



# European Associations: The Political Debate and Basic Legal Questions

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In 1989, the Delors Report on an Economic and Monetary Union was published. Two years before, the Fontaine Report proposed to explore a legal framework for European Associations. But while the Euro was launched in 1999, a European Associations Statute (EAS) is still out of sight. Should this matter be so much more intricate than the introduction of a common currency? Certainly not. It is mainly about political will. Here is some background information.

## **A. The political debate on European Associations**

### **1987: The ‘Fontaine Report’**

On 8 January 1987, the later president of the European Parliament (1999-2002) and recently deceased **Nicole Fontaine** (16 January 1942 - 17 May 2018) authored a report titled ‘*Report on Non-Profit Making Associations in the European Community*’. She recommended to abolish all discrimination based on nationality for the membership in associations in Europe for European citizens (which has since been widely accomplished), and also achieve mutual recognition of national associations within the EC, plus to explore a legal framework for a European status for European Associations.



Nicole Fontaine  
Source: © European Union –  
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Parliament

### **1987: European Parliament ‘Resolution on non-profit-making associations in the European Communities’**

Based on the Fontaine Report, the European Parliament adopted the ‘*Resolution on non-profit-making associations in the European Communities*’ on 13 March 1987 asking the European Commission inter alia “to draw up a proposal for a regulation incorporating a Community-wide statute for associations covering the requirements of associations operating in more than one Member State and national associations

wishing to act in concert at European level”. In the same year, the European Commission decided to start preparing a first draft of a statute of European Associations (EAS).

### **1991: The first proposal of the Commission**

On 18 December 1991, the European Commission presented its first ‘*Proposal for a Council Regulation on the Statute for a European association*’. It was accompanied by a ‘*Proposal for a Council Directive Supplementing the Statute for a European association with regard to the involvement of employees*’. The European Economic and Social Committee issued a supportive opinion regarding the proposal. On 20 January 1993, the European Parliament had its first reading of the draft and approved it while requiring certain amendments.

### **1993: The amended proposals of the Commission**

In 1993, the Commission delivered amended proposals. Yet, criticism of the member states prevailed:

One form of criticism was fundamental, challenging the jurisdiction of the EU and a statute of European Associations as such. Governments known to be fundamentally opposed to the proposal at the time were Germany, Denmark, and the United Kingdom. They argued in part that it was against the *principle of subsidiarity* to provide EU legislation in the field of associations that should remain in the sole jurisdiction of member states. Also, they questioned that there was any proven need for an EAS.

The other type of criticism was directed against the specific proposal and certain provisions therein (not against having a proposal as such). The German government, for example, criticised the draft did not distinguish between non-economic and economic associations, and said that was against the basic conception of non-economic associations in Germany (‘*Idealverein*’), which should be considered in its own right. Also, the proposal was criticized for placing too many administrative burdens on associations: In particular, according to the draft, European associations were required to go through an annual financial auditing and publicly disclose its accounts. Such obligations resemble that of public stock companies.

### **1994, 1998, 2001, 2002: MEPs continued to demand progress**

Time and time again, Members of the European Parliament of different party affiliations and different European nationalities have demanded independently of each other progress on the EAS. Among them Jean-Pierre Raffarin (FR), Shaun Spiers (UK), Salvador Garriga Polledo (ES), and Marco Cappato (IT).



Jean-Pierre Raffarin (FR), Shaun Spiers (UK), Salvador Garriga Polledo (ES), and Marco Cappato (IT).  
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## 2005: The Commission's withdrawal of the proposal

On 27 September 2005, the Commission decided to withdraw the proposal of the EAS as part of its 'Better Regulation' initiative along with 67 other legislative proposals, of which they considered not sufficient progress had been made.

## 2005: Public Protest

13 NGOs protested this decision to withdraw the proposal in a complaint against the European Commission via the European Ombudsman. Some Members of the European Parliament (MEPs), in particular Jo Leinen, continued to publicly ask for the adoption of an EAS (Leinen, Jo (2010), 'Das Europäische Parlament und der Vertrag von Lissabon', in Olaf Leiß (editor): *Die Europäische Union nach dem Vertrag von Lissabon*, pp. 97-113 (108), Wiesbaden: VS Verlag für Sozialwissenschaften).



Jo Leinen (MEP)  
Source: © European Union - Photo Service of the European Parliament

## 2006: European Economic and Social Committee (EESC) calls for EAS

In 2006, the European Economic and Social Committee reiterated its support for a European statute of transnational associations, by analogy with the statute of European political parties.

## 2011: Civil society protest and Resolution of the European Parliament

In 2011, 39 NGOs signed a 'Manifesto for a European Statute of the European Association' calling to act and take the necessary steps for introducing proposals for European statutes for associations. On 10 March 2011, the European Parliament adopted a 'Declaration on establishing European statutes for mutual societies, associations and foundations'.

## 2015: Opinion of the EESC after adoption of the Lisbon Treaty

After the adoption of the Lisbon Treaty, the European Economic and Social Committee (EESC) expressed in its opinion on the new EU-Treaty (EESC-2015-03264-00-01-AC-TRA) how the revised provision on EU citizenship in Art. 11 TEU should be used to strengthen European civil society.



The EESC premises in Brussels  
Source: © European Union - Photo Service of the European Parliament

## 2015: Question to the European Commission

In 2015, MEP Alex Voss asked the Commission why the proposal regarding the EAS had been withdrawn. In response, Ms Bienkowska replied on behalf of the Commission that “*further reflection on the need for a European statute for non-profit-making associations is possible only after the adoption of the proposed European Foundation Statute.*” Since the proposal for the European Foundations Statute (EFS) had been withdrawn in 2015, the proposal for an EAS was also not considered any longer. She further stated: “*The endorsement of such an initiative by the Council which, similarly to all other Regulations in the social economy area, can be achieved only by unanimity, seems, at present, unlikely.*”



Axel Voss (MEP)

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## 2017: European Economic and Social Committee (EESC) calls again for a European legal framework

In the recent EESC’s opinion on the financing of civil society organisations by the EU (SOC/563-EESC-2017-01953-00-01-ac-tra), the EESC demanded inter alia “*a political and legal framework should be put in place at European and national level to nurture the development of European civil society, whose activities are an integral part of values anchored in fundamental rights.*”

## 2017/2018: Public Petitions in Germany and Luxembourg

In 2017 and 2018, public petitions were launched in Germany and Luxembourg with the goal to remind national legislators to hold the European Commission accountable and to make progress with new proposals regarding an EAS. In response to the petition in Luxembourg, the minister of justice, Félix Braz, wrote: “*Despite the failure of these previous initiatives, I believe that there is a real added value to the establishment of a regulation introducing the statute of a non-profit association at the European level and that initiatives to this end should be supported.*”

On 20 June 2018, the French Assemblée Nationale and the German Bundestag stated in a joint parliamentary position paper for the renewal of Elysée-treaty between the two countries under No. 6: “*In order to enable the establishment of cross-border associations, a German-French, if possible European legal status will be created for associations.*”

## Table of Events

| Date             | Event   | Institution          | Link |
|------------------|---|----------------------|------|
| 13 November 1984 | Motion for a resolution tabled by Mr Eyrau (MEP) and others on the role and administration of associations and the law governing them in the European Communities (Doc. 2-920/84) | MEP Eyrau and others |      |

|                  |  |  |   |
|------------------|--|--|---|
| 13 June 1985     | Motion for a resolution tabled by Mr De Gucht and others on freedom of assembly and association (Doc. B 2-336/85),   | MEP De Gucht and others  |   |
| 8 January 1987   | “Fontaine Report” (Report on Non-Profit Making Associations in the European Community)   | Committee on Legal Affairs and Citizens' Rights of the European Parliament | <a href="https://uia.org/archive/legal-status-3-7">https://uia.org/archive/legal-status-3-7</a>   |
| 13 March 1987    | Resolution on non-profit-making associations in the European Communities   | European Parliament  | <a href="https://uia.org/archive/legal-status-4-12">https://uia.org/archive/legal-status-4-12</a>   |
| 18 December 1991 | Proposal for a Council Regulation on the Statute for a European association. Proposal for a Council Directive Supplementing the Statute for a European association with regard to the involvement of employees., COM(91) 273/I and II final, Official Journal C 99, 21 April 1992. | European Commission  | <a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1531288234360&amp;uri=CELEX:51991PC0273(01)">https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1531288234360&amp;uri=CELEX:51991PC0273(01)</a> |
| 26 May 1992      | Opinion on the proposal for a Council Regulation (EEC) on the Statute for a European Association (supportive)  | European Economic and Social Committee (EESC)                              | <a href="https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:51992AC0642(01)&amp;from=EN">https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:51992AC0642(01)&amp;from=EN</a>             |
| 20 January 1993  | First Reading, Approval with Amendments, Official Journal C 42, 15.02.1993   | European Parliament  |   |
| 6 July 1993      | Amended proposals COM(93) 252 final COD0386 and COD0387, Official Journal C 236, 31 August 1993  | European Commission  | <a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ%3AC%3A1993%3A236%3ATOC">https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ%3AC%3A1993%3A236%3ATOC</a>                                     |
| 3 March 1994     | Written question to the Commission regarding the progress that has been made with respect to (inter alia) the EAS (94/C 332/108)   | MEP Jean-Pierre Raffarin (PPE)   |   |
| 16 December 1998 | Question to the Presidency of the Commission regarding the progress that has been made with respect to (inter alia) the EAS (H-1189/98)  | MEP Shaun Spiers   |   |

|                   |  |   |   |
|-------------------|--|---|---|
| 12 June 2001      | Motion for a European Parliament resolution on European non-profit making associations   | MEP Salvador Garriga Polledo                  | <a href="http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+MOTION+B5-2001-0319+0+DOC+XML+V0//EN">http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+MOTION+B5-2001-0319+0+DOC+XML+V0//EN</a>               |
| 8 November 2002   | Motion for a European Parliament Resolution on the drafting of a EAS (B5-0444/2002)  | MEP Marco Cappato                             |   |
| 27 September 2005 | Decision of the Commission as part of the 'Better Regulation'-initiative withdrawing 68 legislative proposals including the EAS draft  | European Commission                           | <a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52005DC0462">https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52005DC0462</a>   |
| 11 April 2006     | Opinion of the European Economic and Social Committee on The representativeness of European civil society organisations in civil dialogue (supportive)   | European Economic and Social Committee (EESC) | <a href="https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52006IE0240&amp;qid=1531287134800&amp;from=EN">https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52006IE0240&amp;qid=1531287134800&amp;from=EN</a> |
| 31 July 2009      | Complaint via the European Ombudsman against the decision of the Commission to withdraw the EAS proposal   | 13 NGOs                                       |   |
| 10 March 2011     | Declaration of the European Parliament on establishing European statutes for mutual societies, associations and foundations  | European Parliament                           | <a href="http://www.europarl.europa.eu/sides/getDoc.do?reference=P7_TA%282011%290101&amp;language=EN">http://www.europarl.europa.eu/sides/getDoc.do?reference=P7_TA%282011%290101&amp;language=EN</a>                                   |
| 2011              | Manifesto for a European Statute of the European Association   | 39 NGOs                                       | <a href="http://www.acc.eu.org/uploads/Manifesto_for_a_European_Statute_of_the_European_Association.pdf">http://www.acc.eu.org/uploads/Manifesto_for_a_European_Statute_of_the_European_Association.pdf</a>                             |
| 16 September 2015 | Opinion on improving the functioning of the EU building on the potential of the Lisbon Treaty and on possible evolution and adjustments of the current institutional set-up of the EU (EESC-2015-03264-00-01-AC-TRA (EN) 1/1 1 | European Economic and Social Committee (EESC) | <a href="https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/lisbon-treaty-ep-opinion">https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/lisbon-treaty-ep-opinion</a>               |
| 17 December 2015  | Written Question to the Commission on why the proposal for a European Association Statute was withdrawn  | MEP Axel Voss (PPE)                           | <a href="http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-">http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-</a>   |

|                 |   |   |   |
|-----------------|---|---|---|
|                 |   |   | <a href="http://EP//TEXT+WQ+E-2015-015971+0+DOC+XML+Vo//EN">//EP//TEXT+WQ+E-2015-015971+0+DOC+XML+Vo//EN</a>  |
| 18 March 2016   | Answer given by Ms Bienkowska on behalf of the commission E-015971/2015   | Commission  | <a href="http://www.europarl.europa.eu/sides/get-AllAnswers.do?reference=E-2015-015971&amp;language=EN">http://www.europarl.europa.eu/sides/get-AllAnswers.do?reference=E-2015-015971&amp;language=EN</a>   |
| 07 June 2017    | Public Petition No. 71927 to the German Bundestag for the introduction of the legal form of European Association on the EU-Level  | German Bundestag  | <a href="https://epetitionen.bundestag.de/petitionen/2017/06/07/Petition_71927.nc.html">https://epetitionen.bundestag.de/petitionen/2017/06/07/Petition_71927.nc.html</a>   |
| 19 October 2017 | Opinion on the Financing of civil society organizations by the EU (SOC/563-EESC-2017-01953-00-01-ac-tra)  | European Economic and Social Committee (EESC)                               | <a href="https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/financing-civil-society-organisations-eu">https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/financing-civil-society-organisations-eu</a>   |
| 22 March 2018   | Public Petition No. 986 to the Chamber of Deputies of the Grand Duchy of Luxembourg for the introduction of a legal framework for European Associations on the EU-Level and positive reply of justice minister Félix Braz | Chamber of Deputies of the Grand Duchy of Luxembourg                        | <a href="https://chamber.lu/wps/portal/public/Accueil/TravailA-LaChambre/Petitions/RoleDesPetitions?action=doPetitionDetail&amp;id=1288">https://chamber.lu/wps/portal/public/Accueil/TravailA-LaChambre/Petitions/RoleDesPetitions?action=doPetitionDetail&amp;id=1288</a>                                 |
| 20 June 2018    | Joint French-German parliamentary position paper for the renewal of the Elysée-Treaty (under no. 6 at the end regarding European associations)  | French-German working group of the Assemblée Nationale and German Bundestag | <a href="http://www2.assemblee-nationale.fr/content/download/68974/703161/version/1/file/2018_06_20+Position+commune_N3+FR+ALL+%28version+finale%29.pdf">http://www2.assemblee-nationale.fr/content/download/68974/703161/version/1/file/2018_06_20+Position+commune_N3+FR+ALL+%28version+finale%29.pdf</a> |

## **B. Some Basic Legal Questions on European Associations**

### **1. What do we mean by talking about ‘associations’?**

When talking about ‘associations’, we mean **membership-based** organizations of individuals for a **specific purpose**, created for an indefinite period of time and having its **own legal personality** and thereby existing independently from any changes in membership. Associations may have different names in different legal systems and languages, such as ‘clubs’ or ‘societies’. Associations can be formed for a wide variety of purposes. Those may include leisure activities and hobbies such as sports, music, art, literature and culture, or a number of charitable or public interest purposes, such as

science and education, protection of the environment and climate, animal protection or emergency or poverty relief.



In liberal democracies, associations are considered to further fulfill many important functions:

- **Schools of Democracy:** Associations are considered ‘schools of democracies’ because they follow democratic principles, e.g. ‘one member one vote’. Each association resembles a ‘small republic’. Thus, the culture and techniques to carry out disputes and arguing in a civilized way, such as negotiating, advocating, building coalitions, making compromises, voting for representatives and acting together are all exercised in associations. Therefore, European transnational associations are of paramount importance for the emerging transnational European democracy.
- **Trailblazers and innovators:** Unlike political parties and government agencies, associations are more flexible and relatively unrestrained by bureaucratic procedures. Important social and grassroots movements (women’s rights, workers’ rights, environment, food safety, self-help groups, animal rights, peace movement, national unity, European unity, LGTB-rights etc.) will often first take the form of loose networks and associations of like-minded individuals. A flourishing civil society with strong associations are an important hallmark of participatory, liberal democracies.
- **Associations as ‘Communities of Choice’ and part of Individual Freedom and Human Development:** Part of the human experience is that we can create the life we aspire to only in concert with others. Therefore, the right to associate is considered to be a natural, a basic human right, not a privilege. From Aristoteles characterizing humans as the ‘social animal’, to Abraham Lincoln claiming ‘We can only succeed by concert’, the ability to join each other’s company (and also leave and abstain from it) has been characterized a basic human need in order to realize our full potential as free human beings.
- **Defenders of Minorities:** Associations allow for the aggregation and safe spaces for minorities of all types. It can provide both shelter from public gaze and at the same time provide publicity if intended to alarm others about issues and concerns that otherwise would go unnoticed.
- **Carriers of Moral and Ethical Orientation:** In socially increasingly fragmented societies, associations often provide important moral and ethical orientation and stability for their members. In Europe, European values and liberties need to be represented and reinforced in European Associations.

- **Closing Service Gaps and Economic Activity:** Very importantly, in economic systems focused primarily on profit-making, associations provide services in often not-profitable areas in the social sector and lower the threshold for participation in many social activities (e.g. sports, music etc.).

Many associations may be economically active to a certain extent, but most are ‘not-for-profit organisations’ (NPOs), which means that they do not divide generated profits among their members (unlike cooperatives). Also, associations fall into the category of non-government organisations (NGOs). However, we need to distinguish associations further from other types of NPOs and NGOs:

In particular, besides associations, there are **foundations**, which are typically not membership-based but primarily center on assets that are dedicated to a specific charitable purpose. Yet, especially foundations are facing similar problems like associations. This is because both foundations and many associations serve charitable purposes. And in many countries, preferential tax treatment applies to both foundations and associations if serving a public interest.

Also, from an economic perspective, associations and foundations are often considered to be important building blocks of the ‘third sector’ or ‘social economy’.

Regarding foundations, the European Commission actually adopted a legislative proposal for a European Foundation Statute on 8 February 2012, however it was removed from the European Commission work program in 2015 because a unanimous Council decision was not achievable. A lot of preparatory work had been carried out before. In 2009, a feasibility study was created, as well as a public consultation with stakeholders. The work of the European Foundation Center (EFC, <http://www.efc.be>) was important in promoting the proposal.

## 2. What is the legal situation of associations in the EU today ?

Today, **each European country has its own separate national legislation on associations.**

National law regarding associations is mostly only available in the respective national language(s) and differs in various aspects, for instance::

- Requirements for establishment,
- Organs and legal representation,
- Taxation,
- Supervision and public security legislation with respect to associations.

For example, France requires a minimum of two members to register an association, while Belgium requires three, Germany seven, and Greece 20 members. Also, the respective authorities in charge of such registration differ: While in France, it is possible to register an association at a local police station, Germany requires the registration at a local court. In Italy, a ministerial consent may be required in some cases. Also, the fees for the establishment vary.

When it comes to taxation, the laws differ regarding

- Corporate Income tax,

- Taxation of membership fees and donations,
- Types and requirements of preferential tax treatments (in case of charitable/public interest purpose).

Thus, each country's approach differs on how regular associations are taxed. Moreover, the countries have set up different requirements and procedures allowing associations to gain *preferential tax treatment*. For example, while in Ireland a "charitable organisation" needs to be established as such in order to gain preferential tax treatment, German associations are allowed to apply for a 'public interest' status any time they want, according to a list of public interest purposes in the German tax code. Furthermore, while contributions of individuals to public interest associations are tax-deductible in many countries, countries, Sweden and Finland would not allow that.

National legislation regarding associations also contains a body of law dealing with the policing and public security of associations. European Associations will require similar framework, which will allow authorities to step in in case of criminal or extremist associations.

The broad range of different legal frameworks creates a considerable number of problems:

- Membership in associations remains *de facto* often reserved to the inhabitants of the respective country, given that national law is customarily only available in the respective language turning it difficult for EU citizens to find their way and actively engage in associations outside their own country.
- Associations operating in more than one country will often have to set up a separate local entity in each country.
- Operating across borders is often hampered because national association are not treated equally in different European countries, e.g. when trying to open a bank account, procurement / entering into contracts, etc.
- Financial contributions will primarily be made to associations in one's own country, as tax deductions to out-of-country associations are hardly recognized.
- Some countries led by authoritarian governments restrict the freedom of association generally ('shrinking civic space', see <https://www.liberties.eu>), which makes cross-border cooperation increasingly difficult.

### **3. What could be a solid legal basis for a Statute of European Associations?**

In the absence of an explicit provision in the treaties for associations, **Article 352 of the Treaty on the Functioning of the European Union (TFEU)** provides a legal basis for the adoption of a regulation (and possibly a supplemental directive regarding harmonized taxation): "*If action by the Union should prove necessary, within the framework of the policies defined in the Treaties, to attain one of the objectives set out in the Treaties, and the Treaties have not provided the necessary powers, the Council, acting unanimously on a proposal from the Commission and after obtaining the consent of the European Parliament, shall adopt the appropriate measures.*" Of course, unanimity is a steep hurdle.

If a unanimous decision of the Council cannot be achieved, other ways to move ahead may be considered:

- One possible path might be to use the mechanism of ‘enhanced cooperation’ under Article 326 TFEU. It allows a group of at least nine member states to create secondary legislation that can be adopted by other EU countries if they decide to do so.
- A different approach could be a form of ‘silent harmonization’ whereby European countries bring their national legislation in line with non-binding model laws for non-profit organisations in order to slowly progress to a set of common rules for associations.
- Assuming that governments and legislators should refuse unisono to tackle the matter of a common European Association Law, there might still be a way out by creating a ‘virtual’ law, i.e. a statute adopted by the relevant civil society organisations which lacks any legal force but could serve both as a manual in practice and as a template for future legislative steps.

#### **4. Would national legal forms be replaced if a Statute of European Associations would be adopted?**

No. It is a common misunderstanding that the European Union, by adopting an EAS, would assume jurisdiction for associations as a whole, and the EAS would replace the existing national legal forms. It is in no one’s interest to replace the national legal forms having served their purposes so well for a long time. An additional EAS would keep the current tapestry of legal forms across Europe intact. But, by providing an additional, complementary legal form for European Associations, it would free many associations from their national shackles. The EAS is meant to bring **more freedom, not less**. If the European Association becomes attractive, it is of course possible, over a longer period, that more and more national associations will turn into the form of the European Association which we consider absolutely beneficial to connect Europe with its citizens.

#### **5. Which requirements would an association presumably have to meet for the formation of a European Association?**

In the **first draft proposal**, two ways of formation were provided for European Associations:

- **Merger:** Two or more associations formed under the law of a member state and having their registered office and central administration in at least two member states merge into a European Association. In addition, at least 21 natural persons being nationals of at least two member states would be required.
- **Conversion:** An association initially formed in accordance with the law of a member state and having its registered office and central administration in the EU convert into the European Association form provided it has an establishment in a member state other than that of its central administration, and is able to demonstrate it is carrying on genuine and effective cross-border activities .

In the **amended draft proposal**, the number of members in case of a merger was reduced to seven. Regarding the conversion, it was further added that the conversion should only be possible if the activities in the other member state had been carried out for at least two years.

However, it is reasonable to emphasize that any additional requirements for the establishment of European Associations are detrimental to a genuine European civil society and to cross-border activities. Negotiations in the future may reveal which model will

be best to allow for an **easy process of generic establishment and administration** and to ensure broad accessibility for all European citizens.

**6. Assuming the national governments would consider to resume negotiations on an EAS, what would presumably be the most controversial points of disagreement?**

Some governments are likely to **fundamentally oppose** any proposal for EAS as such. Their (political) arguments against the EAS will form the biggest obstacle to resuming negotiations. If unanimity on the basic desirability of the EAS is unlikely, the Commission will not be ready to prepare a new draft. Such arguments will most likely be along the following lines:

- **Jurisdiction and Subsidiarity:** Arguments against the EAS will presumably claim missing ‘jurisdiction’ and the ‘subsidiarity’ of the issue to be dealt with on the national level. Also, national governments may try to frame transnational associations as a threat to ‘national security’ and ‘national democratic sovereignty’. These governments may possibly include certain Eastern European governments, such as Hungary, Poland and Romania, which fear and try to restrict the work of associations with foreign support and also place great value on their only recently found independence after the fall of the Soviet Union. But it may also include governments of the UK, Denmark and Germany, who have also opposed the previous EAS proposal on such grounds in the past.
- **No Proven Need:** In addition, national governments may challenge the existence of a ‘proven need’ for an additional legal form. They may claim the current legal system would sufficiently allow European citizens of other member states to participate in each other’s civil society. Also, they will claim that an additional legal form will also not solve the ‘language problem’ which will persist for example in the form of articles of association drafted in only one language.
- **Costs and Feasibility of Implementation:** Governments fundamentally opposed to the EAS will in all likelihood question whether its benefits will outweigh the costs of implementation. As well, they will allege technical difficulties of implementation to contest the overall feasibility of the EAS.

Besides fundamental opposition, there will probably be more specific objections not directed against the EAS as such, but against **specific provisions of a possible proposal:**

- **Economic activity:** There will be different perspectives regarding the permitted economic activity of associations and its supervision. While there is agreement that associations shall be ‘not-for-profit’ associations, the extent to which an association may engage in economic activity (even though not for profit) and to what degree it has obligations in that regard (financial reporting etc.) will be in dispute. The French government for instance, emphasised the role of associations as economic actors of the ‘third sector’ and the ‘social economy’ and in consequence considered **all** associations to be economically active and having reporting duties in this regard. The German government, on the other side, held the view that the basic form of an association shall be a not economically active association (even though a certain amount of economic activity is permissible). However, there are certainly ways to accommodate these different views by

placing additional responsibilities of economically active associations (financial reporting etc.) and not overburdening those that do not.

- **Employment Law:** Larger associations often have employees. The question for European associations will be how to ensure their representation in decision making processes of the association (see the accompanying directive to the first draft) and the applicable employment law.
- **Competition Law and Public Procurement:** In the past, it had often been unclear as to how far European rules of competition law and public procurement law (when fulfilling a public purpose) might apply to national associations. Clarifications and exemptions will be needed in these areas for European associations.
- **Taxation:** Also, there will be disagreements on taxation (see also question 7 below). The EU would currently not have explicit jurisdiction on the taxation of associations but may aim in the future to create a common list of charitable or public interest purposes for preferential tax treatment of European Associations. Disagreement is also likely on the question of how to avoid ‘tax evasion’ and in case of non-harmonized taxation to avoid ‘jurisdiction shopping’ to a country with the lowest taxation level or the country with the most lenient taxation supervision authorities.
- **Formation:** The requirements to form a European association may become part of a dispute. Besides the formation through merger and conversion, one will want to add a generic way to establish new European Associations in a way that is easy and accessible for all European citizens.
- **Registration:** There needs to be a coordinated system of registration, and it will certainly create disagreement along with the question of joint supervision below. One aspect will be of how much of the registration should be centralized or carried out in a decentralized fashion. Since the authorities in charge of registration differ throughout the EU, one needs to find at least common standards for the registration procedure. Also, in case of decentralized registration, a central online portal will be desirable to achieve an easy access to information on European associations and overall transparency for all EU citizens.
- **Supervision:** Similar to the question of registration the supervision of European associations needs to be coordinated and may also require joint leadership. In case of associations that pursue a criminal or terrorist purpose, security measures need to be coordinated and carried out throughout the EU.
- **Applicable laws/hierarchy of laws/coherence of court decisions:** Finally, the law of associations is an integral part of the different private law systems (further complicated by the divide of common law and civil law systems) which touches on many other, very general matters such as the legal age, law of consent (of becoming a member), enforceability of membership rights, contract law and so forth. One question will be in how far to *refer* to applicable laws and ensure coherence. Furthermore, as the right to associate is enshrined in many constitutions, the question of hierarchy of laws and coherent jurisdiction will arise.

## 7. Would European Associations be able to obtain a charitable status and enjoy preferential tax treatment throughout the EU?

Taxation is mostly not harmonized in the EU, and the EU’s jurisdiction is limited to indirect taxes under Article 113 TFEU. Other measures need to be based on Art. 115 if

it is necessary for the functioning of the internal market and to avoid distortion of competition. This lack of harmonization in the area of tax treatment is a significant obstacle for European associations. And it is not only an obstacle for not-for-profit associations, but also for foundations. Yet, European values are expressed in the Treaty of the European Union and the European Charter of Fundamental Rights. Therefore, EU law can even impact on national legislation regarding charitable purposes in cross border cases, which prompted the German Bundestag to look into this issue ('Unionsrechtliche Fragen zur Gemeinnützigkeit von Vereinen mit selektiver Mitgliederstruktur' <https://www.bundestag.de/blob/530844/2ac899c01e512f48358c7f920b229fb2/pe-6-055-17-pdf-data.pdf>). Even more so, in case of European Associations, a preparatory step should be for the EU to create **a common list of EU-wide recognized charitable and public interest purposes.**

## **8. Could the Mutual Recognition of National Associations be an Alternative Solution?**

Apart from creating an own European status of associations, **mutual recognition** of the existing national associations could be another option, Actually, this has been tried to a certain extent:

Internationally, the idea to mutually recognize the legal status of international non-profit organizations goes back to the year 1912, when the **Institute of International Law** made a proposal for the international recognition of associations ('von Bar proposal'). However, this proposal has not been transposed into law.

In Europe, however, the **Council of Europe** (not to be confused with the EU Council) drafted a '**European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations**' on 24 April 1986 (<https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/124>). This convention entered into force on 1 January 1991. However, so far, it has been ratified only by 12 European countries. Many large countries, such as Germany, Italy, Spain, Poland, and Sweden have not yet ratified it and will probably never do.

Furthermore, the convention does not imply an automatic recognition of an NGO in other countries. Instead, there is an administrative process the NGO has to go through country by country where it wants to be recognized. This is not a very efficient solution, given that there are 28 member states with different legal forms. Also, besides the 'formal recognition' there are no specific guarantees in the convention to ensure that foreign NGOs are equally treated just as domestic NGOs with respect to banks, tax authorities, political organs and so forth.

The recognition of national associations neither solves the practical problems on the European level that are associated with having this mix of national associations, nor the problem of a missing European perspective in European civil society. In order to enable a genuinely European civil society to flourish, an additional legal form whose law is available in all European languages is needed.

## **9. Can the regulation regarding the European stock company, Societas Europaea (SE), serve as a model for the 'European Association'?**

The SE enables European stock companies to have a uniform European appearance and also general legal recognition. Yet, it offers only a very rudimentary legal framework: There are certain prerequisites for its creation and it is necessary to opt either for a monistic management body (board of directors) or for a dualistic body (supervisory board and board of directors). However, regarding all other features, the company then largely follows the rules for stock companies set out in the country of its seat.

## 10. What is the role of the European Union Agency for Fundamental Rights (FRA)?

The FRA (<http://fra.europa.eu>) was established in 2007 as an EU Agency to provide advice on fundamental rights in the EU. The fundamental rights enjoyed by the people within the EU are contained in the ‘Charter of Fundamental Rights of the European Union’, which is legally binding for EU institutions and entered into force of the Treaty of Lisbon in December 2009. Of particular importance for associations is **Article 12 paragraph 1** which reads:

“1. Everyone has the right to freedom of peaceful assembly and to freedom of association **at all levels**, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.”

‘All levels’ includes the European level. However, to this date, there is no legal framework for EU citizens to easily associate on the European level. The EAS is needed to close that gap.

In order to engage with civil society organisations, the FRA also has established a Fundamental Rights Platform (FRP, <http://fra.europa.eu/en/cooperation/civil-society>). This platform could be one forum to further promote research regarding the adoption of the European Association Statute.



Michael O'Flaherty, FRA Director and the FRA premises in Vienna

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