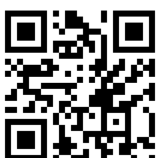
STUDY

Requested by the JURI Committee

Public benefit status and CMD systems for associations and non-profit organizations in the EU



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Public benefit status and CMD systems for associations and non-profit organizations in the EU

Abstract

This study, which was commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the JURI Committee, provides a comparative analysis of the laws on public benefit status found in the Member States of the EU from the perspective of associations and discusses the state of the art of EU law in this field. The study also deals with the legal regulation of cross-border conversion, merger and division of associations, focusing on some problematic aspects that also concern associations that hold the public benefit status. Conclusions focus on the need for the introduction of an EU statute that guarantees public benefit organizations effective freedom of establishment within the Union.

This document was requested by the European Parliament's Committee on Legal Affairs.

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ANBI	Dutch Public Benefit Institutions
AO	Abgabenordnung - German Tax Code
CA	Irish Charities Act (2009)
CJEU	Court of Justice of the European Union
CLG	Company Limited by Guarantee
CMD	Cross-border conversion, merger and division
CRA	Irish Charities Regulatory Authority
CSO	Civil Society Organization
CTS	Italian Code of the Third Sector
EC	European Commission
ECBA	European Cross-Border Association
EEA	European Economic Area
EEIG	European Economic Interest Grouping
EESC	European Economic and Social Committee
EP	European Parliament
ESUS	Entreprise Solidaire d'Utilité Sociale – French Social Enterprise of Social Utility
EU	European Union
ISTAT	Italian National Institute of Statistics
MS	Member State of the European Union
NGO	Non-Governmental Organization
NPO	Non-Profit Organization
ONLUS	Italian Non-Profit Organizations of Social Utility
PBO	Public Benefit Organization

RUNTS	Italian Register of Third Sector Organizations
SBBI	Dutch Social Benefit Institutions
SCE	European Cooperative Society
SE	European Company
SEO	Social Economy Organization
TEU	Treaty of the European Union
TFEU	Treaty on the Functioning of the European Union
TSO	Third Sector Organization
VAT	Value Added Tax

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EXECUTIVE SUMMARY

In all the national jurisdictions of the EU there are provisions instituting the public benefit status and the resulting category of PBOs.

In almost half of the MSs, the public benefit status is a general legal status provided for in ad hoc laws which recognize, regulate and support PBOs. In many other MSs, the public benefit status is a general legal status provided for in tax law with the main objective to support PBOs. In a minority of MSs, a general legal status for PBOs does not exist, but a specific public benefit status for associations is found in the national law on associations.

Since the public benefit is a legal status, PBOs are not, technically speaking, a legal type or sub-type of entity. "Public benefit organization" is a legal qualification that entities established in a certain legal form (association, foundation, company, etc.) may decide to obtain and may even decide to relinquish, without this determining their extinction as legal entities.

Notwithstanding the variety of legislative models and legal denominations, the national regulations on public benefit status have several traits in common so that PBOs share a common identity regardless of the country of incorporation.

The public benefit status is an optional legal status that national laws make available to private law organizations which, regardless of their legal form (association, foundation, mutual society, company or cooperative, except those entities that are explicitly excluded by law, such as political parties, trade unions, etc.), meet certain legal requirements, including the exclusive pursuit of a public benefit purpose and/or the performance of a public benefit activity, and agree to the use of assets for the exclusive pursuit of public benefit purposes ("asset-lock") and the non-distribution of profits to founders, members, shareholders, directors, etc., at any stage of the organization's life, including at its dissolution.

Usually, PBOs are also subject by law to specific governance and transparency obligations with the aim of making their conduct consistent with their particular purpose of promoting trust and accountability, and of facilitating the external control of PBOs.
PBOs are required to register in special registers or lists. Registration is possible only if the necessary legal requirements are met by the interested organizations and is necessary for them to acquire and maintain the legal status.

PBOs are subject to a specific form of public supervision to check compliance with the public benefit status regulation. The loss of the requirements for qualification as PBOs and/or the persistent violation of the applicable rules determines de-registration and loss of the status.

PBOs are recipients of specific support measures, mainly, though not exclusively, of a tax nature. Among other things, PBOs may receive tax-privileged donations (in the form of either a deduction from the taxable base or a tax credit) and benefit from tax allocation or designation schemes.

Not only MSs, but also European institutions, are increasingly devoting attention to this category of organizations.

The European Parliament has included specific provisions on the public benefit status in the two legislative proposals on associations and non-profit organizations contained in its Resolution of February 2022.

In June 2023, The European Commission published a staff working document on the non-discriminatory taxation of PBOs and in September 2023 another brief document on the public benefit

status as an annex (no. 12) to the Impact Assessment Report accompanying the proposal for a directive on ECBAs. Both documents were linked to actions taken in the context of the Action Plan on the Social Economy of December 2021.

However, no specific provisions on the public benefit status are found in the recently proposed directive on the ECBA, notwithstanding the EP's request and the fact that the great majority of PBOs have the legal form of an association.

In contrast, PBOs are specifically considered in the recently adopted proposal for a Council Recommendation on the improvement of the Social Economy framework conditions, although only with respect to the issue of their non-discrimination for taxation purposes on the basis of their nationality, whereas the aspect of their mobility across the EU is not specifically dealt with.

The great majority of MSs lack legal provisions on cross-border conversion, merger and division of associations, also as a result of the absence of EU legislation on this matter. This situation negatively affects the mobility of associations, particularly those that are public benefit, within the EU. In this regard, associations are unequally treated as compared to limited liability companies (and cooperatives), which benefit from ad hoc legislation. The recently proposed directive on the ECBA is meant to remedy this gap. However, since it does not address associations holding the public benefit status, but only associations, the proposed directive, as it currently stands, does not help solve the issues related to the effective exercise of a PBO's fundamental freedoms in the EU. Among these issues is the possibility for PBOs to receive tax-privileged donations from abroad, which in turn implies the possibility for a donor to enjoy national tax breaks for donations to foreign PBOs that are comparable to national PBOs. Whilst in principle (although with some exceptions) this possibility is granted by national laws to their taxpayers (in accordance with the jurisprudence of the CJEU), the absence of a common regulation both on the procedure and criteria for assessing the comparability and on the requirements of the public benefit status, make this possibility de facto less effective than it appears on paper.

The introduction of an EU statute on PBOs needs, therefore, to be carefully evaluated. To this end, there are several possible strategies that the EU institutions might consider if they wish to deal with this issue.

The first option, which is the maintenance of the status quo, is not to be recommended, because it cannot offer any solution to the two main cross-border issues related to the public benefit status, which are the mutual recognition of PBOs, mainly for taxation purposes, and the mobility of PBOs across borders.

The second option, which is a recommendation to MSs to develop their legal frameworks regarding PBOS in a certain manner, is the easier and more practicable option, also in the short term. However, since the recommendation is a non-binding legal instrument, the effectiveness of this option depends on the willingness of MSs to follow said recommendation.

The third option is the harmonization of national laws. This option may be implemented in several ways; the way in which this option is implemented affects its complexity and degree of feasibility; a directive harmonizing the national public benefit statuses would be a disproportionate legal instrument and may be difficult for MSs to accept; in contrast, a directive harmonizing the national procedures for the recognition of comparable PBOs would be in line with the objectives of the EU legal intervention and might be more easily accepted by MSs; a directive establishing which PBOs of different national jurisdictions are equivalent would definitively resolve the issue of the mutual recognition of PBOs and their equal treatment for taxation purposes, regardless of the country of incorporation; on the other hand, MSs might be reluctant to accept a directive that deprives them of the discretionary power to assess which foreign PBOs are comparable to domestic PBOs.

The fourth option is the creation of a European Public Benefit Status through a European Directive. It would resolve the problem of the mutual recognition of PBOs in a different way than the preceding option by offering a European public benefit status alternative to the national public benefit statuses which would be automatically recognized by every MS. On the other hand, this option raises the issue of the legal basis, which is an issue of concrete feasibility in the case of a regulation according to art. 352 TFEU and of legitimacy in the case of a directive according to art. 50 and/or art. 114 TFEU.

Neither of the options considered above would, per se, resolve the issue of the mobility of PBOs across the EU, for which a specific EU directive on the cross-border conversion, merger and division of associations (and foundations), along the same lines as the existing directive on the cross-border conversion, merger and division of limited-liability companies (and cooperatives), would be necessary. Unfortunately, the EC has recently preferred to treat this topic in a different way by introducing a new legal form of association, named ECBA. Whilst hoping that a general solution (as happens for companies) can be found in EU law for the issue of the mobility of associations and foundations, what can be recommend in the short term is to at least include in the recent proposal for a directive on ECBAs, the express possibility for ECBAs to acquire the public benefit status in their country of registration.

1. PUBLIC BENEFIT STATUS AND PUBLIC BENEFIT ORGANIZATIONS: NOTION AND BOUNDARIES

KEY FINDINGS

Public benefit organizations constitute a particular category of private organizations identified on the basis of certain legal requirements necessary to obtain and maintain the public benefit status and their registration on ad hoc registers.

Notwithstanding the variety of legal denominations and legislative models, the public benefit status exists in all the EU national jurisdictions and is provided in laws whose main aim is to support organizations that perform public benefit or general interest activities and/or pursue public benefit or social objectives.

Public benefit organizations must be distinct from other categories of organizations, such as non-profit organizations and social economy organizations. In some countries, third sector organizations represent the equivalent of public benefit organizations and may include social enterprises.

This study addresses a particular category of private organizations, or more precisely, a legal status that certain private organizations, notably (non-profit) associations, may decide to assume. This status is usually referred to as "public benefit status" and the organizations that hold it are commonly known as "public benefit organizations" (PBOs), in light of the major element that connotes them, namely, the pursuit of public benefit purposes and/or the performance of public benefit activities.

In some European Union (EU) Member States (MSs), these organizations are referred to in a totally or partially different manner, including, for example, "third sector organizations" (in Italy), "charities" (in Ireland), "philanthropic institutions" (in Cyprus), "voluntary organizations" (in Malta), "public benefit non-governmental organizations" (in Lithuania). The name given to them is sometimes also a consequence of the national law's particular approach to this subject. However, notwithstanding the variety of legal denominations and national legislative patterns, PBOs are provided for in all the EU national jurisdictions, as shown in Table 1 below[1].

[1] PBOs also exist outside the EU. For example, European PBOs have features in common with the category of organizations dealt with in sect. 501(c)(3) of the United States' Internal Revenue Code: cf. Brakman Reiser (forthcoming). For general overviews on the public benefit status, not limited to the EU countries, cf. Moore et al (2007) and, from the perspective of philanthropy, OECD (2020). For a more recent overview, see European Commission (2023b).

Table 1: Laws on the Public Benefit Status in the EU Member States

Member State	**Main sources of the regulation**	**Subject**
Austria	Sects. 34-47 of the Federal Tax Code	Organizations pursuing public benefit, charitable or religious purposes
Belgium	Art. 145/33 of the Income Tax Code	Accredited non-profit organizations
Bulgaria	Arts. 37-44c of the Law on Non-Profit Organizations of 2000	Non-profit organizations pursuing activities for the public benefit
Croatia	Arts. 32 ff. of the Law on Associations of 2014	Associations implementing programs and projects for the public benefit
Cyprus	Art. 9(1)(f) of Income Tax Act no. 118(I)/2002	Recognized philanthropic institutions
Czech Republic	Sect. 146 of the Civil Code of 2012 and Sects. 15(1) and 20(8) of Income Tax Act no. 586/1992	Organizations pursuing public benefit purposes
Denmark	Sect. 8A of the Income Tax Act (and Order of the Ministry of Taxation no. 1656 of 19 December 2018)	Approved organizations pursuing charitable purposes
Estonia	Sect. 11 of the Income Tax Act of 1999	Charitable organizations operating in the public interest
Finland	Sect. 22 of Income Tax Act no. 1535/1992	Public benefit organizations
France	Art. 10 ff. of Law 1 July 1901 on the contract of association (and Decree 16 August 1901)	Public benefit associations
Germany	Sects. 51 ff. of the Tax Code	Organizations pursuing public benefit, charitable or religious purposes
Greece	Law no. 4873/2021 on Protection of volunteerism, strengthening of the action of the Civil Society, tax incentives to strengthen the public benefit action of public benefit organizations and other provisions	Public benefit organizations
Hungary	Sect. 32 ff. of Law no. CLXXV of 2011 on the freedom of association, on public benefit status, and on the activity of and support for civil society organizations	Public benefit organizations
Ireland	Charities Act 2009	Charitable organizations
Italy	Legislative Decree 3 July 2017, no. 117, on the Code of the Third Sector	Third sector organizations
Latvia	Law of 7 July 2004, no. 106, on Public Benefit Organizations	Public benefit organizations
Lithuania	Law no. XII-717 of 19 December 2013, on the development of non-governmental organizations	Public benefit non-governmental organizations

Luxembourg	Art. 26-2 of Law of 21 April 1928 on associations and foundations without a profit purpose	Public benefit associations
Malta	Voluntary Organizations Act no. XXII of 2007 (Chapter 492 of the Laws of Malta)	Voluntary organizations
Netherlands	Art. 5b of the General Tax Law	Public benefit institutions
Poland	Act of 24 April 2003 on Public Benefit Activity and Volunteerism	Public benefit organizations
Portugal	Law no. 36/2021 of 14 June, framework law on the public benefit status	Public benefit organizations
Romania	Art. 38 ff. of Governmental Ordinance no. 26 of 30 January 2000 on associations and foundations	Public benefit organizations
Slovakia	Law no. 213/1997 Coll.	Non-profit organizations providing generally beneficial services
Slovenia	Art. 6 ff. of Law of 2018 on non-governmental organizations	Non-governmental organizations in the public interest
Spain	Art. 32 ff. of Law no. 1/2002 on associations (and Royal Decree no. 1740/2003)	Public benefit associations
Sweden	Chap. 7, Sect. 3 ff., Income Tax Act no. 1999:1229	Public benefit organizations

Source: Capgemini Invent et al (2023); European Commission (2023b); European Commission (2023d); Fici ed. (forthcoming); the Author

One of the main objectives of this Study is to present and discuss the national legislation on PBOs (or equivalent organizations, regardless of their legal denomination) in a comparative perspective, focusing on the main features of this legislation, which also depend on each national law's particular objectives.

Indeed, public benefit status is a legal tool for States that wish to satisfy specific needs. Given their public benefit purposes and activities, PBOs attract the State's attention for several reasons. The main one is that PBOs may complement, and in certain cases substitute, the action of public bodies in favor of people, communities, territories, art and cultural heritage, the environment, etc. PBOs meet expectations that States usually meet or at least care about[2]. Therefore, the promotion of these entities is useful for States, especially in times of economic or social crises, or (as the most recent events have demonstrated) in times of pandemic and war[3]. Given that the practice of identifying and promoting

[2] As Moore et al (2007), p. 2, put it, "In most countries, …, the state does not want to extend benefits to all CSOs indiscriminately; instead, the state typically extends benefits to a subset of these organizations, based on their purposes and activities. In return it requires a higher level of governance and accountability for these organizations. By providing benefits, the state seeks to promote certain designated activities, usually related to the common good".

[3] According to European Commission (2023b), p. 6 f.: "Tax concessions could be justified if they result in a larger increase in social welfare than that which government could have otherwise achieved through direct spending. Another argument is that the surplus of a public benefit organisation is different in nature to income and therefore beyond the scope of the income tax base. Additional arguments include that charitable giving, as well as the institutions it develops, strengthen civil society and decentralise decision-making and are thus an important feature of a democratic society and worth supporting. On the other hand, the cost of providing concessions is often highlighted as a concern. By reducing

organizations acting for the public benefit is deeply rooted in European society[4], it is therefore not by chance that EU MSs are increasingly devoting attention to PBOs (or equivalent organizations, whatever their name might be). New laws on the public benefit status have been recently passed in some MSs, such as Italy in 2017 and Greece and Portugal in 2021. Previously abolished tax-privileged donations to PBOs have been recently reintroduced in Sweden. In some countries, such as Poland and Slovakia, the regulation of PBOs is more sophisticated than the regulation of "ordinary" associations. As we shall observe later in this Study, recent events also indicate a growing interest in this category of organizations among EU institutions[5].

Promotion of PBOs requires first and foremost their legal recognition, followed by the provision of measures in their support, amongst which direct and indirect tax incentives are the most common, but not the only measures. The way in which PBOs are recognized and incentivized by law determines the characteristics of the national legislation in this field. The object and extent of the regulation may vary. At one end of the spectrum there are national laws that recognize PBOs only for specific tax reasons, notably the provision of tax privileges to donations in favor of PBOs. Whilst at the other end of the spectrum there are more general national laws that regulate PBOs in a comprehensive manner (including their structure and governance), promote them in several ways (not only through taxation), and assign state funds and structures to deal with PBOs (for registration, promotion and supervision purposes). Usually, as the subsequent analysis will demonstrate, a less-intensive regulation is found in tax laws, whereas a broader and more detailed regulation is contained in separate laws specifically dedicated to PBOs.

PBOs constitute a specific category of organizations, which is distinct from others, including non-profit organizations (NPOs)[6]. Clarifying the relationships between PBOs and other surrounding classes of legal entities is also necessary to define the boundaries of this Study and justify its scope.

1.1. Public benefit organizations and non-profit organizations

As regards the relationship between PBOs and NPOs, it is clear, especially from a comparative legal perspective, that whilst on the one hand not all NPOs are PBOs, on the other hand not all PBOs are NPOs. To provide only some examples, an Irish association may or may not be a charity and not all Irish charities are associations; an Italian foundation may or may not be a third sector organization and not all third sector organizations are foundations; a Spanish association may or may not be recognized as a public benefit association. Moreover, in some countries, as we shall point out, the public benefit status is also available to organizations, such as limited liability companies and cooperatives, which are not "essentially" NPOs (because they may be established, and usually are established, to make profits for their shareholders).

government revenue, tax concessions for public benefit organisations require other taxpayers to bear an increase tax burden (or alternatively result in less government expenditure on other policy priorities). A concern regarding the exemption of income from economic activities of PBO is that this may create an unfair competitive advantage for PBO over for-profit businesses".

For a more detailed discussion on the reasons why States promote PBOs or should do so, cf. the various chapters contained in part I of Peter, Lideikyte Huber (eds.) (2021).

[4] In this sense, Moore et al (2007), p. 2, which further explain: "Codification of the common law system dates back to 1601 and the English Statute of Charitable Uses, whose purpose was to enumerate charitable causes and to eliminate abuse. Over time, the notion of public benefit was expanded beyond the relief of poverty to include caring for the sick, training of apprentices, building of bridges, maintaining roads and other related purposes. In the civil law tradition, foundations – which were dedicated to a public benefit purpose – existed in Europe in the fifth century BC".

[5] Cf. *infra* sect. 4.

[6] According to European Commission (2023b), p. 7: "From a legal perspective, the non-profit sector and the public benefit sector do not coincide and do not fully overlap".

The distinction between the two groups of organizations – PBOs and NPOs – is mainly based on the following aspects:

- first of all, that of PBOs is a legal category of organizations which comprises associations and other entity's legal types with the public benefit legal status, whereas that of NPOs is only a conceptual category of organizations; moreover, in the few countries, for example Bulgaria, in which that of NPOs is also a legal category, it is conceived of by law as a legal category of organizations distinct from the legal category of PBOs;

- secondly, whilst NPOs are usually identified only on the basis of their non-profit purpose, namely, the fact that they neither can, not do, distribute any profits to their founders, members, directors, etc., the legal requirements for acquiring and maintaining the public benefit status include, but are not limited to, this profit non-distribution constraint. PBOs are first of all identified by law for their positive contribution to society and the common good, which is a feature that not all NPOs necessarily possess. Indeed, provided that no distribution of profits takes place, an association – which together with the foundation is the "typical" legal form of NPO – may be established, in almost all national jurisdictions, either for the private (even economic) benefit (of even a closed group of persons) or for the public benefit[7]. This is also true of foundations, although to a lesser extent (because most national legal systems admit only public benefit foundations)[8]. The public benefit purpose of PBOs, as compared to the non-profit purpose of NPOs, not only justifies the preference given by States to PBOs over simple NPOs, but also the State's special interest in the preservation of a PBO's identity, which results in legal provisions on a PBO's governance and reporting, the allocation of profits and the use of assets, and their public supervision;

- thirdly, beyond the pursuit of a public benefit purpose, further requirements usually characterize PBOs which are, consequently, a more complex category of organizations as compared to NPOs, particularly in those countries (such as, among others, Ireland, Italy and Poland) in which the public benefit status is not a simple fiscal status but a broader organizational status (which has tax and many other implications).

The theoretical and legal difference between PBOs and NPOs is also confirmed by the fact that in some EU national jurisdictions (such as Austria, Germany, Ireland, Italy, etc.), the public benefit status may also be acquired by entities, like shareholder companies, which are not by law "essentially" non-profit, but voluntarily decide to submit to the ban on profit distribution to members, directors, etc., by stipulating this prohibition in their statutes. Yet more evidently, in Italy, some PBOs (namely, companies and cooperatives with the status of social enterprises) are even permitted by law to distribute some profits to their members[9]. In this respect, Italian law presents an exceptional rule in comparison to other national laws on PBOs, in which PBOs are fully prohibited from distributing profits, but this exception may shed light on the potential developments of the legislation on PBOs.

As a consequence of the distinction, the non-profit sector is of course larger in size than the public benefit sector. For example, in Italy and Ireland, PBOs (namely, TSOs and charities) represent approximately one third of all NPOs[10].

[7] Cf. Capgemini (2023).

[8] For an overview of a foundation's purpose according to the relevant national laws in the EU, Cf. Dafne, EFC (2021).

[9] This, however, may affect the possibility for them to take advantage of the entire set of promotional measures in support of TSOs. For example, social enterprises established in the form of a company or a cooperative cannot be recipients of tax-privileged donations in accordance with art. 83 of the Italian Third Sector Code: see *infra* sect. 2.2.3.

[10] Cf. Fici (forthcoming) and Breen (forthcoming).

1.2. Public benefit organizations and social economy organizations

PBOs must also be distinguished from social economy organizations (SEOs).

Just as is the case of PBO, that of SEO is a legal status found in some EU countries, such as France, Poland, Portugal and Spain, which have specific laws that recognize and promote the social economy[11]. However, in these laws, the criteria for the identification of SEOs are different from those used by law to identify PBOs. Although a full explanation would go beyond the scope of this Study[12], it may be sufficient to mention here that most national laws on the social economy consider some legal entities, such as associations, as SEOs per se, without inquiring into the purpose pursued by the association, whereas, as previously underlined, the pursuit of a public benefit purpose is an essential element of the public benefit status. Furthermore, most national laws on the social economy restrict the area of the social economy to market-organizations, namely, organizations performing entrepreneurial activities[13], whereas the way in which the public benefit activity is performed, in an entrepreneurial or in a non- entrepreneurial way, is not relevant for the public benefit status (on the contrary, in some countries, PBOs may have a limited possibility to perform economic activities).

The above does not imply that PBOs could not be additionally classified as SEOs[14]. This depends, of course, on the specific provisions of the national law on the social economy, but many PBOs would perfectly fit into the legal category of SEOs as it is emerging, in general, from the relevant national legislation. This is particularly important in light of the strategy envisaged in the European Action Plan on the Social Economy of December 2021, whose actions should specifically consider PBOs and would also benefit them[15]. Indeed, specific provisions on the public benefit status and PBOs are found in the proposed Recommendation of June 2023 on developing social economy framework conditions, adopted within the Action Plan[16], which confirms, on the one hand, that PBOs may be considered part of the social economy and, on the other hand, that the implementation of the Action Plan may be an opportunity for PBOs to improve their situation both at the national and the Union level.

1.3. Public benefit organizations and third sector organizations

The relationship between PBOs and third sector organizations (TSOs) is more complex to explain because that of a TSO is either a debated, and at times loosely defined concept in the socio-economic literature, or a precise legal category which, as such, exists only in one MS of the EU, namely Italy. After the reform of 2017, Italian TSOs are the equivalent of other countries' PBOs. Therefore, if TSOs are those regulated by Italian law, then, notwithstanding the specificities of the Italian regulation which will be highlighted later in this Study, TSOs are PBOs and no difference exists between the two legal categories of organizations.

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[11] Cf. Fajardo-García (forthcoming); Magnier (forthcoming); Meira (forthcoming); Radwan et al (forthcoming).

[12] Cf. Fici (forthcoming/2). See also Liger *et al* (2016).

[13] This is the case of Spanish, Portuguese and French laws, whereas the most recent Polish laws of 2022 seems to include in the social economy both entrepreneurial and non-entrepreneurial organizations: cf. Fici (forthcoming/2).

[14] As the European Commission maintains, "social economy entities can respond to public benefit criteria in the legal frameworks of many Member States": cf. European Commission (2023b), p. 1.

[15] See *infra* sect. 4.6.

[16] See *infra* sect. 4.6.

1.4. Public benefit organizations and social enterprises

The public benefit legal status is also to be distinguished from the legal status of social enterprise which may be found in an increasing number of national jurisdictions[17]. No strict separation, however, exists between the two legal statuses. Indeed, in some countries the same organization can assume both statuses (this is possible, for example, in France, Poland and Slovakia); in other jurisdictions, an organization recognized as a social enterprise is automatically considered a PBO (this happens, for example, in Italy, where that of social enterprise is, specifically, a sub-status of the third sector status); in yet other jurisdictions, a PBO may perform its public benefit objectives through the establishment of a social enterprise (as happens in Latvia).

Indeed, more generally, in the absence of a law providing for such qualification, PBOs performing their public benefit activities in an entrepreneurial fashion (i.e., a cultural association selling tickets for theater performances) can be considered de facto social enterprises. Therefore, social enterprises and PBOs, though not overlapping, have several traits in common, which may justify the legislator's choice to treat them together in a single law, or at least to clarify their mutual relationships in each particular law.

1.5. Public benefit organizations and other sector labels

Finally, it must be emphasized that in some jurisdictions there are other sector labels, usually referring to broader (rather than different) categories of organizations, which must not be confused with PBOs. This is the case, for example, of non-profit organizations in Bulgaria, civil society organizations (CSOs) in Greece and Hungary, and non-governmental organizations (NGOs) in Lithuania, Poland and Slovenia. In the relevant national laws, these labels refer to non-profit organizations that are eligible for the public benefit status but are not PBOs by law.

Having provided this introductory general explanation, the Study is structured as follows: Section 2 first seeks to illustrate the concept of "public benefit status" taking into consideration its main contents (i.e., legal requirements for qualification), and subsequently classifies the existing national legislation on PBOs according to three different models. For each model, one or more national laws are presented and discussed as a benchmark or prominent examples. Section 2 also offers a general overview of the laws on the public benefit status in force in the other MS of the EU, grouped according to the three models of legislation previously identified. Section 3 analyzes the topic of cross-border conversion, as well as the merger and division of associations and PBOs, focusing on the most problematic issues that this topic raises. Section 4 explores the state of the art of EU law and policies on PBOs and surrounding categories of organizations (NPOs, social enterprises, SEOs). Finally, in section 5, following some synthesis and comparative remarks based on the preceding analysis, the potential introduction of an EU regulation of the public benefit status is discussed. Considering its specific objectives, the various topics dealt with in this Study will be examined from the main perspective of associations and association law.

[17] Cf. Fici (2023).

2. ESSENCE, SOURCES AND MAIN MODELS OF NATIONAL LEGISLATION ON THE PUBLIC BENEFIT STATUS IN THE EUROPEAN UNION

KEY FINDINGS

The comparative legal analysis of EU national laws reveals the existence of three different models of legislation on the public benefit status.

In some EU countries, the public benefit status is a fiscal status whose regulation is found in tax law. In the majority of EU countries, the public benefit status is a broader organizational status provided for in ad hoc laws.

In a minority of EU countries, the national law does not provide for a general public benefit status available to different types of organizations (as happens in the other countries), but a specific public benefit status for associations.

Regardless of the legislative model, the public benefit status may be acquired by organizations meeting certain legal requirements which mainly relate to the purpose pursued and the activity carried out. As a corollary, public benefit organizations are fully prohibited from distributing profits and subject to a strict "asset-lock", which also applies in the case of dissolution.

As shown in previous table 1, the public benefit status is recognized and regulated in all the MSs of the EU, although features and contents of this legislation vary (at times even substantially) across countries, also as a result of the main objectives pursued by the national legislators through the public benefit legal status.
In the EU, three main models of legislation on the public benefit status can be identified[18].

***i*) Public benefit status as a fiscal status in tax laws**

Many national laws (precisely 10 national laws) recognize the public benefit status only for specific tax reasons, mainly to grant tax benefits to a PBO's donor, but also, in some instances, to lay down specific tax rules for PBOs. In this case, the regulation of the public benefit status is found in tax law, as happens in Austria, Germany and eight other MSs, and the public benefit status is a purely fiscal status (even though in some cases not lacking organizational implications) available to organizations established in various legal forms, including the association form.

***ii*) Public benefit status as an organizational status in ad hoc laws**

Many other national laws (precisely 13 national laws) recognize the public benefit status for reasons other than the preferential tax treatment of PBOs and donations in their favor. They do so in order to provide a comprehensive and consistent legal framework for the existence of PBOs, as well as a series of instruments for their promotion, including, but not limited to, taxation (which moreover, in most cases, is formally found in tax law). In this case, the regulation of PBOs is usually found in ad hoc laws that systematically deal with this category of organizations, as happens in Ireland, Italy and Latvia, or in ad hoc laws that also cover a different or (in certain instances) a broader category of organizations, such as NPOs in Bulgaria, CSOs in Greece and NGOs in Lithuania, Poland and Slovenia. The public benefit status is not, in this case, a purely fiscal status, but a broader organizational status available to organizations established in various legal forms, including the association form.

[18] For a partially different classification, see Moore et al (2007), p. 5 f.

***iii*) Specific public benefit status for associations**

Some national laws (precisely 4) do not recognize a general public benefit status available to different legal types of entities, including associations, but rather a specific public benefit status for associations, whose regulation is consistently found in the national law on associations. In general, this public benefit status, though specific to associations, has an organizational nature like the public benefit status recognized by the national laws pertaining to the second model of legislation described above.

The previous classification is convenient for greater clarity in the study of the subject and may also be useful for lawmakers, but the distinction between the three legislative models is, however, not so clear-cut and convergences on some issues do exist. For example, beyond rules on the functioning of PBOs, ad hoc laws usually comprise a specific tax regime of PBOs (although in most cases the tax treatment of PBOs is found in tax law rather than in the law recognizing and regulating the public benefit status, and there are even countries in which a beneficial tax treatment is awarded not only to PBOs, but also to other organizations in relation to their non-profit purpose or to the public benefit nature of the activity performed). On the other hand, in laws providing for the public benefit status as a purely fiscal status, rules on the governance of PBOs or the use of assets can also be found. In turn, the specific public benefit status for associations may be an organizational status that comprises rules on governance and taxation such as those present in the other models of legislation. These numerous points of contact therefore allow for synthesis and comparative analyses that go beyond the specificities of the three models, as well as supranational regulations based on all existing national laws, notwithstanding the different domestic approaches to the subject.

In general, in the relevant laws on the subject, regardless of the model of legislation, that of "public benefit organization" is not a legal form of an entity's establishment, but a legal status that entities (already) established in certain legal forms – not only the association and the foundation forms, but also, in some jurisdictions, the company and the cooperative forms – may acquire[19]. This means that an organization is not established as a PBO but may obtain this label or qualification after having been established in one of the legal forms eligible for the public benefit status[20]. Similarly, the loss of the status is not per se a cause of dissolution of the organization, which in this event continues to exist as an "ordinary" association (or as an "ordinary" foundation, company or cooperative) without the public benefit status. Certain organizations, such as public bodies, political parties, trade unions, etc., may be denied the possibility to qualify as PBOs ex ante by law, and the same may happen to organizations that are directed or controlled by these "excluded entities".

By providing an optional legal status for certain organizations, PBO law functions as a sort of second-level regulation that applies to an organization in addition to the first-level regulation of the form in

[19] As Moore et al (2007), p. 3, explain, "in most continental European countries, recognizing a certain organization to be of 'public benefit' indicates that the organization has obtained a 'status' and not that it has been registered as a separate legal form. Public benefit status is granted after the organization has been registered as a legal entity (most commonly in the form of an association or a foundation). If the public benefit organization ceases to fulfill the conditions for having this status, it would lose the status and the benefits associated with it, but it could still continue to operate". Cf. also European Commission (2023b), p. 6, according to which the "legal status" of public benefit organizations is "not a distinct legal form but, rather, relates to organisations that fulfil certain criteria. To adopt this status, legal forms are required to pursue a prescribed social purpose for the public interest or benefit, the organisations are not allowed to distribute profits and are often subject to heavier reporting requirements than conventional for-profit organisations. The public benefit status enables organisations to benefit from tax relief and other incentives. The public benefit status is particularly important for the eligibility of tax deductions for donations to such social enterprises fulfilling the criteria of public benefit organisations (PBO)".

[20] This statement is not contradicted by the fact that the establishment of the entity and the acquisition of the public benefit status by the same entity may, in some jurisdictions, happen at the same time. Indeed, from a legal point of view, the logical and technical distinction between establishment of an entity and acquisition of the status remains unvaried.

which the organization is established[21]. This may raise issues concerning the interplay between these different sources of law. Indeed, an association with the public benefit status is subject to both PBO law and association law. In principle, association law regulates the formation, structure, functioning and dissolution of the association, whilst PBO law lays down requirements for obtaining and maintaining the public benefit status and regulate its acquisition and loss. This separation of scope and functions, however, does not prevent interferences between the two bodies of law, particularly in the cases in which PBO law also imposes governance and reporting obligations on the organizations. In this latter instance, for an association to maintain the public benefit status, PBO law should prevail over association law. On the other hand, when PBO law does not regulate a certain aspect, for example, governance, dissolution or conversion, association law applies to public benefit associations.

This double level of regulation makes the understanding of the overall legal regime of PBOs rather complex, particularly to a foreign observer, and not always do the relevant laws help readers in this respect. A relevant exception is found in art. 3, para. 2, of the Italian Code of the Third Sector, which presents an important rule on the sources of regulation of TSOs and their interplay. According to art. 3, para. 2, TSOs (the Italian equivalent of PBOs) are primarily regulated by the Code of the Third Sector and additionally, for aspects not provided for by the Code of the Third Sector, by the compatible provisions of the Civil Code related to the legal form of a TSO's establishment. Therefore, the law of associations (or, depending on the case, the law of foundations, companies or cooperatives) only applies to Italian TSOs to fill the gaps of TSO law, and only to the extent that the former's provisions are compatible with the latter's provisions.

The public benefit status is not a compulsory legal status, but an optional legal status. Therefore, it may be voluntarily acquired and (unless provided for differently in some national laws) relinquished by a given organization. Equally, an organization is deprived of the status if and when the authority in charge of PBO supervision verifies that the organization has lost the necessary requirements for the status or has not respected the obligations deriving from the possession of the status. Indeed, the status confers both benefits and burdens upon the organizations that hold it. The benefits justify the decision to acquire the status, whilst the burdens may explain why an organization decides to abandon the status after having acquired it (or why an eligible organization decides not to acquire the status).
The ways in which the status is formally acquired by an interested organization vary across countries. Depending on the national law, prior approval or accreditation of the organization as a PBO may or may not be necessary. Usually, PBOs are included in special registers or lists kept by public administrations, which are also in charge of PBOs' supervision, in other words of the control of the conditions for the maintenance of the status, to avoid misuses or abuses of it.

As previously stated, to obtain and maintain the status, interested organizations must meet specific legal requirements.

The most important requirement is the pursuit of a public benefit purpose and/or the performance of a public benefit activity (more precisely, some laws distinguish between public benefit purposes and charitable purposes, which may, however, be considered together as a unitary category for the purposes of this Study). This "worthy purpose" requirement is at the core of the public benefit status. Therefore, it is no coincidence that this category of organizations is named after this very requirement. National laws adopt either lists of public benefit purposes or activities (with mechanisms for their update over time) or general clauses that are subsequently implemented by (government or ministerial) decrees or administrative practices. Many commonalities exist among the various

[21] Admittedly, Slovakian law may be an exception in this regard, as Law no. 213/1997 Coll. seems to treat PBOs more as a legal form of an entity's incorporation than as a legal status.

jurisdictions with regard to the admissible activities, but there are also some differences, for example with regard to religious activities, which only in some countries are considered to be of public benefit. Furthermore, some national laws specify that public benefit activities must benefit a large group of people or that they cannot benefit a too limited circle of people. It must also be underlined that, in some legal systems, there may be different lists of public benefit activities for different legal purposes. It is possible to find, for example, a list provided by law to identify PBOs (or equivalent organizations) and a list provided by law to identify organizations (not only PBOs) that may benefit from tax-privileged donations from individual and legal entities and/or from tax designation schemes by taxpayers. Different lists of public benefit activities may also be found in laws providing for different, though related, legal statuses. It is possible to find, for example, a list provided by law to identify the public benefit status and a list provided by law to identify the social enterprise status, even in the case in which both legal statuses may, in principle, be held by the same organization.

As a corollary of the pursuit of a public benefit purpose, PBOs are barred from distributing (either directly or indirectly) profits to their founders, members, directors, employees, etc. More precisely, PBOs are obliged to use their assets exclusively in the pursuit of their public benefit purposes. This strict "asset-lock" exists in all phases of a PBO's life, including at its dissolution and in the event of loss of the public benefit status. In this respect, explicit references are found in several laws, whereas other laws remain silent on the point, although the fact that, in some of these laws, only "essentially" non-profit legal forms, such as associations and foundations, are eligible for the public benefit status, may substantially lead to the same result (inasmuch as association laws and foundation laws bar associations and foundations from distributing profits to their founders, members, directors, etc., at all stages of an association's or a foundation's life, including at their dissolution).

The public benefit status awards specific benefits to the organizations that hold it. Indeed, as already observed, it is created by law mainly to provide support to organizations that contribute to the collective or general interest and the public good and collaborate with the State in the provision of public benefit services. State promotion may be limited to tax breaks and the possibility to receive tax-privileged donations or other forms of private support (such as tax allocation or designation schemes). This may explain why, in many European countries, the regulation of PBOs is found in tax laws. Nevertheless, in other countries, State support goes beyond a preferential tax regime and involves other measures, such as the provision of a comprehensive and consistent legal framework for the operations and functioning of PBOs, the possibility to establish partnerships with public bodies for the co-organization and co-management of public benefit activities, the provision of dedicated public funds in favour of PBOs, etc.

In the following sections of this Study, while presenting and describing the existing national laws on PBOs (or equivalent organizations) according to the different models of legislation previously identified, attention will be given to the way in which each national law deals with the essential elements of the public benefit status described above.

2.1. Public benefit status as a fiscal status

In the laws pertaining to the first model of legislation, the public benefit status is a purely fiscal status recognized and regulated by national tax laws. In this case, the national legislators' main intention is to promote through tax incentives of various types organizations that are considered worthy of this status in light of the objectives pursued and the activities performed. However, many of these laws do not limit themselves to supporting PBOs, but also regulate their activity and governance, in order to ensure that tax incentives are enjoyed only by organizations that are structured and operate in a certain way. In this manner, tax law also serves, *de facto*, as the organizational law of PBOs. Ultimately, this

demonstrates that it is not only the performance of public benefit activities that matters to States, but also the way in which the organizations performing these activities are managed, which is to say, how public benefit purposes are pursued.

Prominent examples of detailed regulation on the public benefit status as a fiscal status (with organizational implications) in tax law are found in Germany and Austria. Eight other MSs – namely, Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, Netherlands and Sweden – follow this model of legislation, although in some of these countries national tax law provisions are less specific in the regulation of the subject matter.

2.1.1. Germany

In Germany, the public benefit status is provided for in sect. 51 ff. of the Tax Code (*Abgabenordnung* or AO). Tax privileges are granted to any legal entity (a company, an association, a foundation, a cooperative, etc.)[22] that pursues directly and exclusively "public benefit, charitable or religious" purposes, which are together referred to as "tax-privileged purposes" (sect. 51(1) AO)[23], although the term "public benefit" is regularly used, in Germany, to describe all of these purposes[24]. These purposes may even be achieved abroad, in which case the tax privileges are conditioned on the advancement of natural persons with residence or habitual abode in Germany or on the positive contribution of the promoted activities to the reputation of Germany abroad (sect. 51(3) AO).

An organization serves a public benefit purpose "if its activity is dedicated to the altruistic advancement of the general public in material, spiritual or moral respects". Such an advancement does not subsist "if the group of persons benefiting from such advancement is circumscribed, for instance by membership of a family or the workforce of an enterprise, or can never be other than small as a result of its definition, especially in terms of geographical or professional attributes" (sect. 52(1) AO).

Sect. 52(2) of the German Tax Code offers a long list of activities that, subject to the condition in previous subsection (1), are considered as "advancement of the general public". This list includes the advancement of

- science and research;
- religion;
- public health and public hygiene;
- assistance to young and old people;
- art and culture;
- protection and preservation of historical monuments;
- upbringing, adult education and vocational training including assistance for students;
- nature conservation, environmental protection, coastal defence and flood defence;
- public welfare;
- relief for people persecuted on political, racial or religious grounds, for refugees, expellees, ethnic German repatriates who migrated to the Germany between 1950 and 1 January 1993, ethnic German

[22] Natural persons and partnerships without legal personality are not eligible for this status: cf. Von Hippel (2017), p. 393, fn. 40.

[23] All translations from German are official translations of the AO found on the website of the Ministry of Justice at https://www.gesetze-im-internet.de/englisch_ao/index.html.

[24] Cf. Bishoff, Helm (2023), p. 140.

repatriates migrating to Germany after 1 January 1993, war victims, dependents of deceased war victims, war disabled and prisoners of war, civilian war disabled and people with disabilities as well as relief for victims of crime;

- commemoration of persecutees, war and disaster victims;
- tracing service for missing persons;
- lifesaving;
- fire prevention, occupational health and safety, disaster control and civil defence as well as accident prevention;
- internationalism, tolerance in all areas of culture and the concept of international understanding;
- protection of animals;
- development cooperation;
- consumer counselling and consumer protection;
- welfare for prisoners and former prisoners;
- equal rights for women and men; protection of marriage and the family;
- crime prevention;
- sport (including chess);
- local heritages and traditions;
- animal husbandry, plant cultivation, allotment gardening, traditional customs including regional carnival, the welfare of servicemen and reservists, amateur radio, aeromodelling and dog sports;
- democratic government in Germany (except endeavours which are solely in pursuit of specific individual interests of a civic nature or which are restricted to the local-government level);
- active citizenship in support of public-benefit, charitable or religious purposes.

Moreover, if the purpose pursued by the organization does not fall within one of the activities listed above, but the general public is correspondingly advanced altruistically in material, spiritual or moral aspects, the purpose may be declared as being for the public benefit by the competent public authority (sect. 52(3) AO).

The German Tax Code considers the charitable purposes separately from the public benefit purposes. Charitable purposes are served if the activity of the organization is dedicated to altruistic support for persons whose physical, mental or emotional state are dependent upon the assistance of others, or who are in financial needs according to precise criteria developed by the same Code (sect. 53 AO).

There is no prior accreditation of German PBOs nor a special registration procedure for them. An organization with the status of PBO is so considered for tax purposes if it actually operates in accordance with the various rules defining the status. The law only provides that an organization may request the responsible tax authority to examine whether its statutes have the essential contents for organizations with the public benefit status (statute-related compliance according to sect. 60a AO).

However, since 2024, a register of PBOs that benefit from tax-privileged donations will be introduced and will be publicly accessible. The register will be maintained by the Federal Central Tax Office.

PBOs are identified by the German tax legislator on the basis of several requirements, regardless of the legal form of incorporation, which, as stated, may even be that of a company[25]. All these requirements must be met by an organization to maintain the PBO status. Accordingly, the law stipulates that "the actual management of the organization shall be directed towards the exclusive and direct achievement of the tax-privileged purposes and shall conform to the provisions on the requirements for tax privileges contained in the statutes" (sect. 63(1) AO).

The first and most fundamental requirement regards the purpose that the organization shall pursue. It must be, as already mentioned, one of the tax-privileged purposes identified by the law.

The second requirement regards the manner in which the advancement has to be provided, namely, "altruistically" (sect. 55 AO). This requirement has to do with the way in which the organization uses its profits and assets. In this regard, a strict "asset-lock" is provided for by law. The altruistic pursuit of a public benefit purpose presupposes that no economic, commercial or gainful purposes are served by the organization and, in particular, that the following conditions are met:

1) the funds of the organization may be used only for the purposes set out in the statutes. Members, as well as founders, donors and their heirs (in the case of foundations) may receive neither profit shares nor in their capacity as members any other allocations from the funds of the organization. The organization may use its funds neither for the direct nor for the indirect advancement or support of political parties;

2) on termination of their membership or on dissolution or liquidation of the organization, members may not receive more than their paid-up capital shares and the fair market value of their contributions in kind;

3) the organization may not provide a benefit for any person by means of expenditure unrelated to the purpose of the organization or disproportionately high remuneration;

4) where the organization is dissolved or liquidated or where its former purpose ceases to apply, the assets of the organization in excess of the members' paid-up capital shares and the fair market value of their contributions in kind may be used only for tax-privileged purposes. This requirement can also be met if the assets are to be assigned to another tax-privileged organization or to a legal person under public law for tax-privileged purposes;

5) subject to section 62 (which under certain conditions permits the allocation of funds to reserves), the organization shall in principle use its funds promptly for the tax-privileged purposes set out in its statutes. The use of funds for the acquisition or creation of assets serving the purposes set out in the statutes shall also constitute an appropriate use. Funds shall be deemed to have been used promptly where they are used for the tax-privileged purposes set out in the statutes by no later than two calendar or financial years following their accrual.

The third requirement is "exclusivity", which is satisfied if the organization pursues only the public benefit purposes set out in its statutes (sect. 56 AO). Therefore, a German PBO cannot carry out activities other than public benefit activities. On the other hand, there are no restrictions as regards the way in which the public benefit activity, which means that activities may also be performed using business methods (purpose-related economic activities).

The fourth requirement is "directness", which is met if the organization itself pursues the public benefit purposes (sect. 57 AO). In fact, however, there are several instances in which the requirement may be

[25] Public benefit limited liability companies are increasingly diffuse. They can use the abbreviation "gGmbH" instead of "GmbH", where the first "g" means "*gemeinnützig*" (public benefit).

satisfied in an indirect manner. This happens, for example, when the organization acts through an auxiliary person or holds and manages shares in another tax-privileged organization (sect. 57(4) AO).

Sect. 58 AO lists a series of acts whose performance does not negatively affect the public benefit status. For example, the status would not be compromised by an organization assigning part of its funds, surpluses or gains to another tax-privileged organization or to a legal person under public law to be used for tax-privileged purposes (sect. 58(2) and (3) AO); by a foundation using a part not exceeding one third of its income for the appropriate upkeep of the donor and his or her near relatives, to maintain their graves and to honour their memory (sect. 58(6) AO); by an organization holding social events which are of secondary significance in comparison with its tax-privileged activities (sect. 58(7) AO); or by a sport association promoting paid, in addition to unpaid, sporting activities (sect. 58(8) AO); etc.

In a similar vein, sect. 62 AO allows a PBO to allocate all or part of its funds to reserves, within certain conditions and time limits (after a given period of time reserves must be dissolved and the funds used for pursuing the purposes) so as to prevent resources from being accumulated rather than used to reach the objectives of public benefit.

German PBOs may take advantage of several tax benefits.

They are exempt from corporate income tax (sect. 5(1), no. 9, Corporate Income Tax Act). The exemption applies to the income from the "ideal" sphere of a PBO (memberships fees; donations; etc.), from the "passive" management of its assets (e.g., bond interests), and from purpose-related economic activities[26]. In contrast, purpose-unrelated economic activities are subject to corporate income taxation if they generate total annual income, including VAT, that exceeds EUR 45,000 (sect. 64(3) AO).

Purpose-related economic activities are those activities that are directed towards achieving the public benefit purpose of a PBO as set out in its statutes, provided that this purpose can be achieved only by way of such activities, and these activities do not enter into competition with non-privileged activities of the same or similar type to a greater extent than necessary for achieving the public benefit purpose (sect. 65 AO). Moreover, there are some activities that are per se considered by law purpose-related, such as, for example, old people's homes, old people's residential and nursing homes, convalescent homes and services for the provision of meals (sect. 68 AO)[27].

Some public benefit activities are VAT exempt, including health-related, educational, cultural and scientific activities. If an economic activity is subject to VAT, PBOs apply a reduced VAT rate (7%) if the activity is purpose-related, while the ordinary VAT rate applies to their purpose-unrelated economic activities[28].

Donations to German PBOs allow donors (both individuals and legal entities) to obtain tax benefits. The donated amount may be deducted up to a certain extent, which is 20% of the total income for individual donors (sect. 10b(1) Income Tax Act) and 20% of the total income or 0.4% of the sum of gross revenues and salaries per year for corporate donors (sect. 9(1) n. 2, Corporate Income Tax Act)[29]. These benefits are awarded also in case of donations to comparable foreign organizations, provided that proof is given by the tax-payer to the tax office of the possession by the recipient foreign organization

[26] According to sect. 14 AO, "'Economic activity' shall mean an independent sustainable activity from which revenue or other economic benefits are derived and which comprises more than mere asset management. The intention to realise a profit shall not be required. As a rule, an activity shall be deemed to constitute asset management where assets are utilised, e.g., by investing capital assets to earn interest or by renting or leasing immovable property".

[27] Cf. Bishoff, Helm (2023), p. 142.

[28] Cf. Richter and Gollan (2020), p. 11; Bishoff, Helm (2023), p. 142.

[29] Cf. Stanitzke (2020), p. 22; Bishoff, Helm (2023), p. 143.

of the necessary requirements[30]. The comparability test is conducted on a case-by-case basis, but starting from 2024 foreign organizations will also be entitled to register in the register of beneficiary organizations and be therefore allowed to receive tax-privileged donations on a permanent basis.
Since 2000, contributions to the endowment of foundations (including "non-independent foundations")[31] with the public benefit status enjoy an additional tax relief. An individual donor (not a corporation) can deduct up to 1 million EUR from personal income tax over ten years (sect. 10b(1a), Income Tax Act)[32].

German PBOs are required to submit an annual statement of accounts on their income and expenditure as well as on their reserves to the tax authority, but there is no obligation to publish this information. The report may be used by the tax authority to check compliance with the requirements for the status. Indeed, there is no other specific public authority supervising German PBOs.

2.1.2. Austria

In Austria, the public benefit status is provided for in sect. 34 ff. of the Tax Code.

Like in Germany, the Austrian Tax Code identifies some "tax-privileged purposes" of a public benefit, charitable or religious nature. Associations and other types of organizations, such as foundations and companies, which pursue these purposes are granted tax benefits if their statutes comply with the necessary requirements and if they are managed exclusively and directly to promote said purposes. Benefits are also granted to organizations not established in Austria if they prove to meet the necessary requirements (sect. 34).

As is also the case in Germany, there is no prior accreditation, approval or registration of PBOs, because what matters is that PBOs concretely act in the pursuit of (at least) one of the tax-privileged purposes. However, to receive tax-privileged donations in accordance with the Income Tax Act, the organizations not explicitly mentioned by the same Act as possible beneficiaries must be included on a list of "beneficiary organizations" by the competent tax authority. There are special requirements for inclusion on this list, including having already pursued a tax-privileged purpose for at least three years and having administrative costs related to the use of donations no greater than 10% of the income from donations. These special requirements must be certified by a professional auditor. Comparable organizations based in another MS of the EU may also be included on the list of "beneficiary organizations".

Austrian law defines the public benefit purposes as purposes that benefit the general public. Promotion of the general public interest only occurs when the activity benefits the common good. This applies, in particular, to the promotion of:

- art and science;
- health-care;
- child, youth and family welfare;
- care for the elderly, the sick or people with physical disabilities;
- physical sports;
- public housing;

[30] For further details, cf. Bishoff, Helm (2023), p. 143 ff.

[31] Non-independent foundations are separate funds owned by individuals or legal entities.

[32] Cf. Von Hippel (2010), p. 210; Richter and Gollan (2020), p. 12.

- school education, education, popular education, vocational training;

- the preservation of monuments, nature, animal and cave protection;

- local history;

- home care and the fight against natural disasters (sect. 35).

It must also be pointed out that the Income Tax Act identifies specific privileged purposes for tax-privileged donations.

A group of persons is not to be regarded as a general public group if it is firmly delimited through a closer bond, such as belonging to a family, a family association or an association with a closed number of members, through employment at a specific institution and the like, or if, as a result of its demarcation based on local, professional or other characteristics, the number of persons to be considered can only be small on a permanent basis (sect. 36).

Like German law, Austrian law considers charitable purposes separately from public benefit purposes. Charitable purposes are those purposes that aim to support people in need (sect. 37).

The tax-privileged purposes may be pursued by the organization either directly or indirectly, in other words through another organization whose activities may be considered as the activities of the organization (e.g., a fully owned company). An organization acting as a pure holding pursues privileged purposes if all its subsidiaries serve public benefit, charitable or religious purposes (sect. 40).

The status may also be held by organizations providing funds to "beneficiary organizations" as provided for by the Income Tax Act and by organizations that partially, though not prevalently, provide services for a fee to other PBOs pursuing the same purposes (sect. 40a).

To retain the status, an organization can perform other activities only if they are subordinate and secondary relative to the public benefit and charitable activities (sect. 39(1)). This requirement in Austrian law is less strict than the "exclusivity" requirement found in German law.

The performance of commercial activities is allowed, provided that the organization does not seek profit and profits are not distributed to members (sect. 39(2)).

Other legal requirements for the status relate to the way in which profits and assets are used by the organization. Austrian law prescribes (in sect. 39) that:

- assets must exclusively and directly be used to fulfil the stated purposes;

- no profits and assets can be distributed to members (and other persons), neither directly nor indirectly (through unreasonable administrative expenses or disproportionately high remunerations, e.g., to board members);

- upon the entity's dissolution (or loss of the public benefit status, as happens in the case of a change of the stated purposes), members may only recover their paid-up capital shares and the fair market value of their in-kind contributions, and the entity's residual assets must be used for public benefit or charitable purposes (or devolved to other organizations pursuing these purposes).

There are no specific provisions regarding the governance of the organization. It is only stated that an organization must be managed to fulfil exclusively and directly its public benefit or charitable purposes.

There are no specific reporting requirements for an organization to maintain the public benefit status. However, organizations included in the list of "beneficiary organizations" must submit an annual report

by an auditor (in which confirmation is given that the organization maintains the necessary legal requirements) and the changes made to its statutes to the tax authority.

As regards taxation, a PBO's essential purpose-related activities (e.g., theatre performances by a theatre association) are not subject to income tax and VAT. On the other hand, non-essential purpose-related activities are subject to income tax and VAT, unless the organization's total profits per calendar year do not exceed EUR 10,000. Activities not related to the essential purpose are, in principle, subject to income tax and VAT, unless the organization's total profits do not exceed EUR 10,000 per calendar year. Profits from unrelated activities may affect the tax privileges that the organization enjoys with regard to the purpose-related activities and may ultimately determine the loss of the public benefit status unless the annual turnover does not exceed EUR 40,000. In the event of sales exceeding this limit, an organization must obtain an exemption from the tax office to maintain the public benefit status.

PBOs pursuing one of the "privileged purposes" identified by the Income Tax Act may receive tax-privileged donations from physical or legal persons. Donors may deduct these donations up to 10% of their taxable income.

There is no specific authority in charge of the supervision of PBOs. Compliance with the legal requirements for the maintenance of the status is verified by the tax authority on an ongoing basis.

2.1.3. Overview of equivalent regulations in other EU Member States (basic legislative tables)

BELGIUM	
Main sources of the regulation	Art. 145/33 of the Income Tax Code
Legal denomination and/or definition	In Belgian law, a formal public benefit status for associations and other NPOs does not exist. However, an equivalent category of organizations for certain tax purposes is that of the "accredited non-profit organizations" pursuant to art. 145/33 of the Income Tax Code.
Eligible legal forms	Associations with legal personality and other NPOs, including foundations
Excluded entities	No specific provisions
Accreditation/Registration	Accreditation must be requested to the tax administration and is awarded for no more than six years
Public benefit activities and/or purposes	- Scientific research - Assistance to victims of war - Assistance to the disabled, the elderly, protected minors or indigents - Assistance to developing countries - Culture - Support to victims of recognized natural calamities - Protection of nature and environment - Support to victims of major industrial accidents - Conservation and protection of monuments and sites - Sustainable development - Management of shelters for animals
Commercial activities	Accredited NPOs may carry out commercial activities provided that it does not distribute any profit

Main requirements on the use of profits and assets	No more than 20% of the income can be used for general administrative expenses
Main governance requirements	No specific provisions
Main reporting requirements	Accredited NPOs must submit their statutes, amendments to the statutes, annual accounts, provisional budgets and annual reports on the activities performed to the tax authority
Main benefits	Accredited NPOs are not subject to the corporate income tax but to the more favorable tax on legal entities even if their activities are profit-making. Under this regime, the income from commercial activities is not taxed. Donations greater than EUR 40 per year to accredited NPOs entitle individual donors to a tax reduction of 45% of the donated amount up to either 10% of the net income or EUR 392,200. Legal entities may deduct the donated amounts up to either 5% of their income or EUR 500,000
Public Supervision	The tax authority has to power to verify that the organizations meet the requirements for the accreditation
Other relevant aspects	To obtain tax-privileges for donations to organizations of another MS of the EEA, the taxpayer must make available to the administration proof that the foreign organization is comparable to, and is accredited in a similar manner as a Belgian eligible organization

CYPRUS	
Main sources of the regulation	Art. 9(1)(f) of Income Tax Law no. 118(I)/2002
Legal denomination and/or definition	Recognized Philanthropic Institutions
Eligible legal forms	Associations and other NPOs, including foundations and companies
Excluded entities	No specific provisions
Accreditation/Registration	Philanthropic institutions must be recognized by the Ministry of Finance, which identifies the requirements necessary for this purpose. The Ministry maintains and publishes a list of recognized philanthropic institutions
Public benefit activities and/or purposes	The purpose of the institution must be philanthropic and support and promote society and the public interest in general. No other activities are allowed
Commercial activities	Philanthropic institutions must not engage in commercial activities or activities of an economic nature such as land trading, real estate exploitation or other activities of a profit-making nature that are not aimed at the public interest.
Main requirements on the use of profits and assets	In the event of dissolution, assets must not be distributed to the members but transferred to another recognized philanthropic institution or to a state agency.

	Philanthropic institutions must be self-sustaining and not transfer future expenses to the Government or other bodies without their consent, therefore they cannot be given loans. The merger with another institution, and the transfer of assets to another institution, must be notified to the Ministry of Finance, providing details relative to the operation. The merger implies the deletion of the institution from the list of recognized philanthropic institutions. The new institution will have the right to re-apply to Ministry of Finance for inclusion in the list. The income cannot be saved or invested, but must be, for the most part, allocated annually for the fulfilment of the purposes of the institution
Main governance requirements	Board members must be reputable persons who have not been convicted of a criminal or disciplinary offense. Their election, appointment and termination must be made through transparent and democratic procedures. Board members cannot be remunerated and may not have any transactions in any way with the institution. A founder cannot act as the general director of the institution. The board of directors must ensure the proper service of the institution's purposes, evaluate its activities, assets and income and establish criteria for its operation. For example, if the purposes of the institution include the provision of financial assistance or scholarships, strict criteria should be established in relation to the provision of scholarships, i.e., criteria that determine when the applicant is excellent, needy, etc., so that the process of selecting the scholarships is democratic. These criteria must be included in the Institution's statutes, or in the issuance of relevant Regulations, which must be sent to the Minister of Finance for approval. Furthermore, it is forbidden to select the scholarship holders from among the children or relatives of the board members
Main reporting requirements	No specific provisions
Main benefits	Donations for philanthropic purposes to recognized philanthropic institutions are deductible from the taxable income
Public Supervision	The Ministry of Finance has to power to verify that the institutions maintain the requirements for their recognition
Other relevant aspects	Only entities established in Cyprus may be approved as philanthropic institutions

CZECH REPUBLIC	
Main sources of the regulation	Sect. 146 of the Civil Code of 2012 and Sects. 15(1) and 20(8) of Income Tax Act no. 586/1992
Legal denomination and/or definition	In Czech law, a formal public benefit status for associations and other NPOs does not exist.

	The Civil Code of 2012 originally had a part (sects. 146-150) on public benefit legal persons, which contained some general provisions aiming at laying the foundations for a subsequent regulation of this status. However, an implementing regulation was never adopted and ultimately arts. 147-150 were repealed in 2017. The only article remaining, art. 146, provides a definition according to which "a publicly beneficial legal person is a legal person whose mission is to carry out its own activities to contribute, in accordance with the forming juridical act, to achieving common welfare, if the decision-making of the legal person is significantly influenced only by persons with no criminal record, if it has acquired its property from fair sources, and if it uses its assets and liabilities economically for a publicly beneficial purpose". In tax law, there is a definition of "public benefit taxpayer" (sect. 17a Income tax Act no. 586/1992). It is a taxpayer whose main activity, in accordance with its founding legal act, is not a business. This category includes NPOs like associations and foundations (except family foundations), and may cover PBOs among them. In sects. 15(1) and 20(8) of the Income Tax Act no. 586/1992 a particular regime of deduction from the tax base of individuals and legal entities for donations to legal entities for certain public benefit purposes is found
Eligible legal forms	Associations and other legal entities
Excluded entities	No specific provisions
Accreditation/Registration	No specific provisions
Public benefit activities and/or purposes	- Science and education - Research and development - Culture - Education - Police - Fire protection - Support and protection of young people - Protection of animals and their health - Social care - Health care - Ecological purposes - Humanitarian purposes - Philanthropic purposes

	- Religious purposes for registered churches and religious communities - Physical education and sports
Commercial activities	No specific provisions
Main requirements on the use of profits and assets	No specific provisions
Main governance requirements	No specific provisions
Main reporting requirements	No specific provisions
Main benefits	Public benefit taxpayers do not pay taxes on the income from their non-business activities provided that costs incurred for the performance of these activities exceed profits derived from them (sect. 18a(1)(a), Income tax Act no. 586/1992). Public benefit taxpayers (with some exceptions, including a professional chamber and a taxpayer established for the purpose of protecting and defending the business interests of its members who are not employers' organizations) do not pay taxes on the income from their business activities up to a certain extent (CZK 300,000) and enjoy a reduction of the tax base (up to 30% or CZK 1,000,000) for income exceeding that ceiling (sect. 20(7) Income tax Act no. 586/1992). Tax savings thus obtained must be used in the following tax period to cover the costs of the public benefit taxpayer's non-business activities. Donations made in accordance with sects. 15(1) and 20(8) of Income Tax Act no. 586/1992 may be deducted from the tax base up to a maximum of 15% for individuals if the total value of donations exceeds 2% of the tax base or is at least CZK 1,000, and up to a maximum of 10% for legal persons (except public benefit taxpayers) if the total value of donations exceeds CZK 2,000
Public Supervision	No specific provisions
Other relevant aspects	The provisions in sect. 15(1) and 20(8) of Income Tax Act no. 586/1992 also applies to donations to legal entities established in another MS of the EU or the EEA, if the recipient entity and the purpose of the donation meet the relevant legal requirements.

DENMARK	
Main sources of the regulation	Sect. 8A of the Income Tax Act (and Order of the Ministry of Taxation no. 1656 of 19 December 2018)

Legal denomination and/or definition	Tax law identifies a category of organizations that pursue charitable purposes and are eligible for tax-deductible donations if they are approved (for the calendar year in which the donation is made) by the tax authority and meet some specific requirements as laid down by the competent Ministry
Eligible legal forms	Associations and other NPOs, including foundations
Excluded entities	No specific provisions
Accreditation/Registration	To be recipient of tax-deductible donations, charitable organizations must be approved by the tax authority. The tax authority publishes every year a list of approved organizations
Public benefit activities and/or purposes	The purpose of the organization must be charitable or non-profit, namely, the funds must be used only to support a large group of people in financial need or in difficult financial circumstances or for a purpose which, based on a general perception among the population, can be characterized as beneficial and which benefits a certain large group of people. The number of donors in the EU/EEA must exceed 100 each year. The individual donor must have made a donation of at least DKK 200 during the year to the relevant organization. The annual gross income or the assets (equity) must exceed DKK 150,000
Commercial activities	Allowed
Main requirements on the use of profits and assets	Assets must exclusively be used for pursuing the organization's public benefit purposes. The funds must be used for the benefit of a group of people which is not limited geographically or in any other way to a population level of less than 35,000. Residual assets at dissolution must be devolved to another charitable organization based in Denmark or in another EU/EEA Member State
Main governance requirements	For organizations which are independent legal entities, the following conditions must be met: 1) The board of the organization must not primarily be self-electing 2) The number of fee-paying members in the EU/EEA must exceed 300, and the fee must be of an amount that overall covers the organization's normal administrative expenses 3) The organization must not be a member of a previously approved main organization. This condition will not apply, however, where the applying organization is a national organization.

	Foundations must be managed by a governing body of which at least one member is independent and impartial in relation to the founders
Main reporting requirements	The organization must submit to the tax administration information regarding the donations received and other relevant aspects for the maintenance of the status, as well as the annual reporting according to the Tax Reporting Act. It must be disclosed whether one or more donations exceeding a total of DKK 20,000 have been received from the same foreign donor in the previous calendar year
Main benefits	Donations may be deducted up to DKK 17,200 (2022 level)
Public Supervision	The tax authority monitors the continued compliance with the requirements for approval. For this purpose, the organization must, on request, submit its financial statements, itemizations etc. to the Danish Tax Agency. The tax authority revokes the approval when the requirements are no longer met.
Other relevant aspects	Tax-deductible donations may also be made in favor of organizations approved in another MS of the EU or the EEA

ESTONIA	
Main sources of the regulation	Sect. 11 of the Income Tax Act of 1999
Legal denomination and/or definition	Tax law identifies a category of non-profit organizations that may benefit from income tax incentives
Eligible legal forms	Associations and other NPOs, including foundations
Excluded entities	Professional organizations, organizations for business support, trade unions or political associations.
Accreditation/Registration	To access this regime, NPOs must be approved by the national tax authority, which drafts a list of approved NPOs.
Public benefit activities and/or purposes	The organization must operate in the public interest. It must be charitable, in the sense that it offers goods or services primarily free of charge or in another non-profit seeking manner to a target group which, arising from its articles of association, the organization supports, or makes support payments to the persons belonging in the target group
Commercial activities	Business may even be the main activity of the organization provided that at least 90% of the business income after the deduction of the expenditure related to business is used for objectives set out in its statutes. The following activities are not considered business: 1) activities directly related to the objectives set out by the articles of association (e.g., publication of printed matter, training, information exchange, organization of events);

	2) activities for the sale of donations; 3) organization of lotteries and auctions for charitable purposes, and other such activities for collecting donations unless such activity is the principal activity of the association; 4) receiving financial income which results from the activities specified in the articles of association
Main requirements on the use of profits and assets	The organization may not distribute its assets or income, grant material assistance or monetarily appraisable benefits to its founders, members, members of the management or controlling body, persons who have made a donation to it or to the members of the management or controlling body of such person or to the persons associated with such persons (such as spouses, entities belonging to the same group, etc.), unless the associated person belongs to the target group supported by the organization and does not receive additional benefits as compared with other persons in the target group. Upon dissolution, residual assets must be transferred to another organization entered in the list or a comparable organization established in another MS of the EEA. The administrative expenses of the organization must correspond to the character of its activity and the objectives set out in its statutes. The remuneration paid to the employees and members of the management or control body of the organization may not exceed the amount of remuneration normally paid for similar work in the business sector
Main governance requirements	No specific provisions
Main reporting requirements	Organizations belonging to the list must submit to the tax authority a number of documents, including a declaration on the donations received and on the use of donations and other income
Main benefits	Donations to organizations of sect. 11 are deductible from the income up to 5% (and in any event no more than EUR 1,920, other deductions included) in the case of individuals and up to 10% of the profits (or 3% of the amount of the payments subject to social tax) in the case of legal persons
Public Supervision	The tax authority monitors the continued compliance with the requirements for approval. It deletes an organization from the list if the activity does not meet the requirements, it has violated other rules (e.g., it has repeatedly delayed payment of tax) or it has asked to be deleted
Other relevant aspects	An organization established in another MS of the EEA is deemed to be an organization benefiting from income tax incentives if it is supported by sufficient evidence that it meets the requirements set forth by law and has not violated those rules whose violation is cause of deletion from the list. Donations to organizations based in another EEA Member State are also tax-deductible

FINLAND	
Main sources of the regulation	Sect. 22 of Income Tax Act no. 1535/1992
Legal denomination and/or definition	Public Benefit Organizations
Eligible legal forms	Associations and other legal entities
Excluded entities	No specific provisions
Accreditation/Registration	Yearly accreditation by the tax authority
Public benefit activities and/or purposes	Benefitting the common good in a material, spiritual, moral or social sense, without limiting the operations to a specific group of people and without generating financial benefits in any form (dividend, profit-sharing, unreasonable salary or compensation) for any party involved in the organization's activity. Examples include an agricultural center, an agricultural and farming association, a labor association, a labor market organization, a youth or a sport association, an association that promotes hobby and leisure activities based on voluntary civic work comparable to these, a party registered in the party register and its member, local, parallel or auxiliary association, as well as any other community whose actual purpose is to influence state affairs or engage in social activities or support science or art. A community of general interest can also be considered a set of assets set aside to support a candidate in general elections.
Commercial activities	No specific provisions
Main requirements on the use of profits and assets	No specific provisions
Main governance requirements	No specific provisions
Main reporting requirements	Associations that receive tax-deductible donations must submit annually to the tax administration information on the deductible donations received, their donors and the purpose for which the donation has been used. Furthermore, the activity report, profit and loss account and balance sheet for the most recently ended operating year must be submitted to the tax administration
Main benefits	PBOs are in general subject to taxation for their income from business activities, with some exceptions (e.g., income from lotteries, entertainment events, etc., organized to finance their activities). A monetary donation of at least EUR 850 and no more than EUR 50,000, which has been made for the purpose of promoting science, art or the preservation of the Finnish cultural heritage, to an association established in the EEA and approved by tax administration, whose actual purpose is to support science or art or the preservation of the Finnish cultural heritage, is deductible.
Public Supervision	The tax authority has to power to verify that the institutions maintain the requirements for their recognition

Other relevant aspects	

NETHERLANDS	
Main sources of the regulation	Art. 5b of the General Tax Law
Legal denomination and/or definition	Public Benefit Institutions (ANBIs). In art. 5c of the General Tax Law, also Social Benefit Institutions (SBBIs) are recognized as organizations that contribute to the individual development of their members and the social cohesion of society or a healthier society
Eligible legal forms	Associations and other NPOs, including foundations (companies and cooperatives are explicitly excluded by law)
Excluded entities	No specific provisions
Accreditation/Registration	ANBIs must be accredited by the tax authority which forms and publish a list of ANBIs (accreditation is not needed for SBBIs)
Public benefit activities and/or purposes	ANBIs must exclusively or almost exclusively act for the common good. This happens when at least 90% of the costs of the organization relate to the pursuit of a public benefit purpose. Public benefit purposes are: a. welfare; b. culture; c. education, science and research; d. protection of nature and the environment, including promotion of sustainability; e. healthcare; f. youth and elderly care; g. development cooperation; h. animal welfare; i. religion, philosophy of life and spirituality; j. the promotion of the democratic legal order; k. social housing; l. a combination of the aforementioned goals, as well m. supporting a public benefit institution financially or otherwise. As regards the SBBI status, there are no specific purposes listed by law. This status is for example compatible with the performance of sport, music, art and theater activities, etc.
Commercial activities	ANBIs can perform commercial activities as long as revenues are entirely or almost entirely used for pursuing their public benefit purposes (commercial activities are meant as performing work or providing services at commercial rates with the aim of achieving a positive result to finance the public benefit activities of the institution). However, activities are not public benefit activities if the ANBI carries out all of those activities at commercial rates

Main requirements on the use of profits and assets	ANBIs must not have any profit purpose. They must have no more assets than reasonably needed for the pursuit of their public benefit purposes. The ANBI's management costs must be in reasonable proportion to the expenses. Directors cannot be remunerated, but may only receive a non-excessive attendance fee and be reimbursed for expenses incurred. Residual assets at dissolution must be devolved to another ANBI or to a foreign institution that aims exclusively or almost exclusively for the public benefit
Main governance requirements	No single person can have control over the assets of an ANBI as if they were their own assets Integrity requirements apply to the directors
Main reporting requirements	ANBIs must have an up-to-date policy plan which provides insight into the activities to be performed by the ANBI to achieve its objective, the method of raising income, the management of the institution's assets and how they are spent ANBIs must report a number of information and publish documents on their website (to be communicated to the tax authority) including the current policy plan, the composition of the board of directors and the remuneration policy, a report of the activities performed, the balance sheet and the statement of income and expenditure, with explanatory notes,
Main benefits	Periodic and other Gifts to ANBIs are deductible from taxable income for personal income tax (gifts by natural persons) and corporate income tax (gifts by legal persons): art. 6:32 Income Tax Act. This applies also to gifts in kind. Also volunteer labour can be deductible if certain conditions are met. Gifts to cultural entities can be taken into account for 125% of the value of the gift. Periodic gifts are donations based on an obligation entered into by notarial or private deed of donation to pay annually for five or more years while the donor is alive. Periodic gifts are fully deductible up to EUR 250,000. If the periodic gift exceeds the income of a certain year, the remainder can be deducted in a following year. Other gifts taken together in a year are deductible if they exceed 1% of the gross income (with a minimum of EUR 60) and up to 10% of the gross income. Also volunteer work (and volunteer expenses) may be deducted under certain conditions. Specific measures apply in favour of cultural ANBIs
Public Supervision	By the Tax Authority (where an ANBI expert team is established). It may lead to the revocation of the ANBI status
Other relevant aspects	State, provinces and municipalities in the Netherlands, as well as comparable bodies in another MS of the EU or the EEA are considered ANBIs by law

	Comparable organizations established in another country of the EU may be granted the ANBI status by the Dutch Tax Authority

SWEDEN	
Main sources of the regulation	Chap. 7, Sect. 3 ff., Income Tax Act no. 1999:1229
Legal denomination and/or definition	Public Benefit Organizations
Eligible legal forms	Associations, foundations and religious communities
Excluded entities	No specific provisions
Accreditation/Registration	Registration with the Tax Authority is necessary to acquire the status Specific approval is necessary for a PBO to receive tax-privileged donations
Public benefit activities and/or purposes	A PBO must pursue one or more public benefit purposes. Public benefit purpose is a purpose that promotes: - sports, - culture, - environmental care, - care for children and youth, - political activities, - religious activities, - health care, - social assistance activities, - Sweden's defense and crisis preparedness in collaboration with authorities, - education, - scientific research, or - another equivalent activity The purpose of a PBO association must not be limited to the financial interests of certain families, members or other specific persons. The activity of the PBO must exclusively or almost exclusively (at least 90% of the activities) serve one or more public benefit purposes
Commercial activities	No restrictions
Main requirements on the use of profits and assets	Income and assets must be, to a reasonable extent, used for the public benefit purposes. The Tax Agency may grant exceptions for a PBO that intends to acquire a property or other facility intended for the public benefit activity or that intends to carry out extensive building, repair or construction work on a property. Exception may be granted for a maximum of 5 consecutive years
Main governance requirements	A PBO may not refuse entry as a member, unless there are special reasons for this with regard to the nature or extent of its activities, purpose or otherwise.

Main reporting requirements	No specific provisions
Main benefits	Income from a PBO's public benefit activities and connected activities is tax-exempt. If a PBO has approximately 75% of tax-exempt activities, then also income from unrelated activities is tax-exempt ("principality assessment" principle). Donations to PBOs are tax-incentivized. To receive tax-privileged donations, PBOs need a specific approval by the tax authority (one condition is that the PBO has at least one professional accountant) and must be active in social assistance or scientific research. Approval lasts until the end of the third year after the year of the approval. An individual donor is entitled to a tax reduction of 25% of the donated amount up to a maximum of SEK 3,000. The donor must give donations worth no less than SEK 2,000 (in total) and SEK 200 (each donation) in a year to receive a tax reduction
Public Supervision	By the Tax Authority
Other relevant aspects	Organizations established in the EEA may apply for the approval as donation recipient organizations

2.2. Public benefit status as an organizational status

The laws belonging to the second model of legislation identified above provide an organic and systematic legal framework for PBOs, which is not limited to their promotion but is comprised, first and foremost, of rules on their structure and functioning. In some jurisdictions, for example in Ireland, tax measures are not even directly related to the possession of the status, but subject to additional conditions. Moreover, the promotion of PBOs is not only comprised of tax measures, but also of other measures, including special rules on the relationships between PBOs and public administrations for the co-design and co-provision of public benefit activities.

In this instance, the first and main concern of the national legislator is not to award a preferential tax treatment to PBOs, but to establish an adequate legal framework for their existence. Therefore, laws of this type are similar to organizational laws, although they perform a different role. Indeed, the objective of these laws remains that of providing incentives for the development of a certain category of organizations (as clarified, for example, in art. 1 of Latvian Law on public benefit organizations, according to which: "the purpose of the Law is to promote the public benefit activities of associations and foundations, as well as religious organizations and the institutions thereof"). They do not offer a particular legal form for an entity's incorporation (as organizational laws do) but an optional legal status that confers benefits upon the organizations that hold it. Therefore, although the legislator's general objectives do not change according to the different model of public benefit legislation, the ad hoc laws on PBOs, such as those found, among others, in Ireland, Italy, Latvia and Poland, are not only concerned with the promotion of PBOs, but also with their organization and functioning, so that the public benefit status is, in these national jurisdictions, a broader organizational status rather than a merely fiscal status.

Given these characteristics, it is no coincidence that this legislative approach is found in countries, like Ireland and Italy, that do not have an adequate legal framework for associations and other NPOs. In these jurisdictions, the laws instituting the public benefit status for NPOs have to fill existing gaps of

organizational law. However, even in these jurisdictions that of public benefit remains, as stated, a legal status and PBOs are conceptually distinct from generic NPOs, such as associations and foundations.

As a consequence, under this model of legislation, PBOs are usually subject to a specific form of public supervision, which is not conducted by the same authority, if any, that supervises generic NPOs, nor by the tax authority (which, however, maintains the power of checking compliance with taxation rules applicable to PBOs), but by a specific authority, which may also have regulatory powers.

In this section of the Study, three comprehensive ad hoc laws in which the public benefit status is treated as an organizational status will be analyzed. These laws are the Irish Charities Act of 2009, the Polish Law of 24 April 2003 and the Italian Third Sector Code of 3 July 2017. All of them represent prominent examples of this legislative model on the public benefit status, notwithstanding the different denominations that PBOs assume in each of these laws (charitable organizations, public benefit organizations and third sector organizations, respectively) and the specific characteristics of each of them. In this regard, the most particular law is the Italian Third Sector law, whose specificities need to be highlighted in a comparative legal study, also because they may show the potential developments of the legislation on the public benefit status.

Ten other MSs, namely, Bulgaria, Greece, Hungary, Latvia, Lithuania, Malta, Portugal, Romania, Slovakia and Slovenia, follow this model of legislation, even if some national laws do not provide a very specific regulation of the public benefit status, which is the case, for example, in Romania where, moreover, PBOs do not receive better treatment than other NPOs without the PBO status, thus significantly reducing its attractiveness.

2.2.1. Ireland

In Ireland, the conceptual distinction between NPOs and PBOs, or rather "charitable organizations" as they are named in this country, is clear, also thanks to the legislation in force. While NPOs are characterized by the sole fact of being "not-for-profit", PBOs are non-profit organizations meeting the legal requirements for registering as charities. Hence, "while not every non-profit will be a charity, every charity will be a non-profit"[33]. There are more than 34,000 NPOs in Ireland, and approximately one-third are charities[34]. It is more or less the same proportion which currently exists between NPOs and TSOs in Italy. The Italian National Institute of Statistics (ISTAT) has recently released the last update on "non-profit institutions", which are 363,499 as of 31 December 2020. In the RUNTS, the special register in which, as we shall see, Italian TSOs must register to acquire the status, there are 108,602 registered organizations and 5,708 pending procedures for registration.

The charity is not a legal form of an entity's incorporation but a legal status whose acquisition and maintenance are subject to the possession by the entity of specific legal requirements and its registration in a register held by the Charities Regulatory Authority (CRA), which is also the body responsible for the regulation and supervision of charities.

The charity status may be acquired by entities established in any legal form. All charitable trusts, bodies corporate and unincorporated bodies of persons that meet the requirements established by the Charities Act 2009 (CA) and are not "excluded bodies" may be registered as charities. The list of excluded bodies comprises (*a*) a political party, or a body that promotes a political party or candidate, (*b*) a body that promotes a political cause, unless the pro- motion of that cause relates directly to the advancement of the charitable purposes of the body, (*c*) an approved body of persons within the meaning of section 235 of the Taxes Consolidation Act 1997, (*d*) a trade union or a representative body

[33] In these terms, Breen (2023).

[34] Cf. Breen (2023).

of employers, (*e*) a chamber of commerce, or (*f*) a body that promotes purposes that are (i) unlawful, (ii) contrary to public morality, (iii) contrary to public policy, (iv) in support of terrorism or terrorist activities, whether in the State or outside the State, or (v) for the benefit of an organization, membership of which is unlawful (sect. 2 CA).

Among the possible legal forms, the unincorporated association and the company limited by guarantee (CLG) are the most commonly used to establish a charitable organization[35]. A CLG is a company without share capital and therefore without shareholders in the strict sense. CLGs have legal personality (so that their members enjoy a limited liability) and may even be set up by only one person offering a guarantee of EUR 1.

The status of a charity is acquired by registration with the relevant Register maintained by the CRA (sect. 39(3) CA). Registration is possible only for organizations meeting the necessary legal requirements and which are therefore charitable organizations according to the Charities Act (sect. 39(8) CA). Only the registered charities are allowed to use this legal denomination (sect. 46(5) CA)[36], whilst non-registered entities would be guilty of an offence if they were to do so (sect. 46(2) CA).

Registered charities are required to promote a "charitable purpose only" (sect. 3(1) CA). The CA provides a list of charitable purposes, namely,

- the prevention or relief of poverty or economic hardship;

- the advancement of education;

- the advancement of religion; and

- any other purpose that is of benefit to the community (sect. 3(1) CA).

The last, residual category ("any other purpose") includes 12 (sub-) purposes, namely,

(*a*) the advancement of community welfare including the relief of those in need by reason of youth, age, ill-health, or disability;

(*b*) the advancement of community development, including rural or urban regeneration;

(*c*) the promotion of civic responsibility or voluntary work;

(*d*) the promotion of health, including the prevention or relief of sickness, disease or human suffering;

(*e*) the advancement of conflict resolution or reconciliation;

(*f*) the promotion of religious or racial harmony and harmonious community relations;

(*g*) the protection of the natural environment;

(*h*) the advancement of environmental sustainability;

(*i*) the advancement of the efficient and effective use of the property of charitable organizations;

(*j*) the prevention or relief of suffering of animals;

(*k*) the advancement of the arts, culture, heritage or sciences; and

[35] Cf. Breen (2023).

[36] In fact, registered charities are not only allowed, but are obliged to use the denomination of "charity". Sect. 46(7) CA stipulates: "A registered charitable organisation shall, in all public documents and such other publications as may be prescribed, including on television or the internet, state in legible characters (a) that it is a registered charitable organisation, and (b) provide such other information as may be prescribed, including the names of the charity trustees and the address of its principal office".

(*l*) the integration of those who are disadvantaged, and the promotion of their full participation, in society (sect. 3(11) CA).

All charitable purposes must also be "of public benefit" (sect. 3(2) CA). This happens when the purpose is intended to benefit the public or a section of the public and when, in a case where it confers a benefit on a person other than in their capacity as a member of the public or a section of the public, any such benefit is reasonable in all of the circumstances, and is ancillary to, and necessary for, the furtherance of the public benefit (sect. 3(3) CA). Advancement of religion is presumed, unless the contrary is proved, to be of public benefit (sect. 3(4) CA).

Charities do not face explicit restrictions regarding the nature of the activities that they may perform, which in principle may therefore be economic or not, provided they advance the charitable purpose. However, the economic nature of the activity may be relevant under tax law. To qualify for tax-exemption, profits must be applied solely to the purposes of the charity and moreover one of the two following conditions must be met:

- either the trade is exercised in the course of the actual carrying out of a primary purpose of the charity (e.g., a hospital charging fees for the health care services provided), or

- the work in connection with the trade is mainly carried out by beneficiaries of the charity (sect. 208 Taxes Consolidation Act 1997).

"Economic activities that would not otherwise qualify may nonetheless fall under the trading exemption if they are ancillary to pursuing the charity's primary purpose. Examples include a theatre selling food and drink to its patrons, or a hospital selling papers, flowers, and toiletries to patients and visitors. The Revenue Commissioners make determinations on a case-by-case basis in these circumstances"[37].

A strict asset-lock applies to Irish charities, which makes them fully non-profits. A charity "is required to apply all of its property (both real and personal) in furtherance of that purpose" (sect. 2 CA). Assets may be used in the operation and maintenance of the body, including in remuneration and superannuation of staff members (sect. 2 CA), but this may be done only on the condition that remuneration be reasonable, ancillary and necessary pursuant to sect. 3(3) CA. Along the same lines, sect. 89(3) CA stipulates that "any sum or sums payable to a relevant person under an agreement shall not exceed what is reasonable and proportionate having regard to the service provided by the relevant person pursuant to the agreement", otherwise the agreement is null and void (sect. 89(11) CA).

An asset-lock also applies at a charity's dissolution. The CA stipulates: "where a charitable organisation is dissolved, the property, or proceeds of the sale of the property, of the charitable organisation shall not be paid to any of the members of the charitable organisation without the consent of the Authority, notwithstanding any provision to the contrary contained in the constitution of the charitable organisation" (sect. 92 CA). However, "under the doctrine of cy près, as applied either by the CRA or upon application to the High Court, such property must be transferred to another charitable institution or institutions whose main objectives are similar to those of the dissolving body, or, failing that, to some other charitable body"[38]. A clause to this effect in the charity's governing instrument is also required for tax exemption[39].

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[37] International Center for Not-for-profit Law (2020), p. 9.

[38] International Center for Not-for-profit Law (2020), p. 8; Cf. also Breen (2023).

[39] Cf. International Center for Not-for-profit Law (2020) and Breen and Smith (2019), chapter 10, for readers interested in exploring the implications of economic activities of charities in greater detail.

In general, there is no detailed regulation in the CA of a charity's governance, which is in line with the fact that charities may have different legal forms. Thus, the governance of a charity mainly depends on the legal form of establishment. Rather than on its governance, the CA (as well as the applicable tax law) concentrates more on a charity's transparency and accounting, imposing upon a charity's trustees a wide number of related duties, including the submission of an annual report to the CRA[40]. The CRA partially compensates for this through its Code of governance[41].

Some prescriptions are found in tax law in order for a charity to access tax breaks. A registered charity, regardless of its legal form, must have at least three "trustees" (a company's directors also fall within this notion) who are not related to each other and who are independent of one another[42]. Under tax law, directors are not allowed to receive any remuneration other than the refund of their expenses[43]. This shows, in line with the concept of public benefit status adopted by this national law (an "organizational status" rather than a purely "fiscal status"), that further requirements are necessary for a charity to receive beneficial tax treatment.

Indeed, the charitable status does not *per se* guarantee any tax benefit (sect. 7(1) CA). For that purpose, charities must register with the Revenue Commissioners in order to obtain the "charitable tax-exempt status" and be assigned a "CHY reference number", which indicates their eligibility for charitable tax exemption[44]. The Revenue Commissioners are not bound by the determinations of the CRA.

The income of tax-exempt charities is exempt from income tax (sect. 208 Taxes Consolidation Act 1997).

Charities are not *per se* exempt from VAT, but many activities that are VAT-exempt may be relevant for charities[45]. Tax-exempt charities are entitled to a refund of a proportion of their VAT costs under a VAT Compensation Refund Scheme introduced by the Minister for Finance in 2018[46].

Donations are eligible for tax benefit only if their recipients are "designated charities", which requires, among other things, at least two years of tax-exempt status. The designation is valid for up to five years and, upon expiration, may be renewed[47]. Donations are eligible for tax benefit only if they exceed the minimum amount of 250 EUR per year and are within the limit of 1 million EUR per year. However, if there is a connection between the donor and the recipient charity (i.e., the donor is an employee or a member of the charity), tax relief is limited to 10% of the individual's total income per year.

Individual donors do not get tax benefits, but the recipient charity can claim a refund of tax paid on that donation. The relief is calculated by grossing up the donation at the specified rate, which is currently 31%. The amount of the refund cannot be more than the amount of tax paid by the donor for the same year.

Corporate donors can claim a tax deduction as if the donation were a trading expense. Therefore, the relief corresponds to the corporation tax rate, which is currently 12.5%.

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[40] Cf. O'Connor and McGrath (2020), p. 13; Breen (2023).

[41] Cf. https://www.charitiesregulator.ie/media/4657/charities-governance-code-2022-final.pdf. On the specific topic of governance of charities, cf. Breen and Smith (2019), chapter 7.

[42] Cf. Breen (2020), p. 4 f.; O'Connor and McGrath (2020), p. 6.

[43] Cf. https://cof.org/sites/default/files/Common%20Requirements%20Charities%20Regulator%20Revenue.pdf.

[44] This number does not coincide with the number obtained by charities registering with the CRA: cf. International Center for Not-for-profit Law (2020), p. 7.

[45] E.g., the purchase of appliances for use by disabled persons: see International Center for Not-for-profit Law (2020), p. 15.

[46] Cf. International Center for Not-for-profit Law (2020), p. 15; O'Connor and McGrath (2020), p. 16; Breen (2023).

[47] Cf. International Center for Not-for-profit Law (2020), p. 13.

The CRA is the specific supervisor of Irish charities. Its general functions include ensuring and monitoring compliance by charitable organizations with the charity regulation (sect. 14(1)(g), CA). To this end, the CRA may appoint one or more persons "to investigate the affairs of a charitable organisation and to prepare a report thereon". These persons are referred to as "inspectors", and they have particularly incisive powers (sect. 64 CA). The CRA itself has specific powers of investigation and sanctioning (sections 68-69, 73 CA). The CRA can also apply to the High Court for the suspension or removal of any charity trustees or staff of a charity or prevent the sale of property as a result of misuse, misconduct or mismanagement[48]. Some decisions of the CRA can be appealed to a Charity Appeals Tribunal[49].

2.2.2. Poland

In Poland, a public benefit status is provided for by the Law of 24 April 2003. More precisely, this law first identifies (in its art. 3, para. 2) the category of "non-governmental organizations" (NGOs) and then establishes (in art. 20 ff.) the public benefit status, which may be obtained by NGOs and other organizations that carry out a public benefit activity to the benefit of society and meet other specific legal requirements related to the governance, transparency and use of profits and assets. The status is obtained upon the entity's registration in the National Court Register and lost upon removal from this register (art. 22 Law 24 April 2003). Polish PBOs receive significant benefits from this law and are considered fundamental partners of the public administration in the provision of public benefit activities. Indeed, cooperation between public administration and PBOs is one of the key features and objectives of this law. "Shared administration", which in Italy is only an option for public bodies, is compulsory in Poland pursuant to the provision in art. 5, para. 1, Law of 24 April 2003, according to which public administration authorities "must perform" public activities in cooperation with NGOs and other organizations eligible for the PBOs status[50].

As regards the types of organizations that may acquire the public benefit status, substantially in line with Italian law on TSOs and other national laws on PBOs, including the previously examined German and Irish laws, Polish law makes the public benefit status available to all private not-for-profit entities, regardless of their legal form. Therefore, not only associations and foundations (i.e., NGOs), which are essentially non-profit according to their organic laws[51], but also joint stock and limited liability companies may acquire the public benefit status if they "do not operate for profit and allocate all of their profit to perform their statutory objectives, and they do not divide their profit between their members, shareholders, stockholders or employees" (art. 20, para. 1, and art. 3, para. 3, no. 4, Law of 24 April 2003). Religious entities may also obtain this status (art. 20, para. 1, and art. 3, para. 3, no. 1, Law of 24 April 2003). In contrast, there are some organizations that are by law ex ante "excluded" from this possibility, namely, all entities that form part of the public finance sector, political parties, trade unions, organizations of employers, and professional self-governing authorities. Significantly, social cooperatives of Law 27 April 2006 are also excluded. According to the law, they are allowed to perform public benefit activities but cannot acquire the public benefit status, presumably because Polish social cooperatives are by law devoted to the work integration of disadvantaged people in business activities, rather than to the performance of public benefit activities. As we shall see, the opposite solution is found in Italian law, where social cooperatives are per se social enterprises and consequently per se

[48] Cf. O'Connor and McGrath (2020), p. 11.

[49] On the jurisdiction of this Tribunal, cf. the discussion in chapter 6 of Breen and Smith (2019).

[50] Cf. Radwan et al (forthcoming).

[51] Cf. Radwan et al (forthcoming).

TSOs, but Italian social cooperatives, contrary to Polish social cooperatives, are also engaged in the performance of public benefit activities and not only in the work integration of disadvantaged people.

The main legal condition for obtaining the status is performing public benefit activities. More precisely, an eligible organization may register as a PBO only if it shows that it has already carried out one or more public benefit activities for at least two years (art. 20, para. 1 and art. 22, para. 1, Law of 24 April 2003). These activities must be conducted "to the benefit of the entire society or of a specific group of individuals provided that such group can be distinguished from the society due to difficult living conditions or financial situation", and in any event not solely to the benefit of the members of the organization (art. 20, para. 1, no. 1, and art. 20, para. 2, Law of 24 April 2003). As happens in other jurisdictions, including those previously examined, Polish law lists the public benefit activities that PBOs must perform to retain the status. The list in art. 4, para. 1, of the Law, is very long and has been increased over time. It currently includes 40 activities, ranging from social assistance to supporting NGOs and other organizations that perform public benefit activities. Furthermore, the Council of Ministers may define, by way of regulation, tasks different than those listed as relevant to public interest, in recognition of their particular benefit for the society and providing that they can be performed by the relevant organizations in a manner satisfactory for the needs of society (art. 4, para. 2, Law of 24 April 2003).

The law does not require that public benefit activities be conducted for free and in a non-entrepreneurial way. Therefore, they may in principle even generate profits as long as profits are not distributed by the PBO and are reinvested in the latter's public benefit activities (art. 21, no. 2, Law of 24 April 2003)[52]. In contrast, as regards a PBO's activities which are not of public benefit, the rule is that PBOs "may pursue business activity solely as an activity auxiliary to public benefit work" and provided that income is allocated to the public benefit activities of the organization (art. 20, para. 1, no. 2 and 3, Law of 24 April 2003).

The other legal requirements for the maintenance of the status concern the entity's governance, transparency and use of profits and assets.

PBOs must have an internal supervisory body, which must be independent from the management body. The members of the supervisory body may be reimbursed for any reasonably incurred costs and can also be remunerated at a rate not exceeding the average monthly remuneration in the corporate sector announced for the previous year by the President of the Central Statistical Office (art. 20, para. 1, no. 4, Law of 24 April 2003). The members of the management body of a PBO must not have been convicted by virtue of a final court judgement for any crime involving intentional fault or for a tax offence (art. 20, para. 1, no. 5, Law of 24 April 2003).

To prevent "indirect" distributions of profits to the detriment of the public benefit purpose, the law prohibits PBOs from performing any act in which members, boards' members, employees, etc., might have a direct interest, such as, for example, granting loans or pledging the organisation's property to secure any financial liabilities of these people (art. 20, para. 1, no. 6, Law of 24 April 2003).

PBOs are also subject to specific reporting requirements. They must draft (in accordance with a detailed regulation from the competent minister) and publish an annual performance report describing their

[52] Specifically, art. 21, no. 2, is referred only to certain PBOs, namely religious entities and companies. It does not also address associations and foundations because these legal forms of organization are, under Polish law, already non-profit on the basis of their particular laws. Of course, this rule does not allow an ordinary association – which in Poland, unlike a registered association, may not conduct business activities – to conduct public benefits activities that generate profits.

activities and an annual financial statement and submit them to the competent minister (art. 23 Law of 24 April 2003).

PBOs are subject to a specific form of public supervision aimed at verifying compliance with the requirements for qualification and the rules that apply to PBOs. The auditing procedure is carefully regulated by law and may culminate in the removal of the PBO from the relevant register, which implies the loss of the status and the obligation to devolve residual assets to other organizations with identical or similar statutory objectives (arts. 28-34 Law of 24 April 2003).

Polish PBOs are granted several benefits by law. These benefits are not only those deriving from their being considered "natural" partners of the public administration in the performance of public benefit activities.

Art. 24 of Law of 24 April 2003 exempts PBOs from a number of taxes, including corporate income tax as long as the income is allocated to the performance of public benefit activities. Art. 26 of the same law prescribes that "public radio and television facilities shall provide public benefit organisations with free of charge broadcasting time to inform the general public of their activities, in conformity with the rules laid out in separate legal provisions". Art. 27 allows a personal income taxpayer to donate 1.5% of the tax to support personally selected PBOs, which is a promotional measure also found in other countries, including Italy (but limited to 0.5%).

Polish tax law provides incentives to donations. Both personal and corporate income tax payers can deduct from their taxable basis donations to PBOs and other organizations that conduct public benefit activities (as defined in the Law of 24 April 2003), within the limits of 6% of the taxable income for physical persons and 10% for corporations[53].

2.2.3. Italy

Before describing the current regulation of the public benefit status in Italy[54], which in this country is denominated third sector status, it is worth highlighting that, with the reform of 2017, Italy has changed its regulatory approach, moving from the first model of PBO legislation to the second model of PBO legislation. Indeed, the public benefit status was a mere fiscal status according to Legislative Decree no. 460/1997 (the ONLUS status, where ONLUS stood for "non-profit organizations of social utility"), whilst today is a broader organizational status pursuant to the Code of the third sector of 2017, which has replaced the preceding ONLUS regulation.

Beside Legislative Decree no. 117/2017 on the "Code of the Third Sector", other laws form the overall legal framework for Italian TSOs, the most important of which is Legislative Decree no. 112/2017 on social enterprises, which are a particular type of TSOs. The regulatory framework also embraces various ministerial decrees enacted in the implementation of many provisions of the Code.

The prestigious name of "Code" given to Legislative Decree no. 117/2017 shows the legislative intention to provide a complete and systematic regulation of TSOs, based on own principles and values. The Code comprises 104 articles and is divided into 12 parts ("titles"). It provides a comprehensive regulation of TSOs, which is not limited to organizational law issues (mainly found in titles II-V), but also includes provisions of labour law, administrative law (titles VI and XI), public procurement law (title VII), and tax law (title X). Measures in support of TSOs are contained in titles VIII and IX, while in title XI there are transitory provisions and provisions repealing previous laws.

[53] Cf. International Center for Not-for-profit Law (2019), p. 9.

[54] For further details, cf. Fici (forthcoming/1).

The third sector status may be acquired by different types or legal forms of organizations meeting the requirements for qualification laid down by law. The law grants benefits to the organizations that hold the third sector status, but at the same time imposes burdens on them to retain the status.

The status is formally acquired by the entity's registration in a special register know by the acronym of "RUNTS" and is lost by deletion from this register. Registration is a fully on-line procedure.

The Italian framework on TSOs is made more complex by the fact that, beside a general status, there are six third sector sub-statuses, among which is that of social enterprise (social cooperatives of Law no. 381/1991 are considered social enterprises by law). Accordingly, the RUNTS is divided into seven sections (one for the organizations holding the general status and six for the organizations holding the sub-statuses). Each particular sub-set of third sector organizations has some distinguishing traits, which mainly relate to the type of activity performed or to the manner in which the activity is conducted, but may also include governance aspects. Differential treatment across the particular types of third sector organizations may also concern the promotional aspect: there are measures available for all TSOs and measures specific to one or more particular types of TSOs, as well as measures from which some types of TSOs are excluded. An organization may change its sub-status by meeting the requirements of another sub-status and changing section of the RUNTS in which it is registered.

For an organization to acquire and maintain the third sector status, it must simultaneously:

i) have the legal form of an association, with or without legal personality, or a foundation (only social enterprises may also be established as companies, even with a single stakeholder, or as cooperatives);

ii) be independent from "excluded entities", namely, not be directed or controlled by those entities that may never acquire the status as TSOs, which are public administrations, political parties, trade unions, professional associations, associations representing economic categories, and representative organizations of employers (in the case of social enterprises, "excluded entities" are public administrations and for-profit entities);

iii) perform, exclusively or at least prevalently, one or more activities of general interest; it is not relevant how the activity is conducted, whether in a gratuitous or in an entrepreneurial way (in contrast, social enterprises must necessarily perform their general interest activities in an entrepreneurial way and can also be characterized, rather than by the performance of a general interest activity, by the work integration in any entrepreneurial activity of disadvantaged persons and workers, who shall be at least 30% of the total workforce);

iv) distribute no profits and exclusively pursue civic, solidaristic and social utility purposes (however, social enterprises in the company or the cooperative form may distribute to their shareholders up to 50% of their annual profits, but no more of the maximum interest of postal bonds increased by 2.5 points on their paid-up shares;

v) be registered in the "RUNTS" (social enterprises must register in a specific section of the Register of enterprises rather than in the RUNTS, to which data on social enterprises flow from the Register of enterprises).

As regards the activities of general interest, the Code provides a long list of activities that are deemed to own this nature (art. 5 CTS). This list includes the following activities:

a) social services;

b) health services;

c) socio-health services;

d) education, instruction, and professional training;

e) services aimed at safeguarding and improving the conditions of the environment and the prudent and rational use of natural resources, as well as the protection of animals and prevention of stray animals;

f) services for the protection and enhancement of the cultural heritage and the landscape;

g) university and post-university training;

h) scientific research of particular social interest;

i) organization and management of cultural, artistic or recreational activities of social interest, including activities, among them editorial activities, for the promotion and dissemination of culture and the practice of voluntary work and of activities of general interest;

j) radio broadcasting of a community nature;

k) organization and management of tourist activities of social, cultural or religious interest;

l) extra-curricular training aimed at the prevention of early school leaving and promotion of academic and educational success, at preventing bullying and at combating educational poverty;

m) instrumental services to third sector entities provided by entities composed of no less than 70% of third sector entities;

n) development cooperation;

o) fair trade;

p) services aimed at the insertion or reintegration into the labour market of disadvantaged workers and persons;

q) social housing, as well as any other temporary residential activity aimed at satisfying social, health, cultural, training or working needs;

r) humanitarian reception and social integration of migrants;

s) social agriculture;

t) organization and management of amateur sports activities;

u) charity, remote support, free sale of food or products, or provision of money, goods or services in support of disadvantaged people or of activities of general interest;

v) promotion of the culture of legality, peace between peoples, non-violence and unarmed defence;

w) promotion and protection of human, civil, social and political rights, as well as the rights of consumers and users of activities of general interest, promotion of equal opportunities and mutual aid initiatives, including time banks, and joint purchasing groups;

x) management of international adoption procedures;

y) civil protection;

z) requalification of unused public assets or assets confiscated from organized crime.

The list may be updated by decree of the President of the Council of Ministers adopted in accordance with a particular procedure (art. 5, para. 2, CTS).

A partially different list applies to social enterprises (and yet another list to social cooperatives of Law no. 381/1991).

TSOs are not obligated to exclusively perform general interest activities, but they must do so at least prevalently. Therefore, they may conduct activities "other" than those of general interest, but only on the condition that their statutes allow them to do so, and these activities are secondary and instrumental relative to the activities of general interest (according to criteria laid down by Ministerial Decree no. 107/2021).

Not only TSOs have to act "without a profit purpose", but they must also "exclusively pursue civic, solidaristic and social utility purposes". Indeed, the non-profit requirement is treated as a pure corollary of the "worthy" purpose requirement.

To safeguard their "worthy" purpose, the Code prescribes that the assets of a TSO, including any profits, income, proceeds, revenues however denominated, must be used to carry out the statutory activity for the exclusive pursuit of civic, solidarity and social utility purposes (art. 8, para. 1, CTS).

For this reason, a TSO is barred from distributing, directly or indirectly, profits and operating surpluses, funds and reserves, however denominated, to founders, associates, workers and collaborators, directors and other members of the corporate bodies, also in the case of withdrawal or any other hypothesis of individual dissolution of the associative/corporate relationship (art. 8, para. 2, CTS).

The law goes on to identify some situations that are qualified, under any circumstances, as an "indirect distribution" of profits and assets by a TSO (art. 8, para. 3, CTS). These hypotheses are:

a) the payment to directors, auditors and all those who hold an organizational role, of an individual remuneration which is not proportionate to the activity carried out, to the responsibilities borne and to their specific competence, or which is, in any case, higher than that provided by entities operating in the same or similar sectors and conditions;

b) the payment to dependent or self-employed workers of wages or payments 40% higher than those established, for the same qualifications, by the collective agreements referred to in Article 51 of Legislative Decree 15 June 2015, no. 81, except for proven necessities relating to the need to acquire specific skills for the purpose of carrying out certain activities of general interest (those referred to in art. 5, para. 1, letters b), g) and h), CTS);

c) the purchase of goods or services for considerations that, without valid economic reasons, are higher than their normal value;

d) the sale of goods and the provision of services under more favourable conditions than those of the market, to shareholders, associates or participants, to founders, to the members of the administrative and control bodies, to those who, in any capacity, work for the organization or are part of it, to persons who provide gifts to the organization, to their relatives within the third degree and to their relatives in law within the second degree, as well as to the companies directly or indirectly controlled or connected by them, exclusively by reason of their quality, unless such sales or provisions constitute the object of the activity of general interest performed by the TSO;

e) the payment to persons, other than banks and authorized financial intermediaries, of interest rates, due on loans of all kinds, four points higher than the annual reference rate.

As already stated, the asset lock also operates upon a TSO's dissolution, in which case residual assets must be devolved to other TSOs, subject to the positive opinion of the authority that runs the RUNTS. The acts of devolution of the residual assets concluded in the absence, or in contrast, with the authority's opinion are null and void (art. 9 CTS).

The same happens when an entity is cancelled from the RUNTS and thus loses its qualification as TSO, although in this event the assets to be devolved are only those accumulated during the time of

registration in the RUNTS (art. 50, para. 2, CTS). In contrast, social enterprises must devolve all their assets to other social enterprises, after the deduction, in the case of social enterprises in the company form, of the shareholders' paid-up shares.

TSOs are also subject to specific governance requirements.

Associations recognized as TSOs must have a members' general meeting as the "supreme" body of the organization, a board of directors (a sole director is not admitted) and, in certain cases, also a supervisory board. The supervisory board, composed of one or more professionals, must be appointed when the association exceeds, for two consecutive financial years, two of the following thresholds: five employees on average, EUR 220,000 of annual profits and EUR 110,000 of net assets (art. 30 CTS). Among other general aspects, the supervisory board must also check compliance with the purposes of the association. If higher thresholds are exceeded (art. 31 CTS), the association must also appoint a professional auditor for auditing its accounts, unless the supervisory board is charged with this task (in which case it must be entirely composed of professional auditors).

Foundations recognized as TSOs must appoint a board of directors (or a sole director) and a supervisory board (also monocratic). Art. 31 CTS also applies to them.

Social enterprises must appoint a supervisory board (also monocratic) and must involve their workers, customers and other stakeholders in the management of the enterprise, in accordance with guidelines provided by the Ministry of Labour and Social Affairs. In larger social enterprises, stakeholders must be entitled to appoint at least one member of the board of directors and at least one member of the supervisory board (art. 11 Legislative decree no. 112/2017).

TSOs are also subject to specific reporting obligations, including the drafting of a financial statement in accordance with forms defined by ministerial decree and for TSOs with revenues exceeding EUR 1 million (and for all social enterprises, including social cooperatives) the drafting of a "social balance sheet" following ministerial guidelines (art. 14, para. 1, CTS). Both documents must be published in the RUNTS.

Various promotional measures are provided by law in support of TSOs.

Among these measures are the possibility of making exclusive use of the label of "third sector organization" and of undertaking special relationships (not subject to ordinary public procurement law) with the public administrations for the co-programming, co-design and co-provision of general interest activities (so-called "shared administration" of arts. 55-57 CTS).

As regards taxation, Italian law adopts a peculiar distinction between "commercial entities" and "non-commercial entities". TSOs (other than social enterprises) may be "commercial" or "non-commercial" depending on the ratio of the volume of their non-commercial activities to that of commercial activities (art. 79 CTS). Revenues from non-commercial activities are not subject to taxation and non-commercial TSOs may also opt for a specific (and particularly advantageous) tax treatment regarding the profits generated by their commercial activities (art. 80 CTS). This fiscal regime, however, is not yet in force, since it is subject to the authorization of the European Commission which has yet to be granted[55].

Social enterprises are "commercial entities" by definition, even when they are established as associations or foundations. However, profits re-invested in their activity do not constitute taxable income (art. 18 Legislative decree no. 112/2017). This measure is also still not in force since it is subject

[55] Authorization is still to be requested by the Italian Government.

to the authorization of the European Commission. However, a similar rule already applies to social cooperatives of Law no. 381/1991.

VAT does not apply to non-commercial activities of non-commercial entities (art. 4, para. 3, Presidential decree no. 633/1972).

In addition, there are some services (such as socio-health services or home assistance of disabled persons and other disadvantaged people) that, if provided by non-commercial TSOs, are VAT exempt (art. 10, para. 1, n. 27 *ter*, Presidential decree no. 633/1972). However, at the moment, this provision applies to entities with the fiscal status of ONLUS, but in the future, once the new fiscal regime of TSOs is approved by the European Commission, will only apply to non-commercial TSOs[56].

A reduced VAT rate (5% rather than the ordinary 22%) applies to social cooperatives that provide specific health, socio-health, assistance and educational services (Table A), Part II *bis*, no. 1, Presidential decree no. 633/1972).

Furthermore, there are some services usually provided by TSOs, such as, for example, those pertaining to childcare facilities or retirement homes for the elderly, whose provision is exempt from VAT (art. 10, para. 1, n. 21, Presidential decree no. 633/1972).

Among the tax measures aimed at favouring private support to TSOs, reference must first of all be made to the tax-privileged regime of donations to TSOs. 30% of the amount of cash donations or of the value of in-kind donations to TSOs (excluded social enterprises in the company or the cooperative form, but included social cooperatives of Law no. 381/1991) may be deducted from the gross income tax of individuals, for a total amount, in each fiscal year, not exceeding 30,000 EUR (art. 83, para. 1, CTS). The percentage of tax reduction is 35% if the recipient organization is a voluntary organization. Cash or in-kind donations may be deducted from the total net income of individuals, legal entities and companies within the limit of 10% of the total declared income (art. 83, para. 2, CTS).

Like in Poland and in other EU countries, there is also a tax designation scheme (in this case, in support not only of TSOs but also of other entities) which is known as "5 per thousand". When declaring their income for the purposes of tax payment, any individual may decide to allocate to TSOs (or even to a specific TSO identified by its fiscal code) 5 per thousand (i.e., 0.5%) of the income tax due for the preceding year. This 5 per thousand is not retained by the State, which receives the payment of taxes, but is forwarded directly to the TSO indicated by the taxpayer on the tax declaration.

TSOs are subject to a specific form of public supervision, which is aimed at verifying that they act in accordance with the applicable law.

Public supervision is exerted by the same public offices that are in charge of the management of the RUNTS and the registration of TSOs (the offices of the RUNTS). In contrast, social enterprises are supervised by the Ministry of Labour and Social Affairs, whereas social cooperatives by the Ministry of Economic Development. TSOs are also supervised by the tax authority for tax purposes.

If irregularities are found and are not duly remedied, the organization is cancelled by the RUNTS (or by the Register of enterprises in the case of social enterprises) and loses its status as a TSO (or as a social enterprise). Upon removal, assets accumulated after registration must be disinterestedly devolved to other TSOs (all assets in the case of social enterprises) subject to the positive opinion of the competent

[56] Pursuant to art. 89, para. 7, lit. b), CTS, which will enter into force beginning from the fiscal year following that in which the authorization of the European Commission for the new tax regime of TSOs is granted.

authority, but the cancelled organization may continue to operate as an ordinary organization (of course, without the status of TSO).

Italian law does not contain any explicit provision about the possibility for a foreign "comparable" organization to enjoy the opportunities granted to TSOs. However, the Italian tax revenue authority has stated (in its "reply" no. 406/2021) that, for this to happen, a foreign association must be registered in the RUNTS, which is a way to avoid the comparability test and exclude this possibility (in contrast with the jurisprudence of the Court of Justice of the EU), because, to register in the RUNTS the foreign legal entity should transfer its registered seat to Italy and thus become an Italian association.

2.2.4. Overview of equivalent regulations in other EU Member States (basic legislative tables)

BULGARIA	
Main sources of the regulation	Arts. 37-44c of the Law on Non-Profit Legal Entities of 2000
Legal denomination and/or definition	Non-profit legal entities pursuing activities for public benefit
Eligible legal forms	Associations and foundations (which are also qualified by the same Law as NPOs)
Excluded entities	No specific provisions
Accreditation/Registration	NPOs determine their status as organizations pursuing activities for public benefit through explicit provisions in their statutes. This determination is optional but it is irrevocable following its registration in the Register of NPOs. Conversion of a PBO into an NPO pursuing activities for the private benefit is explicitly prohibited by law. The registration authority (the Registry Agency under the Minister of Justice) must refuse registration of NPOs defining themselves as PBOs if their statutes do not comply with the applicable rules.
Public benefit activities and/or purposes	- Development and promotion of civil society, civic participation and good governance - Development and promotion of spiritual values, health, education, science, culture, technology, technology or physical culture - Support for children, people with disabilities, people and communities at risk of social exclusion - Protection of human rights or the environment - Other purposes determined by law
Commercial activities	There is no prohibition to conduct the main public benefit activities on a commercial basis. Moreover, PBOs may also qualify as social enterprises pursuant to the pertinent Bulgarian Law of 2018. Additional commercial activities are allowed only if they are purpose-related and profits are not distributed but used to pursue the public benefit purposes of the PBO.
Main requirements on the use of profits and assets	Assets must be exclusively used for the fulfilment of the public benefit purposes.

	Operations in favour of certain persons and legal entities, such as board members or past board members or entities managed by these people, must be approved by a special resolution of at least 2/3 of the members and in certain instances are prohibited. Residual assets at dissolution must be devolved by court decision to another PBO pursuing similar objectives or to the municipality, which must use these assets for the same or most similar purposes.
Main governance requirements	An association with the status of PBO must be established by at least 7 natural persons or 3 legal entities. PBOs must have at least a collective supreme body and a management body.
Main reporting requirements	Beyond the various data and documents that NPOs must publish in the Register of NPOs, the following applies: The annual financial statements are subject to an independent financial audit under the terms of the Accounting Act and must be submitted for publication in the Register of NPOs. An annual report on the activities (including, among others, data on how funds are used for the activities, results obtained, donations, donors) must be drafted by the PBO and be submitted for publication in the Register of NPOs.
Main benefits	State support to PBOs through tax and other means is explicitly foreseen by NPO law. This law also obliges the State to implement a policy to support civil society organizations and creates, to this purpose, a Civil Society Development Council, composed of representatives of PBOs and chaired by the deputy prime minister responsible for implementing the policy strategy, under the Council of Ministers. PBOs do not pay taxes on the income from donations and other non-commercial sources of income. Donations to PBOs may be deducted up to 5% of the taxable income by donors who are natural persons and up to 10% of the taxable profits by donors that are legal persons.
Public Supervision	The registration authority ensures compliance with the reporting obligations. The tax authority has to power to verify that the organizations meet the requirements for accreditation
Other relevant aspects	Foreign NPOs may carry out public benefit activities through their branches in Bulgaria in compliance with the Non-Profit Act. The tax-privileged donation regime for Bulgarian citizens and entities also applies to donations made in favor of

	identical or similar foreign organizations established in another MS of the EU and of the EEA. The donor must have an official document certifying the status of the foreign organization, issued or certified by the competent authority of the relevant MS and translated into Bulgarian.

GREECE	
Main sources of the regulation	Law no. 4873/2021
Legal denomination and/or definition	Public Benefit Organizations. Indeed, the same Greek law creates another legal status, which is that of "civil society organizations" (in previous laws, NGOs). The category of PBOs comprises CSOs and other entities, such as public benefit foundations. CSOs are associations established in Greece, independent from the State and other public bodies, commercial private entities, trade unions, professional organizations, political parties and organizations.
Eligible legal forms	Associations and other NPOs, including foundations
Excluded entities	No specific provisions
Accreditation/Registration	PBOs must apply for registration in a Special register for PBOs held and maintained by the Ministry of Interior. The Register is divided in sections according to the activities
Public benefit activities and/or purposes	Not explicitly stated by law but the Register is divided into the following sections a) Health, Social Solidarity and Welfare, b) Environment, Civil Protection, Quality of Life, c) Human Rights, Justice, Governance, d) Education, Research, Culture, e) Consumer and f) International Humanitarian and Development Cooperation, Sustainable Development.
Commercial activities	No specific provisions
Main requirements on the use of profits and assets	To register in the PBO register, CSOs must not enter into contracts of any kind with persons participating in its governance organs or with members or partners who have statutory control over it, with spouses or parties with whom they have entered into a civil partnership, with their children and parents. However, contracts of employment are permitted with the above persons as long as they are conducted under normal terms and conditions and remuneration, not exceeding 5% of the total number of employees per year. In addition, the CSO must not enter into contract with companies that the above persons control, for remuneration or reward which is onerous for the CSO and surpassing the amount of 1.000 euros per year.

Main governance requirements	To register in the PBO register, CSOs must be established at least 3 years prior to their application; must be independent from public bodies, etc.; must not receive a regular state subsidy annually, which surpasses 30% of its own budget for operating costs, except for its salary costs, or loans guaranteed by the Greek State.
Main reporting requirements	Documents at registration (art. 6) Updates to the documents (art. 8) Obligation to draft and publish financial statements audited by a professional auditor of accounts.
Main benefits	State funding without limits (50,000 for non-registered entities). Tax reduction of 40% of the amount (if it exceeds EUR 100) donated to registered PBOs, if the amounts of the donations are deposited in special bank accounts for this purpose that operate legally in an EU MS. In the case of other organizations (not registered) subject to a decision of the Minister of Finance, also with headquarters in another MS of the EU or the EEA, tax reduction is 20% of the donated amount (if it exceeds EUR 100) for no more than 5% of the taxable income.
Public Supervision	Ministry of Interior (Directorate for CSOs and PBOs) Invitation to regularize, suspension of the status and then deletion from the special Register.
Other relevant aspects	

HUNGARY	
Main sources of the regulation	Sect. 32 ff. of Law no. CLXXV of 2011 on the freedom of association, on public benefit status, and on the activity of and support for civil society organizations.
Legal denomination and/or definition	Public Benefit Organizations. Indeed, the same Hungarian law creates another legal status, which is that of "civil society organizations" (this category includes civil companies, associations registered in Hungary, excluding political parties, trade unions and mutual associations, foundations, excluding public foundations and party foundations).
Eligible legal forms	A civil society organization (with the exception of civil companies) or another organization (e.g., a non-profit company) allowed by law to obtain the public benefit status.
Excluded entities	Civil companies, foundations engaged in scientific, academic, research and educational activities in support of political parties ("party foundations"), political parties, mutual associations and trade unions.

Accreditation/Registration	In the public-benefit register kept by the competent court. The status is acquired upon registration.
Public benefit activities and/or purposes	Public benefit activities are all activities serving – directly or indirectly – the fulfillment of public functions specified in the instrument of constitution, with a view to facilitating the common interests of society and of the individual. Organizations engaged in the pursuit of public benefit activities contribute to satisfying the common needs of society and individuals, provided that – relying on the data contained in the public-benefit status report for the previous year pertaining to target groups – the organization's services are also available to persons other than the organization's members, employees and volunteers.
Commercial activities	Business (entrepreneurial) activities may be undertaken only without jeopardizing the implementation of the public benefit and other mission-related activities determined in the statute. A business activity is any economic activity, other than public benefit activities, pursued commercially for the purpose of or resulting in receiving income or accumulating assets.
Main requirements on the use of profits and assets	PBOs must have sufficient resources, which occurs if either one of the following requirements is satisfied with respect to the previous two completed financial years: *a)* the average yearly income exceeds one million forints, or *b)* the financial result after tax is not a negative figure for the previous two years on the aggregate, or *c)* the staff costs (expenses) amount to one-fourth of all costs (expenses), exclusive of the sums paid to executive officers, and including the value of the total work hours performed by persons engaged in the pursuit of voluntary activities of public concern. PBOs must have demonstrable social backing, which occurs if either one of the following requirements is satisfied with respect to the previous two completed financial years: *a)* sums donated to the organization from the personal income tax in accordance with the taxpayer's instruction cover at least two per cent of the total revenue, or *b)* the costs and expenses on public benefit activities amount to at least half of all expenditures on average of two years, or *c)* public benefit activities are carried out on the long term (on average of two years) by at least ten volunteers.

	PBOs must not distribute business profits, as such shall be appropriated for the public benefit activities defined in the instrument of constitution. PBOs may not extend any target-specific assistance to their executive officers, benefactors or volunteers, or to the close relatives of such persons, with the exception of services which are made available to the general public without restriction and designated provisions defined in the instrument of constitution and provided by associations to their members.
Main governance requirements	If the annual revenues of a PBO exceed fifty million forints, a supervisory body shall be created, independent from the supreme body, even if such obligation does not exist by virtue of any other legislation.
Main reporting requirements	PBOs must draft and publish a financial report and a public-benefit status report.
Main benefits	State, administrative and budgetary agencies may enter into a public service contract with a civil society organization only if the civil society organization has public-benefit status. A public service contract is a contract for the fulfillment of a public function, or a part thereof, on behalf of the relevant body. Public benefit activities are not considered entrepreneurial activities for tax purposes and therefore any associated income is tax exempt. PBOs also enjoy a tax-exempt threshold on income arising from entrepreneurial activity (15% of total income, not exceeding 10 million HUF). For non-profit companies with the public benefit status this applies only in the case of income from public benefit activities provided under a contract with public bodies. Corporate donations to PBOs are tax-deductible by 20% of the value of the donation or 40% of the value of the donation if it is provided to a PBO under a long-term donation contract (by which the donor undertakes to provide the donation in the subject year and at least once a year for at least three forthcoming years, in the same or larger amount, without any consideration). The benefit is subject to a donation certificate issued by the PBO in favor of the donor. Individual tax-payers are entitled to designate 1% of their income taxes to specific NPOs that carry on public benefit activities and some other institutions.
Public Supervision	Upon the public prosecutor's initiative. It may culminate with the withdrawal of the status by the competent court and deletion from the register. PBOs are also supervised by the tax authority for tax purposes.

Other relevant aspects	

LATVIA	
Main sources of the regulation	Law of 7 July 2004, no. 106
Legal denomination and/or definition	Public Benefit Organizations
Eligible legal forms	Associations, foundations and religious organizations
Excluded entities	No specific provisions
Accreditation/Registration	The status is acquired by registration in the Register of PBOs kept by the State Revenue Service. In this even, several documents, including the statutes, must be submitted. A justified opinion of the Public Benefit Commission is also required.
Public benefit activities and/or purposes	An activity which provides a significant benefit to society or a part thereof, especially if it is directed towards charitable activities, protection of civil rights and human rights, development of civil society, education, science, culture and promotion of health and disease prophylaxis, support for sports, environmental protection, provision of assistance in cases of catastrophes and extraordinary situations, and raising the social welfare of society, especially for low-income and socially disadvantaged person groups. The following shall not be deemed to be public benefit activities: 1) activity, which is directed to the support of political organizations (parties) or the election campaign thereof; 2) activity of such a scope as it is directed only to the members or founders of the association and foundation and persons associated with them for the satisfaction of private interests and needs, except activity which promote an association or foundation, which is founded and is engaged in order to protect of the rights and interests of socially disadvantaged person groups and low-income persons and families; and 3) activity, which is directed to the collection of donations for third parties, withholding payment therefor which exceeds the administration expenses.
Commercial activities	No specific provisions
Main requirements on the use of profits and assets	A PBO has a duty to use its property and financial means for the aims indicated in the articles of association, constitution or by-laws of the relevant organization. Income cannot be used for activities that are of a commercial nature.

	The law provides specific obligations relative to how funds and donations must be used and the maximum amount of expenses that can be covered through donations. A PBO cannot divide its property and financial means between founders, members of boards of directors or other administrative institutions (if such are established), as well as utilize it so that directly or indirectly a benefit is obtained (guarantees, loans, promissory notes, as well as other material benefits). If a person receives remuneration for work in a PBO, such remuneration shall be reasonable and justified by the work performed and the financial circumstances of the PBO. A PBO has the right, in accordance with the procedures laid down in the Social Enterprise Law, to establish a limited liability company with the status of a social enterprise, and to transfer the donated property or financial resources thereto free of charge. In the case of the reorganization of an association or foundation, the PBO status does not pass on to the acquiring association or foundation, except in the case if the reorganization of the association or foundation is performed by way of acquisition and the acquired association or foundation is a PBO at the moment of the coming into effect of the reorganization. In the case of liquidation, residual assets are transferred to another PBOs performing similar activities, pursuant to a decision of the State Revenue Service, based on justified opinion of the Commission. If this is not possible, residual assets are devolved to the State, which shall use them for the same aims of the liquidated PBO.
Main governance requirements	No specific provisions
Main reporting requirements	Report on the activities for the previous years and plan of further activities
Main benefits	According to the law, PBOs have the right to receive tax rebates specified by law, and it shall have other rights specified by law. Persons who donate to a PBO are entitled to receive tax rebates specified by law, except in the cases if they recall their donation. Sect. 12 of the Enterprise Income Tax Law provide a detailed regulation of tax-privileged donations to PBOs. (1) A taxpayer who has donated to a PBO is entitled to choose one of the following relief possibilities in the reporting year: 1) not to include the donated amount in the base taxable with the enterprise income tax in the taxation period but not more than 5% of the profits from the previous reporting year after the calculated taxes;

	2) not to include the donated amount in the base taxable with the enterprise income tax in the taxation period but not more than 2% of the total gross work remuneration calculated for employees in the previous reporting year from which State social insurance contributions have been made; 3) to reduce the enterprise income tax calculated on the dividends calculated for the reporting year in the taxation period by 85% of the donated amount but not exceeding 30% of the calculated amount of enterprise income tax on the calculated dividends. Individual donors to PBOs are entitled to a deduction from their taxable income of the donated amount up to 20% of the taxable income.
Public Supervision	It is carried out by the State Revenue Service. It may culminate with the withdrawal of the status. After withdrawal of the status, the same organization can submit a new request for the status only after the lapse of a certain period of time. The law provides for the establishment of a Public Benefit Commission as a collegial institution, which equal numbers shall include officials, as well as representatives of associations and foundations. The Commission provides the State Revenue Service with a justified opinion on the conformity of associations, foundations or religious organizations to the essentials of public benefit organization activities, as well as the conformity of the use of property and financial means thereof to the provisions of this Law.
Other relevant aspects	The tax regime of donations to PBOs also applies to "equivalent" entities established in another MS of the EU. For the benefit to apply, the taxpayer must accompany the annual financial statement submitted to the State Revenue Service with documents which confirm the following: a) the recipient of the donation is a resident of any European Union Member State or a state of the European Economic Area, b) the recipient of the donation has a status equivalent to the PBO in the country of residence, c) the recipient of the donation operates in the field of public benefit which provides a significant benefit to the society or any part thereof, particularly if it is directed towards charity, protection of human rights and individual rights, development of civil society, promotion of education, science, culture and health, and prevention of diseases, support to sport, environmental protection,

	provision of aid in cases of catastrophes and emergency situations, improvement of social welfare of the society, particularly groups of the poor and socially vulnerable persons, d) at least 75% of the amount donated by the payer are used for the purposes of public benefit.

LITHUANIA	
Main sources of the regulation	Law no. XII-717 of 19 December 2013
Legal denomination and/or definition	Public Benefit Non-Governmental Organizations
Eligible legal forms	Associations and other organizations (foundations, public institutions, etc.) established on a voluntary basis for the benefit of society or a group thereof, and which does not have the aim to seek political power or purely religious goals.
Excluded entities	Political parties; trade unions and employers' organisations and their confederations; organisations in which membership is mandatory for certain professions; legal persons with more than one-third of their participants being legal persons other than non-governmental organisations or religious communities or associations; legal persons whose participants are legal persons other than non-governmental organisations or religious communities or associations and hold more than one-third of the votes at the general meeting of members; and other more particular organizations listed by law.
Accreditation/Registration	NGOs must be recognized as PBOs by an institution authorized by the Government (currently the Ministry of Social Security and Labor), which evaluates the PBO statutes, the activity reports of the two previous reporting years and the results of the social impact of the activities of one past calendar year, if the main goal of the organization is to provide public services. The decision is also based on an opinion by the Council of NGOs. The status is noted in the Register of legal entities.
Public benefit activities and/or purposes	Activities that benefit not only a PBO's participants but also the society. Activities, the greater part of which benefit society or its part and which are aimed at increasing the well-being of children and young people, protecting the disabled, ensuring equal opportunities for women and men, protecting human rights, strengthening families, reducing social exclusion and poverty, promoting education, science, culture and sport, providing humanitarian aid, health protection, environmental protection, civic

	education, protection of the rights of members of the public and ensuring the public interest. A PBO must seek a measurable positive social impact on society or part of society, must indicate in its founding documents the purpose of the desired social impact (social problem to be addressed), indicators of measurable social impact, the methodology for evaluating these indicators and once per calendar year must make evaluation of the social impact of its previous calendar year activities and the activities to achieve social impact in consultation (with the possibility to submit opinions and suggestions) with persons who are socially affected by the activities carried out by the organization and with the public. The results of the social impact must be approved by the founders of the PBO and made public. The measurement of social impact is applied only to those PBOs whose main goal is to provide public services. In the law of 1993 on charity and sponsorship, public benefit purposes mean activities in the domains of international cooperation, human rights protection, minority integration, promotion of cultural, religious and ethical values, education, science and professional upgrading, non-formal and civic education, sports, social security and labor, health care, national security and defense, law and order, crime prevention, accommodation of residential environment and housing development, copyright and related rights protection, environmental protection and other areas recognized as public benefit and selfless. The greater part of the activity must be of public benefit, therefore other activities can be conducted by a PBO..
Commercial activities	No specific provisions
Main requirements on the use of profits and assets	No specific provisions
Main governance requirements	No specific provisions
Main reporting requirements	A PBO must submit to the Register of Legal Entities the activity reports for the previous two financial years and a set of annual financial statements
Main benefits	Reduction of taxable profits by the funds directly allocated, in the current tax period or in the two subsequent tax periods, by a non-profit organization for financing of activities in the public interest (art. 46[3] of the Law on Corporate Income Tax). Corporate donations to entities that are entitled to charity and sponsorship (including PBOs) entitle to a 200% tax deduction up to 40% of taxable income (art. 28, para. 2, Law on Corporate Income Tax).

	Individual tax-payers are entitled to designate 2% of their income taxes to entities that are entitled to charity and sponsorship (including PBOs) under the Law on Charity and Sponsorship (art. 34, para. 3, Law on Personal Income Tax). Public benefit NGOs may be given priority in the allocation of public funds in favor of NGOs.
Public Supervision	By the Ministry of Social Security and Labor
Other relevant aspects	Sponsorship shall also be recognized under this Law where it is provided to legal persons or other organizations established in member states of the EEA, whose purpose of activity is non-profit-making and profits earned may not be assigned to their participants. The sponsor shall submit to the State Tax Inspectorate documents specified by the institution authorized by the Government as evidence that sponsorship is provided for public benefit purposes (art. 7, para. 5, Law on Charity and Sponsorship).

MALTA	
Main sources of the regulation	Voluntary Organizations Act no. XXII of 2007 (Chapter 492 of the Laws of Malta)
Legal denomination and/or definition	Voluntary Organizations (VO)
Eligible legal forms	Associations and other NPOs, including foundations, and charitable trusts (limited liability companies and commercial partnerships are explicitly excluded)
Excluded entities	Religious organizations, public agencies and organizations controlled by the Government, political parties and organizations with political purposes. Religious organizations and organizations with political purposes may establish an organization which may enroll as a voluntary organization.
Accreditation/Registration	Voluntary organizations must register with the Register of Voluntary Organizations maintained by the Commissioner for Voluntary Organizations. At registration, a voluntary organization's constitution or founding document must meet a number of prescribed requirements set out in the law. Amendments to these acts must be notified to and approved by the authority. In certain instances, registration is mandatory.
Public benefit activities and/or purposes	A social purpose is any charitable or philanthropic purpose, other than a political purpose, including: (a) the advancement of education, including physical education and sports; (b) the advancement of religion; (c) the advancement of health;

	(d) social and community advancement, including the promotion of the ethical, educational and social aspects of a particular profession or trade, but which does not include the promotion of any private economic interest; (e) the advancement of culture, arts and national heritage; (f) the advancement of environmental protection and improvement, including the protection of animals; (g) the promotion of human rights, conflict resolution, democracy and reconciliation; (h) the promotion or protection of the interests of other public benefit organizations, including federations of such organizations; (i) the carrying out of activities intended to raise funds to support other public benefit, non-profit or voluntary organizations or to generally support the voluntary sector as a whole or parts of it through the application, grant, transfer or otherwise making available of funds so raised to them or for their benefit; or (j) any other purpose as may be prescribed by the Minister by means of regulations. A public benefit purpose is a social purpose which promotes or serves the general public interest or the interest of a sector of the general public, whether directly or indirectly; it does not promote or serve any private benefit unless such benefit is solely limited and incidental or ancillary to the principal purpose and objectives of the organization and as permitted by law.
Commercial activities	Voluntary organizations shall not be established principally for trading purposes nor shall they regularly engage in acts of trade, but to the extent that they are established for public purposes which are achieved through the carrying out of certain acts of trade listed by law (e.g., the operations and activities carried out by schools, training centers and other educational institutes and the charging of fees for educational services), voluntary organizations may regularly carry out such acts of trade which are related and ancillary to the principal purpose and objectives of the organizations in order to achieve their public purposes. Voluntary organizations may also carry out trading activities that are marginal to their income.
Main requirements on the use of profits and assets	Voluntary organizations must be non-profit making. The 1st schedule of the Act contains provisions to ensure that any material private interest in any voluntary organization is avoided in view of the public support and trust vested in such organizations on the basis of their non-profit making qualities.

	Among these provisions are that the purposes of the organization are not to make profit or to promote private interests; that no part of the income, capital or property is available directly or indirectly to any administrator or any promoter, founder, member, donor or beneficiary, or any other private interest; that such income, capital, property, or part thereof is administered solely in order to obtain the purpose and objectives for which the organization was established. Remunerations to administrators, founders, members, et. are allowed when these people are engaged or are employees of the organization, but under certain conditions, such as that the remuneration is strictly attributable to the function performed; is not substantial and is in accordance with market levels and market conditions established in terms of these provisions, and in any case, is of material irrelevance when compared to the overall income and expenditure of the organization; is not as such as to prejudice the achievement of the purposes and objectives of the organization or its sustainability. The founding document of an approved voluntary organization must state that on dissolution, the remaining assets must be transferred to a similar approved voluntary organization established and registered in Malta.
Main governance requirements	At least two of the following elements are necessary: (a) the overall control of the organization is exercised by administrators who do not receive any remuneration for their services for carrying on functions of administrators; (b) the organization is created by the endowment of voluntary and gratuitous grants and the organization's affairs are supported, at least in part, by such voluntary or gratuitous grants or by services rendered on a voluntary basis; (c) in the case of an association, subject to limitations due to the nature or size of the organization and subject to any discretion which may be exercised in terms of the statute of an organization by the administrators or a membership committee, any person can join the organization or participate in the activities of the organization and every participant in the organization has the right to freely leave the organization. A voluntary organization must have at least three administrators. The administrators are bound to act autonomously and independently in seeking to fulfil the express purposes of such organization and must not be subject to the control of any other person or authority nor bound in any manner,

	directly or indirectly, to act under the direction or in the interest of any other person.
Main reporting requirements	Voluntary organizations must submit annual returns and accounts. Reporting requirements depend on the amount of generated revenue and income (no more than EUR 50,000; from 50,001 to 250,000; exceeding 250,001). In the latter case, organizations are subject to full audit by an auditor and the International Financial Reporting Standards (IFRS) must apply.
Main benefits	Only voluntary organizations may make public collections without further authorization. Only voluntary organizations may: (a) receive or be the beneficiary of grants, sponsorships or other financial aid from the Government, any entity controlled by the Government or the Voluntary Organizations Fund; (b) be the beneficiary of any policies supporting voluntary action as these may be developed by the Government; (c) receive or be the beneficiary of exemptions, privileges or other entitlements in terms of any law; (d) be a party to contracts and other engagements, whether against remuneration or not, for the carrying out of services for the achievement of its public purpose at the request of the Government or any entity controlled by the Government. There is a tax exemption for voluntary organizations whose turnover for the year immediately preceding the year of assessment does not exceed EUR 50,000. Voluntary organizations are not per se recipients of tax-privileged donations (the Malta Council for the Voluntary Sector has recommended the introduction of this measure).
Public Supervision	It is exercised by the Commissioner for Voluntary Organizations and may lead to the removal of the organization from the Register.
Other relevant aspects	

PORTUGAL	
Main sources of the regulation	Law no. 36/2021 of 14 June, framework law on the public benefit status (EUP)
Legal denomination and/or definition	Public Benefit Organizations
Eligible legal forms	Associations, foundations and cooperatives
Excluded entities	Political parties, associations and movements; trade unions; religious, cult or belief organizations.

Accreditation/Registration	The status is granted by the National or Regional Governments, also based on an opinion of the municipal council of the place of the organization's registered office. It ordinarily lasts 10 years and may be renewed upon request. Private Social Solidarity Institutions (IPSS) of Law-Decree no. 119/1983 of 25 February, social solidarity cooperatives of Law no. 101/1997 of 13 September, and mutual aid associations of Law-Decree no. 59/2018 of 2 August, have the status by law.
Public benefit activities and/or purposes	PBOs must pursue purposes of general, regional or local interest and cooperate with public administrations in one or more of the following sectors (ordinarily) for at least three years: a) Historical, artistic or cultural b) Sport c) Local development d) Social solidarity e) Teaching or education f) Citizenship, equality and non-discrimination, defense of human rights or humanitarian support g) Youth h) Development cooperation and education for development i) Health j) Protection of people and goods, namely helping the wounded, sick or shipwrecked, and extinguishing fires k) Scientific research, scientific dissemination or technological development; l) Entrepreneurship, innovation or economic and social development; m) Employment or protection of the profession; n) Environment, natural heritage and quality of life; o) Animal welfare; p) Housing and urban planning; q) Consumer protection; r) Protection of children, young people, the elderly or other people in a situation of physical, psychological, social or economic vulnerability; s) Family policies
Commercial activities	The status cannot be awarded to organizations that carry out, exclusively or mainly, the activity of producing and selling goods or services in a competitive market if the attribution of the status prevents, distorts or restricts, in a sensitive way, competition, in whole or in part, in the corresponding relevant market.

Main requirements on the use of profits and assets	PBOs must act in accordance with the guiding principles of the Social Economy, as laid down by Law no. 30/2013, of May 8, without prejudice to the specific principles applicable to them by reason of their nature.
Main governance requirements	The fact that the organization has been established by, or is participated, individually or jointly, or is subject, individually or jointly, to the dominant influence of a legal entity does not prevent the attribution of the status. Minimum number of individual members in associations and cooperatives no less than the double of the number of people who act as members of the boards. Associations and cooperatives must not use discriminatory criteria in the admission of new members (but justifiable conditions in light of the purpose pursued can be provided for in their statutes). PBOs must act in accordance with the guiding principles of the Social Economy, as laid down by Law no. 30/2013, of May 8, without prejudice to the specific principles applicable to them by reason of their nature.
Main reporting requirements	PBOs must draft regular financial accounts, submit them to the authority in charge of their supervision, and publish them on a freely-accessible Internet page. PBOs must draft annual reports on the activities carried out, submit them to the authority in charge of their supervision, and publish them on a freely-accessible Internet page. PBOs must publish on a freely-accessible Internet page their statutes, internal regulations, reports, lists of people who seat in their bodies.
Main benefits	Income from purpose-related economic activities of PBOs is exempt from corporate income tax. Corporate donors to PBOs may deduct their donations to PBOs from their tax base by up to 8/1000 of total turnover. Some donations may be deducted for a higher value (130% to 150% depending on the case) (art. 62 Law-Decree no. 215/89). Individual donors may reduce their personal income tax by 25% of the donation to PBOs up to 15% of the tax due. If the value of donations exceeds EUR 50,000 and the reduction cannot be made, the amount not deducted may be deducted in the assessments of the three following tax periods up to 10% of the tax due in each of the tax period (art. 63 Law-Decree no. 215/89). IRS Allocation scheme for individuals: individuals may allocate to PBOs 0.5% of the personal income tax due. VAT allocation scheme: individuals in Portugal can also direct a share of some of their VAT payments to the same

	entity that they specified for the allocation of their income tax. Contrary to the allocation of personal income taxes, the VAT allocation scheme comes at a cost to the taxpayer and is therefore a form of philanthropic giving. In Portugal 15% of the VAT paid to car workshops, restaurants, accommodation services (e.g., hotels), hairdressers, beauty salons and veterinaries, and 100% of the VAT paid for social passes (i.e., public transportation) is tax deductible. The allocation scheme allows taxpayers to direct their VAT deductible VAT payments to a PBO and forgo the tax benefit themselves.
Public Supervision	By the same authority responsible for awarding the status. It may lead to the revocation of the status.
Other relevant aspects	Foreign NPOs, which intend to pursue their purposes in Portugal in a stable manner, must have a permanent representation in Portugal. The awarding of the public benefit status to the permanent representation of a foreign organization is subject to the verification of the legal requirements. The benefits arising from the status apply exclusively to activities carried out in Portugal. Permanent representations of foreign organizations with public benefit status have the same rights and duties as Portuguese PBOs

ROMANIA	
Main sources of the regulation	Art. 38 ff. of Governmental Ordinance no. 26 of 30 January 2000 on associations and foundations
Legal denomination and/or definition	Public Benefit Organizations
Eligible legal forms	Associations, foundations and their federations
Excluded entities	No specific provisions
Accreditation/Registration	PBOs are recognized by a decision of the Government, based on the statutes and the curriculum of the organization, which must have been operating for at least three years and have achieved significant results, as testified by its balance sheets and provisional budgets, and must have assets, staff, partnerships and contracts that permits the fulfillment of the purposes. Organizations must also have acquired legal personality by registering in the Register of associations and foundations. To be recognized, federations must be composed of minimum 2/3 of PBOs. A special register for NPOs eligible for tax-privileged donations also exists.

Public benefit activities and/or purposes	PBOs must perform activities of general or collective interest, aiming at the public interest or at the interest of a given community. A specific list of activities exists in the regulation of tax-privileged donations to NPOs.
Commercial activities	No specific provisions
Main requirements on the use of profits and assets	In the event of dissolution, residual assets are devolved to other associations or foundations pursuing similar purposes or to public entities performing the same activities, by a decision of the Government in the case in which residual assets originate from public funds or according to the provision of the statutes in the other cases.
Main governance requirements	No specific provisions
Main reporting requirements	Changes to the statutes, activity reports and annual financial statements must be communicated to the competent administrative authority and are available to any interested person. Excerpts of these documents must be published in the Official Gazette and in the National Register of non-profit legal entities.
Main benefits	Right to receive free public goods. Right to mention the possession of the public benefit status. Income from related economic activities of NPOs (not necessarily PBOs) is exempt from corporate tax if the income falls below EUR 15,000 or 10% of the entity's total income, whichever is less (Fiscal Code Article 15(3)). Any donation from a corporation to NPOs (not necessarily PBOs) that carry out certain activities (cultural, artistic, educational, scientific activities; fundamental and applied research; humanitarian, religious, philanthropic, sports activities; human rights protection; health, assistance and social services; environmental, social and community protection activities; representation of professional associations; as well as maintenance, restoration, preservation and enhancement of historical monuments) allows the corporate donor to a tax reduction (Law 32/1994 on sponsorship). Reduction is allowed up to 0.5% of the turnover or 20% of the profit tax due, whichever is less (art. 25 Tax Code). Professionals have the right to deduct these donations up to 5% of the income from the professional activity. Individuals may allocate 3.5% of their annual income tax to NPOs. Under this program, with the consent of their employers, taxpayers may choose to sign a sponsorship contract with an NPO, whereby the taxpayers' employers

	will pay a portion of the taxpayer's income directly to the NPO. This agreement is valid for a maximum of two years.
Public Supervision	Any interested natural or legal person may denounce the loss of the requirements for the status or the violation of any obligation by a PBO to the competent administrative authority, the Ministry of Justice or the Government. The Government may withdraw the status upon proposal of the competent administrative authority or the Ministry of Justice in the event of loss of requirements or non-performance of obligations.
Other relevant aspects	Foreign non-profit legal entities can be recognized by the Government under the condition of reciprocity, by registering in the relevant Registers. Only Romanian NPOs can benefit from tax-privileged donations.

SLOVAKIA	
Main sources of the regulation	Law no. 213/1997 Coll.
Legal denomination and/or definition	Non-Profit Organizations Providing Generally Beneficial Services
Eligible legal forms	Not applicable (NPO itself is a legal form)
Excluded entities	No specific provisions
Accreditation/Registration	Register of non-governmental NPOs (Law no. 346/2018 Coll.). A special list of organizations that may benefit of tax allocation by individuals and legal entities also exists.
Public benefit activities and/or purposes	a) provision of health care b) provision of social assistance and humanitarian care c) creation, development, protection, restoration and presentation of spiritual and cultural values d) protection of human rights and fundamental freedoms e) education, upbringing and development of physical culture f) research, development, scientific and technical services and information services g) creating and protecting the environment and protecting the health of the population h) services to support regional development and employment i) ensuring housing, administration, maintenance and renovation of the housing stock An NPO may not condition the provision of its generally beneficial services to the provision of donations from natural persons or legal entities. Beneficial services must be provided under pre-determined and equal conditions for all users and in the

	respect of the conditions for their provision as established by the relevant regulations.
Commercial activities	An NPO may conduct business according to special regulations on the condition that this activity achieves a more efficient use of its assets and that the quality, scope and availability of the services for which it was established are not threatened. An NPO may even acquire the status of a social economy entity and of a social enterprise according to Law no. 112/2018 Coll.
Main requirements on the use of profits and assets	Profits may not be used for the benefit of the founders, members of the bodies or its employees, but must be used in their entirety to ensure generally beneficial services. Expenses (costs) of the NPO may not be disproportionately high compared to the range of generally beneficial services provided. The funds of an NPO may not be used to finance the activities of political parties and political movements or to benefit a candidate for an elected position. Residual assets at dissolution must be devolved to another NPOs or a foundation.
Main governance requirements	NPOs do not have members and may be established by natural persons, legal persons or the State. They must have a board of directors composed of at least three members. They must have a supervisory board of at least three members if their assets are higher than EUR 165,969 or include state assets. Otherwise, an auditor must be appointed to exercise the same powers.
Main reporting requirements	An NPO is obliged to have its financial statements and annual report verified by a statutory auditor if it has income from public funds or from allocated taxes exceeding EUR 200,000 or revenues exceeding EUR 500,000. An NPO must draft, publish and made available to the public an annual report on the activities performed and other financial and organizations issues.
Main benefits	Individuals can allocate 2% or 3% (if they have volunteered for at least 40 hours in the year) and legal entities 1% or 2% (if donations are at least 0.5% of the tax paid) of their income tax due to NPOs or other organizations to develop the following activities: a) health protection and promotion; prevention, treatment, resocialization of drug addicts in the field of healthcare and social services b) support and development of sports c) provision of social assistance d) preservation of cultural values

	e) education support f) protection of human rights g) protection and creation of the environment h) science and research i) organizing and mediating volunteer activities Recipient organizations must be listed as of December 31 of the previous calendar year in the central register of beneficiaries maintained by the Chamber of Notaries of the Slovak Republic (sect. 50, Income Tax Law).
Public Supervision	By the Registry Office with the Ministry of Interior, it may lead to the removal of the NPO from the Register.
Other relevant aspects	A legal entity with its registered office outside the territory of the Slovak Republic, which is an NPO under the law of the state in whose territory it has its headquarters or its organizational component, may operate in the territory of the Slovak Republic under the same conditions and to the same extent as an NPO established under this Act, if it fulfils conditions for entry into the register established by this law.

SLOVENIA	
Main sources of the regulation	Art. 6 ff. of Law of 2018 on non-governmental organizations
Legal denomination and/or definition	Non-Governmental Organizations in the Public Interest
Eligible legal forms	Associations and other NPOs
Excluded entities	Political parties, religious organizations, trade unions, chambers of commerce
Accreditation/Registration	The status is granted, upon application by an NGO that has operated for at least three years obtaining proven results in the last two years, by the Ministry competent for the relevant field of activity or by the Ministry competent for the field in which the NGO primarily operates and with the prior agreement of the Ministries competent for the other fields. The status is awarded for one or more fields. There is a special Register of NGOs operating in the public interest. There is also a list of entities beneficiaries of tax-privileged donations.
Public benefit activities and/or purposes	NGOs in the public interest pursue generally beneficial purposes that exceed the interests of their founders and members. NGOs in the public interest must operate in one or more of the following fields: culture, education, health care, social security, family policy, the development of democracy, protection against discrimination, human rights

	protection, disabled persons protection and conduct of humanitarian activities, protection of equal opportunities for women and men, care for the elderly, integrity in the state and civil society, consumer protection, food safety and security, promotion and organization of voluntarism, the youth sector, promotion of tourism, cultural heritage protection, environmental protection, nature conservation, spatial planning, animal health and welfare protection, agriculture, forestry, rural development, sport, defense, protection against natural and other disasters, road safety, international relations, external affairs, international development cooperation, international humanitarian aid, the development of non-governmental organizations, the development of the information society, science or other areas.
Commercial activities	NGOs must be non-commercial organizations, meaning that they are not established to conduct commercial activities or to obtain profit or to develop, facilitate or promote gainful activities of its founders or members.
Main requirements on the use of profits and assets	NGOs use their profit or surplus of income over expenditure solely for achieving their purpose or objectives; they do not share their assets with founders, members or other persons, and in the event of winding up and after the settlement of all liabilities, their assets are transferred to another NGO with the same or a similar purpose or a NPO governed by public law.
Main governance requirements	An NGO must be independent, meaning that state representatives, representatives of self-governing local communities, of other persons governed by public law, of the holders of public authority powers, of international intergovernmental organizations, political parties, trade unions, chambers of commerce and companies, and natural persons who conduct independent commercial activities in the market, or representatives of other non-profit persons represent less than a quarter of votes in its management body or authority or supervisory body.
Main reporting requirements	A report on the activities performed and a program of the planned activities must be submitted while applying for the status and subsequently to maintain the status.
Main benefits	Exclusive use of the words “non-governmental organisation operating in the public interest” in the organization’s name. Preference in the allocation of public funds. Bankruptcy proceedings may be conducted against an NGO in the public interest only subject to the prior agreement of the competent Ministry. Agreement is given if the interests of the creditors are considered more

	relevant than the public interest in the continuation of the activities. In general, NPOs do not pay taxes on income from non-profit activities (including income from donations, public funds, membership fees, etc.) performed for the fulfilment of their non-profit purposes, whereas they pay taxes on income from for-profit activities (e.g., sale of goods and services), even if purpose-related. For-profit activities are those carried out on the market for the purpose of making profit or those conducted in competition with others (Art. 9 Corporate Income Tax Act). Taxpayers can deduct donations for humanitarian, charitable and other generally beneficial purposes, up to 1% of the taxable income. An additional deduction up to 0.2% of the taxpayer's taxable income can be claimed for donations for cultural or sports purposes or to NGOs in the public interest acting in the field of protection against natural and other disasters (Art. 59 Corporate Income Tax Act). Individuals can designate up to 1% of their personal income for financing NGOs in the public interest and other organizations (art. 142 Income Tax Act).
Public Supervision	By the Ministry in charge of registration. It may lead to withdrawal of the status.
Other relevant aspects	

2.3. Public benefit associations

In some EU MSs, a general public benefit status, either of a purely fiscal nature or of a broader organizational nature, is not provided for by national law, which in contrast makes a specific public benefit legal status available to associations. This happens in France, as well as in three other EU MSs. Similarly, in this group of national jurisdictions, a specific public benefit legal status can be found for foundations.

This specific legal status for associations can have an organizational character, as happens in France, where public benefit associations not only enjoy tax or other benefits but are subject to specific rules that influence their structure and functioning, and even their legal capacity.

2.3.1. France

In France, the association is a general legal form of non-profit organization regulated by the Law of 1 July 1901 on the contract of association.

According to French law, an association may be established by two or more (natural or legal) persons "for a purpose other than profit sharing" (art. 1). This means that, in principle, an association may pursue either private or public interests. Yet, associations may seek recognition as public benefit associations by applying to the Ministry of Interior (art. 10).

One of the main advantages of their being recognized as public benefit is that public benefit associations have "full" legal capacity (i.e., they may conclude all legal acts except those prohibited by their statutes) and may accept donations and legacies in accordance with art. 910 of the Civil code (art.

11). Indeed, under French association law, associations may be "declared" or "undeclared". Declared associations have only "little" legal capacity. They may, without any special authorization, sue, receive "manual" donations as well as subsidies from the state, regions, departments or municipalities; collect contributions from its members; own and manage the premises intended for the administration of the association and the meeting of its members, as well as buildings strictly necessary for the accomplishment of their purposes (art. 6). In contrast, declared associations recognized as public benefit associations have "full" legal capacity (art. 11).

The procedure for the recognition of public benefit associations is regulated by art. 8 ff. of the Decree of 16 August 1901.

For an association to acquire the public benefit status, it must meet some legal requirements. It is also strongly recommended that it adopts a model statute approved by the Council of State (this model statute is de facto compulsory).

The public benefit status is granted by the competent authority only if the following requirements are met:

a) the association is of general interest, i.e., it does not carry out profit-making activities, it is managed in a disinterested manner, and it does not operate for a small circle of people.

Disinterested management requires that:

- directors carry out their activities on a voluntary basis or are remunerated within the limits established by law (which are calculated in two different ways depending on the total revenues of the association, whether they are below EUR 200,000 or exceeding this ceiling);

- the association does not make any direct or indirect distribution of profit, in any form whatsoever;

- the members of the association and their successors in title do not hold any share whatsoever in the association's assets, except for the right to re-appropriate the contributions made to the association;

b) its scope of activities goes beyond the local context;

c) it has a certain minimum number of members (at least 200), an effective activity and a real associative life (which is to say, an effective participation of at least a majority of the members in the activities of the association);

d) it has a democratic structure and operates democratically according to its statutes;

e) it has solid financial foundations (minimum annual resources equal to EUR 46,000, public subsidies less than half of the budget and positive results during the last three years).

A probationary period of operation of at least three years after the association's initial declaration to the prefecture is necessary before applying for the public benefit status, unless the resources of the association are such as to ensure its financial stability over a period of three years.

Upon dissolution of a public benefit association, all residual assets, including those contributed by members and founders, must be disinterestedly devolved to one or more entities pursuing a similar purpose, which must be public entities or private entities recognized as public benefit.

According to the model statute for public benefit associations, a public benefit association's structure comprises a general meeting of members, which is responsible for taking fundamental decisions, such as those regarding the election (by a secret ballot) of directors, the approval of annual accounts and budget, the amendments to the statutes and the dissolution of the association, and a board of directors composed of a minimum of six to a maximum of 24 members, as determined by the members' general meeting. The board manages and administers the association in accordance with the strategic

guidelines approved by the members' general meeting. The board elects, from among its members (by secret ballot), an executive committee ("*bureau*") of at least three members (including a president and a treasurer) and no more than one third of the directors. The executive committee examines all matters submitted to the board of directors and monitors the execution of its deliberations.

Public benefit associations are subject to a more incisive form of public supervision than ordinary associations. Public control already takes place during the public benefit status' recognition procedure. The application, accompanied by various documents, must be sent to the Ministry of the Interior. If the request is considered admissible, the Ministry collects the opinions of the ministries concerned by the activity of the association and then of the Council of State on the draft recognition decree, which is then issued by the Government and published in the Official Journal.

As already stated, there also exist model statutes (drafted by the Council of State) that public benefit associations are strongly recommended to adopt in order to be granted the status. Amendments to the statutes must also be approved by the Ministry of the Interior[57].

Every year, a public benefit association must send a report on the activity, a budget, and its annual accounts certified by an auditor to the Prefecture, the Ministry of Interior and the Ministries interested in its activities.

Finally, the recognition of public utility may be withdrawn if the association loses the requirements for the status or decides to renounce to the status, in which case the public benefit association is dissolved as such (it may continue to operate as an ordinary declared association) and must devolve all its residual assets in a disinterested manner.

In general, an association, including a public benefit association, can undertake activities that generate profits, even on a regular basis, provided that profits are not distributed and are used in accordance with the applicable legal rules.

Public benefit associations performing economic activities may even be recognized as "social and solidarity economy enterprises" according to French Law no. 2014-856 of 31 July 2014, and also, more specifically, as "social enterprise of social utility" ("*entreprise solidaire d'utilité sociale*" - "ESUS") according to art. L3332-7-1 of the French Labour Code.

Accreditation as ESUS is reserved to SSEEs (within the meaning of art. 1 Law no. 2014-856) that satisfy the following cumulative conditions:

1) they mainly aim at pursuing one of the social utility objects mentioned in art. 2 of Law no. 2014-856;

2) the costs incurred in the fulfilment of the social utility objects have a significant impact on their balance sheet;

3) in the remunerations of workers, a certain maximum salary gap (as determined by law) is not exceeded;

4) the enterprise's securities, if any, are not exchanged on a market of financial instruments;

5) the object of social utility is mentioned in the statutes.

Public benefit associations (and other similar organizations) need only need to meet the conditions mentioned above under 3) and 4).

[57] Cf. https://www.service-public.fr/associations/vosdroits/F1131.

Asset-lock at dissolution also applies to social and solidarity economy enterprises. In their case, their residual assets shall be disinterestedly devolved to other social and solidarity economy enterprises.

The performance of profit-making economic activities by an association may have tax consequences[58].

Pursuant to articles 206, para. 1 *bis*, and 261, para. 7, no. 1, of the General Tax Code, a non-profit organization is exempt from both corporate income tax and VAT on its operations if:

- it is managed disinterestedly;

- the profit-making activity ("*activité lucrative*") that it conducts does not compete with the commercial private sector, because it is performed with different methods to those employed in the commercial sector (test of the "4P")[59];

- the profit-making activity is marginal, considering the total revenues of the NPO, so that its non-profitable activities remain predominant.

If all these conditions are met, only amounts exceeding EUR 76,679 (a ceiling indexed every year) are subject to taxation.

Donations to public benefit associations (as well as to other non-profit organizations, including "general interest" associations, namely, associations performing the public benefit activities mentioned below) may be tax-privileged under certain conditions and within certain limits.

To receive tax-privileged donations, public benefit associations must carry out activities of a philanthropic, educational, scientific, social, humanitarian, sporting, family, cultural character, or contributing to the enhancement of the artistic heritage, the defence of the natural environment or the dissemination of French culture, language and scientific knowledge (arts. 200 and 238*bis* of the General Tax Code).

Individuals who donate to public benefit associations (as well as to other organizations listed by law) are entitled to a tax reduction equal to 66% of the donated amount up to 20% of their taxable income. Tax reduction is for legal entities equal to 60% of the donation up to EUR 2 million and 40% for the amounts exceeding this amount, in any event up to EUR 20,000 or 0.5% of the annual turnover. When the amount of the donation exceeds these thresholds, the exceeding part can be carried forward over the next five years.

Foreign organizations located in another MS of the EU may benefit from tax-privileged donations only if they are "approved" by the French tax authority, which requires that they pursue objectives and have characteristics similar to the eligible organizations located in France. If the organization has not been

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[58] Here, qualification of an NPO under tax law does not necessarily coincide with that under organizational law. Indeed, the French tax administration underlines that "*l'assujettissement aux impôts commerciaux d'une association qui réalise des activités lucratives n'est pas, à lui seul, de nature à remettre en cause sa situation juridique, au regard de la loi du 1er juillet 1901 relative au contrat d'association dès lors que, notamment, sa gestion reste désintéressée. La soumission d'une association aux impôts commerciaux, du fait de la qualification de son activité comme lucrative au sens fiscal du terme, est, en droit, sans incidence sur les agréments, habilitations ou conventions qui sont susceptibles de lui être délivrés au titre d'une réglementation particulière. De même, l'octroi de concours publics aux organismes concernés reste soumis aux dispositions qui leur sont spécifiques*". Cf. https://bofip.impots.gouv.fr/bofip/2358-PGP.html/identifiant=BOI-IS-CHAMP-10-50-10-20-20170607.

[59] The tax administration applies the rule of the "4P", which are – in order of importance – "Product", "Public", "Price", and "Publicity". The premise of the argument is that the fact that an NPO acts in a field of activity where also companies of the lucrative sector operate does not *ipso facto* determine its subjection to taxation. Exemption for "absence of competition" shall therefore be evaluated considering whether the activity of the NPO is of social utility (the "Product"); the characteristics of the users (also in light of the conditions and the context in which the services are provided) (the "Public"); whether the price is determined so as to allow the public to access the services (the "Price"); whether the NPO advertises its services like commercial companies do. For further information see https://bofip.impots.gouv.fr/bofip/2358-PGP.html/identifiant=BOI-IS-CHAMP-10-50-10-20-20170607.

previously approved, the taxpayer may produce to the tax authority evidence of the existence of the requirements for its approval.

2.3.2. Overview of equivalent regulations in other EU Member States (basic legislative tables)

CROATIA	
Main sources of the regulation	Arts. 32 ff. of the Law on Associations of 2014
Legal denomination and/or definition	In Croatian law, a formal public benefit status for associations and other NPOs does not exist. However, in the law on associations of 2014, there are some provisions concerning programs and projects for the public benefit implemented by associations
Eligible legal forms	Not applicable
Excluded entities	No specific provisions
Accreditation/Registration	No specific provisions
Public benefit activities and/or purposes	Public benefit activities are those activities that contribute to: - Protection and promotion of human rights, of the rights of national minorities or of the rights of persons and children with disabilities, the elderly or the disabled - Protection and promotion of equality, peacemaking and fight against violence and discrimination - Promotion of the values of the Homeland War - Protection, care and education of children and youth and their active participation in society - Prevention and fight against all forms of addiction - Development of a democratic political culture - Protection and promotion of the rights of minority groups in society - Promotion and development of volunteering, social services and humanitarian work - Promotion and development of social entrepreneurship - Protection of consumers' rights - Environmental and nature protection - Protection and preservation of cultural goods - Sustainable development - Development of the local community - International development cooperation - Health protection - Development and promotion of science, education, life-long learning, culture and art - Technical and information culture - Sports - Volunteer firefighting, search and rescue - Other activities that, by their nature or special regulations related to the financing of public needs in certain areas, may be considered as activities for the public benefit.

Commercial activities	No specific provisions
Main requirements on the use of profits and assets	An association must use the funds obtained from public sources exclusively for the implementation of approved programs or projects. Associations that have received funds from public sources must, in the event of their dissolution, return the remaining funds to the budget from which such funds were allocated.
Main governance requirements	No specific provisions
Main reporting requirements	If the association carries out public benefit activities financed from public sources, it is obliged to inform the general public and its donors, at least once annually, on its activities, scope, manner of acquisition and use of donors' funds, via its website or in any other appropriate manner.
Main benefits	Donors may deduct donations for a broad range of public benefit activities, including cultural, scientific, educational, health, humanitarian, sport, religious, ecological, and other public benefit activities up to 2% of their gross income in the preceding year. However, the tax-exempt percentage may be higher, pursuant to a decision of the competent ministry on financing particular programs and actions.
Public Supervision	No specific provisions
Other relevant aspects	

LUXEMBOURG	
Main sources of the regulation	Art. 26-2 of Law of 21 April 1928 on associations and foundations without a profit purpose
Legal denomination and/or definition	Public Benefit Associations
Eligible legal forms	Not applicable
Excluded entities	No specific provisions
Accreditation/Registration	The status is acquired by a Grand-Ducal decree on the basis of an application submitted by an association to the Minister of Justice and supported by statutes, annual accounts (since the establishment), report on the activities performed in the last three years, list of members, list of directors, proof that statutes, list of directors and annual financial statements have been duly filed with the Trade and Companies Register. There is a list of organizations benefitting from tax-privileged donations
Public benefit activities and/or purposes	A general interest purpose of a philanthropic, religious, scientific, artistic, pedagogic, social, sporting or touristic nature

Commercial activities	No specific provisions
Main requirements on the use of profits and assets	No specific provisions
Main governance requirements	No specific provisions
Main reporting requirements	Changes in the documents (i.e., statutes, etc.) submitted at the application stage to be notified to the Ministry of Justice. Accounts to be filed with the Company and Trade Register (like for any other corporation).
Main benefits	Public benefit associations (as well as other organizations) are exempt from the corporate income tax if they directly and exclusively pursue public benefit, charitable or cultural purposes (art. 161(1), no. 1, Income Tax Act). However, their economic activities are in general subject to taxation, unless, due to their public benefit prominent character, they are considered "non-commercial" by a decision of the Government. Donations to public benefit associations (as well as other organizations) from individuals and legal entities are eligible for a tax benefit in the form of a deduction from the donor's income tax. Donations are deductible up to the limit of 20% of the taxable income or EUR 1,000,000, provided their amount exceeds EUR 120. Amounts donated in excess of the limits can be deducted during the two subsequent years under the same conditions and limits.
Public Supervision	Ministry of Justice and Tax authority
Other relevant aspects	

SPAIN	
Main sources of the regulation	Art. 32 ff. of Law no. 1/2002 on associations (and Royal Decree no. 1740/2003)
Legal denomination and/or definition	Public Benefit Associations
Eligible legal forms	Not applicable
Excluded entities	No specific provisions
Accreditation/Registration	An association registered in the Register of associations may submit to the registration authority a request for declaration as public benefit only after two years of effective operations. The request must be accompanied by a note motivating the request, a report on the objectives pursued through the declaration, annual accounts, reports on the activities and other documents related to the preceding two years of activity. Associations must have adequate means to reach their purposes. Associations are

	declared of public benefit by order of the Ministry of Interior published in the Official Gazette.
Public benefit activities and/or purposes	General interest purposes of a civic, educational, scientific, cultural, sports, health nature, promotion of constitutional values, promotion of human rights, social assistance, cooperation for development, promotion of women, protection of childhood, promotion of equal opportunities and tolerance, defense of the environment, promotion of the social economy or research, promotion of social volunteering, defense of consumers and users, promotion and attention to people at risk of exclusion for physical, social, economic or cultural reasons, and any other of a similar nature. The activities must not be restricted to the members but open to any other possible beneficiary who meets the necessary requirements.
Commercial activities	No specific provisions
Main requirements on the use of profits and assets	Board members may be paid a proportioned remuneration but not using public funds and subsidies.
Main governance requirements	No specific provisions
Main reporting requirements	Submission to the registration authority of annual accounts and a report on the activities drafted in accordance with the relevant provisions in Royal Decree no. 1740/2003 and standardized models.
Main benefits	Public benefit associations have the exclusive right to make use of the "public benefit" formula in their documents. Public benefit associations have the right to free legal assistance. A specific tax regime is provided for by Law no. 49/2002 to public benefit associations (and other organizations mentioned by law) that meet some specific requirements, including the following: - that they perform general interest activities, such as defense of human rights, social assistance, etc. - that they allocate at least 70% of their income to the realization of general interest purposes and the remaining income to increase their assets or to reserves - that their revenues from purpose non-related economic activities does not exceed 40% of total revenues - that founders, employers, members, etc., as well as their spouses and relatives, are not the main recipients of the activities carried out by the organization, nor benefit from special conditions to use their services - that the members of the organs do not receive any remuneration for the functions performed - that in case of dissolution residual assets are devolved to other non-profit organizations pursuant to the same Law or other organizations listed by the Law

	Some incomes of NPOs, as identified by Law no. 49/2002, are exempt from corporation tax, including income from donations, contributions made by members, and some economic activities in the field of social action, social assistance, health services, theatre and cultural performances, etc. Exempt are also economic activities that are merely ancillary or complementary to the previous ones (provided that the turnover for the financial year corresponding to all of them does not exceed 20% of the total income of the organization) and those of little relevance (whose net turnover for the financial year does not exceed EUR 20,000). Donations to NPOs according to Law no. 49/2002 entitle donors to reduce the tax due of the following percentages: 80% for donations up to EUR 150; 35% or 40% (if in the two preceding tax periods tax-privileged donations have been made in favor of the same entity for an amount equal to or greater, in each of them, than the previous year) for donations exceeding this amount (art. 19 Law 49/2002). For legal entities the percentage is 35% (or 40%) up to 10% of the taxable base (art. 20 Law 49/2002).
Public Supervision	By the registration authority. It may lead to the revocation of the status by order of the Ministry of Interior.
Other relevant aspects	It is explicitly stipulated by Law no. 49/2002 that foreign "comparable" entities may also gain access to the tax regime of this Law.

3. CROSS-BORDER CONVERSION (AS WELL AS MERGER AND DIVISION) OF "ORDINARY" AND PUBLIC BENEFIT ASSOCIATIONS: NATIONAL REGULATIONS AND CROSS-BORDER ISSUES

KEY FINDINGS

Cross-border conversion, merger and division are restructuring operations that any private legal entity, including an association with a relevant degree of cross-border activities, might want to undertake in order to re-organize its activity at the Union level, by changing the national law by which it is governed.

Whilst companies and cooperatives may benefit from a specific EU Directive regulating these operations, associations, including associations holding the public benefit status, cannot count, neither at the national nor at the Union level, upon ad hoc legislation on cross-border conversion, merger and division.

The lack of regulation makes the situation of associations (as well as of other non-profit organizations) unfairly unequal compared to that of companies (and cooperatives), significantly limiting the former's capacity to operate cross-border and pursue their purposes at the supranational level. This situation also raises a number of issues related to the cross-border mobility of public benefit organizations.

Cross-border conversion, merger and division (CMD) are restructuring operations that any private legal entity, usually with a relevant degree of cross-border activities, might want to undertake in order to re-organize its activity or business at the Union level, by changing the applicable national law, namely, the national law by which it is governed, without having to dissolve according to the national law of the country of establishment and be re-incorporated under the national law of the country of destination. Of course, the matter is relevant only inasmuch as the applicable national laws are (substantially) different. It is also (significantly) affected by the way in which the national law of establishment regulates the activity conducted abroad by the national law entity and the national law of destination regulates the activity conducted in the country of destination by the foreign law entity. Indeed, if national laws were homogeneous and any organization, either national or foreign, could freely act across its own national borders, the reasons for an organization to change the applicable national law by undertaking one of these restructuring operations would decrease considerably. It follows that the issue at stake is connected with the general subject of a legal entity's freedom of establishment across the EU, which falls among the competences of the EU in light of EU primary legislation and articles 49 and 54 TFEU in particular. Therefore, it is no coincidence that cross-border conversion, merger and division find regulation at the EU level, although this regulation (thus far) regards only (limited liability) companies and cooperatives.

According to Directive (EU) 2017/1132 of 14 June 2017, as amended by Directive no. 2019/2121 of 27 November 2019, cross-border conversion "means an operation whereby a company, without being dissolved or wound up or going into liquidation, converts the legal form under which it is registered in a departure Member State into a legal form of the destination Member State, as listed in Annex II, and transfers at least its registered office to the destination Member State, while retaining its legal personality" (art. 86b).

As indicated by this legal definition, the operation of cross-border conversion must not be confused with the conversion (or "transformation") that consists in the change of the legal form, which may take place at the domestic level, if national law so permits[60], but also at the supranational level, in the event of a cross-border conversion. Whilst cross-border conversion implies a change of the nationality of the legal form and the applicable national law (e.g., an Italian association is converted into a Belgian association and therefore becomes subject to Belgian association law in lieu of Italian association law), conversion implies a transformation of the legal form of establishment and regulation (e.g., an association is transformed into a foundation and therefore becomes subject to foundation law rather than association law). There is no impediment, of course, to the co-existence of both conversions may co-exist, as might happen, for example, if an Italian association had to be converted into a Belgian foundation or an Irish company. In this latter case, were the two regulations deemed both applicable, they might interfere with each other. For example, if the national law on associations prohibits the transformation of an association into another legal form (as happens, for example, in Hungary pursuant to sect. 3:83 of the Civil Code or in Estonia according to art. 1, para. 4, Law of 2014), the question arises whether the association might convert cross-border into a foundation or a company (and even if it might convert at all)[61].

Whilst in the case of cross-border conversion the change of the applicable national law, i.e., the national law by which the entity is governed, is the effect of a decision of a single entity to transfer (at least) its registered office from a "departure MS" to a "destination MS", in the case of cross-border merger, the change of the applicable national law is the effect of an operation involving at least two entities governed by the laws of two different MSs (art. 118, Directive (EU) 2017/1132 of 14 June 2017) but resulting in the dissolution (without liquidation of the assets) of one or all of the participating entities.

A cross-border merger implies the transfer of all the assets and liabilities of an entity governed by the national law of a given MS to an entity governed by the national law of another MS, which may be one of the merging entities ("merger by acquisition") or a new entity established ad hoc by them ("merger by formation of a new legal entity"). In both cases, one or more entities formally cease to exist as autonomous legal entities, but their existence de facto continues in the entity that receives their assets and liabilities, which is governed, however, by a different national law.

A change of the applicable national law may also be the result of a cross-border division, another restructuring operation involving at least two entities governed by the laws of two different MSs but resulting in the full or partial dissolution (without liquidation of the assets) of one of the participating entities. According to art. 160b(2) of Directive (EU) 2017/1132 of 14 June 2017, as amended by Directive no. 2019/2121 of 27 November 2019, a company being divided "means a company which, in the process of a cross-border division, transfers all its assets and liabilities to two or more companies in the case of a full division, or transfers part of its assets and liabilities to one or more companies in the case of a partial division or division by separation".

From the point of view of the change of the applicable national law, cross-border mergers and cross-border divisions raise the same issues as cross-border conversions, which explains why they are usually analyzed together, as will also be the case in this Study. However, in the case of cross-border merger and cross-border division, it is not a change in the national law that governs an entity which takes place, but a change in the national law that governs an entity's assets and liabilities.

[60] See, for example, articles 42-bis and 2500-octies of the Italian Civil Code, which explicitly recognises and regulates transformation, as well as merger and division, of association.

[61] The same question arises in the case in which national law permits domestic mergers and divisions of associations only into an association, as happens for example in the Czech Republic pursuant to sect. 274 ff. of the Civil Code.

As already stated, the topic discussed in this section of the Study is closely connected with the issue of the freedom of establishment of organizations at the Union level. Indeed, the possibility for an entity to convert, merge or divide itself cross-border implies the possibility for the same entity to transfer the registered office from one MS to another and consequently to change its "nationality", i.e., the national law by which it is governed, which is the manner by which a legal entity exercises its freedom of establishment in the EU. The point is reflected in the first recitals of Directive no. 2019/2121, which, in turn, finds its roots in the well-known CJEU case-law on company mobility, beginning with Daily Mail (C-81/87)[62].

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[62] The list of relevant judgments on a company's freedom of establishment is very long and includes at least the following main decisions:

- *Daily Mail* (C-81/87): Since companies are creatures of national law (para. 19), and the Treaty places on the same footing, as connecting factors, the registered office, central administration and principal place of business (para. 21), articles 52 and 58 of the Treaty (current articles 49 and 54 TFEU) confer no right on a company incorporated under the legislation of a Member State and having its registered office there to transfer its central management and control to another Member State.
- *Centros* (C-212/97): It is contrary to articles 52 and 58 of the Treaty (current articles 49 and 54 TFEU) for a Member State to refuse to register a branch of a company formed in accordance with the law of another Member State in which it has its registered office but in which it conducts no business where the branch is intended to enable the company in question to carry on its entire business in the State in which that branch is to be created, while avoiding the need to form a company there, thus evading application of the rules governing the formation of companies which, in that State, are more restrictive as regards the paying up of a minimum share capital.
- *Uberseering* (C-208/00): Where a company formed in accordance with the law of a Member State ("A") in which it has its registered office is deemed, under the law of another Member State ("B"), to have moved its actual centre of administration to Member State B, articles 43 EC and 48 EC (current articles 49 and 54 TFEU) preclude Member State B from denying the company legal capacity and, consequently, the capacity to bring legal proceedings before its national courts for the purpose of enforcing rights under a contract with a company established in Member State B.
- *Inspire Art* (C-167/01): It is contrary to articles 43 EC and 48 EC (current articles 49 and 54 TFEU) for national legislation to impose on the exercise of freedom of secondary establishment in that State by a company formed in accordance with the law of another Member State certain conditions provided for in domestic law in respect of company formation relating to minimum capital and directors' liability.
- *Sevic* (C-411/03): Cross-border mergers operations constitute particular methods of exercise of the freedom of establishment, important for the proper functioning of the internal market, and are therefore amongst those economic activities in respect of which Member States are required to comply with the freedom of establishment laid down by articles 43 EC and 48 EC (current articles 49 and 54 TFEU). These articles preclude registration in the national commercial register of the merger by dissolution without liquidation of one company and transfer of the whole of its assets to another company from being refused in general in a Member State where one of the two companies is established in another Member State, whereas such registration is possible, on compliance with certain conditions, where the two companies participating in the merger are both established in the territory of the first Member State.
- *Cartesio* (C–210/06): Articles 43 EC and 48 EC (current articles 49 and 54 TFEU) are to be interpreted as not precluding legislation of a Member State under which a company incorporated under the law of the Member State may not transfer its seat to another Member State whilst retaining its status as a company governed by the law of the Member State of incorporation.
- *Vale* (C-378/10): Articles 49 TFEU and 54 TFEU must be interpreted as precluding national legislation which enables companies established under national law to convert, but does not allow, in a general manner, companies governed by the law of another Member State to convert to companies governed by national law by incorporating such a company. Articles 49 TFEU and 54 TFEU must be interpreted, in the context of cross-border company conversions, as meaning that the host Member State is entitled to determine the national law applicable to such operations and thus to apply the provisions of its national law on the conversion of national companies governing the incorporation and functioning of companies, such as the requirements relating to the drawing-up of lists of assets and liabilities and property inventories. However, the principles of equivalence and effectiveness, respectively, preclude the host Member State from - refusing, in relation to cross-border conversions, to record the company which has applied to convert as the 'predecessor in law', if such a record is made of the predecessor company in the commercial register for domestic conversions, and - refusing to take due account, when examining a company's application for registration, of documents obtained from the authorities of the Member State of origin.
- *Polbud* (C-106/16): Articles 49 and 54 TFEU must be interpreted as meaning that freedom of establishment is applicable to the transfer of the registered office of a company formed in accordance with the law of one Member State to the territory of another Member State, for the purposes of its conversion, in accordance with the conditions imposed by the legislation of the other Member State, into a company incorporated under the law of the latter Member State,

Therefore, to freely move within the EU, legal entities need enabling legislation that allows for the possibility for them to cross-border convert (as well as merge or divide) and regulate this operation. However, whilst limited-liability companies (and cooperatives) may count on harmonized national legislation in this regard (due to national transposition of pertinent EU law, namely, Directive (EU) 2017/1132 of 14 June 2017, as amended by Directive no. 2019/2121 of 27 November 2019, the so-called "mobility directive"), associations and other NPOs do not enjoy an equivalent legal framework for their cross-border re-organization. This makes the situation of associations (and other NPOs) unfairly unequal compared to that of companies (and cooperatives), also because art. 54 TFEU and the related jurisprudence of the CJEU only consider the mobility of companies.

Table 2 below presents the existing legal framework on an association's cross-border conversion, merger and division, as found in the national legislation of the MSs of the EU.

Table 2: National laws on associations in the EU and provisions on cross-border conversion, merger and division of associations

Member State	National Law on Associations	Cross-border conversion, merger and division of associations
Austria	Federal Law on Associations of 2002	Transfer of the seat abroad is a cause for an association's dissolution by the competent Authority (art. 4, para. 2)
Belgium	Code of Companies and Associations of 2019	Arts. 14:51 ff. allow and regulate cross-border conversion of associations
Bulgaria	Law on Non-Profit Legal Entities of 2000	*No specific provisions*
Croatia	Law on Associations of 2014	*No specific provisions*
Cyprus	Law on Associations and Foundations no. 104(I)/2017	*No specific provisions*
Czech Republic	Civil Code of 2012 (sects. 214-302)	Sects. 139–142 of the Civil Code: "A legal person having its registered office in the Czech Republic may transfer its registered office abroad, unless it is contrary to public order and if permitted by the legal order of the state to which the registered office of the legal person is to be transferred".
Denmark	*No specific legislation* (associations are regulated by principles developed through case law and legal doctrine)	*No specific provisions*
Estonia	Non-Profit Associations Act of 1996	*No specific provisions*
Finland	Associations Act no. 503/1989	*No specific provisions*

when there is no change in the location of the real head office of that company. Articles 49 and 54 TFEU must be interpreted as precluding legislation of a Member State which provides that the transfer of the registered office of a company incorporated under the law of one Member State to the territory of another Member State, for the purposes of its conversion into a company incorporated under the law of the latter Member State, in accordance with the conditions imposed by the legislation of that Member State, is subject to the liquidation of the first company.

France	Law 1 July 1901 on the contract of association	*No specific provisions*
Germany	Civil Code of 1896 (arts. 21 ff.)	Sect. 6, para 3, of the Regulation on the Register of Associations (*Vereinsregisterverordnung,* VRV) provides that the transfer of the association's seat to a foreign country must be entered into the register as a dissolution.
Greece	Civil Code of 1946 (arts. 78-106)	*No specific provisions*
Hungary	Civil Code of 2013 (sects. 3:63 ff.)	*No specific provisions*
Ireland	*No specific legislation* (associations are mainly governed by common law)	*No specific provisions*
Italy	Civil Code of 1942 (arts. 14-42*bis*)	Legislative Decree 2 March 2023, no. 19, transposing Directive no. 2019/2121, also applies to associations that carry out economic activities and registered in the Register of Enterprises.
Latvia	Associations and Foundations Law no. 161/2004	*No specific provisions*
Lithuania	Law on Associations no. IX-1969 of 22 January 2004	*No specific provisions*
Luxembourg	Law on Associations and Foundations of 21 April 1928	Associations incorporated under Luxembourg law may transfer their registered office abroad, without losing their legal personality, provided that the State of their new registered office recognizes the continuation of this legal personality (art. 26-1, para. 3, Law of 1928).
Malta	Civil Code (2nd Schedule)	*No specific provisions*
Netherlands	Civil Code (arts. 2:26-2:52)	*No specific provisions*
Poland	Law on Associations of 7 April 1989	*No specific provisions*
Portugal	Civil Code (arts. 167-184 and 195-201A)	"The transfer, from one State to another, of the registered office of a legal person does not extinguish its legal personality, if the laws of both States so agree" (art. 33, para. 3, of the Portuguese Civil Code).
Romania	Governmental Ordinance no. 26/2000	*No specific provisions*
Slovakia	Act 83/1990 Coll. on Associations	*No specific provisions*
Slovenia	Law on Associations of 2011	*No specific provisions*
Spain	Law no. 1/2002 on the Right of Association	*No specific provisions*

Sweden	*No specific legislation* (associations are regulated by principles developed through case law and legal doctrine)	*No specific provisions*

Source: Capgemini Invent et al (2023); European Commission (2023a); European Commission (2023d); Fici ed. (forthcoming); the Author

As shown by the table above, three different scenarios may be detected at the national law level with regard to the topic of cross-border conversion (as well as merger and division) of associations.

i) Absence of specific provisions for associations

In exactly three quarters of MSs, the issue of cross-border conversion, merger and division of associations (as well as other NPOs), including public benefit associations or associations with the public benefit (or an equivalent) status, is completely ignored, so that there are no rules that explicitly allow associations to carry out cross-border conversions or prohibit them from doing so[63].

ii) Existence of general provisions also applicable to associations

In two MSs there are general provisions regarding legal entities in general which may also apply to associations. Art. 33, para. 3, of the Portuguese Civil Code allows the transfer abroad of the registered office of a Portuguese legal person if the law of the country of destination so permits. A similar provision is found in sects. 139–142 of the Czech Civil Code.

iii) Existence of specific provisions for associations

Only in five MSs is the topic specifically treated by law. In two of them there are certain provisions of national association law that lead to the prohibition of cross-border conversion, whereas in the others the cross-border conversion of associations is fully or at least partially permitted and regulated.

a) Prohibition

In Austrian and German association laws the transfer of an association's seat abroad is cause for its dissolution, which means that an operation of cross-border conversion may not take place without terminating the legal personality. Therefore, to transfer its seat, an Austrian or a German association would have to dissolve, liquidate its assets, and then re-incorporate under the national law of the country of destination[64].

b) Permission

In Belgium, associations with legal personality may transfer their seat abroad, thereby assuming a legal form of the jurisdiction of destination without terminating their legal personality (arts. 14:51 and 14:52 Code of 2019). The procedure of conversion is regulated in detail by arts. 14.54 ff. of the Code.

Along similar lines, Luxembourg law allows an association to transfer its registered office abroad without losing its legal personality, provided that the State of the new registered office recognizes the continuation of the legal personality (art. 26-1, para. 3, Law of 1928).

Both national jurisdictions explicitly admit the "immigration" of a foreign association.

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[63] There may however be legal scholarly opinion on the point. In the Netherlands, for example, it is generally accepted that Dutch associations (and foundations) can qualify as companies within the meaning of art. 54 TFEU and therefore, based on the case law of the CJEU on the freedom of establishment, are allowed to perform restructuring operations within the EEA.

[64] However, in Germany, some legal scholars hold that associations fall within the scope of art. 54 TFEU, so that they should be considered allowed, like companies, to undertake cross-border restructuring operations that imply the transfer of their registered office abroad. As regards the regulation of such operations, legal scholars propose to apply either the provisions on domestic changes of legal form in sect. 190 ff. UmwG or the regulation on cross-border mergers of corporations in sect. 122a ff. UmwG by way of analogy.

In Italy, there was already a general provision of private international law according to which "transfers of the registered office to another State and mergers of entities based in different States are effective only if carried out in accordance with the laws of the States concerned" (Art. 25, para. 3, of Law 31 May 1995, no. 218). However, a specific provision for the cross-border conversion of associations has been recently adopted on the occasion of the transposition of Directive no. 2019/2121 (so called "mobility directive") by Legislative Decree 2 March 2023, no. 19. This regulation also applies to associations (and foundations) that carry out an entrepreneurial activity and are registered in the Register of Enterprises, on the condition that art. 25, para. 3, is respected. This means that these associations (and foundations) may convert into a foreign legal entity insofar as the country of destination (as is the case, for example, of Belgium and Luxembourg) so permits.

The absence of specific regulation on the cross-border conversion of associations leaves a number of issues open and raises the level of legal uncertainty. Not only is the possibility for an association to convert cross-border questionable, but also the rules applicable uncertain, as well as the limits of such conversion. For example, it is not clear whether the limits that apply to domestic conversions (for example with regard to the legal forms in which conversion is legally possible[65]) also apply to a cross-border conversion. An equal importance issue is that it is not clear whether the asset-lock that applies to associations in the case of a domestic conversion (there are national laws that even prohibit the conversion of associations[66]) should or might also apply to associations that undertake a cross-border conversion.

As regards the latter hypothesis, the issue is whether national rules aimed at preserving the destination of the assets of an association (therefore providing for an "asset-lock") also apply to cross-border conversion. In the case of a positive answer, these rules would definitely exclude or limit cross-border conversion, even if national law is silent on the point. In more general terms, the compatibility of such national rules with EU law needs to be evaluated.

As the European Commission has recently stated in its arguments in favor of the 2023 proposal on a European Cross-Border Association (which will be briefly presented in the next section of this Study), "Member States currently lack legislation specifically addressing cross-border activities and mobility of non-profit associations, except for a few countries". Indeed, in some countries there are rules prohibiting the transfer of the seat. Only in a few countries is the "emigration" of associations explicitly allowed (and in some cases also regulated) by law. In the vast majority of MSs, the absence of rules generates legal uncertainty which de facto hinders the free movement of associations. The situation described above clearly constitutes a legal barrier to the freedom of establishment and mobility of associations in the EU.

The lack of national rules and, *a fortiori*, of harmonized national rules on the cross-border conversion (as well as on merger and division) of associations raises even more specific and problematic issues in the case of associations with the public benefit status, because the destination abroad of assets accumulated through state incentives of various kinds is at stake here. May a State prohibit the cross-border conversion of public benefit associations, or must a State permit the transfer abroad of benefitted entities and/or of their assets? On what conditions? Shall the destination of assets to the public good be ensured by the converted or recipient foreign entity? How does the national regulation prohibiting the domestic conversion of associations or allowing an association's conversion only into

[65] Cf. Capgemini (2023).

[66] Cf. Capgemini (2023).

a certain type of legal entity interfere with the issue of the allowance of cross-border conversion and its limits?

In the absence of legal provisions on this point, one may try to answer these questions by resorting to the rules that apply to the devolution of assets upon a PBO's dissolution or loss of the status. And the result is not encouraging, because the laws on the public benefit status usually establish that, upon their dissolution or loss of the status (or removal from the relevant register), PBOs must devolve their assets to other PBOs or similar entities. This means that, applying this rule to the case of the transfer of the registered office of a national public benefit association, a sort of "comparability test" would become necessary which is, as we know, already problematic to carry out (for those who wish to demonstrate such comparability), particularly in some countries.

Free mobility of public benefit associations within the EU seems therefore to require precise EU legal rules.

4. NON-PROFIT, PUBLIC BENEFIT AND SOCIAL ECONOMY ORGANIZATIONS IN CURRENT EUROPEAN UNION LAW AND POLICIES

KEY FINDINGS

There is no regulation of the public benefit status at the EU level, but the interest in this category of organizations is developing among EU institutions, together with a renewed interest in non-profit legal forms, such as the association, and new categories of organizations, such as social economy organizations and social enterprises.

In particular, public benefit organizations were specifically considered in the Resolution of the European Parliament of February 2022, calling on the Commission to introduce EU legal statutes on cross-border associations and non-profit organizations.

Following the EP Resolution of 2022, the European Commission has recently launched a legislative proposal on cross-border associations which, however, does not specifically consider public benefit associations, thus leaving several issues unresolved.

On the other hand, public benefit organizations are specifically considered in the recommendation on developing social economy framework conditions, as well as in one of the accompanying documents of said recommendation, released by the Commission within the framework of the social economy action plan of December 2021.

PBOs are not regulated at the EU level, nor have PBOs as a class of organizations been considered by EU institutions in policy documents and programs. This does not mean, however, that the EU has never manifested any interest in PBOs and/or in the legal forms of non-profit organizations that may usually acquire this status. Rather, the opposite is true. However, the interest of the EU institutions in these organizations has fluctuated and has intensified only in recent years, also due to the serious economic, social and health crises that have afflicted Europe. Moreover, the focus has varied over time, at times showing an uncertain and changing trajectory, prone to current fashions or the influences of stakeholder groups. Thus, as we shall see, whilst the Union initially focused on certain legal forms of non-profit organizations (associations, foundations and mutual societies), it later devoted its attention to social enterprises. Today, the subject of the social economy and the organizations that compose this sector has gained centrality. At the same time, the matter of the legal forms of the non-profit sector, notably associations, is regaining ground. This section of the Study presents and discusses this path and its evolution, by analyzing the main acts on which they are based. In particular, attention will be given to some recent documents published by the European Commission earlier this year, namely:

i) the proposal of September 2023 for a directive on European cross-border associations and some accompanying staff working documents[67];

ii) the proposal of June 2023 for a recommendation on developing social economy framework conditions and some accompanying staff working documents[68].

[67] COM(2023) 516 final, available with accompanying documents at https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13538-Single-market-proposal-for-a-legislative-initiative-on-cross-border-activities-of-associations_en.

[68] COM(2023) 316 final, available with accompanying documents at https://ec.europa.eu/commission/presscorner/detail/en/ip_23_3188.

4.1. Freedom of establishment and EU organizational law: about failed previous attempts to introduce European legal forms of non-profit organizations

In the Treaty on the European Union (TEU), the only reference to private organizational forms is in art. 11, which obliges the institutions of the EU to give citizens and their "representative associations" the possibility to express their opinions in all areas of Union action, as well as to maintain an open, transparent and regular dialogue with these associations and civil society. Whilst it is significant that the TEU refers to "associations" in close relationship to "citizens"' and "civil society", it does not seem that the TEU intends here to refer to a precise legal form, that of the association, and in any event the provision is not relevant for our specific purposes, because art. 11 does not regulate associations (nor does it confer enforceable rights upon them), but the activity of the EU institutions (which are obligated to establish a dialogue with civil society).

As regards EU primary legislation, of utmost importance in our area of law is art. 54 of the Treaty on the Functioning of the European Union (TFEU), where specific types of private organizations are mentioned, namely, companies, cooperative societies and "non-profit-making" private legal persons. The function of this provision is to specify the scope of freedom of establishment within the EU, with particular regard to the freedom "to set up and manage undertakings".
More precisely:

i) art. 49(1) TFEU prohibits restrictions on the freedom of establishment of nationals of a MS in the territory of another MS;

ii) prohibited restrictions – according to art. 49(2) TFEU – are also those relative to the establishment and management of "companies or firms";

iii) art. 54(1) TFEU specifies that "companies or firms formed in accordance with the law of a Member State and having their registered office, central administration or principal place of business within the Union shall […] be treated in the same way as natural persons who are nationals of Member States", and therefore enjoy the same freedom of establishment as the citizens of the EU;

iv) art. 54(2) TFEU clarifies what "companies" are for the said purposes, namely, "companies or firms constituted under civil or commercial law, including cooperative societies, and other legal persons governed by public or private law, save for those which are non-profit-making".

With the aim of safeguarding and ensuring the effectiveness of this particular aspect of the freedom of establishment, these provisions of the TFEU have stimulated the development of EU organizational law.

More exactly, what happened is that – having freedom of establishment as its main objective and favoured by the EU institutions' focus on the internal market and its inherent virtues – a set of EU rules on companies (and cooperatives) was produced in several decades, starting from the 1960s[69]. This corpus of law comprises both EU regulations and directives[70] with different objects and purposes, including harmonization and uniformization of certain aspects of national company laws[71], which have

[69] Following the "General Programme for the abolition of restrictions on freedom of establishment", adopted by the Council of the European Economic Community (as the European Union, comprising only six Member States, was named at the time) on 18 December 1961, in 1968 the First Council Directive 68/151/EEC on company law was approved.

[70] Among the legal acts of the EU, a regulation has general application, is binding in its entirety and directly applicable in all Member States, whereas a directive is binding, as to the result to be achieved, upon each Member State to which it is addressed, but leaves to the national authorities the choice of form and methods (art. 288 TFEU).

[71] More precisely, (public and private) limited liability company laws.

been considered necessary to ensure and promote freedom of establishment, as well as the creation of supranational legal forms, which have been provided to EU citizens and organizations as optional and additional legal types of entities[72], which are pan-European (albeit not fully so)[73] and equipped with full mobility across the EU[74]. These European legal forms are the European Economic Interest Grouping (EEIG)[75], the European Company (*Societas Europaea* or SE)[76] and the European Cooperative Society (*Societas Cooperativa Europaea* or SCE)[77].

European company law[78] does not comprise only statutory law but also the case law of the Court of Justice of the European Union (CJEU), which has significantly contributed to its formation, notably by clarifying the contents and limits of a company's freedom of establishment[79].

In contrast, NPOs, such as associations, foundations and mutual societies, have not received the same degree of consideration from the EU legislator. No harmonization or uniformization measures have addressed non-profit organization law[80]. No European legal forms for NPOs exist. As regards harmonization and uniformization of national laws, this is mainly due to insufficient knowledge of non-profit organizations[81] and the misleading reference to "non-profit-making" legal entities in art. 54(2)[82].

[72] "Optional" and "additional" in relation to their national law equivalents. This is why the European Company (as well as the European Cooperative Society) is also understood as the "28th type" of (public limited liability) company available in the EU. In fact, equivalence is not full, because the European Company (as well as the European Cooperative Society) requires a supranational element to be established (indeed, easy to be met). See art. 2, Reg. 2157/2001, and art. 2, Reg. 1435/2003.

[73] "Not fully" because European Companies (and European Cooperative Societies, to an even greater extent) are also regulated by the national law of the Member State in which the European Company (or the European Cooperative Society) has its registered office. See art. 9, Reg. 2157/2001, and art. 8, Reg. 1435/2003.

[74] European Companies and European Cooperative Societies are required to establish their registered offices in the same Member State as their head offices (see art. 7, Reg. 2157/2001, and art. 6, Reg. 1435/2003), but their registered office may freely be transferred to another Member State (see art. 8(1), Reg. 2157/2001, and art. 7(1), Reg. 1435/2003). This means that the legal entity continues in the Member State of arrival, no winding-up takes places and there is no need for re-incorporating the legal entity in the country of destination.

[75] Council Regulation no. 2137/1985 of 25 July 1985, available at https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31985R2137&from=EN.

[76] Council Regulation no. 2157/2001 of 8 October 2001, supplemented by Council Directive 2001/86/EC of 8 October 2001 with regard to the involvement of employees, available at https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02001R2157-20130701&from=EN.

[77] Council Regulation no. 1435/2003 of 22 July 2003, supplemented by Council Directive 2003/72/EC of 22 July 2003 with regard to the involvement of employees, available at https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02003R1435-20030821&from=EN.

[78] For a very useful introduction to the subject, see De Luca (2021).

[79] This long list of judgements includes, at least, *Daily Mail* (C-81/87), *Centros* (C-212/97), *Uberseering* (C-208/00), *Inspire Art* (C-167/01), *Sevic* (C-411/03), *Cartesio* (C-210/06), *Vale* (C-378/10), and *Polbud* (C-106/16).

[80] A recommendation, which is however a non-binding legal instrument of the EU (see art. 288 TFEU), was issued in 2007 with regard to non-governmental organizations or NGOs. A European Convention on the Recognition of the Legal Personality of International NGOs was introduced in 1986, although it was ratified by only eight Member States of the EU.

[81] It is still not always clear, for example, that the non-profit character refers to the purpose of the entity, moreover in a purely negative way (as a profit non-distribution constraint), and not to the activity of the entity. Therefore, NPOs may, in principle, conduct commercial activities that generate profits (provided profits are not distributed but reinvested in the activity).

[82] A global and systematic interpretation of EU law does not allow for the conclusion that art. 54(2) TFEU refers to non-profit organizations, because it is a principle of EU law that undertakings which carry out economic activities must be treated equally whatever their legal form, including a non-profit form (cf. *Höfner and Elser* (C-41/90), para. 21; *Poucet and Pistre* (C-159/91 and 160/91), para. 17; *Fédération Française des Sociétés d'Assurance and others* (C-244/94), para. 22; *Albany* (C-67/96), para. 85, and a number of following decisions). Therefore, art. 54(2) should properly refer to gratuitous, non-economic activities and to entities that exclusively perform these kinds of activities. NPOs are not per se organizations that may or are allowed to conduct exclusively non-economic activities. This is clear not only under national laws but also under EU law, as shown by the fact that NPOs are potential VAT payers (although art. 132(1)(l)(m), Directive no. 112/2006, provides for some exceptions). Under EU public procurement law, NPOs are explicitly considered "undertakings that carry out

The different cultural and historical roots of national NPO laws, and their resulting variety, have also contributed to this result.

As regards supranational legal forms, the absence of EU non-profit legal forms is mainly due to a lack of political consensus. Indeed, the creation of supranational legal forms for NPOs by means of EU regulations equivalent to those establishing the European Company and the European Cooperative Society has been under discussion for several years. The first official proposal on the European Association dates back to 1991[83]; a proposal for a European Foundation was formulated in 2012[84]; the first proposal on mutual societies was made in 1992 and a subsequent draft proposal on the same subject was discussed later[85]. However, despite the considerable efforts of the EU institutions and the pressure applied by the stakeholders, all these proposals have been unsuccessful.

4.2. The 2021 independent study on non-profit law in the EU

Following a period of relative silence (during which, however, attention was focused, as we shall see, on social enterprises), the debate on the introduction of a European statute on non-profit organizations was rekindled by the European Parliament, which first of all commissioned an independent study and then, based on the results produced by the study, passed a resolution on the topic.

The independent study was written by this author and published in 2021[86]. The study provided a comparative analysis of the main laws on non-profit organizations in force in some EU MSs, analyzed the main trends in national legislation and, finally, discussed potential EU legislative measures in this field. In the conclusions of the study, the author highlighted the importance of introducing EU legislation on non-profit organizations, comparing the possible options available in this regard (including harmonization directives, such as those concerning company law, and regulations providing for supranational legal forms, such as the existing regulations on the European Company and the European Cooperative Society), and finally recommended, as the solution most feasible and most worthy of consideration by the EU institutions, the introduction of a European legal status (instead of a European legal form) for NPOs through an EU directive based on art. 50 TFEU.

More precisely, the idea envisaged in the 2021 study was to adopt a directive establishing a European status/qualification/label for non-profit organizations, which all MSs would have been obliged to introduce into their national legal systems.

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economic activities" (see, among many others, *Pavlov* (C-180/98 to 184/98), *Ambulanz Glöckner* (C-475/99); *Conisma* (C-305/08) and *Parsec* (C-219/19).

[83] An EU statute on associations was first recommended in Nicole Fontaine's "Report on Non-Profit Making Associations in the European Community" of 8 January 1997, followed in the same year by a Resolution of the EP. The first official proposal was presented by the European Commission on 18 December 1991. A second amended proposal was put forward in 1993. It attracted criticism by some MSs, notably Germany, Denmark and the United Kingdom. The proposal was officially withdrawn by the European Commission in 2005. After public protest against this decision, both the EESC in 2006 and the EP in 2011 pushed for the adoption of a European statute for associations. The withdrawal in 2015 of the proposed European Foundation statute led the EC to maintain that the endorsement of such an initiative by the Council seemed unlikely at that time. The EESC has revisited this point, once again calling upon the Commission to take actions in this regard.

[84] The European Commission officially withdrew the proposal for a European Foundation statute in 2015 after eight MSs (Austria, Denmark, Estonia, Germany, the Netherlands, Portugal, Slovakia and the UK) rejected it.

[85] The first proposal was officially withdrawn in 2006. Activities on the subject resumed in 2010. Two studies on mutuals were then commissioned. The European Commission launched a public consultation in 2013. Since then, there has been no news on the EC website. AMICE – the association of mutual insurers and insurance cooperatives in Europe – refers on its website to a draft regulation sent to inter-services consultation in April 2014.

[86] Cf. Fici (2021).

This European label would have been optional and available only to private organizations that, regardless of the legal form of incorporation (an association, a foundation, a mutual society, a company, etc.), satisfied common minimum requirements to be defined by the EU Directive itself.

The label would have been effective in all MSs. Therefore, any organization using the label would have been automatically recognized as a European non-profit organization in all MSs and would have enjoyed, in each MS, the same legal treatment (as regards benefits, rights and obligations) as national organizations holding the same legal status. Non-discrimination would also have concerned taxation, in the sense that an organization bearing the European label would have been entitled, in a country other than the country of incorporation, to the same tax benefits as national organizations holding the label.

With regard to the European status or label to be introduced, the 2021 study suggested the introduction of a PBO legal status or even of a broader "European Third Sector (or Social Economy) Organization" legal status, available to private organizations that, regardless of their legal form of incorporation, exclusively pursued public benefit purposes, operated under an "asset-lock" regime (capital remuneration is allowed only to a limited extent), even at the time of their dissolution, were subject to specific governance and transparency obligations, were registered in a specific register, and were subject to public control to check compliance with the qualification requirements.

More precisely, the recommendations contained in the 2021 study by this author were the following:

1) An EU legal statute for non-profit organizations should be introduced.
2) This EU statute, to be introduced by an EU directive based on art. 50 TFEU, should establish a new legal status or label, that of "European Third Sector (or Social Economy) Organization".
3) The EU statute should identify the requirements for the acquisition and maintenance of this European status/label in accordance with those employed by national legislation. In particular, the status should only be made available to:
    a. Private organizations which, regardless of the legal form of incorporation,
    b. exclusively pursue public benefit purposes,
    c. operate under an "asset-lock" regime (capital remuneration is allowed only to a limited extent), even at the time of their dissolution,
    d. are subject to specific governance and transparency obligations,
    e. are registered in a specific register, and
    f. are subject to public control to verify their compliance with the qualification requirements.
4) This EU directive should provide for the obligation for all Member States to introduce this European status and to grant all organizations holding the status the same treatment, also under tax law, regardless of their country of incorporation (and without the need to check comparability).
5) The EU directive might authorize Member States to identify, in transposing the directive, more stringent or additional requirements for the qualification.
6) The EU directive should establish common guidelines that all Member States should follow when exercising control over the national organization holding the European status.

As we shall soon observe, the recommendations contained in the 2021 study were not followed to the letter by the EP, but paved the way for subsequent initiatives by the EU institutions in this field and influenced their orientations.

4.3. The 2022 EP resolution on European Cross-Border Associations and Non-Profit Organizations

Based on the results of the study commissioned in 2021, the EP issued a resolution in February 2022, calling on the Commission to introduce a European statute on non-profit organizations[87].

More precisely, the EP requested the EC to submit two proposals: a proposal, based on art. 352 TFEU, for a Regulation establishing a statute for a European Association, and a proposal, based on art. 114 TFEU, for a Directive on common minimum standards for non-profit organizations in the Union. For both acts, the EP prepared a basic text to be used by the EC as a guideline.

In doing so, the EP did not follow the final recommendations contained in the 2021 study described in the previous section. However, the topic of public benefit organizations was taken into specific consideration in the EP resolution of 2022. Indeed, in the resolution, the EP, after recognizing that "different approaches exist in legislation at national level and in the Member States' legal traditions … to defining, recognising and granting public benefit status", called on the Commission "to recognise and promote the public benefit activities of non-profit organisations by harmonising the public benefit status within the Union" and "to consider adopting a proposal to facilitate the mutual recognition of public benefit tax-exempt organisations, including philanthropic organisations, in every Member State, if recognised as public benefit tax-exempt in one of the Member States for tax purposes".

Accordingly, the EP included in both texts a section on public benefit status (see art. 20 of the proposed Regulation and art. 14 of the proposed Directive), which offered a definition of the status and established the principle of non-discrimination, as shown in the box below.

Box 1: The Public Benefit Status in the EP's Resolution of February 2022

Cumulative requirements for the public benefit status:

- the purpose and activities pursue a public benefit objective which serves the welfare of society or of part of it, and is thus beneficial for the public good, except where that purpose and those activities are systematically and directly aimed at benefitting the structures of a specific political party. 'Public benefit' means an improvement in the welfare of society or part of it, thus benefiting the general interest of society (art. 2(d))

- the following purposes are considered to be oriented towards a public benefit objective:

(i) arts, culture or historical preservation;
(ii) environmental protection and climate change;
(iii) the promotion and protection of fundamental rights and Union values, including democracy, the rule of law, and the elimination of any discrimination based on gender, race, ethnicity, religion, disability, sexual orientation or any other grounds;
(iv) social justice, social inclusion and poverty prevention or relief;
(v) humanitarian assistance and humanitarian aid, including disaster relief;
(vi) development aid and development cooperation;
(vii) protection of, assistance to and support for vulnerable sections of the population, including children, the elderly, people with disabilities, persons seeking or benefitting from international protection and people in a situation of homelessness;

[87] Cf. European Parliament resolution of 17 February 2022 with recommendations to the Commission on a statute for European cross-border associations and non-profit organisations (2020/2026(INL)), available at https://www.europarl.europa.eu/doceo/document/TA-9-2022-0044_EN.html.

(viii) protection of animals;
(ix) science, research and innovation;
(x) education and training and youth involvement;
(xi) the promotion and protection of health and well-being, including the provision of medical care;
(xii) consumer protection; and
(xiii) amateur sports and their promotion.

- any surplus must be used solely to promote the association's public benefit objectives

- in the event of dissolution, it is to be ensured that assets continue to serve public benefit objectives

- the members of the governing structures are not eligible for remuneration beyond adequate expense allowances

Member States shall treat a European Association that is granted public benefit status in the same manner as legal entities that have been granted a corresponding status under their jurisdiction.

Notwithstanding this specific request, no traces of the public benefit status are found in the subsequent legislative proposal elaborated by the EC to comply with the EP resolution, as will be pointed out in the next section of this study.

4.4. The 2023 EC proposal on European Cross-Border Associations

As previously stated, following the EP resolution of February 2022, the debate about the introduction of a European statute for associations and NPOs has re-started. The new political climate, of which the Commission's "Action Plan on the Social Economy" of 2021 is a clear manifestation, might on this occasion yield a different result. This would put NPOs on an equal footing with companies (and cooperatives) and finally terminate an unreasonable disparity of treatment which has lasted for several years, to the benefit of both the European internal market (also because NPOs undertaking commercial activities, due to their non-profit orientation, may solve several market failures[88]) and European civil society at large (which may find in NPOs the legal forms suitable for carrying-out activities of general interest).

Indeed – "sharing the need to create an enabling environment for the non-profit sector, out of which associations are the most present legal form" and "with the aim of facilitating the effective exercise of freedom of movement of non-profit associations operating in the internal market"[89] – the EC has recently launched a proposal for a directive on European Cross-Border Associations (ECBAs)[90]. To be precise, the legislative proposal was officially presented on 5 September 2023, namely, more than a year and a half after the EP had requested the Commission to address the issue and just before the end of the current EP's legislature[91].

The proposal is based on the assumption that "non-profit associations need a predictable legal framework that allows them to seamlessly conduct their activities, including when conducting them

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88 Reference must be made here to the work of Professor Henry Hansmann, beginning with Hansmann (1980).

89 Explanatory Memorandum, p. 1.

90 COM(2023) 516 final, available with accompanying documents at https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13538-Single-market-proposal-for-a-legislative-initiative-on-cross-border-activities-of-associations_en.

91 On the costs of delaying European legislative initiatives, cf. the chapter by Jones, Dohler and Pate, entitled "Better Regulation in the EU: Improving Quality and Reducing Delays", in Jones *et al* (2023), p. 5 ff.

across borders in the internal market". This is a condition for associations to unleash their full potential and have a greater positive impact on ensuring social fairness and prosperity for EU citizens[92]. The EC goes on to explain that the national legislation regarding associations is diverse across MSs, which is a serious obstacle for the cross-border activity of associations. Moreover, neither at the national level, nor at the Union level, are there dedicated rules providing conditions for associations to operate cross-border in the internal market. Therefore, "the proposal aims at addressing the restrictions to the exercise of internal market freedoms non-profit associations face and enabling them to carry out operations anywhere in the EU, via the new form of European cross-border association"[93].

The EC explains that the proposal is included in the 2023 Commission Work Programme as part of the Social Economy framework under the Commission's headline ambition of "An economy that works for people", and that in this sense it interlinks with measures announced in the Social Economy Action Plan and forms together with them the "Social Economy framework", which already includes the proposal of June 2023 for a Council Recommendation on "developing social economy framework conditions in the Member States", which promotes an enabling environment for social economy entities, including associations[94].

The proposal wishes to create a specialized national legal form of association, specifically designed for cross-border activities. This new type of association would be an additional type in the legislation of every MS. Although formally creatures of national law, ECBAs will have some traits in common regardless of the country of incorporation, because in implementing the Directive, MSs shall have to follow some prescriptions found in the same Directive. Although not fully harmonized, national laws regarding ECBAs will therefore be significantly approximated.

The proposal is based on articles 50 and 114 TFEU, thus showing its focus on enhancing the freedom of establishment of associations, as well as their capacity to perform economic activities in the internal market, by providing goods, rendering services and receiving capital without any restriction. This is the usual legal basis of European company law, by which the EC itself declares that it has been inspired ("the proposal follows partially some solutions adopted in the context of EU rules on company law and on services in the internal market"[95]).

The main contents of the proposal are the following:

- by implementing the Directive, each MS shall have to introduce in its legal system a new legal form of association, the ECBA, which after the Directive's implementation, will be therefore found in any national jurisdiction of the EU;

- in implementing the Directive, each MS shall ensure that ECBAs:

i) be membership-based legal entities, established by three or more natural persons (Union citizens or legally resident in the EU) and/or legal entities with a non-profit purpose (legally established in the Union)[96];

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92 Explanatory Memorandum, p. 1.

93 Explanatory Memorandum, p. 3.

94 Explanatory Memorandum, p. 2 f.

95 Explanatory Memorandum, p. 3.

96 Trade unions, political parties, religious entities and associations of such entities are barred from establishing an ECBA: see art. 3(1)(a), of the proposed Directive. The reasons for this prohibition cannot be understood. Probably, the EC has misunderstood the recommendations formulated by the EP in the resolution of February 2022, which were in the sense to prevent the proposed legal instruments from having a direct impact on churches and religious organizations (see para. 17 of said recommendation, as well as recital 13 of the proposed regulation and recital 21 of the proposed directive), but not from excluding religious entities from using the European legal form. Indeed, in the EP's resolution it is underlined that "this does not preclude organisations whose values and aims are informed by a religious, philosophical or non-

ii) have founders with links to at least two MSs, either based on citizenship or legal residence in the case of natural persons, or based on the location of their registered office in the case of legal entities;
iii) carry out activities in at least two MSs;
iv) have a non-profit purpose, meaning that they may not distribute any profit to their members (but are obliged to reinvest it in the pursuit of their objectives);
v) have the acronym "ECBA" in their name;
vi) have the registered office in the Union;
vii) acquire legal personality and full legal capacity upon registration;
viii) define in their statutes some essential aspects (such as name, address of the registered office, rights and obligations of the members, etc.);
ix) have a decision-making body, in which each member has one vote, and an executive body, of which only natural persons that are Union citizens or legally resident in the Union and legal entities with a non-profit purpose established in the Union, through their representatives, may be members;
x) be registered in a specific register held by a designated national authority, following an application that may be submitted on-line and through a procedure that may not last more than 30 days; upon registration they receive the "ECBA certificate", issued by the national authority of registration on the basis of a template established by the EC;
xi) might be established by conversion of a national association;

- an ECBA will be governed first of all by the national rules adopted in the transposition of the Directive and additionally by the national rules applicable to the most similar non-profit association in national law;

- MSs shall recognize the legal personality and legal capacity of ECBAs registered in another MS, without requiring any further registration;

- MSs shall ensure that in any aspect of their operations, ECBAs are not treated less favorably than non-profit associations in national law.

ECBAs are equipped with full mobility across the EU (with some exceptions, e.g., when insolvency is pending). In fact, the right to transfer their registered office from one MS to another shall be ensured by MSs, without this implying dissolution, creation of a new legal person or a modification of the assets and liabilities (art. 22). The Directive will regulate the procedure for the transfer of the registered office (art. 23).

The Commission's proposal, therefore, seeks to solve the issues raised by the absence of national regulations on the cross-border conversion of associations, which prevents the mobility of associations within the EU. It does so not by harmonizing these national regulations, but by introducing a new legal form with the capacity to freely transfer its registered office. Therefore, EU citizens and organizations will have the possibility to establish an ECBA, rather than an "ordinary" association, in order to take advantage of the possibility to change the registered office and the applicable national law. The ECBA will also permit an existing association to go abroad: it can do so after being converted into an ECBA.
With regard to the specific object of this Study, it must be observed that the EC's proposal does not address public benefit associations or associations holding public benefit status. The proposal completely ignores this subject. And this notwithstanding the fact that the EP – as previously mentioned – specifically called on the Commission to also harmonize the public benefit status within

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confessional belief, such as faith-based, charitable non-profit organisations, from benefitting from the scope of those proposed instruments" (para. 17). Thus, putting together for the same purposes religious entities and "persons who have been convicted of offences of money laundering, associated predicate offences, or terrorist financing" does not make sense.

the Union and "to consider adopting a proposal to facilitate the mutual recognition of public benefit tax-exempt organizations, including philanthropic organizations, in every Member State, if recognized as public benefit tax-exempt in one of the Member States for tax purposes". Moreover, the public benefit status for associations was specifically dealt with in the proposals for EU statutes advanced by the EP (precisely, in art. 20 of the proposed Council Regulation on the European Association and in art. 14 of the proposed Directive on common minimum standards for NPOs).

Therefore, notwithstanding the enormous importance for the entire non-profit sector, notably associations, of the proposed Directive on the ECBA, the absence of rules on the public benefit status leaves relevant questions unsolved.

First of all, in its current draft, the proposed Directive would not have any effect with regard to the issue of the mutual recognition of PBOs, leaving the matter regulated by the uncertain "comparability test" based on the CJEU's jurisprudence as freely and divergently applied (or at times even not applied) by each MS. This means, for example, that a German PBO should continue to demonstrate that it is comparable to a Polish PBO to take advantage of the tax benefits that Polish PBOs receive under their own national law. Or that a German donor, in order to obtain tax benefits for a donation to a Portuguese PBO, should continue to demonstrate that a Portuguese PBO is comparable to a German PBO.

Secondly, whilst the proposed Directive would certainly promote a de facto approximation of national association laws, in contrast it would not favor the approximation of the national regulations on the public benefit status.

Thirdly, by only addressing cross-border associations, the proposed Directive would not solve the issue of the mobility of PBOs.

Finally, provided that an ECBA is be able to hold the public benefit status (in light of the equal treatment principle laid down in art. 9 of the proposed Directive), and that a "public benefit ECBA" might therefore be established, it is not certain that this ECBA might really exercise its freedom of establishment within the EU. In fact, as previously mentioned, the legislation on the public benefit status usually reconnects the obligation to devolve the accumulated assets to the loss of the status or removal from the relevant national register. If this latter rule is deemed applicable to an ECBA that transfers its registered office abroad[97], the mobility of a "public benefit ECBA" would be conditional upon the maintenance of the public benefit status in the country of destination and the further demonstration that this status is "comparable" to the public benefit status held in the country of departure. But since the national public benefit statuses are neither harmonized nor approximated, this "comparability test" (whose contents and procedures are not harmonized) would be problematic as is the case when it has to be performed for tax reasons[98].

If the above holds true, the proposed Directive on the ECBA would not have a positive impact on the freedom of movement and operation of public benefit associations in the EU.

[97] In Estonia, for example, upon dissolution of a PBO, its residual assets must be transferred to another organization entered in the list or a comparable organization established in another MS of the EEA. Although the provision is very interesting, it remains problematic the demonstration of the "comparable" nature of the foreign organization.

[98] A more general issue is that of the legitimacy of the national rules that provide for an asset lock with regard to articles 49 and 54 TFEU. On this point, cf., from the main point of view of company law, Möslein, Sanders (forthcoming).

4.5. The EU legal principle of non-discrimination of PBOs under tax law and the issue of its implementation by MSs

In the absence of EU secondary legislation on NPOs, the CJEU has played a significant role in their favour. The European Court has elaborated a non-discrimination principle under tax law, which may be usefully employed when equal treatment of NPOs relative to companies and cooperatives is more generally under discussion. More precisely, the CJEU has ruled that foreign PBOs[99] may not be discriminated against in favour of national PBOs to which the former are "comparable"[100]. This includes not only the direct taxation of PBOs, but also the tax treatment of a third party's act of which they might indirectly benefit. For example, donations to foreign PBOs must be granted, in a given jurisdiction, the same tax privileges as donations to national PBOs to the extent that the foreign PBOs are "comparable" to national PBOs.

This jurisprudence and the principle of non-discrimination of PBOs under tax law have been the focus of a recent staff working document of the EC accompanying the proposal for a recommendation on developing social economy framework conditions[101]. In this document, the Commission – moving from the consideration that MSs "are free to design their tax systems as they see fit" but they must comply with EU law, as interpreted by the Court, and that EU law has important implications for MSs when it comes to cross-border situations connected to the exercise of the four fundamental freedoms – explains that "While it is for each Member State to determine whether it will provide for a certain tax treatment for charitable organisations and charitable giving and, if so, what kind of general interests it wishes to promote by offering such tax treatment under national law, once a Member State decides to provide for an advantageous tax treatment for domestic charities and charitable giving, it should provide for non-discriminatory tax treatment of comparable foreign charities and donations and bequests made to such entities. This ensures that the tax autonomy of the Member States is exercised in accordance with the fundamental freedoms of the TFEU"[102].

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[99] On the distinction between PBOs and simple NPOs, cf. *supra* sect. 1.

[100] The list of relevant judgments includes at least the following:

- *Laboratoires Fournier* (C-39/04): Article 49 TEC precludes legislation of a Member State which restricts the benefit of a tax credit for research only to research carried out in that Member State.
- *Centro di musicologia Walter Stauffer* (C-386/04): Article 73b of the EC Treaty, in conjunction with Article 73d of the EC Treaty, must be interpreted as precluding a Member State which exempts from corporation tax rental income received in its territory by charitable foundations which, in principle, have unlimited tax liability if they are established in that Member State, from refusing to grant the same exemption in respect of similar income to a charitable foundation established under private law solely on the ground that, as it is established in another Member State, that foundation has only limited tax liability in its territory.
- *Hein Persche* (C-318/07): Where a taxpayer claims, in a Member State, the deduction for tax purposes of gifts to bodies established and recognised as charitable in another Member State, such gifts come within the compass of the provisions of the EC Treaty relating to the free movement of capital, even if they are made in kind in the form of everyday consumer goods. Article 56 TEC precludes legislation of a Member State by virtue of which, as regards gifts made to bodies recognised as having charitable status, the benefit of a deduction for tax purposes is allowed only in respect of gifts made to bodies established in that Member State, without any possibility for the taxpayer to show that a gift made to a body established in another Member State satisfies the requirements imposed by that legislation for the grant of such a benefit.
- *Missionswerk* (C-25/10) Article 63 TFEU precludes legislation of a Member State which reserves application of succession duties at the reduced rate to non-profit-making bodies which have their centre of operations in that Member State or in the Member State in which, at the time of death, the deceased actually resided or had his place of work, or in which he had previously actually resided or had his place of work.
- *European Commission v Austria* (C-10/10): By authorising the deduction from tax of gifts to research and teaching institutions exclusively where those institutions are established in Austria, the Republic of Austria has failed to fulfil its obligations under Article 56 TEC.

[101] Cf. European Commission (2023c).

[102] Cf. European Commission (2023c), p. 2 f.

Box 2: General EU legal principles on the non-discrimination of PBOs under tax law (according to the EC) [103]

- MSs are free to decide and define whether they will provide for tax advantages for charitable organizations and charitable donations and, if they do, under which conditions and which charitable purposes they wish to promote
- However, when taking such a decision, the main principle is the principle of non-discrimination, i.e., MSs may not limit tax benefits to domestic charitable organizations or donations/bequests made to domestic entities, while excluding from such benefits comparable foreign charities or donations/bequests to comparable foreign charities
- There is no mutual recognition of foreign charities required under EU law, but only equal treatment or non-discrimination of comparable foreign charities
- The question arises as to what is a comparable foreign charity. There is no single answer to this question, as MSs are free to define the public benefit purpose and other requirements (as long as such requirements are non-discriminatory) that charities will have to meet; and the comparability test will naturally flow from such definitions. While comparability is an EU parameter, it is for each and every MS, i.e., its national administration and courts, to implement it in its laws and administrative practices
- Thus, in order to obtain tax benefits, foreign charities and their donors will need to prove that they meet the public benefit purpose and other requirements as defined in the domestic legislation of a MS. In other words, the burden of proof is on charities and their donors; and in case of charities operating on an EU-wide level, they might face 27 such comparability tests
- In this context, charities and their donors must be granted an opportunity to provide the relevant evidence regarding comparability of foreign charities for them to be able to claim the domestic tax treatment in a MS
- Finally, a MS must have a possibility to verify the submitted information, via the internal or external mutual assistance mechanisms applicable between MSs and between MSs and third countries. In the absence of such a possibility, which could be more likely in a EU-non-member country scenario, a MS is entitled to refuse to grant the tax benefit at issue

In the same document, the Commission explains that it has pursued a horizontal compliance assessment of Member States' national laws in view of the legal principles set by the Court. Since 2005, the Commission has opened 39 infringement proceedings against Member States under Article 258 TFEU which mirror the case-law mentioned above. The majority of the cases dealt with the refusal to grant personal or corporate income tax relief for donations to charities established in other Member States (the *Persche* type infringement). The second group of cases concerned the presence of higher succession or gift duties for legacies and gifts to charities in other Member States (the *Missionswerk* type infringement). The third group of cases concerned instances of higher taxation of income of non-resident charities (the *Stauffer* type infringement). Most of those discriminatory tax rules were resolved by Member States. Three infringement cases were eventually referred to the Court. This concerns the

[103] Cf. European Commission (2023c), p. 8.

following cases: *Commission v Austria* (C-10/10)10, *Commission v France* (C-485/14)11 and *Commission v Greece* (C-98/16)12.

Yet, in the Commission's working document, the state of the art regarding the national rules on the recognition of foreign PBOs after the CJEU's rulings is not described.

Indeed, whilst it is true that several MSs have amended their laws on PBOs (or more specifically, their regulations of tax-privileged donations to PBOs) to take the principle of non-discrimination into specific consideration, however not all MSs have already done it. Moreover, in some countries that have formally adapted their national laws to the CJEU's rulings, the situation is substantially remained unvaried, due to severe difficulties in appyling the "comparability test".

In the majority of countries, national laws in principle allow taxpayers to make tax-privileged donations to foreign entities, provided that they are "comparable" to the national entities that may benefit from these donations according to national law. But, as stated, exceptions exist. In Cyprus, for example, only entities with the registered office in the territory of the country can be approved as philanthropic institutions and thus benefit from tax deductions in art. 9.1 (f) of Law no. 118(I)/2002. In Romania, only Romanian PBOs can benefit from tax-privileged donations. In Greece, donations to foreign PBOs are less beneficial for the taxpayer than donations to national PBOs, which in any event is a sort of discrimination. Italian law does not contain any explicit provision about the possibility for a foreign "comparable" organization to enjoy the opportunities granted to national TSOs. Moreover, the Italian tax revenue authority has recently stated (in its "reply" no. 406/2021) that, for this to happen, a foreign organization must be registered in the RUNTS, which is a way to overcome the comparability test, given that, to register in the RUNTS, the foreign legal entity should transfer its registered seat to Italy and thus become an Italian organization.

In general, proof and relevant documents for the comparability test must be provided by the taxpayer (or the organization) interested in enjoying the beneficial regime, and there is no clear and transparent regulation concerning how (in terms of both procedures and criteria) the comparability test has to be conducted by the competent national authority.

In Belgium, for example, to obtain tax-privileges for donations to organizations of another MS of the EEA, the taxpayer must make available to the administration proof that the foreign organization is comparable to, and is accredited in a similar manner as a Belgian eligible organization. In Bulgaria, the donor must deposit an official statement, translated into Bulgarian, from the foreign competent authority which certifies the status of the foreign organization. In Latvia, for benefits to apply, the taxpayer must submit to the State Revenue Service documents confirming that the foreign status is equivalent to the national status, the recipient entity operates in certain fields of public interest and at least 75% of the donated amount is used by the recipient organization for the purposes of public benefit.

In the case in which (e.g., in Denmark and Finland) national law requires prior approval of the national organizations to be eligible for tax-privileged donations, prior approval of the comparable foreign organizations by the foreign MS is also requested.

Some national jurisdictions explicitly stipulate that comparable foreign organizations may acquire the status by registering with the competent national authority (e.g., the ANBI status in the Netherlands) or may be approved by the national tax authority in order to become recipient of tax-privileged donations (as happens, e.g., in France and Sweden). In these cases, burden of proof is upon the organization, which once registered or approved, may enjoy this treatment on a permanent basis. In France, if the foreign organization has not been previously approved, the taxpayer may however submit to the tax authority evidence of the existence of the requirements for approval.

In Austria, foreign associations may obtain the Austrian Donation Certificate, but it is evaluated whether the association ensures that a process safeguards the reduction of the risk of money laundering and terrorist financing through appropriate measures as far as possible. This may entail being included in the list of donation privileged recipients.

In Germany, tax benefits are awarded also in case of donations to comparable foreign organizations, provided that proof is given by the taxpayer to the tax office that the recipient foreign organization holds the necessary requirements[104]. The comparability test is conducted on a case-by-case basis, but since 2024 foreign organizations will be entitled to register in the register of beneficiary organizations thereby receiving tax-privileged donations on a permanent basis.

The above seems to suffice to demonstrate that the principle of non-discrimination of foreign PBOs compared to national PBOs has yet to become effective or be effectively implemented by MSs. Not only are there national laws that must still comply with this principle of EU law, but there also are national laws that, by placing the burden of proof of comparability on the taxpayer, substantially hinder equal treatment between national and foreign PBOs. On the other hand, in some national jurisdictions, the possibility for foreign PBOs to demonstrate their comparability to national PBOs and thus acquire the PBO status and/or register in lists of potential beneficiary organizations in foreign MSs, is a legislative trend to be welcomed with favor. However, there remains a lack of transparency on procedures and criteria for the comparability test, as well as differences in regulations and administrative practices between MSs, which represent concrete obstacles to the equal treatment of PBOs under tax law, with negative effects on PBOs' fundamental rights (to freely provide services and freely move across the EU).

4.6. From social enterprises to social economy organizations: the recent proposed recommendation on "developing social economy framework conditions"

Only since the crisis of 2008, when complements to the "Welfare State" needed to be identified, has the interest of EU institutions in "alternative" models of enterprise, not based on profit maximization, but on other values, increased. Social enterprises thus became the focus of specific EU documents and policies, beginning with the European Commission's Communication no. 682 of 25 October 2011 entitled "Social Business Initiative Creating a favourable climate for social enterprises, key stakeholders in the social economy and innovation" (SBI)[105].

Based on the assumption that social enterprises generate several positive socio-economic effects, the SBI contemplated a series of key actions in their favour[106], some of them related to "improving the legal environment" for social enterprises. More precisely, key action no. 9 of the SBI included: launching a proposal for simplification of the existing regulation on the European Cooperative Society; making a proposal for the introduction of a European Foundation Statute; and conducting a study on the situation of mutual societies in all Member States[107].

None of those specific actions was eventually taken; however, by providing a definition of social enterprise, the Commission's Communication on the SBI has significantly promoted and influenced the

[104] For further details, cf. Bishoff, Helm (2023), p. 143 ff.

[105] https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0682:FIN:EN:PDF

[106] Cf. Haarich et al (2021).

[107] Curiously, no specific action on the regulation of social enterprises at the EU level was envisaged in the SBI. It is also curious that, in this regard, the SBI did not refer to associations and the European Statute thereof.

legislation on social enterprises in the EU Member States[108]. Following its publication, several MSs adopted specific laws on SEs in which the social enterprise was regulated according to the definition contained in the SBI.

In contrast, the decennial programme foreseen in the SBI has not led, at the Union level, to any change of the legal environment regarding social enterprises (apart from the regulations providing for funding measures), although the European Parliament – following the recommendations contained in a study for the JURI Committee written by this Author in the previous year[109] – in 2018 explicitly called for its introduction[110].

With specific regard to the legal and legislative aspects[111], apart from some specific provisions on social enterprises in EU public procurement law[112], positive effects were produced only at the national level, as many MSs, encouraged by the Commission's actions, adopted specific laws on social enterprises. Inspired by the concept of social enterprise found in the SBI, these national laws conceived of "social enterprise" as a legal status open to entities established in different legal forms and meeting the necessary requirements for qualification. This model of legislation has spread over Europe and offers many potential benefits, as highlighted in other studies of this author[113].

After ten years of work on social enterprise, the focus has now shifted to the social economy, which represents, at the Union level, the most recent theoretical development and the new frontier of the EU institutions' actions in the area of our interest[114].

In December 2021, the European Commission launched a new decennial programme, which this time does not directly address social enterprises, but instead the "social economy". The "Action Plan on the Social Economy" has a larger scope and a more comprehensive and ambitious objective than the SBI, because it aims to build a different economy that works for people. After having highlighted the benefits of the social economy (in terms of quality job creation, contribution to the green and digital transitions, complementing welfare state systems, implementing the United Nations' Sustainable Development Goals at the Union and global levels, etc.), the Communication identifies its addressees, namely the "social economy entities". The influence of the existing national legislation on social economy is evident[115]. According to the Commission, SEOs share some common principles and features, which are:

- "the primacy of people as well as social and/or environmental purpose over profit,
- the reinvestment of most of the profits and surpluses to carry out activities in the interest of members/users ('collective interest') or society at large ('general interest'),
- and democratic and/ or participatory governance".

The Commission goes on by explaining that "traditionally, the term social economy refers to four main types of entities providing goods and services to their members or society at large: cooperatives,

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[108] In fact, not only the definition per se, but also subsequent actions based on that, such as the mapping study on social enterprise in Europe, contributed to this result. Cf. European Commission (2020).

[109] Cf. Fici (2017).

[110] Cf. European Parliament resolution of 5 July 2018 with recommendations to the Commission on a Statute for social and solidarity-based enterprises, available at https://www.europarl.europa.eu/doceo/document/TA-8-2018-0317_EN.html.

[111] For a general overview on the impact of the SBI Communication, cf. European Commission (2020).

[112] Cf. recital no. 36 and articles 20 of Directive no. 2014/24/EU of the European Parliament and of the Council of 26 February 2014, on public procurement and repealing Directive 2004/18/EC.

[113] Cf. Fici (2017), Fici (2021), Fici (2022) and Fici (forthcoming/3).

[114] Admittedly, the subject of social economy was first put forward by the European Parliament in its Resolution of 19 February 2009.

[115] See, already, Liger *et al* (2016).

mutual benefit societies, associations (including charities), and foundations. They are private entities, independent of public authorities and with specific legal forms".

The Action Plan of 2021 aspires to create the right framework, including a legal one, for the social economy to thrive, to open up opportunities for social economy entities to develop, and to enhance recognition of the social economic and its potential. Many actions are foreseen to fulfil these general objectives.

One of this action is on the way to be taken. Indeed, in June 2023, the Commission adopted a proposal for a Recommendation on developing social economy framework conditions[116]. Adapting the national legal frameworks is considered by the Commission necessary to tap the potential of the social economy. With specific regard to the topic of this Study, the proposed Recommendation deals with the public benefit status and PBOs in its recital no. 21 and sections no. 18 on taxation and no. 22 on Union support.

In the proposal, the emphasis is put on the opportunity of a supportive taxation system for SEOs, and PBOs among them, with particular regard to tax incentives for donations, including cross-border donations. In this respect, it is recommended that administrative barriers to the recognition of foreing PBOs for taxation purposes be lowered by making easier and more transparent the national procedures for acquiring the public benefit status and the comparability test. On the other hand, there is no specific recommendation on improving the conditions for the mobility of PBOs across the EU.

Box 3: Public benefit status and PBOs in the proposed Council Recommendation on developing social economy framework conditions of June 2023

- Taxation policy can also have a significant role in fostering the social economy and ensuring that social economy entities can afford to operate alongside mainstream businesses, creating a more equitable business environment while contributing to social inclusion and improved access to employment. Few Member States have established a consistent taxation framework that encourages the development of the sector, including tax incentives tailored to the needs of the social economy, while recognising its diversity and preventing fragmentation. Setting well-designed tax incentives for donations to public-benefit social economy entities can stimulate their financing, also across Union borders in line with the Treaty principle of non-discrimination. Administrative barriers remain in several Member States regarding public-benefit donations across Member States borders, and a lack of transparency on the documents needed to qualify for public-benefit status. Issuing standardised forms of the recipient entity established in another Member State could lessen the administrative barriers. As a first step, Member States could provide translations of the national forms in the languages used by other Member States. As a second step, Member States could explore developing standard forms on direct tax for cross-border donations (recital no. 21).

- MSs are recommended to consider tax incentives for the sector, if not already granted, in line with their social policy objectives and the current practices across Member States and in accordance with Union law, which may include: income tax incentives in the form of deductions or tax credits granted to private and/or institutional donors or a designation scheme according to which taxpayers can indicate to their tax authority the set percentage of their income tax liability to be allocated to public-benefit entities (sect. no. 18, lit. b, *ii*); facilitate compliance on a practical level for public-benefit cross-border donations for

[116] COM(2023) 316 final, available with accompanying documents at https://ec.europa.eu/commission/presscorner/detail/en/ip_23_3188.

taxation purposes, for instance by issuing 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 (sect. no. 18, lit. d)

- The Council welcomes the Commission's intention to support implementation of this Recommendation by working together with Member States to develop enabling policy and regulatory frameworks for the social economy. In particular this includes: publishing analysis on the existing taxation frameworks for the social economy and on the tax treatment of cross-border public-benefit donations and on the principle of non-discrimination (sect. no. 22, lit. a, *ii*)

4.7. Options for further actions

The analysis conducted thus far has shown that the issues related to the European dimension of PBOs cannot be resolved through current EU law and the pending legislative proposals, unless substantial changes are made to them. The introduction of a specific EU statute on PBOs needs, therefore, to be carefully evaluated. To this end, we will present and discuss below five possible strategies that the EU institutions could consider if they wish to deal with this issue.

Option 1: No EU legal intervention

In the first scenario, no EU statute on the public benefit status is introduced. Maintaining the "status quo" implies that:

- the public benefit status continues to be regulated at the national law level only;
- no harmonization or approximation of the different national legal regimes on PBOs can take place;
- PBOs' fundamental freedom of establishment across the EU remains substantially constrained by the absence of specific rules on cross-border conversion, merger and division of organizations holding the public benefit status, explicit prohibitions and legal uncertainty[117]; nor would, as already observed, the proposed directive on ECBAs help solve this issue, because it concerns associations and not PBOs, and moreover does not address associations holding the public benefit status[118];
- a PBO's full capacity to provide services abroad[119], which requires equal treatment of national and foreign PBOs, continues to be dependent on the "comparability test" as regulated by national laws in a non-harmonized way; moreover, as stated, there are MSs in which the existing legislation does not even comply with the non-discrimination principle of foreign PBOs as has been elaborated by the CJEU.

In conclusion, for the abovementioned reasons, "option 1" would not solve any problem related to the cross-border dimension of PBOs and would not have any positive impact. The interests of PBOs and of European civil society, which benefits from PBOs' action in the general interest, would remain unmet.

Information campaigns on the non-discrimination principle would also have little impact. Documents, such as that recently published by the EC on the CJEU jurisprudence, do certainly raise awareness on the issue, but cannot compel MSs to change their legislation in order to allow a PBO's transfer of the seat abroad or make the comparability test more favorable to PBOs and their donors. Indeed, this option alone would be sufficient only if the existing status quo already allowed for a PBO's cross-border

[117] Cf. *supra* sect. 3.

[118] Cf. *supra* sect. 4.4.

[119] Indeed – as Lombardo (2013), p. 225 ff., correctly points out – the CJEU jurisprudence on the non-discrimination of foreign PBOs entails that PBOs may freely provide services in the EU for which they are "paid" or "funded" from abroad. These rulings, therefore, directly regard the free movement of capital, but also, implicitly, the free provision of services by PBOs.

activity and mobility, and therefore no new legal measures were needed, but only better knowledge of the existing legal framework.

Option 2: Council recommendation

By choosing this second option, whose legal basis is found in art. 292 TFEU[120], recommendations would be made to MSs to develop their national legal frameworks on PBOs in a certain way, with particular regard to cross-border aspects, such as the mobility of a national PBO and the recognition of a foreign PBO, notably for taxation purposes.

Rather than being placed in a separate act, such specific suggestions could be contained in the Recommendation "on developing social economy framework conditions" which the Council is about to approve, based on the proposal made by the EC in June 2023. In fact, as previously highlighted in this Study, the proposal already contains provisions on the public benefit status and PBOs, which might be further improved and developed to take other aspects into consideration, notably PBOs' mobility across the EU.

However, a Recommendation has no binding force (art. 288(5) TFEU). Therefore, the problem-solving capacity of this option depends on the extent to which it will be voluntarily followed and implemented by MSs.

If the public benefit status is important for the Union and has a European relevance that goes beyond the national interests, although a recommendation to MSs would represent a significant further step, it would still not be a satisfactory option, so that other, more incisive routes, should be followed.

Option 3: Harmonization directives

The approximation of the national laws on the public benefit status, through a directive based on articles 50(2)(g)[121] and 114(1)[122] TFEU, would certainly make comparison between PBOs from different countries easier. However, this strategy would interfere with the competences of MSs in the area of taxation. Indeed, such a directive should inevitably deal with the requirements for the acquisition of the public benefit status and would consequently make the national tax regime of PBOs dependent on choices made at the Union level, rather than at the national level. Notwithstanding the existing similarities in the national regulation of PBOs, each national law has its own specificities which would make a directive aimed at trying to harmonize the national public benefit statuses a barely feasible strategy, also because the option might appear disproportionate to the aims pursued by EU law. Moreover, this type of directive would not, on its own, solve the issue of the freedom of establishment of PBOs in the EU.

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[120] According to which, "The Council shall adopt recommendations. It shall act on a proposal from the Commission in all cases where the Treaties provide that it shall adopt acts on a proposal from the Commission. It shall act unanimously in those areas in which unanimity is required for the adoption of a Union act".

[121] (1) In order to attain freedom of establishment as regards a particular activity, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee, shall act by means of directives.

(2) The European Parliament, the Council and the Commission shall carry out the duties devolving upon them under the preceding provisions, in particular:

(g) by coordinating to the necessary extent the safeguards which, for the protection of the interests of members and others, are required by Member States of companies or firms within the meaning of the second paragraph of Article 54 with a view to making such safeguards equivalent throughout the Union.

[122] Save where otherwise provided in the Treaties, the following provisions shall apply for the achievement of the objectives set out in Article 26. The European Parliament and the Council shall, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee, adopt the measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market.

A more pragmatic and proportionate option could be that of a directive that only harmonizes the procedures for comparison between PBOs from different countries, possibly on the basis of good practices already existing in some EU countries. This directive could additionally obligate MSs to provide a harmonized way to inform people and organizations about the comparability test and the manner in which it is to be requested by taxpayers and/or beneficiary organizations and is conducted by the competent national authorities. The directive could also obligate MSs to form lists of foreign PBOs that are "approved" (in other words have been determined to be "comparable") on a permanent basis (as already happens in some countries). The directive could further simplify the comparability test by providing as an annex a non-binding list of equivalent public benefit statuses (with the respective national laws) in the EU countries (e.g., Italian TSOs according to Legislative decree no. 117/2017, Irish charities according to the Charities Act 2009, German PBOs according to sect. 51 ff. of the German Tax Code, etc.). Since this directive would be limited to facilitating the process of mutual recognition of PBOs[123], it could encounter less resistance from MSs. On the other hand, given that it would neither touch the substance of the public benefit status (and therefore the right of MSs to select the types of organizations to promote), nor the substance of the evaluation regarding the comparability of foreign PBOs, it might only have a limited impact. In any event, even this type of directive would not solve the issue of the freedom of establishment of PBOs in the EU.

If mutual recognition of the public benefit status is the objective to pursue (rather than harmonization of the national public benefit statuses per se), a directive that ex ante stipulates which PBOs in all MSs can be considered comparable for taxation purposes would obviously be more effective. Given that, in virtue of the non-discrimination principle of foreign PBOs, MSs are obligated to award foreign PBOs that are comparable to domestic ones the same tax benefits as domestic PBOs, this directive would not directly interfere with the competences of MSs in the matter of taxation, since it would only implement the EU legal principle of non-discrimination. In an indirect manner, however, this directive would have implications for MSs on the matter of taxation, because MSs would be deprived of the discretionary power to establish, for taxation purposes, which foreign PBOs are comparable to national PBOs (e.g., if the directive establishes that Irish charities are comparable to Italian TSOs, the Italian government

[123] Originally elaborated by the CJEU (the birth of the principle is usually associated to the *Cassis de Dijon* judgement C 120/78 of 11 July 1979) as a way to achieve the free movement of goods in the absence of harmonization of national laws. It subsequently expanded to other areas of integration, to overcome the inevitable obstacles deriving from the inevitable diversity of national laws. Mutual recognition is an alternative to harmonization (although, as we shall see, it may operate together with harmonizing measures). It is a tool for the achievement of the internal market when legislative diversity impedes that. Indeed, what is mutually recognized (e.g., certificates, judgments, diplomas, etc.) may freely "circulate" within the EU despite the absence of common rules (or rather, allows free circulation of goods, services, workers, based on it). The beneficiaries of the principle are therefore exonerated from complying with two different national regulatory frameworks. The principle is based on the assumption that MSs share equivalent regulatory objectives notwithstanding the differences in the specific regulation of a certain subject matter. Therefore, "what is good for a MS (the State of origin) should in principle also be good for another MS (the State of destination)", unless there are appropriate and proportionate public interest reasons that justify a contrary evaluation by the State of destination. Cf. Janssens (2013), p. 5: "the principle of mutual recognition requires that, notwithstanding differences between the various national rules that apply throughout the EU, objects, activities or decisions that are lawful in accordance with a Member State's legal framework must be accepted as equivalent to objects, activities or decisions carried out by one's own state, and must be allowed to take effect in one's own sphere of legal influence (either by granting them access to the national territory, or by taking them into account in any subsequent decisions, or by executing them), unless one of the available grounds for non-recognition applies". In certain cases, the EU institutions have "supported" the principle of mutual recognition through secondary legislation providing common rules on the conditions and procedures for the comparison, as well as minimum requirements for mutual recognition. Mutual recognition can therefore be sided by EU harmonization rules. A good example is the directive in the field of recognition of professional qualifications (Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications). The CJEU's case-law on the non-discrimination of public-benefit organizations can be considered an application of the principle of mutual recognition with regard to a particular legal status or qualification (the public benefit status) available to non-profit organizations: cf. Janssens (2013), p. 21 f.

could not exclude the former from the tax treatment reserved for the latter). MSs may therefore be more reluctant to accept this option. Again, even this type of Directive would not have any effect on the issue of a PBO's mobility across the EU.

Indeed, the issue of cross-border mobility requires a specific EU directive that provides for, and regulates, the cross-border conversion, merger and division of PBOs. However, this directive could not have PBOs as its sole object, because, as stated, PBOs are organizations holding a status. In contrast, the topic of CMD concerns, first of all, the legal type of an entity's incorporation (associations, foundations, etc.) and the pertinent regulation. European institutions should therefore discuss the introduction of regulations on the cross-border conversion, merger and division of associations and foundations, which lack a dedicated legal regime in this regard. However, the European Commission has just recently chosen not to adopt a directive on the cross-border conversion of associations, but rather has adopted a directive recognizing a new type of association, the ECBA, equipped with full mobility across the EU (an ECBA can freely transfer its registered office from one MS to another). Therefore, the only option that may be suggested here in the short term is to introduce in the ECBA proposal the express possibility for an ECBA to acquire the public benefit status in accordance with the regulation of the country of registration. A public benefit ECBA could therefore transfer its seat abroad. Whilst this solution would clearly be significant, it still would not resolve the mobility issues of PBOs that do not have the form of an ECBA.

Option 4: Creating a European PBO status

Another possible option is the creation of an optional European public benefit status, built on the already existing common core of European PBO law.

By choosing this option, European organizations would have the possibility to obtain the European public benefit status rather than the national public benefit status. Being "European", this public benefit status would be automatically recognized by all MSs which, moreover, in virtue of the principle of non-discrimination, would be obligated to ensure that organizations holding the European status, regardless of their nationality, are granted the same tax treatment reserved for organizations holding the equivalent national status (e.g., an Italian association with the European public benefit status would obtain in Germany the same tax benefits as German associations with the national public benefit status). In addition, EU law might provide that the European public benefit status be maintained by organizations moving their registered office from one MS to another MS, unless this transfer of seat determines the loss of the requirements for qualification.

By choosing this option, EU law would not interfere with the legal regime of PBOs at the national level. EU law would only require that all organizations with the European status – namely, all "European Public Benefit Organizations" or "EPBOs" – be treated in the same way regardless of the country of incorporation (and in the same way as national organizations holding the equivalent national status). Hence, a MS which, for example, does not provide (and does not wish to provide) any tax benefits for donations to PBOs, would not be obliged to introduce such benefits.

The European legal status would be available to associations (and other types of organization) established under a certain national law and therefore presupposes the juridical existence of associations which may acquire this status. Therefore, EU law would not create a "new" or an "additional" European legal form of association. Associations would remain creatures of national law, regulated by the national law of incorporation. This implies that the matter of the cross-border conversion, merger and division of public benefit associations remains in the domain of national laws. What EU law might only stipulate is that the change of nationality of an organization holding the European public benefit status does not, per se, cause the loss of this status.

For the aforementioned reason, EPBOs would not have any particular capacity to move across borders (compared to organizations that do not have the status). The EPBO status would only facilitate their cross-border activity (also meant as capacity to receive donations from abroad). Therefore, this strategy has more to do with the fundamental freedoms of movement of capital and of goods and services, rather than the freedom of establishment. If full mobility of PBOs across the EU is to be ensured, additional legal instruments are needed.

The EU might implement this option either by a Regulation based on art. 352 TFEU or through a Directive, based on art. 50 TFEU (if the aspect of freedom of establishment is considered prevalent)[124] and/or on art. 114 TFEU (if the protection of other freedoms is considered prevalent)[125], which obligates MSs to introduce into their national legal systems a harmonized (and optional) European legal status for public-benefit organizations.

The first legal basis – art. 352 TFEU – raises concerns about unanimity among MSs, which may be difficult to achieve, although in this case the proposed regulation would be limited to the establishment of an EU legal status for public benefit organizations (rather than a new EU legal form).
The other legal basis – art. 50 and/or art. 114 TFEU – might raise an issue of legitimacy, related to the fact that the directive would be designed to oblige MSs to introduce into their national legal systems a legal status that is substantially European, in which case unanimity according to the procedure in art. 352 TFEU might be considered the only admissible legal basis[126]. Moreover, with particular regard to art. 114 TFEU, this legal basis may give rise to controversy, since creating a set of rules parallel to national law does not "harmonize" the national rules or replace them[127]. However, this is the route recently followed by the Commission in the proposal for a directive on ECBAs. The justification of the legal basis might therefore be rooted in the same arguments.

In conclusion, the main results of this option analysis are the following:

- option 1 is not to be recommended, because it cannot offer any solution to the two main cross-border issues related to the public benefit status, which are the mutual recognition of PBOs, mainly for taxation purposes, and the mobility of PBOs across borders;

- option 2 is the easier and more practicable option, also in the short term, due to the fact that there is a pending proposal on the framework conditions for the social economy which may be amended to take PBOs into greater consideration; however, since the recommendation is a non-binding legal instrument, the effectiveness of this option depends on the willingness of MSs to apply it;

- option 3 may be implemented in several ways; the way in which this option is implemented affects its complexity and degree of feasibility; a directive harmonizing the national public benefit statuses would be

[124] However, although art. 50 TFEU literary refers to freedom of establishment only, in practice it has been accepted that it may serve as a legal basis for any rule provided that it serves the realisation of any of the fundamental freedoms (not only freedom of establishment): cf. Mańko (2015), p. 9.

[125] More exactly, art. 114 TFEU, referring to "measures", allows not only directives but also regulations.

[126] The same criticism that the SUP proposal of 2014 attracted in the past. In its opinion on this proposal, the EESC wrote: "the choice of the legal basis (Article 50 TFEU) is unconvincing, and appears to be primary aimed at circumventing the requirement for unanimity in the Council and ensuing that this initiative does not fail as the European Private Company (SPE) has. The intention may be for SUPs to be formally enshrined in national law as an alternative company form, their essential characteristics are nonetheless clearly defined in supranational law. The legal basis should therefore be Article 352 TFEU". Cf. also Malberti (2015), p. 244, who argued: "it seems that the Commission's choice of legal basis was driven by the desire to take advantage of the ordinary legislative procedure and that the limited scope of the SUP Draft Directive was a consequence of this choice". See also CJEU, *European Parliament v Council of the European Union* (C-436/03) of 2 May 2006.

[127] The same criticism that, for example, the proposal for a Regulation on a Common European Sales Law (COM 2011/284 final) attracted in the past.

a disproportionate legal instrument and may be difficult for MSs to accept; in contrast, a directive harmonizing the national procedures for the recognition of comparable PBOs would be in line with the objectives of the EU legal intervention and might be more easily accepted by MSs; a directive establishing which PBOs of different national jurisdictions are equivalent would definitively resolve the issue of the mutual recognition of PBOs and their equal treatment for taxation purposes regardless of the country of incorporation; on the other hand, MSs might be reluctant to accept a directive that deprives them of the discretionary power to assess which foreign PBOs are comparable to domestic PBOs;

- option 4 would resolve the problem of the mutual recognition of PBOs in a different way than option 3; it would offer a legal status alternative to the equivalent national status, namely, a European public benefit status automatically recognized by every MS; this option may be implemented in two different ways; both of them raise the issue of the legal basis (of concrete feasibility in the case of a regulation according to art. 352 TFEU and of legitimacy in the case of a directive according to art. 50 and/or art. 114 TFEU);

- neither of the options considered above would, per se, resolve the issue of the mobility of PBOs across the EU, for which a specific EU directive on the cross-border conversion, merger and division of associations (and foundations), along the same lines as the existing directive on the cross-border conversion, merger and division of limited-liability companies (and cooperatives), would be necessary; unfortunately, the EC has recently preferred to treat this topic in a different way by introducing a new legal form of association, the ECBA; whilst hoping that a general solution (as happens for companies) can be found in EU law for the issue of the mobility of associations and foundations, what can be recommend in the short term is to at least include in the recent proposal for a directive on ECBAs, the express possibility for ECBAs to acquire the public benefit status in the country of registration.

5. CONCLUSIONS

This Study has shown that in all the national jurisdictions of the EU there are provisions instituting the public benefit status and the resulting category of PBOs.

In almost half of the MSs, the public benefit status is a general legal status provided for in ad hoc laws, which recognize, regulate and support PBOs. In many other MSs, the public benefit status is a general legal status provided for in tax law with the main objective to support PBOs. In a minority of MSs, a general legal status for PBOs does not exist, but a specific public benefit status for associations is found in the national law on associations.

Since the public benefit is a legal status, PBOs are not, technically speaking, a legal type or sub-type of entity. "Public benefit organization" is a legal qualification that entities established in a certain legal form (association, foundation, company, etc.) may decide to obtain and may even decide to lose, without this determining their extinction as legal entities. Therefore, public benefit law is a sort of second-degree law that applies to entities formed in accordance with their own substantial law (association law, foundation law, company law, etc.). From the point of view of associations, this means that not all associations are PBOs and not all PBOs are associations.

The legal denomination of the organizations holding the status varies depending on the country. Usually, these organizations are referred to by law as "public benefit organizations", but other formulas can also be found, such as "charitable organizations" and "third sector organizations".

Notwithstanding the variety of legislative models and legal denominations, the national regulations on public benefit status have several traits in common so that PBOs share a common identity regardless of the country of incorporation. This makes it possible to elaborate a common core of European PBO law to lay the foundations for an EU legal intervention in this field.

The public benefit status is an optional legal status that national laws make available to private law organizations which, regardless of their legal form (association, foundation, mutual society, company or cooperative, except those entities that are explicitly excluded by law, such as political parties, trade unions, etc.), meet the following legal requirements:

- the exclusive pursuit of a public benefit purpose and/or the performance of a public benefit activity, as identified by law;
- the use of assets for the exclusive pursuit of public benefit purposes ("asset-lock");
- the non-distribution of profits, neither directly nor indirectly (i.e., through operations that confer unreasonable and unjustifiable benefits on third parties to the detriment of a PBO's assets), to founders, members, shareholders, directors, etc., at any stage of the organization's life, including at its dissolution, in which case the residual assets shall be devolved for public benefit purposes.

Usually, PBOs are also subject by law to specific governance and transparency obligations with the aim of making their conduct consistent with their particular purpose of promoting trust and accountability and of facilitating the external control of PBOs.

PBOs are required to register on special registers or lists. Registration is possible only if the necessary legal requirements are met by the interested organizations and is necessary for them to acquire the legal status. Accordingly, PBOs lose their status upon their removal from the designated register or list on which they are registered. The loss of the status does not determine the termination of the legal personality, but the legal entity continues to exist as an ordinary association, foundation, etc., without the public benefit status. On the other hand, the loss of the status may be accompanied by the

obligation for the entity to devolve all or part of its assets in a disinterested manner (as happens in the case of its dissolution as a legal entity).

PBOs are subject to a specific form of public supervision to check compliance with the public benefit status regulation. The loss of the requirements for qualification as PBOs and/or the persistent violation of the applicable rules determine de-registration and loss of the status.

PBOs are recipients of specific support measures which are mainly, though not exclusively, of a tax nature. Among other things, PBOs may receive tax-privileged donations (in the form of either a deduction from the taxable base or a tax credit) and benefit from tax allocation or designation schemes.

All this makes PBOs different from simple NPOs, whose sole distinguishing trait is the ban on the non-distribution of profits (which, moreover, is sometimes a prohibition not regulated by national laws in such a sophisticated way as happens for PBOs). PBOs must also be distinguished from social enterprises (although social enterprises may also be PBOs) and social economy organizations (although PBOs may also be SEOs).

Not only MSs, but also European institutions, are increasingly devoting attention to this category of organizations.

The European Parliament has included specific provisions on the public benefit status in the two legislative proposals on EU associations and non-profit organizations contained in its Resolution of February 2022.

In June 2023, the European Commission published a staff working document on the non-discriminatory taxation of PBOs and another brief document on the public benefit status in September 2023 as an annex (no. 12) to the Impact Assessment Report accompanying the proposal for a directive on ECBAs. Both documents were linked to actions taken in the context of the Action Plan on the Social Economy of December 2021.

However, no specific provisions on the public benefit status are found in the recently proposed directive on the ECBA, notwithstanding the EP's request and the fact that the great majority of PBOs have the legal form of an association.

In contrast, PBOs are specifically considered in the recently adopted proposal for a Council Recommendation on the improvement of the Social Economy framework conditions, although only with respect to the issue of their non-discrimination for taxation purposes on the basis of nationality, whereas the aspect of their mobility across the EU is not specifically dealt with.

Indeed, it has also emerged from this Study that the great majority of MSs lack legal provisions on cross-border conversion, merger and division of associations, also as a result of the absence of EU legislation on this matter. This situation negatively affects the mobility of associations, particularly those that are public benefit, within the EU. In this regard, associations are unequally treated as compared to limited liability companies (and cooperatives), which enjoy ad hoc legislation. The recently proposed directive on the ECBA is meant to remedy this gap. However, since it does not address associations holding the public benefit status, but only associations, the proposed directive, as it currently stands, does not help solve the issues related to the effective exercise of a PBO's fundamental freedoms in the EU. Among these issues is the possibility for PBOs to receive tax-privileged donations from abroad, which in turn implies the possibility for a donor to enjoy national tax breaks for donations to foreign PBOs that are comparable to national PBOs. Whilst in principle (although with some exceptions) this possibility is granted by national laws to their taxpayers (in accordance with the jurisprudence of the CJEU), the absence of a common regulation both on the procedure and the criteria for assessing the comparability

and on the requirements of the public benefit status, make this possibility de facto less effective than it appears on paper.

In light of this, the introduction of a specific EU statute on PBOs should be carefully assessed by the EU institutions. To this end, this Study has presented and discussed (in section 4.7 above) some possible lines of action which the EU institutions could take into consideration in dealing with PBOs with a view to solving the main issues related to their European dimension.

REFERENCES

- Bishoff C., Helm T. (2023), *Philanthropy and Charitable Giving: Taxation of Public Benefit Organizations in Germany*, in *Betriebs-Berater*, no. 3, p. 138 ff.

- Brakman Reiser D. (forthcoming), *European Law of Third Sector Organizations from the US Standpoint*, in Fici A. (ed.), *The Law of Third Sector Organizations in Europe. Foundations, Trends and Prospects*, Springer, Cham

- Breen O.B. (2020), Ireland. Country Profile. In: Legal Environment for Philanthropy in Europe

- Breen O.B. (forthcoming), *Third Sector Organisations in Ireland: Assembling the Regulatory Jigsaw Pieces of an Evolving, if Fragmented, Sector*, in Fici A. (ed.), *The Law of Third Sector Organizations in Europe. Foundations, Trends and Prospects*, Springer, Cham

- Breen O.B., Smith P.A. (2019), *Law of Charities in Ireland*, Bloomsbury Professional, Dublin

- Capgemini Invent *et al* (2023), *Study Supporting an Impact Assessment on Cross-Border Activities of Associations. Final Report*, September

- Culot H., Defer J. (forthcoming), *The Third Sector in Belgium*, in Fici A. (ed.), *The Law of Third Sector Organizations in Europe. Foundations, Trends and Prospects*, Springer, Cham

- Dafne, EFC (2021), *Comparative Highlights of Foundation Laws*

- De Luca N. (2021), *European Company Law*, 2nd ed., Cambridge University Press, Cambridge

- European Commission (2020), *Impact of the European Commission's Social Business Initiative (SBI) and its Follow-up Actions. Final Report*, Brussels

- European Commission (2023a), *Comparative Legal Analysis of Merger Rules Concerning Associations in the EU. Final Report*, Brussels

- European Commission (2023b), *Relevant taxation frameworks for Social Economy Entities*, SWD(2023) 211 final of 13.6.2023

- European Commission (2023c), *Non-discriminatory taxation of charitable organisations and their donors: principles drawn from EU case-law*, SWD(2023) 212 final of 13.6.2023

- European Commission (2023d), *Impact Assessment Report*, SWD(2023) 293 final of 5.9.2023

- Fajardo-García G. (forthcoming), *Social Economy and Third Sector in Spanish Law. Convergences and divergences*, in Fici A. (ed.), *The Law of Third Sector Organizations in Europe. Foundations, Trends and Prospects*, Springer, Cham

- Fici A. (2017), *A European Statute for Social and Solidarity-Based Enterprise*, Study for the JURI Committee of the European Parliament, European Union, Brussels

- Fici A. (2020), *Social Enterprise Laws in Europe after the 2011 "Social Business Initiative". A Comparative Analysis from the Perspective of Worker and Social Cooperatives*, CECOP, Brussels

- Fici A. (2021), *A Statute for European Cross-Border Associations and Non-Profit Organizations. Potential Benefits in the Current Situation*, Study for the JURI Committee of the European Parliament, European Union, Brussels

- Fici A. (2022), *Social Enterprises and Social Cooperatives in the New Italian Legal Framework for Third Sector Organizations*, in Tadjudje W., Douvitsa I. (eds.), *Perspectives on Cooperative Law. Festschrifts in Honour of Professor Hagen Henry*, Springer, Singapore, p. 77 ff.

- Fici A. (2023), *Models and Trends of Social Enterprise Regulation in the European Union*, in Peter H. *et al* (eds.), *The International Handbook of Social Enterprise Law Benefit Corporations and Other Purpose-Driven Companies*, Springer, Cham, p. 153 ff.

- Fici A. (forthcoming/1), *The New Italian Code of the Third Sector. Essence and Principles of a Historic Legislative Reform*, in Fici A. (ed.), *The Law of Third Sector Organizations in Europe. Foundations, Trends and Prospects*, Springer, Cham

- Fici A. (forthcoming/2), *Third Sector Organizations in a European and Comparative Legal Perspective*, in Fici A. (ed.), *The Law of Third Sector Organizations in Europe. Foundations, Trends and Prospects*, Springer, Cham

- Fici A. (forthcoming/3), *Social Enterprise in EU Law and Policies*, in Brakman Reiser D., Dean S. and Lideikyte-Huber G. (eds.), *Social Enterprise Law. A Multijurisdictional Comparative Review*, Intersentia, Cambridge

- Fici A. (ed.) (forthcoming), *The Law of Third Sector Organizations in Europe. Foundations, Trends and Prospects*, Springer, Cham

- Hansmann H. (1980), *The Role of Nonprofit Enterprise*, in 89 Yale Law Journal 5, p. 835 ff.

- International Center for Not-for-profit Law (2019), *Nonprofit Law in Poland*

- International Center for Not-for-profit Law (2020), *Nonprofit Law in Ireland*

- International Center for Not-for-profit Law (2021), *Nonprofit Law in Hungary*

- International Center for Not-for-profit Law (2022), *Nonprofit Law in Germany*

- Janssens C. (2013), *The Principle of Mutual Recognition in EU Law*, OUP, Oxford

- Jones S. *et al* (2023), *Better Regulation in the EU*, Study for the JURI Committee of the European Parliament, European Union, Brussels

- Liger Q. *et al* (2016), *Social Economy*, Study for the IMCO Committee of the European Parliament, European Union, Brussels

- Lombardo S. (2013), *Some Reflections on Freedom of Establishment of Non-profit Entities in the European Union*, in *European Business Organization Law Review*, p. 225 ff.

- Magnier V. (2023), *Economie Sociale et Solidaire* in the Middle of the Ford, in Fici A. (ed.), *The Law of Third Sector Organizations in Europe. Foundations, Trends and Prospects*, Springer, Cham

- Malberti C. (2015), *The relationship between the Societas Unius Personae proposal and the acquis: Creeping Toward an Abrogation of EU Company Law?*, in 12 *European Company and Financial Law Review* 2
- Mańko R. (2015), *EU Competence in Private Law*, European Union, Brussels
- Meira D. (forthcoming), *The legal regime of the social economy sector in Portugal*, in Fici A. (ed.), *The Law of Third Sector Organizations in Europe. Foundations, Trends and Prospects*, Springer, Cham
- Moore D. *et al* (2007), A Comparative Overview of Public Benefit Status in Europe, in 11/1 *The International Journal of Not-For-Profit Law*
- Möslein F. (forthcoming), *Law in Transition: Reforming the Legal Framework of the Third Sector in Germany*, in Fici A. (ed.), *The Law of Third Sector Organizations in Europe. Foundations, Trends and Prospects*, Springer, Cham
- Möslein F., Sanders A. (forthcoming), *Corporate Asset Locks: A Comparative and European Perspective*
- O'Connor J.C., McGrath H. (2020), *Charitable organisations in Ireland: overview*
- OECD (2020), *Taxation and Philanthropy*, OECD Tax Policy Studies, No. 27, OECD Publishing, Paris
- Peter H., Lideikyte Huber G. (eds.) (2021), *The Routledge Handbook of Taxation and Philanthropy*, Routledge, London-New York
- Radwan A. *et al* (forthcoming); *Third Sector in the Third Republic: An Overview of the Law and Practice in Poland*, in Fici A. (ed.), *The Law of Third Sector Organizations in Europe. Foundations, Trends and Prospects*, Springer, Cham
- Richter A., Gollan A.K. (2020), *Charitable Organizations in Germany: Overview*
- Stanitzke A. (2020), *Germany. Country Profile*, in *Legal Environment for Philanthropy in Europe*
- Von Hippel T. (2010), *Nonprofit Organizations in Germany*, in Hopt K.J., von Hippel T. (eds.), *Comparative Corporate Governance of Non-Profit Organizations*, Cambridge University Press, Cambridge, p. 197 ff.
- Von Hippel T. (2017), *Legal Aspects of Civil Society Organizations and Their Relation with Government: Germany*, in van der Ploeg T.J. *et al* (eds.), *Civil Society in Europe. Minimum Norms and Optimum Conditions of its Regulation*, Cambridge University Press, Cambridge, p. 384 ff.

This study, which was commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the JURI Committee, provides a comparative analysis of the laws on public benefit status found in the Member States of the EU from the perspective of associations and discusses the state of the art of EU law in this field. The study also deals with the legal regulation of cross-border conversion, merger and division of associations, focusing on some problematic aspects that also concern associations that hold the public benefit status. Conclusions focus on the need for the introduction of an EU statute that guarantees public benefit organizations effective freedom of establishment within the Union.

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