



## Cross-Border Tax and Philanthropy: Avoiding the Icebergs in the Sea of Generosity

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Over the past 20 years, the role and value of civil society has been increasingly recognized by the European institutions. Yet, obstacles continue to hamper the free movement of philanthropic capital across the European Union.

Analysing the EU regulatory space, this paper examines what structural, policy and fiscal barriers affects cross-border tax-effective generosity, offering a ‘navigational map’ to overcome them.

Conflicting stances among Member States, a lack of clear procedures and a prevailing concern about tax evasion are behind the EU and Member States’ reluctance to open the doors for cross-border generosity. Only multi-stakeholder coalitions and a better understanding of the space in which EU and national regulators operate will enable philanthropic actors to make headways into their advocacy efforts and get the structural changes needed.

[#crossborderphilanthropy](#) [#europeangenerosity](#) [#charitytaxation](#)

### Background

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### Context



- Over the last two decades, and although European Economic Community (EEC) founding treaties gave little consideration to charitable entities, **the role and value of civil society has been increasingly recognized by the European institutions**. EU treaty amendments and legal decisions from the European Court of Justice (ECJ) have enshrined the right of free movement for philanthropic capital and condemned Member States’ discriminatory tax treatment of EU-based comparable charities.
- Yet in practice, the path of cross-border philanthropy remains arduous. Across the EU, **discriminations for tax-purposes between domestic and foreign entities**, together with a **clear lack of accessible and efficient comparability process**, continue to impact European charities’ opportunity to fundraise cross-border.
- Though fierce, **advocacy efforts from European nonprofits and their representative bodies have not yet been able to overcome the EU’s hesitance** to develop and foster a facilitating infrastructure for cross-border philanthropy and to remove national fiscal and structural obstacles.
- It is these stumbling blocks, or **‘hidden regulatory icebergs’**, that the authors investigate in this article. Drawing on case studies, Breen and Cordery shed light on the **underlying issues at play** and offer **practical solutions** aimed at enabling European transnational generosity to reach its full potential.

# ERNOP Research Note

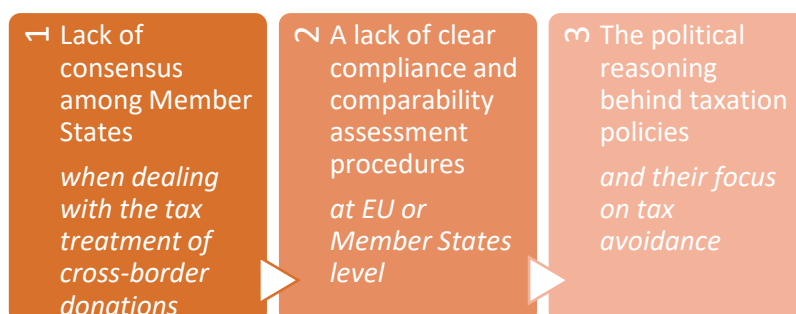
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## Take aways & Learnings



- Applying the theoretical construct of regulatory space to 4 case studies (Ireland, the Netherlands, Luxembourg and Transnational Giving Europe), the authors identify **3 factors that hamper the free movement of tax-effective generosity across Europe**: (1) **a lack of consensus among Member States** and the resulting ‘case-by-case’ approach; (2) **a lack of clear compliance and comparability procedures** across countries; and (3) **the political reasoning behind taxation policies’** focus on tax avoidance.
- **Additional legal and fiscal issues also restrain cross-border philanthropic capital movement**: competing domestic and EU positions, a myriad or lack of national regulators, differing definitions of philanthropy, diverse taxation policies, and distinct civil and common law regimes.
- When negotiating with EU and national regulators, **philanthropic representatives must balance their ask for a free market with the authorities’ opposing focus on for-profit tax evasion**. Advocacy efforts should also consider the **variety of tax policy stakeholders** (from OECD to EU to national).
- Overall, **greater clarity on administrative taxation procedures and support for foreign charities and donors** must be provided either at EU level or by the Member States. An ideal scenario would see the **development of an easy and EU-wide process** to help tax authorities determine fairly on the comparability of a foreign entity.
- Beyond the structural change required to address all these blocks, **philanthropic actors and their representative bodies must join forces and seek additional coalitions**, including with for-profit actors, to enact successful lobbying campaigns.

**Figure 1.** The three factors hampering the free movement of cross-border capital across Europe



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