

Position of the Samaritan International network on Charitability and the Social Economy in Europe



We, Samaritan International, a network of 19 charitable non-governmental organisations in 18 European countries, consider it necessary to advance the work of putting charitable organisations in Europe on a supranational, legally secure basis. Our intention is to mitigate the challenges of legal uncertainty that arise from the fact that charitable status is not clearly defined on the European level.

Charitable status should cover organisations and service providers that:

- are certified as charitable/working in the general interest in their national contexts and do not work for profits and/or reinvest all profits they have into their designated charitable cause;
- conduct the majority of their work as part of the social economy – meaning that they offer social services in the general interest or non-economic services on a not-for-profit basis;
- usually do the aforementioned with considerable support and contribution of volunteers as active citizens;
- are, for example, organisations, associations or social enterprises that work in the areas of rescue services, patient transport, paramedical services, civil protection or social services such as youth centres, consulting services for labour market reintegration, day care for people with disabilities, out- and inpatient elderly and medical care or emergency call systems.

European law and European Commission initiatives know and recognise the special status and added value of charitable organisations on several occasions, such as the procurement directive (Directive 2014/24/EU) or the Commission's various initiatives on the Social Economy.

However, this recognition and, in fact, the multiple specific definitions of what is to be recognised still lead to legal uncertainty, even in cases where the law is widely interpreted to guard the societal value of charitable organisations. Often, the letter of the law warrants sufficient room for interpretation

Specific case – Proceedings at the ECJ, excerpt from legal comment commissioned by SAM.I. member organisations

Art. 10 h) of the directive on public procurement (2014/24/EU) defines that specific services provided by not-for-profit organisations or associations, such as civil defence, civil protection, and danger prevention, are exempt from the directive. This means that authorities can task such organisations with these services directly, without conducting a regular procurement procedure. Without a doubt, rescue services with ambulance vehicles and the transport of emergency patients fall within the scope of this exception. (...)

However, since there is room for interpretation in the definitions of some terms used, lawsuits are initiated time and time again, bringing the matter before the courts. Two requests for preliminary decisions are currently before the ECJ (cases C-465/17 and C-424/18). The decisions are still forthcoming. Yet, it is a fact that these ever-recurring uncertainties are harmful and demoralizing and harm the actual goal – the sustainable offering of high-quality services for citizens. (...)

that lawsuits against the applicability of certain provisions or exceptions keep emerging.

One example of this are current legal proceedings concerning exceptions in Art. 10 (h) of the procurement directive (see box on the right).

We advocate a European law on charity that creates certainty and removes the burden of continually and repeatedly having to prove the applicability of exceptions for charitable organisations, therefore allowing them to focus their resources on their services to citizens.

The following three points further illustrate the necessity of a European law on charitability:

Valuation of services and their quality not only by purely economic terms: Social Europe

Social (added) value has to be recognised as a criterion on equal footing with price when evaluating a service. Just focusing on price can, in many cases, not yield sustainable long-term results. A clear definition of this social added value and how it differs from purely private services has to be created.

The goals of the European Pillar of Social Rights can, in practice, only be reached via the active inclusion and continued sustainability of social economy services, including the many non-economical spin-off services provided by charitable organisations on the basis of volunteer work. Societal cohesion and inclusion in particular profit from services that are offered with the general interest and not only profits in mind. In charitable organisations, they are often offered by citizens, in the role of volunteers, for citizens. The social and other services of charitable organisations also form the substance of European initiatives such as the EaSi programme.

Not only focusing economic criteria is furthermore an essential contribution to fair working conditions for the employees of the social sector. This sector needs good working conditions even more than others, since its sustainable operation in the face of demographic and social change is highly dependent on the attractiveness of this work for potential employees.

Volunteer work as a recognised added value

Particularly in areas that are highly depended on civic engagement of citizens beyond the prescribed catalogue of services, volunteer work has to be considered an essential criterion for sustainable services, not as potentially harmful for the labour market. Volunteering and its added value

are a sensitive civic good in need of public and political support, that must not become the plaything of national policies and private businesses. Active support for civic engagement is necessary in all areas of general public interest. In particular in times of increasing demand (caused by, among other things, demographic change), achieving blanket-coverage of certain services is decreasingly viable from an economic perspective. In remote areas, citizens have the right to the same basic services as those in cities. “Active citizenship” can be key to solving this problem.

These added values of volunteer work are generally accepted, including at the European level, as well as the necessity to uphold them by creating favourable framework conditions. This was affirmed as early as the European Year of Volunteering 2011 by the Commission’s official civil society partners in the EYV Alliance. Yet, volunteering and its societal value also continue to face legal challenges.

This shows that a secure legal basis finds no substitute in a well-intentioned general stance at various political levels. Such a secure legal basis is still lacking – particularly in policy areas that are the competency of the European Union, but also in national implementations of EU directives.

It is necessary to establish charitable organisations as recognised actors of the social economy, between the state and the private economy.

When considering the offers of private and charitable service providers, the comprehensiveness and sustainability of the service should already be integral part of the procurement procedure. For example, a service that may be profitable in densely populated areas but is likely not in remote or rural areas can be provided by a charitable organisation for the complete region. A level playing field in terms of competition means that private enterprises would also have to make an offer encompassing both types of areas.

Charitable organisations are unique in their ability to offer such services with universal regional coverage, in that their mission focuses on “public value” or “social value”, not “shareholder value”.

The charitable organisations are also an essential mediator between the state and civil society and, as such, have an irreplaceable role in public life. Therefore, they require basic certainty for the viability of their operations, independent of the politics of the day, so that services for citizens by citizens can continue to play their vital role in civic life.

To ensure such certainty, we urge the creation of a European law on charity that would legally enshrine the status of charitable organisations by virtue of their societal and social added value.

Core piece of such a law would be European criteria for charitable status – as a frame wherein national or regional particularities could be expressed on top of the common European definition.

The necessity of comprehensive recognition and support of charitable organisations is clear, if the previously named added values are to be sustainably secured. Samaritan International will continue to focus on this in the coming years. We are convinced that our endeavour to sustainably protect the charitable organisations of the social economy is, at the same time, also an important contribution in the direction of a true European Social Policy.

Together we work on a Europe-wide, future-proof and secure system for supplying citizens with essential services through recognised charitable organisations of the social economy. This is the position of Samaritan International.



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