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Agenda of Civil Society V

# Is Freedom of Movement Possible for Civil Society Organisations in the EU?



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# Is Freedom of Movement Possible for Civil Society Organisations in the EU?

The report published by the European Parliament, entitled **“A Statute for European Cross-border Associations and Non-Profit Organizations”**<sup>1</sup> explores possibilities for establishing such a common legal statute, as there's currently no common regulation for non-governmental organizations at the EU level.

<sup>1</sup> [https://www.europarl.europa.eu/RegData/etudes/STUD/2021/662630/EPRS\\_STU\(2021\)662630\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2021/662630/EPRS_STU(2021)662630_EN.pdf)

**It can be said that a possible regulation will roughly mean the free movement of civil society organizations at the EU level.**



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# Freedom of Movement

In December 2021, the European Union Encyclopedia was published by the Economic Development Foundation (IKV) and Ankara University European Union Research and Application Center (ATAUM). You can reach the European Union Encyclopedia from the below link:  
[http://ataum.ankara.edu.tr/wp-content/uploads/sites/209/2022/01/avrupa\\_birli-gi\\_ansiklopedisi.pdf](http://ataum.ankara.edu.tr/wp-content/uploads/sites/209/2022/01/avrupa_birli-gi_ansiklopedisi.pdf)

As mentioned in this valuable source, the main goal of European integration is to create a common market based on the free movement of goods, labor, services and capital between member states in the founding treaties. (European Union Encyclopedia, p. 286) This principle of free movement, also known as the four freedoms, is one of the most important dimensions of the EU integration process.

At the EU level, there's no common regulation or statute for non-profit organizations (or for civil society organizations as it's commonly used in Turkey). All member states have different approaches based on their own historical traditions. However, this situation creates some difficulties for non-governmental organizations operating in different countries of the EU, e.g. collecting donations, non-profit status or applying for tax benefits. For a company based in one of the member countries, there's no legal obstacle to operate in another member country, according to the "four freedoms" mentioned above. However, for a foundation or association based in one of the member countries, there are some obstacles to enjoy tax benefits in another member country due to its legal status.



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## **Member States aren't obliged to grant the same rights in their own country to a CSO that enjoys a tax advantage in another EU country because of its non-profit status.**

However, this non-obligation is limited to some extent by the Agreement on the Functioning of the EU and the decisions of the EU Court of Justice. A CSO based in another EU country cannot be prevented from obtaining public benefit status in a member country if it meets the conditions. In addition, member states are expected to apply a "comparability test" in such cross-border cases. This test will examine whether the CSO in question meets the national requirements. In order to carry out this comparison, member states may ask the CSO or donor in question to provide relevant documentation.

As a result, this proves to be an obstacle to the cross-border fundraising efforts of the CSO in question and to the enjoyment of tax benefits in other countries. Combined with differences in practice among member states, this makes the process uncertain, costly, and fraught with legal differences. CSOs may face similar problems in the areas of competition law, state aid, and tax regulations.

The issue has actually been on the EU agenda since the 1990s. However, all attempts remained unfinished, perhaps due to the horizontal dimension of the issue.

## **As a result, civil society organizations cannot fully benefit from the right to free movement of goods, capital and persons, as well as the right to freedom of establishment and freedom to provide services at the EU level.**

The report published by the European Parliament, "A Statute for European Cross-border Associations and Non-profit Organizations," is of utmost importance for the analysis of potential regulations on the agenda in the EU in the field of civil society. The details of the report are presented below, with the intention that efforts to achieve a common EU-wide status for civil society organizations



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could provide guidance for Turkey in the long term.

The report highlights two important trends that have been observed in the EU since the 1990s. First, it highlights the diversification of structures that can be defined as "non-profit organizations." This means that in addition to associations and foundations, structures such as cooperatives, non-profit enterprises, social enterprises, initiatives and solidarity networks are included in this scope. Secondly, the crisis of the "non-profit principle" is highlighted. It is emphasized that non-profit structure, one of the most important principles of civil society, or non-distribution of profits, has taken a back seat in the definition of civil society. As a result, the terms "third sector organizations" or "social economy organizations" are increasingly used.

Following these findings, the report provides a comparative analysis of the structure of civil society in Belgium, France, Germany, Ireland, and Italy. The comparative country examples also show that there are significant differences in the legal regimes for CSOs at the EU level, but also that there are common contexts in national regimes.

First of all, associations and foundations seem to be the common and most frequent organizational form for CSOs across Europe.

**Although associations and foundations are non-profit structures, this doesn't prevent them from engaging in profit-making economic activities.**

In fact, it's been noted that there's a tendency towards more economic activities, and there are examples of regulations facilitating this situation.

Second, it highlights that non-profit enterprises, including cooperatives, are becoming more widespread. In particular, the legal regulations on social entrepreneurship that have been introduced in some EU member states facilitate this process.

Third, the country comparisons show that there are two main



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approaches to civil society regulations:

- laws that provide for specific forms of incorporation for non-profit organizations, the main ones of which are, as already observed, the association and the foundation
- laws that provide for a public benefit status (or similar statuses) acquirable by organizations that, regardless of the legal form of incorporation (association, foundation, and frequently also company etc.), meet certain legal requirements, including (but not limited to) the prohibition on profit distribution.

**At this point, for the Turkish context, mainly the first approach is used, but the status of non-profit for associations and the status of tax exemption for foundations are granted in a limited context. However, no similar status is defined for companies, cooperatives or social enterprises.**

In the EU context, it can be observed that the second approach is more widespread, although there are differences between countries. Considering that the organizations in question benefit from some tax advantages when granted this status, these organizations may use their profits and assets only for the intended purpose, serve exclusively the public interest, and include rules on internal governance and decision-making processes (the obligation to publish annual activity reports, such as the existence of a monitoring structure) and the existence of public control over the organizations.

It is suggested in the report that, an EU directive based on art. 50 TFEU should be introduced with the below specifications:



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1. An EU legal statute for non-profit organizations should be introduced
2. A new legal status or label that of "European Third sector (or social economy)" should be introduced with this directive
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
  - o Private organizations which, regardless of the legal form of incorporation
  - o Exclusively pursue public benefit purposes
  - o Operate under an "asset lock" regime (capital remuneration is allowed only to a limited extent), even at the time of their dissolution
  - o are subject to specific governance and transparency obligations
  - o are registered in a specific register
  - o are subject to public control to verify their compliance with the qualification requirements

Furthermore, below are suggested for defining these 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



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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.

## What are the potential benefits of this statute?

These benefits are summarized in the report as follows:

- Civil society is supported as the driving force of participatory democracy,
- It'll contribute to strengthening citizen participation and building a citizen-centric EU,
- Actors who contribute to the regulation of the labor market can be supported,
- Actors that can promote good and stable jobs even in times of economic crisis will be supported,
- Legal barriers to cross-border activities of non-profit organizations can be removed by increasing the efficiency of free movement,
- Transnational initiatives that pursue the public interest will be supported,
- Incentives for corporate donations and corporate social responsibility activities are created,
- Cross-border philanthropic activities are





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supported,

- Collaborations, mergers and amalgamations between nonprofit organizations can be supported,
- The visibility and awareness of nonprofit organizations at the EU level will be increased,
- It'll be possible to align national legislation on civil society,
- It'll be possible to unite European citizens and promote social cohesion,
- It'll be possible to treat non-profit structures with different legal status (cooperative, social enterprise) equally.

Following the publication of the aforementioned report in May 2021, a recommendation was issued by the Legal Affairs Committee of the European Parliament. On the other hand, work continues on a regulation in the direction proposed in the report. Finally, at the meeting of the European Parliament on January 19, 2022<sup>2</sup>, it was emphasized that the issue is also important for the full realization of the internal market, and the European Parliament called on the EU Commission to prepare a comprehensive strategy and start drafting the relevant legal regulations.

It would be optimistic to expect a regulation in a short time, because similar processes at the EU level require long-term studies and the difficulties of the subject, which we've tried to summarize above.

**However, it can already be asserted that the field of civil society at the EU level will be the scene of interesting discussions in the coming years.**

<sup>2</sup> [https://www.europarl.europa.eu/doceo/document/A-9-2022-0007\\_EN.html#title5](https://www.europarl.europa.eu/doceo/document/A-9-2022-0007_EN.html#title5)



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# What is the significance of all this for Turkey?

It is known that there are several criticisms regarding the regulations in force in the context of freedom of association in Turkey. Primarily, the relevant part of the 2021 Turkey Report published by the EU will give a general idea. Also the 11th Development Plan has suggestions for improvement in the field of civil society, although it has a different perspective.

The complicated structure of the Law on Collection of Aid, the burdensome tax regulations for civil society organisations, the public benefit status, the non-facilitating regulations for the economic activities of CSOs, compelling rules regarding economic enterprise income, the stoppage obligation for office rents, the lack of facilitating regulations for volunteering and employment, the lack of regulation for social cooperatives and social entrepreneurs, the difficulties in collecting data on the civil society sector, and the lack of recognition of civil society structures without legal personality are the main problem areas that we can list at once regarding civil society in Turkey.

As a natural consequence of the EU negotiation process, EU-level regulations or the EU acquis remain important for Turkey despite all the negativity in relations. In particular, when new laws are drafted, EU-level regulations are taken into account, at least at the technical level.

**As a natural consequence of this situation, possible regulation of civil society at the EU level is also important for Turkey.**

For this reason, it would be beneficial for civil society organizations, public institutions, and all relevant actors in Turkey to closely follow developments in this area.