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UK charities in the post-Brexit storm: Everything must change so that nothing changes



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After dominating European political news in recent years, Brexit has finally become a reality. Since January 1, 2021, European Union law no longer applies to the United Kingdom. For British charities, the National Council for Voluntary Organisations (NCVO) has just listed in its annual report the many challenges they will have to face. Without being alarmist, some clouds are gathering.

Thunderbolt

Administrative procedures are on the agenda, whether it is to obtain a “UK visa sponsorship for employers” to employ EU nationals whose numbers have doubled in the last two decades; or to ship or receive goods from the continent without getting stuck, like a charity had the unpleasant experience at the North Shields warehouse. Not to mention the processing of personal data, the black gold of charities. In six months the General Data Protection Regulation (GDPR) stops at the Channel, the charities will have to appoint a local representative based in the EU, and provide them with the necessary information on the use made of such personal data.

Above all, Brexit is taking with it the European funding that UK charities have benefited from until now. The sectors most affected are humanitarian aid, development aid, research, environmental protection and heritage protection. According to the Directory of Social Change, the end of European funding represents a cut of about £258 million per year (298 million euros) for British charities. For others, the loss is more serious, since the European Social Fund (ESF) alone was funding €1.7 billion, most of which went to the UK third sector. To offset this, Downing Street created the UK Shared Prosperity Fund (UKSPF), and Chancellor Rishi Sunak announced a £220 million (€254 million) pilot program in 2021. But for some, these promises, the details of which remain unclear, are only a consolation ; and many wonder how many years it will take for the UKSPF to reach the £1.5 billion promised.

Give and let give

since January 1, the United Kingdom has left the “Common Market for Philanthropy”, which was enshrined in 2009 by the Persche decision in which the European Union Court of Justice extended the principle of free movement of capital to donations: donations made by an EU resident to an organization established in another Member State are entitled to the same tax benefits as those granted to national organizations.

Donors from the continent are now losing the ability to obtain tax relief on donations to charities in the United Kingdom – a chilling blow to their generosity. Conversely, UK charities and donors are losing the benefit of tax relief on donations to charities in other EU countries.

Since the UK is not even a member of the European Economic Area (EEA), a donation to a charity in Liverpool will fall under the same strict terms as a donation to an NGO registered in Hanoi or

Panama; and reference should be made to the 27 regimes that the laws of the 27 Member States provide for the tax treatment of donations outside the EU – regimes that are necessarily stricter and less favourable, where the tax advantage is sometimes suspended by administrative authorisations.

To take the example of France, the patronage regime applicable to actions carried out outside the EU (although one of the most flexible regimes compared to the legislations of other Member States), is only open for the following actions: humanitarian, scientific, environmental, or promoting French artistic heritage, French culture, language and scientific knowledge. The benefit of this scheme is also subject to accounting and monitoring rules.

In addition to the loss of funding from Brussels, the continent’s donations are decreasing. This conjuncture puts the British third sector in turmoil. The Civil Society Forum has been set up; the Charity Tax Group is running a lobbying campaign to defend the interests of the non-profit, and the #NeverMoreNeed campaign is sounding the alarm to the public authorities.

Time, however, is running out. The charities, which were on the front line during the COVID crisis – despite the fact that they are still lamenting a loss of around £12.4 billion in revenue in 2020, are calling for immediate solutions to maintain much-needed revenue levels, and to pursue fruitful relationships with their European partners (institutions, donors and charities).

Quantum of solace

Several organizations did not wait to get out of the blizzard and set up a branch in an EU member state to ward off the curse of June 23, 2016. According to the Charity Commission, about 4,373 charities already operate in one or more EU countries, representing about 3% of all charities in the UK.

For these charities, France is one of the first countries to be considered. France is the second country in Europe, after Spain, to have the most British nationals, and to have the largest number of English and Welsh charities (1,500), after Ireland. France is also one of the countries with the most non-profit organizations (NPOs) in the World. Another reason probably lies in the fact that French legislation has adapted to common law concepts (e.g. the establishment in 2008 of the “Fonds de dotation”, the French equivalent of an endowment fund), but has also provided a framework for certain practices familiar to charities (street marketing, Giving Tuesday, charity shops, crowdfunding, charity auctions, to name but a few).

It is becoming clear that setting up an ad hoc structure in the EU, regardless of the territory of the election, is an option for charities currently based in the UK. However, these subsidiaries must be more than just “letterboxes” in order to meet the eligibility criteria for EU grants. The establishment must have been established for at least three years, with a degree of autonomy from its “parent entity”, implying a real power of decision.

Liberté, Egalité, Générosité

In France, for once, the administrative procedure to create an association or an endowment fund is relatively simple and fast, regardless of the nationality of its founders. A foreign association even has the possibility of settling a “local section” in France, which benefits from French legal personality as soon as it is declared at the prefecture. In this case, however, the capacity of the foreign association will be doubly limited to the prerogatives granted to it under national law and to those that French law attributes to a declared French association.

In such a case, a charity would therefore have every interest in creating a legally distinct “subsidiary” association in France. This is the solution adopted by the vast majority of foreign organizations, NGOs and charities, the best example being the International Committee of the Red Cross, a Swiss-based organization, which founded the French Red Cross as early as 1864. The “subsidiary” association actually has a greater capacity than the “parent” entity.

Finally, there is no doubt that, through their resilience and pragmatism, the British will be able to find a sustainable solution plus the charity sector. But time is ticking, the clock is ticking, because the risk of social crisis and the social stakes born from COVID make the response by the English charity sector crucial. The relations between European civil society and the British third sector will be crucial. We must stand together and welcome the charities that would choose to settle in France. Let's talk about it again on the occasion of a forum, on the horizon of 2022, once COVID and Brexit stabilize.