank accounts blocked or denial of provisions of banking services to NGOs (transfer of funds, credit cards, etc). And banks also increasingly question direct payments that non-profit associations receive from abroad (also inside the EU) because of the AML, including funding support.

Several NPOs across Member States struggle with the exceptions to state aid rules, whether these are group exemptions, the implementation of the de minimis aid rule, and in the context of the services of general economic interest, which creates a lot of legal uncertainties. These exceptions are, however, unfulfilling as they fail to protect civil society organisations in various ways – either because their domain is not included in the group exemptions, the de minimis rules do not cover the operation of bigger non-profit organisations, or the particularity of their economic activities is not covered by the very strict and exhaustive SGEI rules.

Despite ECJ rulings confirming the non-discrimination principle and the free flow of capital, there are still rules in place which provide that non-resident foundations (and their donors) are denied all or some tax benefits which domestic legislators have granted to resident foundations and their donors. It is still difficult for associations to ensure that donors from abroad receive the same tax treatment as donors from the country of establishment of the organisation. Some organisations have to find solutions through partnerships with NGOs of the same country as the donor. This clearly limits opportunities for fundraising and also the freedom of private donors. We were also alerted to the application of the inverted VAT rules, leading to uncertainty or double taxation.

In short, we currently lack a comprehensive solution for non-profit organisations in Europe – and as long as non-profit organisations are put on the same level as genuine enterprises, this will continue to be the issue.

Any other points you would like to raise related to the single market dimension in the context of the Rule of Law Report

In addition to bank derisking, certain aspects of money laundering and terrorism financing policies are limiting the operating space for philanthropy and civic space. Even though not required by the EU Directives, certain countries consider non-profit associations and foundations as quasi-obliged entities requiring more strenuous reporting requirements, without clearly identified risks.

In recent years several Member States have introduced provisions that introduce restrictions to civil society organisations to their advocacy activities.As an example the decision of tax authorities in Germany to remove charitable status from certain NGOs involved in public campaigning, provisions in the Electoral Act in Ireland, clauses in public grants preventing advocacy or other forms of pressure on CSOs requiring to abstain from advocacy or watchdog activities; laws and policies on disinformation such as the 2018 ‘Holocaust law’ in Poland that induce censorship as well as intimidation, including the use of criminal law to obstruct free speech, as well as the change to the criminal code in Hungary and Spain in 2020 all currently enforced. This issue has also been addressed in the European Commission 2022 rule of law report.

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