



*COMECE Secretariat contribution*

European Commission public consultation on  
**Single market – Proposal for a legislative initiative on cross-  
border activities of associations**

**1. Introductory remarks**

First and foremost, we would like to express our support for the goal of enhancing the possibilities of cross-border activities and cooperation for non-profit organisations and associations. Such entities are instrumental in ensuring vital and vibrant democracies and societies all over the Union and in contributing to its cohesion.

On the other hand, we would like to underline the importance of positively integrating and respecting the diversities and specificities existing in the legal systems at the national level. This calls therefore for a prudent legislative approach in addressing the many divergences.

The COMECE Secretariat, also on the basis of the inputs gathered through its Legal Affairs Commission, would like to highlight some legal aspects related to the initiative.

**2. Compliance with Article 17.1 of the Treaty on the Functioning of the EU**

As representation of the Catholic Bishops' Conferences to the EU institutions, we would like to focus primarily on a specific aspect of the public consultation.

The relevant questionnaire refers on page 1 to the fact that religious associations and foundations would be excluded from the scope of the initiative. We appreciate the attention thereby devoted to the specific value of religious entities in society and to the need to respect national competences.

In this regard, we formulate the following recommendations:

1. Considering that the rationale for this legislative option is Article 17.1 TFEU - which refers to 'Churches and religious associations or communities' - the terminology used in the relevant provision of the proposal should be fully in line with it. The same applies to eventual Recitals restating the contents of Article 17.1 TFEU: such provisions should avoid the imprecisions contained in Recital 17 of the *European Parliament resolution of 17 February 2022 with recommendations to the Commission on a statute for European cross-border associations and non-profit organisations*<sup>1</sup> and in Recital 21 of the draft Directive recommended by the European Parliament<sup>2</sup>.
2. The approach proposed in the Commission questionnaire shows a welcome effort to ensure a correct implementation of Article 17.1 TFEU. However, the inclusion in the future proposal of a provision simply referring to an exclusion of religious associations and foundations from the scope of application would be insufficient and could limit the possibilities for some religious-inspired actors to operate across borders, placing them at a disadvantage.
3. The formulation used in Article 2.6<sup>3</sup> of the draft Directive recommended by the European Parliament - as complemented by its Recital 21<sup>4</sup> - may provide a good basis for work, as it proposes a more nuanced approach and distinguishes different situations. The provision would obviously need further refinement (e.g. more clarity would be required in the first sentence) and some imprecisions have already been outlined above.

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<sup>1</sup> [https://www.europarl.europa.eu/doceo/document/TA-9-2022-0044\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2022-0044_EN.html).

<sup>2</sup> Recital 17 of the European Parliament's Resolution omits the words "...and does not prejudice". Recital 21 of the draft Directive recommended by the EP claims even more imprecisely that Article 17.1 concerns the status of "...religious organisations". Incidentally, EU law contains other examples of such imprecisions: e.g. Recital 165 of the General Data Protection Regulation recalls Article 17.1 TFEU, but only refers to the relevant status under existing constitutional law (the primary law provision refers in general to national law).

<sup>3</sup> "Organisations with primarily a religious... aim are excluded from the scope of this Directive. However, that exclusion does not apply to other organisations without such a specific aim, whose values and aims are informed by a religious... belief".

<sup>4</sup> "This Directive should be without prejudice to the competence of Member States regarding the status of religious... organisations as referred to in Article 17 TFEU. In this regard, organisations with primarily a religious... aim, such as churches, religious... communities, should be excluded from the application of this Directive. This however should not be used by Member States to exclude from the scope of application of this Directive other organisations whose values and aims are informed by a religious... belief, such as faith-based, charitable non-profit organisations".

4. In general, it is important to take into full account and respect the diversity of situations in the EU Member States concerning Churches and religious associations or communities. The broad structure of the Catholic Church in the Member States also features a variety of associations and non-profit organisations: some are established under Canon Law, but also have social, not only religious aims; others are Civil Law associations and are totally distinct from the Church, but actively promote aspects of the Catholic faith; others still are associations with a hybrid status (under both Canon Law and Civil Law). Therefore, the range of the exemption the European Commission is currently considering for 'religious associations and foundations' has to be very carefully formulated, so as to avoid creating uncertainties among different Church-related and religious entities.

### 3. Elements in view of an effective EU legal framework

Concerning other aspects of the forthcoming proposal that we deem important, we would like to refer to the following:

- a) With regard to Question 12, we deem Option 2 to be the most viable, although the degree of harmonisation should be attentively calibrated. In view of bringing the legislative process to fruition, it is essential to avoid evoking preoccupations on perceived 'control'/'interference' at the national level.
- b) In the context of respect for national specificities and legal options, the inclusion of provisions impacting on the fiscal treatment/benefits granted to the relevant entities by national law is not recommended.
- c) A well-crafted and inclusive definition of the concepts, especially the ones related to non-profit organisations and associations, will be crucial.
- d) The proposed legislation might be, at least partially, the appropriate context to ensure that Member States do not set excessive/difficult-to-meet requirements for the constitution of non-profit organisations: a worrying example concerns establishment conditions set out for religious legal entities in the 2014 Law on the *Organisation of the legal form of religious communities and their associations in Greece*, which especially affects religious minorities and potentially their members' full enjoyment of the fundamental right to freedom of religion.

- e) We would support the inclusion of provisions on confidentiality of membership and on confidential and sensitive information, on the basis of Articles 25-26 of the draft Directive recommended by the European Parliament.
- f) Eventual clauses on respect for/promotion of EU values should be worded in a manner that prevents any potential interference with the ethos or the identity of single associations and organisations.
- g) The proposal should prevent bureaucratic burdens for the relevant organisations and associations. We recommend a legal framework that is as lean and simple as possible, so as to genuinely ensure simplification and help the daily life of the relevant entities. The establishment of new authorities specifically responsible for the non-profit sector do not seem essential.

*Brussels, 26 October 2022*

*COMECE Secretariat*