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COM(2023) 516 final

2023/0315 (COD)

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on European cross-border associations**

(Text with EEA relevance)

{SEC(2023) 306 final} - {SWD(2023) 292 final} - {SWD(2023) 293 final} -  
{SWD(2023) 294 final}

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

#### • **Reasons for and objectives of the proposal**

The proposal stems from the European Parliament resolution of 17 February 2022, aiming to promote associations and other non-profit organisations in the EU in completing the internal market, protecting their fundamental rights and fostering an EU democratic space. More precisely, the resolution asked the Commission, under Article 225 of the Treaty on the Functioning of the European Union ('TFEU'), to submit two new legislative proposals: a Regulation (under Article 352 TFEU), which creates the legal form of "European Associations", and a Directive harmonising common minimum standards for NPOs (under Article 114 TFEU). The European Commission answered positively to the European Parliament call sharing the need to create an enabling environment for the non-profit sector, out of which associations are the most present legal form.

The proposal aims to improve the functioning of the internal market of non-profit associations by laying down measures coordinating the conditions for establishing and operating European cross-border associations (ECBAs), with the aim of facilitating the effective exercise of freedom of movement of non-profit associations operating in the internal market.

Non-profit associations represent the predominant legal form among non-profit organisations in the European Union, with an estimated number of 3.8 million present in EU Member States. Non-profit associations are also the largest in number of the four legal forms traditionally encompassed by the social economy.<sup>1</sup> Among them, 310 000 non-profit associations are active in more than one Member States, while potentially another 185 000 could theoretically engage in cross-border activities, if barriers were removed. Non-profit associations are organisations driven by the key principles of the social economy: the primacy of people as well as social and environmental purpose over profit, the reinvestment of most of the profits and surpluses to carry out activities in the interest of members/users ("collective interest") or society at large ("general interest") and democratic or participatory governance.

Non-profit associations are active in sectors with a societal impact such as healthcare, social services, social inclusion, culture, sports, research and development, education and training, contributing 2.9% to EU GDP. Through their membership-based structure, they also have a direct leverage effect on citizens who are members, donors or beneficiaries of their activities. When provided against remuneration, non-profit associations' activities constitute a service within the meaning of Article 57 TFEU.

Non-profit associations have a positive impact on ensuring social fairness and prosperity for EU citizens and they play a significant role for growth within the internal market. However, their socio-economic potential is not fully exploited. The full potential of the internal market can only be unleashed if all participants enjoy the rights provided thereby. To this end, non-profit associations need a predictable legal framework that allows them to seamlessly conduct their activities, including when conducting them across borders in the internal market.

Currently, non-profit associations and their activities are regulated by specific legislation in 24 Member States<sup>2</sup> in a different manner, creating legal uncertainty and giving rise to

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<sup>1</sup> The other legal entities present in the social economy are cooperatives, mutual benefit societies (i.e. mutuals) and foundations.

<sup>2</sup> In Ireland, Denmark and Sweden, associations are regulated by principles developed through doctrine and case-law.

different administrative procedures and requirements. Rules on formation, membership and governance impose different requirements. For instance, the number of physical or legal persons required to form a non-profit association ranges from 3 to 20 depending on the Member State. Different requirements apply when it comes to becoming a member or have an executive role in the non-profit association, in some instances pertaining to nationality or legal residence. While all non-profit associations have an executive and decision-making body, the rules pertaining to their governance vary across Member States. Furthermore, acquisition of the legal personality of non-profit associations follows different rules, with some Member States granting legal personality on registration, others on recognition by national authorities or on simple formation. Possibilities to carry out economic activities vary as well. Moreover, a very large majority of Member States do not recognise associations from other Member States seeking to engage in cross-border activities. This forces non-profit associations wishing to carry out economic activities in another Member State to form and register a brand new non-profit association in that Member State, implying additional administrative costs and formalities. This has also consequences regarding the channelling of capital between non-profit associations, impeding a seamless flow of capital and undermining non-profit associations' ability to perform their activities in another Member State. Rules differ also regarding access to capital and difficulties exist when it comes to access financial loans, credits and guarantees within credit institutions. The non-profit nature of associations makes these obstacles particularly acute and add to the financial burden they need to bear when operating cross borders in the Union.

As identified in the context of the impact assessment supporting this proposal, these divergences impose unjustified compliance costs for non-profit associations seeking to carry out activities in multiple Member States, create uncertainty regarding applicable obligations, and may be deterring the provision and further development of services with societal impact in the internal market. Not only does this heterogeneity undermine the proper functioning of the internal market, but it also negatively impacts the freedom of association, together with the freedom of expression and information, and, ultimately, hampers non-profit associations to unleash their full potential to generate economic and societal value in the EU.

- **Consistency with existing policy provisions in the policy area**

The proposal is included in the 2023 Commission Work Programme as part of the Social Economy framework under the Commission's headline ambition of "An economy that works for people",<sup>3</sup> contributing to the objective of "an economy that can fully respond to the needs of EU citizens thereby ensuring social fairness and prosperity". In this sense, it interlinks with measures announced in the Social Economy Action Plan<sup>4</sup> and forms together with them the "Social Economy framework", namely: the proposal for a Council Recommendation on "developing social economy framework conditions in the Member States"<sup>5</sup>; and two Commission Staff Working Documents setting "relevant taxation frameworks for social economy entities"<sup>6</sup> and "non-discriminatory taxation of charitable organisations and their

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<sup>3</sup> An economy that works for people (europa.eu).

<sup>4</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 'Building an economy that works for people: an action plan for the social economy', COM(2021) 778 final.

<sup>5</sup> Council Recommendation on developing social economy framework conditions, COM(2023) 316 final of 13.06.23.

<sup>6</sup> Staff Working Document: Relevant taxation frameworks for Social Economy Entities, SWD(2023) 211 final of 13.06.23.

donors: principle drawn from EU case-law”<sup>7</sup>. In particular, the Council Recommendation promotes an enabling environment for social economy entities, including associations, and the Commission Staff Working Documents on taxation matters bring clarity and improve the understanding of relevant tax rules for social economy entities and cross-border donations for non-profit organisations. These texts therefore complement this legislative proposal as they frame comprehensive strategies for social economy entities, including non-profit associations, and touch upon the area of taxation, which the proposal does not regulate.

The proposal follows partially some solutions adopted in the context of EU rules on company law<sup>8</sup> and on services in the internal market. EU rules on company law (Directive EU 2017/1132)<sup>9</sup> harmonise, inter alia, formation, capital and disclosure requirements and operations (domestic mergers and divisions, cross-border conversions, mergers and divisions for limited liability companies) enabling businesses to be set up and to carry out operations anywhere in the EU. The Services Directive<sup>10</sup> facilitates the exercise of the freedom of establishment for service providers and the free movement of services, while maintaining a high quality of services. In a similar vein, the proposal aims at addressing the restrictions to the exercise of internal market freedoms non-profit associations face and enabling them to carry out operations anywhere in the EU, via the new form of European cross-border association.

In light of the above, the Directive fills in a legislative gap as there is no dedicated EU-level legislation regulating conditions for non-profit associations to operate cross-border in the internal market.<sup>11</sup> In this sense, the targeted approach of the proposal is quite different from the broad one followed by the Commission proposal of 1992 to create a European legal form for association (i.e. the European Association)<sup>12</sup>, as it does not intend to create a European statute for associations, and creates instead a new national legal form facilitating the cross-border activities of non-profit associations and their mobility while respecting national traditions.

Furthermore, the proposal links with EU rules on other existing European legal forms generally designed to facilitate and enhance cross-border activities among Member States and more generally across the Union, in particular the European Economic Interest Grouping (EEIG)<sup>13</sup>, the European Grouping of Territorial Cooperation (EGTC)<sup>14</sup>, the European

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<sup>7</sup> [Staff Working Document: Non-discriminatory taxation of charitable organisations and their donors: principles drawn from EU case-law, SWD\(2023\) 212 final of 13.06.23.](#)

<sup>8</sup> EU rules in the area of company law aims at providing protection for shareholders and other parties with a particular interest in companies, such as employees and creditors, making business more efficient, competitive and sustainable in the long term and encouraging businesses based in different EU countries to cooperate with each other. EU company reporting, auditing and transparency rules complement this legal framework.

<sup>9</sup> Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law (OJ L 169, 30.06.2017, p.46).

<sup>10</sup> Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ L 376, 27.12.2006, p. 36).

<sup>11</sup> The impact assessment identified that associations are subject to dedicated regulation in the majority of Member States. In general, these are comprehensive laws, regulating associations in detail. Yet, cross-border aspects essential to mobility and activities of associations are not comprehensively regulated in any Member State.

<sup>12</sup> Proposal for a Council Regulation on the Statute for a European Association (91/273). Based on Article 114 TFEU, the proposal specified the rules of the formation, registration, constitution, functioning, financing, dissolution, liquidation and insolvency of the association. The proposal was withdrawn in 2005.

<sup>13</sup> Council Regulation (EEC) No 2137/85 of 25 July 1985 on the European Economic Interest Grouping (EEIG) (OJ L 199, 31.07.1985, p. 1).

Research Infrastructure Consortium (ERIC)<sup>15</sup>, and the European Digital Infrastructure Consortia (EDIC)<sup>16</sup>. Although member-based, these legal forms are not comparable to non-profit associations in the context of this proposal. They are either designed for carrying out very specific and limited tasks<sup>17</sup> (ERIC and EDIC), have a very limited type of membership<sup>18</sup> (EGTC and ERIC), do not have limited liability (EEIG and EGTC), or do not have a non-profit purpose and a non-distribution of profits constraint (EEIG).

Finally, this Directive does not seek to regulate certain areas of law pertinent to ECBAs in the internal market, in particular taxation, employment law, competition, intellectual property, anti-money laundering and insolvency.

- **Consistency with other Union policies**

This proposal is embedded in the broader political objectives of the European Green Deal (including the “do not significant harm” principle”) and is relevant to other EU policies put in place in fields such as democracy and fundamental rights.

The proposal is also embedded in the Commission’s priority of “a Europe fit for the digital age”<sup>19</sup> and supports the political objective of the Digital Decade 2030 by enhancing and encouraging the use of digital means to reduce administrative burden linked to cross-border activities of non-profit associations. This is ultimately relevant to strengthening the freedoms of expression and information in civil society, as well as to boosting civic engagement.

Addressing cross-border activities of non-profit associations, the proposal is in line with the findings of the 2022 Annual report on the application of the EU Charter of Fundamental Rights,<sup>20</sup> which stresses that civil society organisations may advocate policies and legislation beyond the borders of Member States and that their role is particularly relevant in the context of current challenges that the EU is facing. In this connection, the Conference on the Future of Europe<sup>21</sup> recognised the important role of the civil society and mentioned the need for a statute for European cross-border associations and non-profit organisations. The proposal could bring positive leverage to the European Universities alliances with the aim to facilitate a deeper, long-term and flexible cross-border cooperation<sup>22</sup>. The proposal is also prepared alongside the announced “Defence of Democracy” package<sup>23</sup>.

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<sup>14</sup> Regulation (EC) No 1082/2006 of the European Parliament and of the Council of 5 July 2006 on a European grouping of territorial cooperation (EGTC) (OJ L 210, 31.07.2006, p. 19).

<sup>15</sup> Council Regulation (EC) No 723/2009 of 25 June 2009 on the Community legal framework for a European Research Infrastructure Consortium (ERIC) (OJ L 206, 08.08.2009, p.1).

<sup>16</sup> Decision (EU) 2022/2481 of the European Parliament and of the Council of 14 December 2022 establishing the Digital Decade Policy Program 2030 (OJ L 323, 19.12.2022, p. 4).

<sup>17</sup> Their potential areas of activity and purpose are limited by the respective regulation.

<sup>18</sup> They are only open to either countries, intergovernmental organisations (ERIC) or Member State authorities (EGTC).

<sup>19</sup> A Europe fit for the digital age (europa.eu).

<sup>20</sup> [https://commission.europa.eu/aid-development-cooperation-fundamental-rights/your-rights-eu/eu-charter-fundamental-rights/application-charter/annual-reports-application-charter\\_en#ref-2022-report](https://commission.europa.eu/aid-development-cooperation-fundamental-rights/your-rights-eu/eu-charter-fundamental-rights/application-charter/annual-reports-application-charter_en#ref-2022-report)  
Conference on the Future of Europe, Report on the final outcome, May 2022.

<sup>21</sup> See [Communication from the Commission on a European strategy for universities](#) of 18.01.2022, COM(2022) 16 final and the [“European Universities initiative”](#).

<sup>23</sup> See the Call for Evidence of 16 February 2023.

## **2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY**

- **Legal basis**

The proposal is based on Article 50 TFEU and Article 114 TFEU.

Article 50(1) and (2) TFEU, which empowers the European Parliament and the Council to adopt provisions in order to attain freedom of establishment, serves as legal basis for measures that facilitate the exercise of the right of establishment of associations engaging in economic activity and their mobility, e.g. transfer of registered office.

Article 114 TFEU empowers the European Parliament and the Council to adopt the measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market.

The aim of the proposal is to facilitate the exercise of non-profit associations' right of establishment and the effective exercise of free movement rights by laying down measures coordinating the conditions for establishing and operating European cross-border associations, thereby providing inter alia for automatic recognition of their legal personality by Member States, ensuring they are subject to a single registration obligation and providing for harmonised rules on mobility (i.e. transfer of registered office). By creating within the national legal order of the Member States a new legal form of non-profit associations dedicated to cross-border activities of and by laying down the conditions for its operations and mobility across the Union, this proposal results in approximating legal and administrative action in the Member States with regard to non-profit associations and, therefore contributes to the functioning of the internal market.

In light thereof, Article 50 TFEU is the appropriate legal basis for measures that directly aim at improving the right of establishment of associations and their mobility within the internal market.

Article 50 TFEU is combined with Article 114 TFEU. Indeed, besides facilitating the freedom of establishment, the proposed Directive aims to ensure that non-profit associations can fully enjoy the free movement of goods, exercise an economic activity and receive services, and can exercise the freedom to receive capital. It does so by removing restrictions, in particular those related to the regulation of economic activities and the channelling of capital. Therefore, Article 114 TFEU is an additional legal basis for an intervention covering non-profit associations engaged in economic activities in the internal market, by harmonising divergent Member States' restrictive provisions as regards their exercise of an economic activity and their freedom to receive capital, which have a direct effect on the functioning of the internal market.

- **Subsidiarity (for non-exclusive competence)**

The overall objective of the proposal is to remove barriers to the cross-border activities and cross-border mobility of non-profit associations in the internal market.

There is a clear value added by acting at EU level because the problems that this proposal tackles have a strong cross-border dimension. Currently, there is little coordination among Member States to facilitate cross-border economic activities of non-profit associations, their mobility and their ability to enjoy internal market freedoms. Such coordination, although theoretically possible, appears unlikely in the near future. For instance, following the Commission's withdrawal in 2005 of its proposal creating the statute for a European association, only three Member States have legislated in ways to facilitate cross-border

activities of non-profit associations by way of registration duties. In particular, individual action or inaction by Member States mainly focuses on regulating non-profit associations in their specific national context and does not address the cross-border dimension, with the exception of a few Member States. The Directive has a sole cross-border focus as it establishes a legal form targeting non-profit associations interested in operating in more than one Member States (the European cross-border association) and provides for the conditions of its operations and its objective is to help these non-profit associations benefit fully from the internal market freedoms through recognition of their legal personality across the Union and improved clarity on administrative procedures applying when operating cross-border. Relying on Member States' action alone, it is likely that the legal and administrative barriers non-profit associations face when engaging in cross-border activities would persist, resulting in the continuation of legal uncertainty and red tape and not allowing a level playing field for non-profit associations in the internal market.

By acting, the EU will provide a clear and predictable framework enabling non-profit associations to fully benefit from their internal market freedoms when they operate cross-border. The objective of this initiative therefore cannot be achieved sufficiently by the Member States alone and can be better achieved at Union level.

- **Proportionality**

The proposal targets non-profit associations which operate or wish to operate cross-border and will not necessarily lead Member States to change their existing national rules on non-profit associations nor will it have direct implications on non-profit associations not interested in cross-border activities. The content and form of the proposal are, therefore, in proportion with the scale and scope of the identified problems non-profit associations face when they engage in cross-border activities or mobility.

The new legal form specifically designed and introduced at national level, which is the central element of this proposal, will allow flexibility for Member States to adapt it to their respective settings. The provisions prescribed in the proposed Directive will not require changing Member States' legislation governing existing forms of non-profit associations established in their territory.

The analysis of the policy options carried out in the Impact Assessment, which took into account their effectiveness, efficiency, coherence and proportionality, showed that all options could have a positive impact and that the option in the presented proposal ranked highest in those terms.

- **Choice of the instrument**

This proposal takes the form of a Directive and a Regulation.

The use of a directive is required by Article 50 TFEU. In addition, a directive is considered to be the most appropriate and proportionate legal instrument to allow room for adapting the transposition measures to national settings, thereby also having the potential to facilitate the uptake of the new legal form by associations.

The Regulation is of technical nature and amends Regulation (EU) No 1024/2012<sup>24</sup> which established the Internal Market Information System (IMI) in order to ensure that Member States' competent authorities cooperate and exchange information through the IMI when they

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<sup>24</sup> Regulation (EU) No 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC (OJ L 316, 14.11.2012, p. 1).

apply the national rules implemented in accordance with the provisions of the proposal. It also amends Regulation (EU) 2018/1724<sup>25</sup> which established the Single Digital Gateway to ensure that Member States give online access to information relevant to the European cross-border associations (ECBAs) and non-profit associations and facilitate the exchange of evidence between competent authorities during the procedures concerning ECBAs, as laid down by the proposed Directive. The Regulation is the appropriate instrument in view of the principle of parallelism of form.

### **3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS**

#### **• Stakeholder consultations**

This proposal follows extensive consultation activities with stakeholders namely non-profit associations, Non-Profit Organisations (NPOs), EU citizens engaging in non-profit associations and other NPO activities, Member States and public authorities, businesses, experts, and researchers in non-profit law.

An open public consultation and a call for evidence were published on 5 August 2022 and ran until 3 November 2022.<sup>26</sup> Input and contributions from stakeholders fed into the process of determining and defining the magnitude of the problem and policy options.

The Commission contracted an external study to support the preparation of this proposal. In this context, additional targeted stakeholders' consultations were conducted.

The impact assessment supporting the Commission's proposal builds on results of the following consultation activities:

- a call for evidence, which received 50 replies;
- a public consultation, which received 64 replies;
- in the context of the external study, a targeted consultation through an online survey, with responses from domestic and cross-border associations (88 in total, including umbrella organisations), service providers (in total 12), academia/research institutes (in total 14), and responsible authorities (in total 11);
- in the context of the external study, 64 interviews with associations and umbrella organizations regrouping national associations.

While the absolute numbers of responses across the consultation activities could be perceived as generally limited, the representativeness of the contributions are reinforced through the contributions of 29 umbrella organisations, that represented the voice of 3026 associations.

Overall, the consultation activities showed that, among stakeholders there is both a wide acknowledgement of the need to strengthen the cross-border activities of non-profit

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<sup>25</sup> Regulation (EU) 2018/1724 of the European Parliament and of the Council of 2 October 2018 establishing a single digital gateway to provide access to information, to procedures and to assistance and problem-solving services and amending Regulation (EU) No 1024/2012 (OJ L 295, 21.11.2018, p. 1).

<sup>26</sup> Single market – Proposal for a legislative initiative on cross-border activities of associations (europa.eu).



associations and also support for EU action to facilitate cross-border activities of non-profit associations in the internal market.<sup>27</sup>

Most respondents reported recurrent challenges and obstacles when conducting cross-border activities. In the Call for Evidence, stakeholders highlighted existing barriers in areas such as providing services in another Member State without registration, problems of recognition in another Member State, access to funding, and different VAT regimes and approaches in different EU countries. In the public consultation, the most recurrent issues were tax related issues, registration processes, and administrative formalities. The answers from the targeted stakeholder consultations were similar, pinpointing issues such as different sets of national rules for establishing non-profit associations followed by difficulties in merging non-profit associations across different Member States and other tax issues.

Regarding the preferred policy option, 36% (22 out of 64) of all respondents to the public consultation, (where 67% i.e. 43 out of 64 are part of the non-profit sector) favoured “a new legal form for associations”. 16 out of 38 respondents who identified themselves to be under the legal form of associations, (i.e. 42% of those respondents) favoured it as well. The “harmonisation of common minimum standards” (policy option 2) was the preferred option of 42% (26 out of 64) of all respondents and for 32% (12 out of 38) of respondents under the legal form of association.

In the context of the targeted survey (which received 140 replies), responding non-profit associations supported an EU intervention, potentially favouring the creation of a new legal forms in terms of effectiveness in facilitating associations’ operations in another Member State, while other policy options were also widely supported.

Detailed information on the consultation strategy, the outcomes and conclusions of the stakeholder consultations can be found in Annex 2 of the impact assessment report and on [Have your say \(europa.eu\)](#).

- **Collection and use of expertise**

To support the analysis underpinning the impact assessment, the Commission used the results of an external study contracted to gather further evidence on cross-border activities of associations. It included a comparative legal analysis of associations laws and regimes in the EU, targeted surveys and the qualitative and quantitative assessment of impacts of potential measures.

In addition, the impact assessment was supported with evidence stemming from the [study on Comparative legal analysis of associations laws and regimes in the EU](#), published in September 2022, and the [study on Comparative legal analysis of merger rules concerning associations in the EU](#), published in July 2023.

Besides these support studies, additional expertise was identified through literature research and through the stakeholder consultation responses.

In this context, the Commission informed and discussed in June and November 2022 with the Commission expert group on social economy and social enterprises (GECES) about the initiative on cross-border activities of non-profit associations.

Alongside the support studies and stakeholder consultations, the Commission paid close attention to the European Parliament resolution of 17 February 2022, which provided recommendations to the Commission on a statute for European cross-border associations and

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<sup>27</sup> For instance, in the Public Consultation (64 replies), the majority of respondents (i.e. 73%; 47 out of 64) support an EU action to facilitate cross-border activities of associations in the single market.

non-profit organisations, as well as to the European Parliament study underpinning its resolution.<sup>28</sup>

- **Impact assessment**

The impact assessment for this proposal was examined by the Regulatory Scrutiny Board on 2 March 2023. Following the negative opinion received on 31 March, a revised impact assessment was submitted to the Board on 8 May 2023. Following the positive opinion with reservations of the Regulatory Scrutiny Board of 8 June 2023, the impact assessment which accompanies this proposal was revised in order to duly address the recommendations of the Board, e.g. by explaining further the choice of the legal basis, clarifying the different impacts among the policy options also in terms of subsidiarity and proportionality and presenting the scoring methodology of the policy options in a more granular manner.

The impact assessment analysed policy options building on the analysis of obstacles identified in four main areas of internal market: in relation to non-profit associations' right to establishment when they operate cross-border, their capabilities to provide services and goods and sending and receiving of capital; the possibilities for cross-border membership and participation in governance bodies of non-profit associations when they operate cross-border; cross-border mobility of non-profit associations.

Under the scenario based on no policy intervention at the EU level, non-profit associations will continue to be governed exclusively by national law. In this baseline scenario, the impact assessment showed that existing barriers will most likely remain or in some cases worsen in light of societal challenges and market developments. Member States currently lack legislation specifically addressing cross-border activities and mobility of non-profit associations, except for a few countries. Moreover, there is no indication of Member States planning legislation in this space. Without an appropriate way to obtain recognition and facilitate mobility, Member State-level measures would have limited benefits.

Therefore, three policy options to reduce the identified barriers that non-profit associations face when operating cross-border in the internal market were assessed.

The first policy option was analysed through two sub-options proposing the introduction of: a) a European legal form called the "European Association" that would regulate all aspects of the functioning of this new legal form and coexist with national legal forms without replacing them. The European Association form would be beneficial for non-profit associations interested in operating in multiple Member States, but may have been less suitable for small non-profit associations with occasional cross-border activities; b) the establishment of an EU level legal form called the "European cross-border Association" that specifically covered cross-border aspects. Unlike the sub-option under point a), this sub-option does not fully prescribe the legal form but only exhaustively prescribes cross-border aspects. Both sub-options would be based on Article 352 TFEU and thereby the new legal form would be created through a regulation.

The second policy option proposes the harmonization of common minimum standards for the cross-border activities and mobility of non-profit associations across Member States. This option would require removing or amending existing provisions and introducing new ones in Member State law to achieve these objectives. This option would encourage fully online registration, digital registers, and standardized procedures to facilitate the registration of non-profit associations operating cross-border and exchange of information among Member States

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<sup>28</sup> A statute for European cross-border associations and non-profit organizations Potential benefits in the current situation | Think Tank | European Parliament (europa.eu).

and at the EU level. Non-profit associations would automatically benefit from these harmonization measures, and depending on the scope of harmonization, all non-profit associations may have been affected by the new rules. Partial harmonization of national laws would simplify rules applicable to non-profit associations operating in cross-border contexts, providing rights and safeguards for their cross-border mobility and activities. The legal instrument for this option would be a Directive and the legal base would be Article 114 or 50 TFEU, or a combination thereof, considering the material scope of the initiative.

Thirdly, a policy option creating at national level an additional legal form of non-profit association designed for cross-border purposes and recognised by Member States, has been assessed. This policy option would require each Member State to introduce in their national legal system a legal form of non-profit association tailored for cross-border purposes. At EU level, it would encompass prescribing only requirements and safeguards necessary for facilitating the said cross-border purposes, and it would co-exist alongside existing legal forms for non-profit associations in national law, while respecting varying national traditions in association law. ‘Cross-border associations’ would not necessarily need to register in each Member State separately, as their legal personality and capacity would be recognised automatically and even when additional formalities are justified, ‘cross-border associations’ should not be required to provide information already submitted to a Member State competent authority. Instead, information will be exchanged between Member State authorities digitally.

The third policy option offers a combination of aspects from the first and second policy options, in that it creates an additional new legal form of non-profit associations (similar to the first policy option), but only with provisions relevant to cross-border aspects, which Member States may adapt to their respective national setting through transposition (similar to policy option two), while avoiding the need to necessarily amend rules on existing legal forms at national level.

Although all policy options would contribute to achieving the policy objectives of the initiative (albeit in a different manner and extent), the main differences between them concern their level of compliance with the proportionality and subsidiarity principles and their level of legal feasibility in relation to the identified problem. In this context, the third option emerged as the preferred option, as it contributes to resolving the identified problem and addresses the specific objectives, while being targeted and balanced in terms of costs and benefits<sup>29</sup>.

Furthermore, the study underpinning the Impact Assessment also evaluated the economic, social and environmental impacts of the preferred policy option and concluded that, in general, policy option three is expected to have a positive impact on competent authorities in the long term without significant adaptation costs.

From an economic perspective, the proposal does not impose any costs. The non-profit associations taking this new legal form may encounter certain costs, which will depend on the extent the harmonised provisions would differ from national rules, but these costs will not be significant. Non-significant costs might occur for public administrations in case an online register needs to be developed or adapted. No adjustment and administrative costs would occur for those associations not wishing to take this legal form. This policy option will lower both one-off costs of launching operations and recurring costs of non-profit associations operating cross-border compared to the baseline policy option. More precisely, the reduction of excess launch costs (e.g. information cost and direct charges) is estimated at EUR 2 150 per launch. Within the assessed 15-year time frame, excess cost reductions could potentially

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<sup>29</sup> As outlined in Section 6 and 7 of the Impact Assessment report.

amount up to between EUR 338 million – 378 million in the best estimate scenario (EUR 358 million for the central estimate of 166 500 new cross-border associations in the assessed 15-year time frame). The reduction of excess cost of operations (recurrent costs, e.g. administrative and compliance costs) for non-profit associations currently operating cross-border is estimated at EUR 770 million per year. Within the assessed 15-year time frame, cost savings could potentially amount up to of EUR 8.5 billion, which would contribute to the general reduction of the regulatory burden. The impact assessment also makes a best estimate of potential indirect economic benefits generated: 157 000 – 176 000 additional associations operating cross border, creating 64 000 – 71 000 jobs and EUR 3.57 billion – EUR 4 billion added value, corresponding to the maximum potential uptake over a 15-year time frame.<sup>30</sup>

Concerning social impacts, it appeared difficult to determine a causal relationship between a directive simplifying regulatory and administrative rules on cross-border operations of non-profit associations and the potential social impacts. Nevertheless, the Impact Assessment determined indirect, but non-measurable, positive effects. In particular, the Directive is believed to improve the access for citizens in sectors offering services across Member States (e.g. healthcare and social services, community service social work, education and training, employment services, etc.). It will further foster convergence between the different models offered in the Member States, leading to an overall enhanced quality of such services in the EU. As regards fundamental rights, this Directive could also strengthen the right to freedom of assembly and association in a non-discriminatory manner, as non-profit associations using the new legal forms would be treated in an equal manner with non-profit associations that already exist under national laws. According to desk research and Public Consultation results, by improving the conditions for non-profit associations to operate in the internal market, the third policy option is believed to have a strong positive impact on safeguarding the rights to freedom of assembly and association and freedom of expression and information of non-profit associations and their members in the EU.

In principle, the nature and objectives of the initiative are not expected to generate measurable direct environmental impacts. When looking at the potential indirect benefits, the preferred option is expected to generate a positive impact by improving the position and presence of non-profit associations operating cross-border and active in the environmental and climate change sphere, such as promotion of biodiversity, nature preservation and the fight against climate change.

The initiative would also have an indirect economic impact on innovation and competition in critical sectors of high societal relevance (e.g. healthcare and social services, social work, work integration, training and education services, employment services and research and development). With fewer barrier for non-profit associations inside the internal market, there will be increased services and products offered on the national markets, as well as more cooperation and competition. This will foster innovation and price quality for services and goods.

Lastly, the initiative contributes to the Sustainable Development Goals (SDGs), and it particularly supports the SDG 8 (Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all), by promoting job creation

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<sup>30</sup> See impact assessment report, section 6.3 on “PO3: Creation of an additional national legal form of association designed for a cross-border membership and/or cross-border purposes or activities”, pp. 64-67. Further clarifications and explication on calculations of figures presented under section 6.3 (and other figures presented in the context of the impact assessment supporting this legislative initiative) can be found in sections 2, 6, 7 and 8 of the impact assessment report and in Annexes 3, 4 and 6 of the impact assessment report.

and improving equal and inclusive access to economic opportunities. It further contributes the SDG 16 (Peace, justice and inclusive societies), by strengthening civil society through protecting associations among other entities.

- **Fundamental rights**

Although the proposal is centred on the functioning of the internal market for non-profit associations operating cross-border, it will also have a positive effect on the protection and promotion of fundamental rights. For instance, improving the conditions for non-profit associations to operate in the internal market will strengthen the enjoyment of the freedoms of expression and information (Article 11 of the Charter) and the freedom of assembly and of association (Article 12 of the Charter) in the EU. This will in fact allow non-profit associations with cross-border ambitions to effectively expand, thereby contributing to also exercise the fundamental rights that they entail on a larger scale, by benefitting from a more harmonized legal framework which would not neglect the national specificities.

From this viewpoint, this initiative will have positive spill-over effects on strengthening civil society in the EU and mitigating the overall trend of shrinking civic space observed in Europe, by facilitating cross-border activities and mobility of non-profit associations and enabling them to mobilise members, volunteers and interest groups operating in the internal market. It would make it easier for non-profit associations to engage in activities across Member States and enable them, first, to unleash their economic potential and, second, their potential to lower the threshold of citizens' engagement in non-profit associations across the Union (as indicated in the impact assessment report, Section 4 on general objectives). Ultimately, the initiative will have an indirect positive impact on the EU democratic space.

#### **4. BUDGETARY IMPLICATIONS**

The legislative financial statement attached to this proposal sets out the implications for budgetary, human, administrative resources.

#### **5. OTHER ELEMENTS**

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The Commission will monitor the implementation of the Directive and will report to the Council and the European Parliament every seven years. For the purpose of monitoring and reporting, the Commission will seek feedback from key stakeholders on the impact of the proposal, including advantages, drawbacks and any practical implementation challenges for Member States and non-profit associations. A regular feedback loop will also allow for data gathering from Member States concerning European cross-border associations (ECBAs) registered in their territory.

- **Explanatory documents (for directives)**

To ensure the proper implementation of this proposal, explanatory documents, explaining the relationship between its components and the corresponding parts of national transposition instruments, are necessary.

- **Detailed explanation of the specific provisions of the proposal**

The proposed Directive lays down measures coordinating the conditions for establishing and operating "European cross-border associations" (ECBAs), with the aim of facilitating the effective exercise by non-profit associations of their rights related to the freedom of establishment, free movement of capital, freedom to provide and receive services and free movement of goods in the internal market.

It contains the following provisions:

Chapter 1 contains, first, the general provisions such as the subject matter and scope (Article 1) and the definitions (Article 2). Second, it details the characteristics of an ECBA (Article 3) and the rules applicable to it (Article 4). Third, it empowers ECBAs with the legal personality and legal capacity and the automatic recognition thereof in all Member States (Article 5). Fourth, it lays down common rules for ECBAs concerning their statutes (Article 6), governance (Article 7), and membership (Article 8).

Chapter 2 lists the rights and the prohibited restrictions of ECBAs. An ECBA benefits from the principles of equal treatment (Article 9) and non-discrimination (Article 10). All decisions concerning an ECBA made by administrative authorities in the Member States should be subject to judicial review (Article 11). An ECBA should only register in one Member State to obtain legal personality and capacity and only for overriding reasons in the public interest, it is possible for both home and host Member States to ask for additional formalities (Article 12). An ECBA should be able to apply for funding in the Member State (s) in which it operates and should not be restricted on its ability to provide or receive funding, except to the extent such restrictions are prescribed by law, justified for overriding reasons in the public interest, appropriate for ensuring the attainment of the objective pursued and do not go beyond what is necessary in order for it to be attained. (Article 13). In addition, an ECBA should be able to provide and receive services and to engage in trade in goods (Article 14). Furthermore, an ECBA should not be subject to certain restrictions based, for example, on the nationality of its members (Article 15).

Chapter 3 concerns the rules of constitution and registration of an ECBA and is comprised of two sections. Member States should ensure that an ECBA is formed by way of its registration and has a minimum of three founding members (Article 16). This chapter also provides for the rules concerning the domestic conversion of a non-profit association into an ECBA (Article 17). It lays down the rules for the application for registration (Article 18), as well as the registration procedure (Article 19). It specifies that Member States should establish a register for the purposes of registration of ECBAs (Article 20) and the content of the ECBA certificate (Article 21).

Chapter 4 lays down the rules on ECBAs' mobility rights. This concerns specifically the possibility for an ECBA to transfer its registered office without such transfer resulting in the dissolution of the concerned ECBA (Article 22) and the procedure for the transfer of an ECBA's registered office (Article 23).

Chapter 5 contains provisions on the dissolution of an ECBA. More precisely, it lays down the rules concerning the voluntary dissolution (Article 24) and the involuntary dissolution (Article 27). Additionally, it ensures that an ECBA's dissolution entails its liquidation which must be in line with the non-distribution constraint linked with its non-profit purpose (Article 25).

Chapter 6 includes provisions on enforcement, cooperation and monitoring of the rules contained in the proposal. This concerns the designation of the competent authority responsible for carrying out the obligations arising from this proposal (Article 27); the administrative cooperation among competent authorities of Member States and the monitoring by the Commission of the use of the Internal Market Information System (IMI) in the context of this cooperation (Article 28); the rules on the monitoring and reporting of this proposed Directive (Article 29).

Chapter 7 sets out the final provisions allowing the Commission to adopt implementing acts (Article 30), on the transposition of this proposal (Article 31) and the entry into force (Article 32) as well as the proposal's addressees (Article 33).

The Directive is accompanied by a Regulation which is of technical nature and amends Regulation (EU) No 1024/2012 which established the Internal Market Information System (IMI) in order to ensure that Member States' competent authorities cooperate and exchange information through the IMI, when they apply the national rules implemented in accordance with the provisions of the proposal (Article 1). It also amends Regulation (EU) 2018/1724<sup>31</sup> which established the Single Digital Gateway, to ensure that Member States give online access to information about ECBAAs and non-profit associations and facilitate the exchange of evidence between competent authorities during the procedures concerning ECBAAs, as laid down by the proposed Directive (Article 2).

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<sup>31</sup> Regulation (EU) 2018/1724 of the European Parliament and of the Council of 2 October 2018 establishing a single digital gateway to provide access to information, to procedures and to assistance and problem-solving services and amending Regulation (EU) No 1024/2012 (OJ L 295, 21.11.2018, p. 1).

2023/0315 (COD)

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**  
**on European cross-border associations**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,  
Having regard to the Treaty on the Functioning of the European Union, and in particular Article 50 and Article 114 thereof,  
Having regard to the proposal from the European Commission,  
After transmission of the draft legislative act to the national parliaments,  
Having regard to the opinion of the European Economic and Social Committee<sup>32</sup>,  
Acting in accordance with the ordinary legislative procedure,  
Whereas:

- (1) In accordance with Article 26(2) of the Treaty on the Functioning of the European Union (TFEU), the internal market comprises an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured. To achieve this objective, Article 50 TFEU provides for the European Parliament and the Council to act by means of directives in order to attain freedom of establishment as regards a particular activity. In addition, Article 114 TFEU provides for the European Parliament and the Council to adopt the measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States, which have as their object the establishment and functioning of the internal market.
- (2) The elimination of barriers to the development of activities of non-profit associations across Member States is essential in order to attain their freedom of establishment, as well as other fundamental freedoms such as the freedom to provide and receive capital and the freedom to provide and receive services within the internal market. By approximating the provisions of national law which affect the exercise of these freedoms, this Directive serves the objective of improving the functioning of the internal market. In so doing, this Directive will further serve the objectives of strengthening European integration, promoting social fairness and prosperity for EU citizens and facilitating the effective exercise of the freedom of assembly and of association throughout the Union.
- (3) The European Parliament adopted a resolution on 17 February 2022 with recommendations to the Commission on a statute for European cross-border associations and non-profit organisations<sup>33</sup>.

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<sup>32</sup> Ref. of the opinion



- (4) On 9 December 2021, the European Commission adopted an action plan for the social economy.<sup>34</sup> In the action plan, the Commission put forward specific measures to create opportunities for social economy entities to start up and scale up, and to ensure that the social economy and its potential are more visible. The European Parliament welcomed the action plan in its resolution issued on 6 July 2022.<sup>35</sup>
- (5) Following up on the action plan for the social economy, the Commission recommended concrete measures to support the social economy, which prioritises people, social and environmental causes over profit. The proposal for a Council Recommendation on developing social economy framework conditions of 13 June 2023<sup>36</sup> includes recommendations for Member States to design and implement social economy strategies. On the same day, the Commission also published two Staff Working Documents to improve the understanding of relevant tax rules for social economy entities<sup>37</sup> and cross-border public-benefit donations.<sup>38</sup>
- (6) Among the legal forms available in the non-profit sector and the social economy, the legal form of the non-profit association is the choice for the large majority. In addition to contributing to the Union's objectives and to achieving goals that are in the public interest, non-profit associations make an important contribution to the internal market by engaging on a regular basis in a wide range of economic activities, for example by offering services in sectors such as social services and health, communication and information, advocacy, culture, the protection of the environment, education, recreation, sports, and in the promotion of scientific and technological advances. This is true when the pursuit of economic activities is the principal activity or objective of the non-profit association, and in other cases.
- (7) A fully functioning internal market for the activities of non-profit associations is essential in order to promote economic and social growth across Member States. At present, barriers within the internal market prevent non-profit associations from extending their operations beyond their national borders, thereby hindering the effective operation of the internal market. Working towards a fully effective internal market requires full freedom of establishment for all activities which contribute to the objectives of the Union.
- (8) In order to establish a genuine internal market for the economic activities of non-profit associations, it is necessary to abolish any unjustified restrictions on the freedom of establishment, the free movement of services, the free movement of goods and the free movement of capital that still apply in the laws of certain Member States. These

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<sup>33</sup> A statute for European cross-border associations and non-profit organisations. European Parliament resolution of 17 February 2022 with recommendations to the Commission on a statute for European cross-border associations and non-profit organisations (2020/2026(INL)) (2022/C 342/17) (OJ C 342, 6.9.2022, p. 225).

<sup>34</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 'Building an economy that works for people: an action plan for the social economy', COM(2021) 778 final.

<sup>35</sup> European Parliament resolution of 6 July 2022 on the EU action plan for the social economy (2021/2179(INI)).

<sup>36</sup> Proposal for a Council Recommendation on developing social economy framework conditions COM(2023) 316 final.

<sup>37</sup> Commission Staff Working Document, Relevant taxation frameworks for Social Economy Entities, SWD(2023) 211 final.

<sup>38</sup> Commission Staff Working Document, Non-discriminatory taxation of charitable organisations and their donors: principles drawn from EU case-law, SWD(2023) 212 final.

restrictions hinder non-profit associations from operating cross-border, not least because they impose on them a specific need to allocate resources to unnecessary administrative or compliance activities, which has a particularly deterrent effect in view of their non-profit nature.

- (9) These barriers arise due to inconsistencies in the national legal frameworks of Member States. The legal framework in which non-profit associations carry out their activities in the Union is based on national law, without harmonisation at Union level. Presently, non-profit associations do not receive uniform recognition of their legal personality and capacity throughout the Union and often need to register for a second time or even form a new legal entity in order to engage in activities in a Member State other than the one in which they are established. The fundamental elements concerning the mobility of non-profit associations within the Union remain inadequately regulated, resulting in legal ambiguity for all non-profit associations with cross-border activities. For instance, when non-profit associations intend to relocate their registered office to a new Member State, uncertainties persist regarding relocation. In particular, the lack of a possibility of transferring the registered office without going through a liquidation hinders non-profit associations from acting, moving, and restructuring across borders within the Union. National rules diverge and often fail to provide clear solutions and procedures for the exercise of cross-border mobility and economic activities of non-profit associations.
- (10) The ability to access and channel funds and capital efficiently across borders is necessary in order to facilitate non-profit associations' activities in the internal market. This includes remuneration for economic activities, but also donations, inheritance, or other forms of funding. Different regulatory frameworks and existing restrictions in the Member States regarding receiving, soliciting donations, and similar contributions in whatever form result in fragmentation in the internal market and constitute a barrier to the functioning of the internal market.
- (11) Moreover, laws of certain Member States impose requirements regarding nationality or legal residence on members of non-profit associations or on members of the executive body of such non-profit associations. Such requirements should be eliminated in order to protect the exercise of freedom of establishment and freedom of association of EU citizens.
- (12) The freedom of association is crucial for the functioning of democracy, as it constitutes an essential condition for the exercise of other fundamental rights by individuals, including the right to freedom of expression and information. As recognised in the Charter of Fundamental Rights of the European Union (CFR) and in the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), freedom of association is a fundamental right.
- (13) It is therefore necessary to put in place harmonised rules facilitating the pursuit of non-profit associations' cross-border activities. Existing national rules on cross-border associations should be harmonised so that they allow those non-profit associations to take a legal form specifically designed to facilitate operations on a cross border basis. That legal form should be provided in Member State's domestic legal orders through the adaptation of their respective rules on non-profit associations. This legal form, which is to be designated as the 'European cross-border association', ('ECBA'), should be automatically recognised by all Member States and will allow non-profit associations to overcome the obstacles they face in the internal market, while respecting Member States' traditions regarding non-profit associations.

- (14) Furthermore, allowing non-profit associations to fully enjoy the freedom of establishment in the Union via a single registration that would be valid throughout the Union and automatic recognition of their legal personality is directly related to, and necessary for, the functioning of the internal market and the possibility to effectively benefit from the rights derived from that freedom.
- (15) Trade unions and associations of trade unions should not be allowed to establish ECBAs, since they have a particular status in national law.
- (16) Nor political parties and associations of political parties be allowed to establish ECBAs, as they enjoy a particular status within national law and Union law as laid down in Regulation (EU, Euratom) 1141/2014 of the European Parliament and of the Council<sup>39</sup>.
- (17) Churches and other religious organisations and philosophical or non-confessional organisations, within the meaning of Article 17 TFEU, as well as associations of these entities, should also not be allowed to establish an ECBA, due to the lack of Union competence to regulate their status, and due to them having a particular status in national law.
- (18) The establishment of an ECBA should be the result of an agreement between natural persons that are Union citizens or legally resident third-country nationals, or legal entities established in the Union, except persons that have been convicted of offences concerning money laundering, associated predicate offences<sup>40</sup>, or terrorist financing or are subject to measures that prohibit their operations in a Member State on the same grounds. In view of the non-profit purpose of the ECBA, where an ECBA is constituted by legal entities, they should also have a non-profit purpose.
- (19) The non-profit purpose of an ECBA should mean that, when a profit is generated by means of economic activities, it should be used only in pursuit of the objectives of the ECBA, as defined in its statutes, and may not be redistributed. Therefore, there should be an asset lock requiring that no distribution of assets to members is to take place, even in the event of dissolution. In the latter case, residual assets should be transferred in a disinterested manner, such as to other non-profit associations having the same purpose.
- (20) In a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail, ECBAs should pursue objectives that are compatible with the values enshrined in Article 2 of the Treaty on European Union ('TEU') such as the respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. In addition, it should not be possible to use ECBAs for terrorist financing, tax evasion, tax avoidance, money laundering or any criminal offences or illegal purposes.
- (21) The cross-border element of an ECBA is central. Therefore, an ECBA should carry out or have in its statutes the objective to carry out at least part of its activities across borders in the Union, in at least two Member States, and have founding members with

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<sup>39</sup> Regulation (EU, Euratom) No 1141/2014 of the European Parliament and of the Council of 22 October 2014 on the statute and funding of European political parties and European political foundations (OJ L 317, 4.11.2014, p. 1).

<sup>40</sup> Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law (OJ L 284, 12.11.2018, p. 22–30).

links to at least two Member States, either based on citizenship or residence in the case of natural persons, or based on the location of their registered office in the case of legal entities.

- (22) In order to ensure that ECBAs fulfil the objectives underlying their creation, the degree of harmonisation of the features and rights of an ECBA should be proportionate to the scale and scope of the identified problems non-profit associations face when engaging in cross-border activities.
- (23) Harmonisation throughout the Union of the key features of ECBAs' legal personality and capacity and their automatic recognition across Member States and the registration procedure, without Member States laying down diverging rules on these issues, is an essential condition for ensuring a level-playing field for all ECBAs. The aspects of ECBAs' activities that are not harmonised by this Directive should be governed by the national rules that apply to the most similar type of non-profit association in national law. Such entities, independently of their name in the domestic legal order, should in all cases be membership-based, have a non-profit purpose, and have legal personality. To ensure transparency and legal certainty, Member States should notify the Commission of those rules.
- (24) To ensure that Member States have the appropriate tools to combat terrorism financing and ensure transparency of certain capital movements, the rules applicable to ECBAs under this Directive should be without prejudice to measures adopted by Member States to prevent the misuse of non-profit associations for public policy and public security reasons and to ensure transparency of certain capital movements when required by Union law, or national law in compliance with Union law.
- (25) In order to remove legal and administrative barriers for non-profit associations operating in more than one Member State and ensure the functioning of the internal market, all Member States should automatically recognise an ECBA's legal personality and legal capacity. This legal personality and the legal capacity should be granted upon the ECBA's registration in a Member State.
- (26) ECBAs should be able to decide freely on their rules of operation. Any limitation on this freedom imposed by a Member State should be applied in a general and non-discriminatory way, prescribed by law, justified by an overriding reason in the public interest, and be appropriate for ensuring the attainment of the objective pursued and not going beyond what is necessary for it to be attained.
- (27) Articles 52, 62 and 65 TFEU and relevant case law also apply to ECBAs. These TFEU Articles provide for the justification of measures restricting the freedom of establishment, freedom to provide services and free movement of capital on grounds including public policy, public security and public health. Furthermore, the concept of 'overriding reasons in the public interest' to which reference is made in certain provisions of this Directive has been developed by the Court of Justice in its case law. Measures by Member States that are liable to hinder or make less attractive the exercise of those Treaty freedoms should be permitted only where they can be justified by objectives listed in the Treaty or by overriding reasons in the public interest recognised by Union law. While no exhaustive definition exists, the Court of Justice has recognised that justifications are possible on various grounds such as public policy, public security and public health, the maintenance of order in society, social policy objectives, the protection of the recipients of services, consumer protection, the protection of workers, provided that the other conditions are met. Such measures need,

in any event, to be appropriate for ensuring the attainment of the objective in question and not go beyond what is necessary to attain that objective.

- (28) In order to ensure a common and appropriate approach to governance across the Union, ECBAs should comprise a decision-making body meaning the body which gathers all members, which is in some Member States traditionally referred to as the general meeting or general assembly. ECBAs should also comprise an executive body, which is in some Member States traditionally referred to as an executive committee or board of directors; the executive body should be in charge of the administration, management and conduct of the ECBA. It should also ensure compliance with the statutes of an ECBA and legal obligations, as well as represent an ECBA in dealings with third parties and in legal proceedings. The executive body of an ECBA should be composed of a minimum of three persons, be it natural persons or legal entities through their representatives.
- (29) In order to ensure that ECBAs are able to effectively perform their activities and ensure equal treatment vis-à-vis non-profit associations in national law, ECBAs should not be treated less favourably than the most similar non-profit association in the domestic legal order of the home Member State where it operates.
- (30) In accordance with the principle of non-discrimination and to ensure the freedom of association, in the implementation and application of this Directive there should be no discrimination against any group or individual on any grounds, such as birth, age, colour, sex and gender, sexual orientation, gender identity, health conditions, immigration or residency status, genetic features, language, national, ethnic or social origin, political or any other opinion, membership of a national minority, physical or mental disability, property, race, religion or belief, or other status.
- (31) To facilitate the cooperation among Member States and between Member States and the Commission, Member States should designate a competent authority responsible for the application of the rule transposing this Directive ('competent authority'). The Commission should publish the list of competent authorities. To have a comprehensive overview of the legal treatment of ECBAs in Member States, Member States should notify the Commission of the names and tasks of relevant authorities, other than the competent authorities, established or designated for the purposes of the national rules applicable to the most similar non-profit association in national law, if applicable.
- (32) In accordance with the right to an effective remedy and to a fair trial as laid down in Article 47 CFR and Article 13 ECHR, decisions made by competent authorities in applying national provisions implementing this Directive should be subject to judicial review. Such judicial review should be available to ECBAs, as well as any other natural persons or legal persons, in respect of decisions made by competent authorities regarding ECBAs, including in cases of failure to act. The right to judicial review includes the right to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law according to the national law of the relevant Member State in compliance with Article 47 Charter of Fundamental Rights of the Union.
- (33) In view of their non-profit purpose, ECBAs should be able to apply for funding from a public or private source in the Member State(s) in which they operate on a non-discriminatory basis. There should be no restriction on the ECBA's right to receive and provide funding, except where a restriction is prescribed by law, justified by an overriding reason in the public interest, is appropriate for ensuring the attainment of

the objective pursued and does not go beyond what is necessary for it to be attained and is compliant with Union law.

- (34) To ensure that ECBAs fully benefit from the internal market, ECBAs should be able to provide and receive services, as well as to engage in trade in goods without interference from Member States. Restrictions should be permitted only if they are prescribed by law, justified by overriding reasons in the public interest, and are appropriate for ensuring the attainment of the objective pursued and do not go beyond what is necessary in order for it to be attained. This should not affect provisions of other Union acts. This should include the provisions of Union acts that reinforce the fundamental freedoms, such as those laid down in Directive 2006/123/EC of the European Parliament and of the Council<sup>41</sup> which guarantee the freedom of establishment and the freedom to provide services as well as the provisions of other Union acts which regulate specific economic activities ECBAs engage in.
- (35) In order to establish a genuine internal market for non-profit associations, it is necessary to abolish certain restrictions on the freedom of establishment, the free movement of services and the free movement of capital that still apply in the laws of certain Member States. Therefore, Member States should not impose any discriminatory requirements based on the nationality of members of an ECBA or its executive body, except as provided for by this Directive. Nor should Member States provide for any requirement on physical presence of members for the validity of a meeting. To enable ECBAs to enjoy the full benefits of the internal market, Member States should not require the registered office of an ECBA to be in the same Member State as its central administration or the principal place of operations. Member States should also not impose general prohibitions on ECBAs carrying out economic activities, nor only allow them to engage in economic activities if they are linked to an objective set out in an ECBA's statutes.
- (36) The registration of an ECBA should be constitutive of the ECBA. In order to register, an ECBA should have a minimum of three founding members. Both legal entities with a non-profit purpose established in the Union and natural persons who are Union citizens or legally residing in the territory of the Union should be able to be founding members of an ECBA. It should also be possible for non-profit associations to convert into an ECBA within the same Member State.
- (37) To ensure that ECBAs are able to operate across borders and in compliance with the principle of proportionality, they should be required to register only once, in the home Member State, in order to acquire their legal personality and legal capacity. To ensure automatic recognition of this registration throughout the Union, it is necessary to harmonise the registration procedure. This concerns in particular the documents and information required for an application to register an ECBA, as well as the checks to be carried out.
- (38) Member States should be entitled to require a registered ECBA to make a declaration, provide information, request or obtain authorisations for engaging in particular activities only where such requirements are (i) applied in a general and non-discriminatory way, (ii) prescribed by law, (iii) justified by overriding reasons in the public interest, (iv) appropriate for ensuring the attainment of the objective pursued and do not go beyond what is necessary in order for it to be attained. Such

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<sup>41</sup> Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ L 376, 27.12.2006, p. 36).

requirements may be connected, for example, to the specificities of certain sectors, like healthcare. Where Member States provide for such additional procedures, this information should be made publicly available in order to ensure that an ECBA is able to comply with these requirements.

- (39) To prevent fraud, it is important that Member States verify the identity of the founding members and the legal representatives of the ECBA. The verification of identity is particularly important if the application for registration is conducted electronically. Due to the variety of different practices in Member States, the specific methods of verifying identity should remain in the prerogative of the Member State concerned.
- (40) While respecting the freedom of establishment and association, the registration of an ECBA should be denied in cases of failure to comply with the formal requirements for the registration, as laid down in this Directive, where the application is not complete or if the objectives described in the statutes contravene Union law or national law compliant with Union law. Furthermore, the registration must be rejected, if the application fails to comply with the basic requirements set out in this Directive to constitute an ECBA, namely the non-profit purpose, the minimum number of founding members and the cross-border element in terms of activities in at least two Member States and founding members with links with at least two Member States. Any refusal to register an ECBA should be made in writing and duly reasoned by the competent authority.
- (41) Member States should be required to establish a register for the purposes of the registration and for maintaining and publishing information on ECBAs. This register should contain information about ECBAs and the submitted documents. As the information kept in the register may become outdated, Member States should ensure that the ECBA notifies any changes concerning the information on ECBAs to the competent authority and that the information held in the register is updated. Member States should be allowed to make use of their existing national registers for the purpose of this Directive. In order to ensure transparency especially for members of an ECBA and its creditors, if applicable, the ECBA certificate, the liquidation and the dissolution of an ECBA are pieces of information that should be made publicly available for a maximum of 6 months after the dissolution of an ECBA. The interoperability solutions developed as part of the implementation of the Proposal for a Regulation of the European Parliament and of the Council laying down measures for a high level of public sector interoperability across the Union<sup>42</sup> can further support Member States to move towards cross-border interoperability of their registers. To ensure that information about the existence of an ECBA is still available even after its dissolution, all data retained and stored in the register should be kept for 2 years after dissolution.
- (42) Regulations (EU) 2016/679<sup>43</sup> and (EU) 2018/1725<sup>44</sup> of the European Parliament and of the Council apply to the processing of personal data carried out in the context of

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<sup>42</sup> COM(2022)720.

<sup>43</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (OJ L 119, 4.5.2016, p.1).

<sup>44</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

this Directive, including the processing of personal data to maintain the national register or registers on ECBAs and their legal representatives, to access personal data in such registers and to exchange personal data in the context of administrative cooperation and mutual assistance between Member States under this Directive, where applicable via the Internal Market Information System (IMI) established by Regulation (EU) No 1024/2012 of the European Parliament and of the Council<sup>45</sup>, and the keeping of records in accordance with this Directive..

- (43) In order to enable ECBAs to reap the full benefits of the internal market and given that mobility rights are directly related and necessary to the functioning of the internal market, ECBAs should be able to transfer their registered office from one Member State to another. Such a transfer of registered office should not result in the dissolution of an ECBA in the home Member State or the creation of a new legal entity in the new home Member State, or affect any of the assets or liabilities, including any terms contained in contracts, or credits, rights or obligations of an ECBA existing before the transfer. In the case of mobility, Member States should ensure the protection of the interests of the ECBA's creditors if any. To ensure protection of employees of ECBAs, ECBAs should be required to inform them of any proposed transfer in good time and allow them to examine the draft terms of such transfer. Other provisions of Union and national law concerning the protection of employees, such as Directive 2002/14/EC of the European Parliament and of the Council<sup>46</sup>, may also be applicable.
- (44) To harmonise the procedure of transfer of registered office of an ECBA, Member States should ensure that a transfer of registered office is decided by the decision-making body of the ECBA concerned. The ECBA should submit the request with the relevant documents to the competent authority of the Member State to which the transfer is to be made and inform in parallel the competent authority of its home Member State when submitting the request for transfer. Where applicable, the proposed statutes of the ECBA should be amended according to the requirements of the national law of the Member State to which the ECBA requests the transfer. Upon transfer of the registered office, the ECBA becomes an ECBA under the national law of the new home Member State. This change of applicable law ensuing from the transfer of the registered office should not lead, in order to avoid duplications, the competent authority of the new home Member State to verify any element already verified during the registration in the previous Member State and harmonised by this Directive. The competent authority of the Member State to which the ECBA intends to transfer the registered office should reject the request of transfer only where the requirements laid down in national law transposing this Directive are not met and should not refuse it on other grounds. In particular, the competent authority should not reject the request on the ground of non-compliance with requirements under its national law that could not have been a ground to reject the registration in accordance with Article 19. In order to facilitate the transfer of registered office of an ECBA in the internal market, the competent authority of the new home Member State should issue an updated certificate in accordance with paragraph 2 of Article 21, adapting the

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<sup>45</sup> Regulation (EU) No 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC (OJ L 316, 14.11.2012, p. 1).

<sup>46</sup> Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community - Joint declaration of the European Parliament, the Council and the Commission on employee representation (OJ L 80. 23.3.2002, p. 39).



unique registration number and the two-letter country code of the Member State where the ECBA's office is transferred and the postal address of the registered office, as well as any other elements, if applicable..

- (45) In compliance with the freedom of assembly and of association, an ECBA should be dissolved only by decision of its members or by a decision of the competent authority of the home Member State. Where the dissolution of an ECBA is the result of a decision of its members, it should be taken by two-thirds of the votes representing at least half of the total of the members during an extraordinary meeting. The dissolution of an ECBA may be involuntary by decision of the competent authority of the home Member State of the ECBA, as a last resort, only where an ECBA does not respect its non-profit purpose, where its activities constitute a threat to public order, or where the members of the executive body of an ECBA have been convicted of a particularly serious criminal offence or the ECBA itself has been convicted of a criminal offence, if national law allows for this possibility. In this case, the competent authority should communicate to the ECBA a formal notice of its concerns and hear the ECBA in order to give the ECBA the opportunity to reply.
- (46) The dissolution of the ECBA should lead to its liquidation. The liquidation of ECBA should be compliant with Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (EIR 2105)<sup>47</sup> which requires that the law applicable to insolvency proceedings and their effects shall be that of the Member State within the territory of which such proceedings are opened. In line with the non-profit purpose of ECBA, any assets of a dissolved ECBA should be transferred to a non-profit entity carrying out a similar activity as the one carried out by the dissolved ECBA or transferred to a local authority which should utilise them for an activity like that pursued by the dissolved ECBA.
- (47) To enable an ECBA to prove that it has registered within a Member State and to further facilitate cross-border procedures and simplify and reduce formalities, the competent authorities should, as the final step of the registration process, issue a certificate ('ECBA certificate') which contains the essential registration information, including the name of an ECBA, the address of its registered office, and the names of the legal representatives. To facilitate the use of this certificate in various Member States without additional adaptations or compliance costs, the Commission should establish a standardised template available in all languages of the Union. Therefore, in order to ensure uniform conditions for the implementation of this act, implementing powers should be conferred on the Commission to produce a standardised template including in relation to the technical specifications of the template. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council<sup>48</sup>. Those implementing acts should be adopted in accordance with the examination procedure referred to in Article 5 of Regulation (EU) No 182/2011 of the European Parliament and of the Council.
- (48) The notion of 'particularly serious crime' should be defined by Member States and may include terrorism, trafficking in human beings and sexual exploitation of women

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<sup>47</sup> Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (EIR 2105), OJ L 141, 5.6.2015.

<sup>48</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers, OJ L 55, 28.02.2011.

and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organised crime.

- (49) In order to allow Member States to efficiently implement legal provisions of this Directive on administrative cooperation and facilitate cooperation, Member States should use the Internal Market Information System (IMI). In particular, the competent authorities should use IMI to notify the competent authorities of the other Member States when a new ECBA is constituted, including when a non-profit association converts into an ECBA. Where a competent authority receives an application for registration, it should communicate through IMI with the competent authorities of the Member State(s) in which these documents have been issued to verify, for instance, their lawfulness. In the case of a transfer of the registered office of an ECBA, the competent authority of the new home Member State should notify the competent authorities of the other Member States of this transfer and update IMI with the relevant information. In the case of a dissolution, both voluntary or involuntary, the competent authority should also notify the competent authorities of the other Member States to inform them about the dissolution and to update IMI with the relevant information.
- (50) Since the objectives of this Directive, namely improving the functioning of the internal market by removing legal and administrative barriers for non-profit associations operating in more than one Member State, cannot be sufficiently achieved by the Member States alone and can rather be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 TEU. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (51) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 and delivered an opinion on 27 June 2023,

HAVE ADOPTED THIS DIRECTIVE:

## **Chapter 1**

### **General provisions**

#### *Article 1*

##### *Subject matter*

This Directive lays down measures coordinating the conditions for establishing and operating ‘European cross-border associations’ (ECBAs), in order to facilitate the effective exercise by non-profit associations of their rights related to the freedom of establishment, free movement of capital, freedom to provide and receive services and free movement of goods in the internal market.

#### *Article 2*

##### *Definitions*

For the purpose of this Directive, the following definitions apply:

- (a) “home Member State” means the Member State in which the ECBA establishes or transfers its registered office;

- (b) “host Member State” means a Member State other than the home Member State in which the ECBA operates;
- (c) “non-profit purpose” means that, regardless of whether the association’s activities are of an economic nature or not, any profits generated are used only in pursuit of the objectives of the ECBA as defined in its statutes and not to be distributed among its members;
- (d) “non-profit association” means a legal entity under national law that is membership-based, has a non-profit purpose and has legal personality;
- (e) “ECBA certificate” means a certificate issued by the competent authority of the home Member State, serving as evidence of the registration of an ECBA.

### *Article 3*

#### *European Cross-Border Association (ECBA)*

1. Each Member State shall establish in its legal system the legal form of the European cross-border association (ECBA). Member States shall ensure that an ECBA is a membership-based legal entity, constituted by means of voluntary agreement by natural persons that are Union citizens or legally resident in the EU or legal entities with a non-profit purpose legally established in the Union, with the exception of:
  - (a) trade unions, political parties, religious organisations and associations of such entities;
  - (b) persons who have been convicted of offences of money laundering, associated predicate offences, or terrorist financing;
  - (c) persons who are subject to measures that prohibit their activity in a Member State in connection with money laundering, associated predicate offences, or terrorist financing.
2. Member States shall ensure that an ECBA shall have a non-profit purpose and any profits of an ECBA shall be used exclusively for the pursuit of its objectives, as described in its statutes, without any distribution among its members.
3. Member States shall ensure that an ECBA shall carry out or have in its statute the objective to carry out activities in at least two Member States and have founding members with links to at least two Member States, either based on citizenship or legal residence in the case of natural persons, or based on the location of their registered office in the case of legal entities.
4. Member States shall ensure that the name of the ECBA shall be preceded or followed by the acronym ‘ECBA’.
5. Member States shall ensure that the registered office of an ECBA shall be located in the Union.

## *Article 4*

### *Rules applicable to ECBAs*

1. For all matters harmonised by this Directive, Member States shall ensure that an ECBA shall be governed by the measures transposing this Directive in the Member State it is registered in or operates.
2. For further matters that concern the establishment or operation of ECBAs, each Member State shall ensure that the national rules applicable to the most similar non-profit association in national law apply to ECBAs.
3. The rules applicable to ECBAs under this Directive shall not affect the measures adopted by Member States on grounds of public policy and public security to prevent the risk of misuse of non-profit associations and to ensure transparency of certain capital movements when required by Union law or national law in compliance with Union law.
4. By [two years after the entry into force of this Directive], each Member State shall identify the most similar legal form of non-profit association in its domestic legal order as referred to in paragraph 2 and notify the Commission thereof and of the national rules that apply to that legal form. Member States shall notify the Commission without delay of any changes regarding the legal forms identified and of any changes to the rules applicable to them. Member States and the Commission shall make the notified information referred to in this paragraph publicly available.

## *Article 5*

### *Legal personality and legal capacity*

1. Member States shall ensure that an ECBA acquires legal personality and legal capacity upon registration in accordance with Article 19. Member States shall recognise the legal personality and legal capacity of ECBAs registered in another Member State, without requiring any further registration.
2. Member States shall ensure that an ECBA has the right to conclude contracts and perform legal acts, be a party to legal proceedings, own movable and immovable property, carry out economic activities, employ staff, receive, solicit and dispose of donations and other funds of any kind from any lawful source, participate in public tenders, and apply for public funding.

## *Article 6*

### *Statutes*

1. Except for the rules laid down in paragraph 2 of this Article and in Articles 3, 7 and 8, the home Member State shall not lay down rules restricting an ECBA's right to determine its rules of operation, including rules concerning internal management and governance structures, unless the restricting rules are:
  - (a) prescribed by law;
  - (b) justified by overriding reasons in the public interest;

- (c) appropriate for ensuring the attainment of the objective pursued and do not go beyond what is necessary in order for it to be attained.
2. Member States shall ensure that the statutes of an ECBA include the following information:
- (a) the name of the ECBA;
  - (b) a detailed description of its objectives and a statement of its non-profit purpose;
  - (c) the names and addresses of the founding members, where they are natural persons, and the names of the legal representatives and registered office of the founding members, where they are legal entities;
  - (d) where a founding member is a legal entity, a detailed description of its statutes and a detailed description of its non-profit purpose;
  - (e) the address of the ECBA's registered office;
  - (f) the assets of the ECBA at the time of its registration;
  - (g) the conditions and procedures for the admission, exclusion and resignation of members;
  - (h) the rights and obligations of members;
  - (i) provisions governing composition, functioning, powers and responsibilities of the decision-making body and the executive body;
  - (j) provisions governing appointment, removal, powers and responsibilities of the members of the executive body;
  - (k) the majority and quorum requirements applicable to the decision-making body;
  - (l) the procedure to amend the statutes;
  - (m) the duration of the existence of the ECBA, where it is of a limited duration;
  - (n) the method of disposition of the ECBA's assets in the event of dissolution.

#### *Article 7*

#### *Governance*

1. Member States shall ensure that ECBAs have a decision-making body and an executive body.
2. Member States shall ensure that only natural persons that are Union citizens or legally resident in the Union and legal entities with a non-profit purpose established in the Union, through their representatives, may be members of the executive body of an ECBA. The executive body of an ECBA shall be composed of a minimum of three persons.
3. Member States shall ensure that natural persons who have been convicted of a particularly serious criminal offence are not to be members of the executive body or representatives of a legal entity that is a member of the executive body.

## *Article 8*

### *Membership*

1. Member States shall ensure that each member of an ECBA has one vote.
2. Member States shall ensure that members of an ECBA are not personally liable for acts or omissions of the ECBA.

## **Chapter 2**

### **Rights and prohibited restrictions**

## *Article 9*

### *Equal treatment*

Each Member State shall ensure that in any aspect of their operations, ECBAs are not treated less favourably than the non-profit association in national law identified pursuant to Article 4(4).

## *Article 10*

### *Non-discrimination*

Member States shall ensure that, within the ambit of application of this Directive, public authorities do not discriminate against any group or individual on any grounds, such as birth, age, colour, sex and gender, sexual orientation, gender identity, health conditions, immigration or residency status, genetic features, language, national, ethnic or social origin, political or any other opinion, physical or mental disability, membership of a national minority, property, race, religion or belief, or other status.

## *Article 11*

### *Judicial review*

Member States shall ensure that all decisions of competent authorities on their territory affecting the rights and obligations of ECBAs, or the rights and obligations of other persons in connection to the operations of ECBAs, are subject to effective judicial review, in compliance with Article 47 Charter of Fundamental Rights of the Union.

## *Article 12*

### *Single registration*

1. Member States shall ensure that an ECBA shall only be required to register once. Registration shall take place in accordance with Articles 18 and 19.

2. Member States shall not require registered ECBAAs to make a declaration, provide information, or request or obtain authorisations for engaging in particular activities, unless such requirements are:
  - (a) prescribed by law;
  - (b) justified by overriding reasons in the public interest;
  - (c) appropriate for ensuring the attainment of the objective pursued and do not go beyond what is necessary in order for it to be attained.
3. Paragraph 1 shall not affect requirements to make a declaration, provide information, request or obtain authorisations for engaging in particular activities provided by Union law or national provisions implementing Union law.

### *Article 13*

#### *Funding*

1. Member States shall ensure that an ECBA, regardless of the Member State of registration, has free and non-discriminatory access to funding from a public source, in compliance with the general principles of EU law.
2. Member States shall not impose any restrictions on an ECBA's ability to provide or receive funding, including donations, from any lawful source, except to the extent that such restrictions are:
  - (a) prescribed by law;
  - (b) justified by overriding reasons in the public interest;
  - (c) appropriate for ensuring the attainment of the objective pursued and do not go beyond what is necessary in order for it to be attained.

### *Article 14*

#### *Provision of services and trade in goods*

1. Member States shall ensure that ECBAAs are free to establish, to provide and receive services, and to exercise the free movement of goods in the internal market in compliance with EU law.
2. Without prejudice to provisions of other acts of Union law, Member States shall not impose any restrictions on the activities referred to in paragraph 1, unless such restrictions are:
  - (a) prescribed by law;
  - (b) justified by overriding reasons in the public interest;
  - (c) appropriate for ensuring the attainment of the objective pursued and do not go beyond what is necessary in order for it to be attained.

### *Article 15*

#### *Prohibited restrictions*

Member States shall ensure that an ECBA is not subject to any of the following requirements:

- (a) requirements based directly or indirectly on nationality or residence of natural persons that are members of the ECBA or its executive body, except as provided for by this Directive;
- (b) a requirement of physical presence of members of the ECBA, its executive body or its decision-making body for the validity of any meeting;
- (c) a requirement to have its central administration or its principal place of operation in the same Member State as its registered office;
- (d) a requirement whereby a host Member State subjects the recognition of an ECBA registered in another Member State to the condition of reciprocity as regards the recognition of its ECBA in that other Member State;
- (e) a requirement for an ECBA to have been registered in the home Member State for a given period in order to operate in the host Member State;
- (f) a requirement of an authorisation or approval by a Member State authority as a condition for receiving donations from a source within the Union;
- (g) the following restrictions on the exercise of economic activities, whether carried out on a regular or on an occasional basis:
  - (i) general prohibitions on carrying out economic activities;
  - (ii) allowing ECBA to carry out economic activities only if such activities are linked to the objectives described in their statutes;
  - (iii) requiring that the pursuit of an economic activity is not the primary objective or activity of the ECBA.

## **Chapter 3**

### **Constitution and registration**

#### *Article 16*

##### Constitution

1. Member States shall ensure that an ECBA is constituted upon registration.
2. Member States shall ensure that an ECBA has a minimum of three founding members.
3. Member States shall ensure that the founding members express their intention to constitute an ECBA either by written agreement between them or by an agreement at the constitutive meeting of the ECBA that is recorded in the written minutes; to that end, such an agreement or minutes shall be duly signed by the founding members.

#### *Article 17*

##### *Conversion of non-profit associations into an ECBA*

1. Member States shall ensure that non-profit associations established in the Union may convert into an ECBA within the same Member State.



2. Member States shall ensure that any conversion is approved by the decision-making body of the converting entity.
3. Member States shall ensure the conversion shall not result in the dissolution of the non-profit association that is converting or any loss of interruption of its legal personality.
4. Member States shall ensure that all assets and liabilities are transferred to the newly constituted ECBA.
5. Member States shall ensure that the conversion shall take effect upon registration of the newly constituted ECBA in accordance with Article 19.
6. Member States shall ensure that the entry concerning the non-profit association that has converted is removed from any register.

### *Article 18*

#### *Application for registration*

1. Member States shall ensure that an application for registration of an ECBA is submitted to the competent authority of the Member State in which the ECBA intends to have its registered office. The application shall be accompanied by the following documents and information, provided in an official language of that Member State or any other language allowed under the law of that Member State:
  - (a) the name of the ECBA;
  - (b) the statutes of the ECBA;
  - (c) the postal address of the intended registered office and an electronic mail address;
  - (d) the names and addresses, and any other information necessary in accordance with the applicable national law for their identification, of persons authorised to represent the ECBA in dealings with third parties and in legal proceedings and an indication whether those persons may do so alone or are required to act jointly;
  - (e) the written agreement of the founding members or minutes of the constitutive meeting of the ECBA containing such an agreement, duly signed by the founding members, or the decision to convert referred in Article 17;
  - (f) a declaration by the members of the executive body that they have not been disqualified from serving as a board member on the comparable bodies of non-profit associations or of companies.

Member States shall not require documents or information other than those listed in this paragraph.

2. Notwithstanding paragraph 3, Member States shall ensure that, for the purpose of registration, an application is complete when it contains the documents and information set out in paragraph 1.
3. By way of derogation from the second subparagraph of paragraph 1, Member States may adopt rules allowing the competent authority to request documents or information additional to those referred to in paragraph 1 by written decision addressed to the person authorised to represent the ECBA referred to in Article

18(1), point (d), setting out a duly substantiated concern that the objectives described in the statutes of the ECBA would contravene Union law or provisions of national law compliant with Union law, where those documents or information are necessary.

4. Member States shall ensure that the application for registration of an ECBA may be submitted online.

## *Article 19*

### *Registration procedure*

1. Member States shall ensure that registration of an ECBA takes place within 30 days from the submission of a complete application and is valid throughout the Union.
2. Member States shall ensure that the competent authority of the home Member State notifies, without delay, the competent authorities of all the other Member States of any new registration of an ECBA.
3. Where the information provided for the purposes of registration is incomplete or contains manifest errors, the competent authority shall ask the ECBA to complete or rectify its submission within a reasonable period of time, which shall not be less than 15 days from the date when the competent authority contacts the person authorised to represent the ECBA referred to in Article 18(1), point (d).
4. Notwithstanding paragraph 1 of this Article, Member States shall ensure that, upon receipt of a complete application pursuant to paragraph 1 of this Article, the competent authority verifies the application to register an ECBA and that it rejects it only where:
  - (a) the application fails to comply with the requirements set out in Article 3;
  - (b) the application is not completed or rectified within the period of time set out in paragraph 3 of this Article;
  - (c) the identities of the legal representatives of the ECBA could not be verified or have been ascertained to have been falsified;
  - (d) the competent authority determines, after having taken the decision set out in Article 18(3) and assessed all documents and information provided in response to that decision, that the objectives described in the statutes of the ECBA would contravene Union law or provisions of national law compliant with Union law;
  - (e) where any person authorised to represent the ECBA referred to in Article 18(1), point (d) or any member of the executive body, has been convicted of a particularly serious criminal offence.

A decision refusing registration shall be in writing, duly reasoned and addressed to the person authorised to represent the ECBA referred to in Article 18(1), point (d).

5. Where the competent authority decides to reject the application or has not reached a decision within 30 days of the submission of the complete application, Member States shall ensure that that decision, or the lack of such decision, is subject to effective judicial review.

## *Article 20*

### *Register*

1. Each Member State shall establish a register for the purposes of registration of ECBAAs pursuant to Article 19.
2. Member States shall ensure that the following documents and information are stored in the register and up-to-date:
  - (a) the statutes of an ECBA;
  - (b) a copy of the ECBA certificate pursuant to Article 21;
  - (c) the names and addresses, and any other information necessary in accordance with the applicable national law for their identification, of persons authorised to represent the ECBA in dealings with third parties and in legal proceedings and an indication whether those persons may do so alone or are required to act jointly;
  - (d) the liquidation and dissolution of an ECBA.
3. Member States shall ensure that registered ECBAAs notify the competent authority of their home Member State about changes to the information held in the register within 30 days from such change.
4. Member State shall ensure that the following information is made publicly available in an online version of the register:
  - (a) the ECBA certificate pursuant to Article 21;
  - (b) the liquidation of an ECBA;
  - (c) the dissolution of an ECBA.
5. Member States shall ensure that the documents and information referred to in paragraph 4 are not publicly available for longer than 6 months after the dissolution of an ECBA.
6. Member States shall ensure that personal data are not retained in the register after the dissolution of an ECBA for longer than 2 years.

## *Article 21*

### *Contents of the ECBA certificate*

1. Member State shall ensure that the competent authorities issue the ECBA certificate, both digitally and in paper form within 5 days from the registration of an ECBA. Member States shall ensure that the ECBA certificate is recognised as evidence of the registration of the ECBA. The ECBA certificate shall include the following information:
  - (a) the unique registration number of the ECBA and the two-letter country code of the home Member State;
  - (b) the date of registration of the ECBA;
  - (c) the date of any transfer of the registered office of the ECBA
  - (d) the name of the ECBA;

- (e) the postal address of the registered office, and the electronic mail address, of the ECBA;
  - (f) the objectives of the ECBA as set out in its statutes.
2. Upon notification from the person authorised to represent the ECBA referred to in Article 18(1), point (d) that the information listed in paragraph 1 of this Article has changed, Member States shall issue an updated ECBA certificate, both digitally and in paper form, within 5 days from the notification of those changes.
- (2) To facilitate the use of the ECBA certificate in all Member States, harmonise its format and reduce the administrative burden for both Member States competent authorities and ECBA, the Commission shall establish the template for the ECBA certificate and its technical specifications by means of an implementing act. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 30(2).

## Chapter 4

### Mobility

#### *Article 22*

##### *Transfer of registered office*

1. Member States shall ensure that an ECBA have the right to transfer its registered office from one Member State to another.
2. Member States shall ensure that the transfer referred to in paragraph 1 shall not result in the dissolution of the ECBA or the creation of a new legal person in the Member State to which its office is transferred. Member States shall ensure that the transfer of the registered office shall not affect any of the assets or liabilities of the ECBA existing before the transfer, including any terms contained in contracts, or credits, rights and obligations.
3. Member States shall ensure that the transfer takes effect on the date of the registration of the ECBA in the home Member State to which it is transferred.
4. By way of derogation to paragraph 1 of this Article, Member States shall ensure that the competent authority of the Member State to which the ECBA intends to transfer its registered office does not permit the transfer in any of the following cases:
  - (a) where the ECBA does not comply with the requirements of Article 3, paragraph 1, paragraph 2 or paragraph 3;
  - (b) where a decision referred to in Article 24(2) has been taken or where a reasoned notice referred to in Article 25(3) has been issued;
  - (c) when insolvency are pending;
  - (d) where the persons authorised to represent the ECBA referred to in Article 18(1), point (d), any member of the executive body or the ECBA itself, if national law provides for this possibility, are the subject of proceedings for a particularly serious criminal offence in the previous home Member State.

## Article 23

### *Procedure of transfer of the registered office*

1. Without prejudice to any provisions in force more favourable to employees based on national or Union law, Member States shall ensure that the employees of an ECBA willing to transfer its registered office are informed of the potential transfer and entitled, in good time and at least one month before the extraordinary meeting referred to in paragraph 2, to examine the draft of the decision approving the transfer of registered office referred to in paragraph 2.
2. Member States shall ensure that the transfer of the registered office needs to be adopted by the decision-making body of the ECBA in an extraordinary meeting. That decision shall be taken by two thirds of the votes, representing at least half of all members.
3. Member States shall ensure that the decision-making body of the ECBA submits a request for transfer of registered office to the competent authority of the Member State to which it wishes to transfer its registered office and informs the competent authority of its home Member State of that request. The request shall include the following:
  - (a) the decision of the decision-making body of the ECBA approving the transfer;
  - (b) the ECBA certificate;
  - (c) the proposed address of the ECBA's registered office in the Member State to which it is transferred;
  - (d) the statutes of the ECBA, specifying, if applicable, its new name;
  - (e) the proposed date for the transfer;
  - (f) a report explaining the safeguards for creditors and employees, if applicable under Union or national law.
4. Member States may adopt rules allowing the competent authority of the Member State to which the ECBA wishes to transfer its registered office to request documents or information additional to those set out in paragraph 3 by written decision addressed to the person authorised to represent the ECBA referred to in Article 18(1), point (d) setting out a duly substantiated concern that the objectives described in the statutes of the ECBA would contravene provisions of national law of that Member State, where those documents or information are necessary to assess that matter.
5. Member States shall ensure that the competent authority of the Member State where the ECBA intends to transfer its registered office is authorised to decide on the request to transfer. That competent authority shall only be entitled to reject the request where:
  - (a) the requirements set out in paragraph 2 of this Article are not met;
  - (b) where the request does not include all the elements required under paragraph 3;
  - (c) where one of the situations set out in Article 22(4) occurs;
  - (d) the competent authority determines, after having taken a decision as set out in this paragraph and assessed all documents and information provided in

response to that decision, that the objectives described in the statutes of the ECBA would contravene national law compliant with Union law.

6. The competent authority shall adopt the decision referred to in paragraph 5 of this Article within 30 days from reception of the request for transfer of registered office referred to in paragraph 3.
7. Notwithstanding paragraph 6, Member States shall ensure that the transfer takes place within 30 days from the submission of a complete application.
8. Where the information provided for the purposes of transfer is incomplete or contains manifest errors, the competent authority shall ask the ECBA to complete or rectify its submission within a reasonable period of time, which shall not be less than 15 days from the date when the competent authority contacts the person authorised to represent the ECBA referred to in Article 18(1), point (d).
9. Member States shall ensure that the competent authority of the new home Member State registers the ECBA and updates the ECBA certificate as regards the elements listed in paragraph 1 of Article 21.
10. Member States shall ensure that the competent authority of the home Member State following the transfer of the registered office notifies the competent authorities of other Member States of the transfer of registered office without delay. Upon receipt of this notification, the competent authority of the previous home Member State shall remove the ECBA from the register following receipt of that notification.

## **Chapter 5**

### **Dissolution**

#### *Article 24*

##### *Voluntary dissolution*

1. Member States shall ensure that an ECBA shall only be dissolved by decision of its members and only in the following cases:
  - (a) the objective of the ECBA has been achieved;
  - (b) the time for which it was set up has expired;
  - (c) for any reason in accordance with its statutes.
2. Member States shall ensure that the decision-making body of the ECBA shall be entitled to dissolve an ECBA only by decision taken by two-thirds of the votes, representing at least half of the total of members, during an extraordinary meeting.

Member States shall ensure that upon liquidation of the ECBA as provided for in Article 28 the competent authority shall remove the ECBA from the register only when the liquidation is completed and that the relevant information in IMI is updated accordingly.

## *Article 25*

### *Involuntary dissolution*

1. By way of derogation to Article 26(1), Member States shall ensure that an ECBA may only be involuntarily dissolved by the competent authority of the home Member State) in the circumstances and according to the conditions provided for in this Article.
2. Member States may provide for the involuntary dissolution of an ECBA only on the basis of one of the following reasons:
  - (a) non-compliance of the ECBA with the non-profit purpose;
  - (b) a serious threat to public order or public security caused by the activities of the ECBAs;
  - (c) a conviction for a serious criminal offence of the ECBA or of the members of its executive body;
3. Where the competent authority has concerns that one of the reasons referred to in paragraph 2 of this Article exists, it shall give a reasoned notice to the ECBA in writing of its concerns and give reasonable time to the ECBA to provide replies regarding those concerns.
4. Member States shall ensure that where, after having duly examined the replies by the ECBA pursuant to paragraph 3 of this Article, the competent authority determines that the ECBA must be dissolved because one of the reasons referred to in paragraph 2 of this Article has been ascertained, it shall adopt a written decision to that effect. A decision to dissolve an ECBA may only be taken where there are no less restrictive measures capable of addressing the concerns raised by the competent authority.
5. Member States shall ensure that the decision referred to in paragraph 4 of this Article is reasoned, subject to effective judicial review, and does not take effect while judicial review is pending.
6. Member States shall ensure that the competent authority shall inform the ECBA of its decision and shall remove the ECBA from the register in due time only after the decision referred to in paragraph 4 has taken effect and after the liquidation of the ECBA as provided for in Article 26 has been completed. The competent authority shall notify the competent authorities of the Member States of the relevant information.

## *Article 26*

### *Liquidation in case of dissolution*

1. Member States shall ensure that the dissolution of an ECBA as provided for by Articles 24 and 25 entails its liquidation.
2. Member States shall ensure that any assets of the dissolved ECBA remaining after financial interests of possible creditors are discounted are transferred to a non-profit entity carrying out a similar activity as the dissolved ECBA or that the assets are transferred to a local authority, which is obliged to utilise them for an activity that is similar to the one pursued by the dissolved ECBA.

## Chapter 6

### Application and administrative cooperation

#### *Article 27*

##### *Competent authorities*

1. Each Member States shall designate the competent authority ('competent authority') responsible for the application of this Directive.
2. Member States shall notify the Commission of the names of the competent authority designated pursuant to paragraph 1. The Commission shall publish a list of the designated competent authorities.
3. Member States shall notify the Commission of the names and tasks of other competent authorities established or designated for the purposes of the national rules applicable to the most similar non-profit association in their domestic legal order, as identified pursuant to Article 4(4), if applicable.

#### *Article 28*

##### *Administrative cooperation*

1. The competent authorities of Member States shall cooperate with and assist each other in an effective and efficient way for the purposes of the application of the provisions of this Directive.
2. The administrative cooperation and the exchanges of information between the competent authorities pursuant to Article 17, Article 18, Article 19(2), Article 19(4), Article 23(5), Article 23(6), Article 23(7), Article 24(3), Article 25(6) and Article 27 shall take place in accordance with Regulation (EU) No 1024/2012.
3. Member States shall ensure that information recorded in IMI is kept up to date and they shall inform each other about the changes of previous information communicated in accordance with Regulation (EU) No 1024/2012.

#### *Article 29*

##### *Reporting*

By [seven years after transposition deadline] at the latest, and every five years thereafter, the Commission shall report to the European Parliament and to the Council on the transposition and application of this Directive. To that end, the Commission may request, to the extent possible through digital tools, Member States to share aggregated data concerning ECBAs registered in their territory.



## Chapter 7

### Final provisions

#### *Article 30*

##### *Committee procedure*

1. The Commission shall be assisted by a Committee. That Committee shall be a committee within the meaning of Article 3(2) of the Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

#### *Article 31*

##### *Transposition*

1. Member States shall adopt and publish the laws, regulations, and administrative provisions necessary to comply with this Directive by [2 years from the entry into force of this Directive]. They shall immediately communicate the text of those measures to the Commission.
2. When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made and how that statement is to be formulated.
3. Member States shall communicate to the Commission the text of the main measures of national law which they adopt in the field covered by this Directive.

#### *Article 32*

##### *Entry into force*

This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

#### *Article 33*

##### *Addresses*

This Directive is addressed to the Member States.

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

## LEGISLATIVE FINANCIAL STATEMENT

- 1. FRAMEWORK OF THE PROPOSAL/INITIATIVE**
  - 1.1. Title of the proposal/initiative**
  - 1.2. Policy area(s) concerned**
  - 1.3. The proposal/initiative relates to:**
  - 1.4. Objective(s)**
    - 1.4.1. General objective(s)*
    - 1.4.2. Specific objective(s)*
    - 1.4.3. Expected result(s) and impact*
    - 1.4.4. Indicators of performance*
  - 1.5. Grounds for the proposal/initiative**
    - 1.5.1. Requirement(s) to be met in the short or long term including a detailed timeline for roll-out of the implementation of the initiative*
    - 1.5.2. Added value of Union involvement (it may result from different factors, e.g. coordination gains, legal certainty, greater effectiveness or complementarities). For the purposes of this point 'added value of Union involvement' is the value resulting from Union intervention, which is additional to the value that would have been otherwise created by Member States alone.*
    - 1.5.3. Lessons learned from similar experiences in the past*
    - 1.5.4. Compatibility with the Multiannual Financial Framework and possible synergies with other appropriate instruments*
    - 1.5.5. Assessment of the different available financing options, including scope for redeployment*
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- 2. MANAGEMENT MEASURES**
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- 3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE**

- 3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected**
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  - 3.2.4. Compatibility with the current multiannual financial framework*
  - 3.2.5. Third-party contributions*
- 3.3. Estimated impact on revenue**

## 1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

### 1.1. Title of the proposal/initiative

Proposal for a Directive of the European Parliament and of the Council on European Cross-Border Associations

### 1.2. Policy area(s) concerned

Internal market and social economy

### 1.3. The proposal/initiative relates to:

a new action

a new action following a pilot project/preparatory action<sup>49</sup>

the extension of an existing action

a merger or redirection of one or more actions towards another/a new action

### 1.4. Objective(s)

#### 1.4.1. General objective(s)

The general objective of this initiative is to improve the functioning of the internal market by removing administrative and regulatory barriers for non-profit associations operating across borders in order to unleash their full potential to generate economic and societal value in the EU.

#### 1.4.2. Specific objective(s)

##### Specific objective No 1

Improve possibilities for a non-profit association to have its legal personality recognised in other Member States, thereby ensuring equal treatment in the internal market.

##### Specific objective No 2

Reduce the regulatory formalities for non-profit associations operating in more than one Member State.

#### 1.4.3. Expected result(s) and impact

*Specify the effects which the proposal/initiative should have on the beneficiaries/groups targeted.*

A policy intervention at EU level would reduce existing barriers for the cross-border activities and mobility of non-profit associations in the EU. The expected impacts are:

##### For Member States

Changes to set up at national level this new legal form designed for cross-border purposes will cause costs of adjustment and costs of compliance/administrative burden for competent authorities varying on the magnitude of these changes.

Non-profit associations operating across-borders currently need to register or create secondary establishment in the Member States in which they wish to expand and

<sup>49</sup> As referred to in Article 58(2)(a) or (b) of the Financial Regulation.

depending on the scope of their activities. The proposal is expected to remove this requirement regarding the establishment and recognition of legal personality and capacity and will consequently reduce the burden on public authorities in the long run. In the short term, introducing a new legal form will require competent authorities to familiarise themselves with the new framework and assure a proper registration.

Considering one-off costs for adapting registration procedures and registers, costs depend on the need for adaptation of current registers or for setting up a new (online) register. Member States will have the flexibility whether to adapt existing registers or establish new ones, while they will be required to offer the option of online registration in case of a newly created legal form. It should be noted that in Member States where no association-specific register is established, other mechanisms exist (or can be used) to make sure that non-profit associations can register. The impact assessment to support the legislative proposal has shown that on average up to EUR 100 000 per Member State additional one-off costs of the adaptation could be expected. Consequently, this is not deemed to be particularly burdensome, since once this adjustment is implemented, the public authority is expected to return to its business as usual. Hence, no significant additional annual running costs can be expected.

In those Member States where registers need to be established, converted or a new “registration line” should be created in an existing register, it would be recommendable to promote digital registers. The impact assessment estimates the costs of online registration tool (assuming a register already exists) range between EUR 42 000 and EUR 270 000, based on known cases. In the short to medium term, competent authorities may be required to invest in acquisition of such tools and adjust processes including training of staff. Adaptation and annual maintenance costs for digital registries in Member States are found as non-significant.

This proposal also encourages measures to assure interoperability of national registers with existing EU level tools such as the Single Digital Gateway in order to allow for automated data access and exchange, and/or the use of agreed minimum standards to ensure comparability of data and the Internal Market Information System (IMI) to foster administrative cooperation among competent authorities.

Finally, Member States would need to set up awareness-raising activities to make the new legal form at national level better known.

For the European Commission

The cost for the European Commission to gather and add information to the Single Digital Gateway / Your Europe portal is estimated at a one-off cost of EUR 300 000 (Single Market Programme) to cover the extra expenditure needed to add information for non-profit associations and yearly cost of EUR 100 000 for the maintenance.

The European Commission will also have to budget the costs necessary to adapt the Internal Market Information System to allow for the administrative cooperation among the competent authorities in the Member States provided for by this proposal. This is estimated at a yearly cost of EUR 125 000 (Single Market Programme).

For non-profit associations / SMEs:

The initiative does not impose new administrative obligations on non-profit associations, including non-profit associations that qualify as SMEs (bearing in mind that associations engaged in economic activities fall within the [definition of micro, small and medium-sized enterprises](#)).

The aim is to remove barriers to non-profit associations' activities across borders. As small non-profit associations have typically fewer resources and capabilities to overcome existing barriers, adjustments to entry and operate are expected to have a positive impact on the competitive position of SME size non-profit associations.

It is expected to lower launch costs as well as the recurrent costs of non-profit associations operating across borders:

- the excess launch costs for new cross-border operation will be reduced by an estimate of EUR 2 150 per launch. Within the assessed 15-year time frame, this excess cost reduction could potentially amount up to EUR 378 million.
- the reduction of excess cost linked to cross-border operations (recurrent costs, e.g. administrative and compliance costs) is estimated at EUR 770 million / year. Within the assessed 15-year time frame, cost savings could potentially amount up to EUR 8.5 billion

The impact assessment explains the potential to reduce costs of operation particularly for non-profit associations operating in multiple Member States, due to the proposal's harmonisation effect and simplification of regulatory and administrative procedures resulting in lower needs in terms of gathering information, regular external advisory support and internal staff working on compliance.

#### 1.4.4. *Indicators of performance*

*Specify the indicators for monitoring progress and achievements.*

##### Indicator No 1 (Specific Objective No1)

The indicators will be as follows:

- Compliance level by Member States (i.e. transposition pace, infringement cases)
- Excess cost reduction for non-profit associations realised due to reduced regulatory and administrative formalities for the launch of operations and in terms of the running costs
- Number, size and geography spread of registered cross-border associations/ECBAs in the EU

The indicators will be measured against the baseline (e.g. costs before the implementation starts, mainly on the basis of data from evaluation/desk research/consultation of stakeholders and national authorities, online registries in Member States (with aggregated information at EU level where data is available), information collected through surveys). The target is assessed through changes in costs for European cross-border associations and changes in the number of registered cross-border associations. More precise target is difficult as the figures depend also on several other factors not related to the proposal (e.g. unpredictability of its uptake, links with national traditions, economic and societal challenges).

Indicator No 2 (Specific Objective No2)

The indicator will be as follows:

- Perceived satisfaction of non-profit associations taking up the new legal form of ECBA operating cross-border in the internal market

The indicator will be measured through against the baseline (e.g. number of registrations at the start of the implementation). The target is assessed through increases in the numbers.

The indicators will be monitored every seven years, starting not earlier than from the time when the measures are fully transposed and operational in Member States, in order to feed into the evaluation report of the Directive which is expected after 7 years after the transposition deadline of the proposed Directive, and every 5 years thereafter.

## 1.5. Grounds for the proposal/initiative

### 1.5.1. Requirement(s) to be met in the short or long term including a detailed timeline for roll-out of the implementation of the initiative

The implementation of this proposal will follow a phased approach. Upon entry into force of this Directive, work will first commence towards the adaptation of the IT tools for its implementation, namely the Internal Market Information System (IMI) and the Single Digital Gateway (SDG), with a view to connecting the competent authorities in Member States ahead of the expiry of the transposition period and making necessary information publicly available. At the same time and to facilitate the implementation of the Directive, the Commission will enact the work on the template for the ECBA certificate by means of an implementing act.

A provisional implementation timeline can be illustrated as follows:

- 2024: Entry into force of the Directive,
- 2025: adaptation of the IMI, SDG
- 2025-2026: implementing act on the ECBA certificate
- 2026: transposition and application by Member States
- 7 years after transposition deadline and every 5 years thereafter: Commission report to the European Parliament and the Council on the implementation of the Directive

### 1.5.2. Added value of Union involvement (it may result from different factors, e.g. coordination gains, legal certainty, greater effectiveness or complementarities). For the purposes of this point 'added value of Union involvement' is the value resulting from Union intervention, which is additional to the value that would have been otherwise created by Member States alone.

#### Reasons for action at European level (ex-ante)

The proposal focuses on non-profit associations operating cross border in the internal market.

The existing regulatory diversity and/or restrictions among Member States demonstrate that the problem is not properly addressed at national level and that, in the absence of mutual recognition mechanisms among Member States, the cross-

border character requires a European solution to remove identified barriers to the cross-border activities and cross-border mobility of non-profit associations in the single market. Furthermore, individual action or inaction from Member States, most often, focuses on their specific national context and usually would not seek to facilitate the cross-border dimension.

A coherent legal framework for cross-border activities of non-profit associations can therefore be better achieved at EU level. Member States would not be able to bring sufficient improvement to those problems on their own.

#### *1.5.3. Lessons learned from similar experiences in the past*

The evidence base for this proposal is drawn from research (e.g. external studies), consultation activities and was supported by a dedicated external study.

The proposal also takes into account the lessons learned from 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 (2020/2026(INL)) as well as lessons learnt from the Commission proposal of 1992 creating a European legal form for associations, the European Association. The proposal was, however, eventually withdrawn on grounds of Member states criticisms (e.g. subsidiarity and unsuitability of the legal basis compared to its scope and purposes and because according to their view it did not answer to any proven need, its provisions did not embody the diversity of national legislations and it laid excessive administrative burden on associations).

#### *1.5.4. Compatibility with the Multiannual Financial Framework and possible synergies with other appropriate instruments*

The proposal contributes to the political objectives of the European Green Deal and the Digital Decade 2030. More specifically, it addresses the Commission political priority “An economy that works for people” contributing to the objective of “an economy that can fully respond to the needs of the EU citizens thereby ensuring social fairness and prosperity”. In this sense, the Directive interlinks with other measures of the Social Economy Action Plan of December 2021 and forms with them the Social Economy package as follows: a proposal for a Council Recommendation developing social economy framework conditions in the Member states and two Commission Staff Working Documents on “relevant taxation frameworks for social economy entities” and on “non-discriminatory taxation of charitable organisations and their donors: principles drawn from the EU case-law”.

#### *1.5.5. Assessment of the different available financing options, including scope for redeployment*

The costs necessary to adapt the scope of SDG to non-profit associations and the use of IMI to allow for the administrative cooperation among the competent authorities in the Member States, as provided for by this proposal, will be financed under the Single Market Programme.



## 1.6. Duration and financial impact of the proposal/initiative

### limited duration

- in effect from DD/MM]YYYY to [DD/MM]YYYY
- YYYY to YYYY for commitment appropriations and from YYYY to YYYY for payment appropriations.

### unlimited duration

- Implementation with a start-up period from DD/MM]YYYY to [DD/MM]YYYY
- followed by full-scale operation.

## 1.7. Method(s) of budget implementation planned<sup>50</sup>

### Direct management by the Commission

- by its departments, including by its staff in the Union delegations;
- by the executive agencies

### Shared management with the Member States

### Indirect management by entrusting budget implementation tasks to:

- third countries or the bodies they have designated;
- international organisations and their agencies (to be specified);
- the EIB and the European Investment Fund;
- bodies referred to in Articles 70 and 71 of the Financial Regulation;
- public law bodies;
- bodies governed by private law with a public service mission to the extent that they are provided with adequate financial guarantees;
- bodies governed by the private law of a Member State that are entrusted with the implementation of a public-private partnership and that are provided with adequate financial guarantees;
- bodies or persons entrusted with the implementation of specific actions in the CFSP pursuant to Title V of the TEU, and identified in the relevant basic act.
- *If more than one management mode is indicated, please provide details in the 'Comments' section.*

### Comments

The proposal will make use of IT tools which are already being funded by the Single Market Programme and managed by the Commission, namely, IMI for the administrative cooperation among the competent authorities of Member States and SDG.

<sup>50</sup> Details of budget implementation methods and references to the Financial Regulation may be found on the BUDGpedia site: <https://myintracomm.ec.europa.eu/corp/budget/financial-rules/budget-implementation/Pages/implementation-methods.aspx>

## **2. MANAGEMENT MEASURES**

### **2.1. Monitoring and reporting rules**

*Specify frequency and conditions.*

The Commission will first report to the European Parliament and the Council on the implementation of this Directive seven years after the transposition deadline of the Directive and every five years thereafter.

### **2.2. Management and control system(s)**

#### *2.2.1. Justification of the management mode(s), the funding implementation mechanism(s), the payment modalities and the control strategy proposed*

The administrative cooperation among competent authorities in the Member States provided for in the proposal will make use of the already existing IMI and SDG operated by the Commission (DG GROW). For this purpose, the proposed Directive enlarges the scope of the IMI and of SDG. This requires the deployment of resources to adapt the IMI to the needs of the proposed Directive, while no additional deployment of resources is deemed necessary to adapt the SDG.

This proposal does not alter the management mode, funding implementation mechanism, payment modalities or control strategy already in place for the system and employed by the Commission.

#### *2.2.2. Information concerning the risks identified and the internal control system(s) set up to mitigate them*

The main identified risk relates to time and cost overruns due to unforeseen IT implementation issues with regard to the adaptation of the IMI. This risk is mitigated by the fact that the IMI system is already in place and that the relevant Commission department has previous experience in adapting the system to new business needs.

#### *2.2.3. Estimation and justification of the cost-effectiveness of the controls (ratio of "control costs ÷ value of the related funds managed"), and assessment of the expected levels of risk of error (at payment & at closure)*

This proposal does not affect the cost-effectiveness of existing Commission controls.

### **2.3. Measures to prevent fraud and irregularities**

*Specify existing or envisaged prevention and protection measures, e.g. from the Anti-Fraud Strategy.*

This legislative financial statement concerns staff expenditure and procurement, and standard rules for this type of expenditures apply.

### 3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

#### 3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

- Existing budget lines

*In order of multiannual financial framework headings and budget lines.*

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Single Market Programme	Diff./Non-diff. <sup>51</sup>	from EFTA countries <sup>52</sup>	from candidate countries and potential candidates <sup>53</sup>	From other third countries	other assigned revenue
1	[03.02.01.02 - 'Internal Market Governance Tools']	Diff./Non-diff.	Yes	Yes	NO	NO

▪

<sup>51</sup> Diff. = Differentiated appropriations / Non-diff. = Non-differentiated appropriations.

<sup>52</sup> EFTA: European Free Trade Association.

<sup>53</sup> Candidate countries and, where applicable, potential candidates from the Western Balkans.

### 3.2. Estimated financial impact of the proposal on appropriations

#### 3.2.1. Summary of estimated impact on operational appropriations

- · The proposal/initiative does not require the use of operational appropriations
- · The proposal/initiative requires the use of operational appropriations, as explained below:

EUR million (to three decimal places)

Heading of multiannual financial framework		Number	1. Single Market, Innovation and Digital							TOTAL
DG: GROW			2024	2025	2026	2027	2028	2029	2030	
x Operational appropriations										
Budget line: 03.020102 - 'Internal Market Governance Tools'	Commitments	(1a)	0.425	0.225	0.100	0.100	0,00	0,00		<b>0,850</b>
	Payments	(2a)	0.425	0.225	0.100	0.100	0,00	0,00		<b>0,850</b>
Appropriations of an administrative nature financed from the envelope of specific programmes <sup>54</sup>										
		(3)								
<b>TOTAL appropriations for DG GROW</b>	Commitments	=1a+1b+3	0.425	0.225	0.100	0.100	0,00	0,00		<b>0,850</b>
	Payments	=2a+2b+3	0.425	0.225	0.100	0.100	0,00	0,00		<b>0,850</b>

<sup>54</sup>

Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former 'BA' lines), indirect research, direct research.

x TOTAL operational appropriations	Commitments	(4)	0.425	0.225	0.100	0.100	0.1100	0,00	0,00	<b>0,850</b>
	Payments	(5)	0.425	0.225	0.100	0.100	0.1100	0,00	0,00	<b>0,850</b>
□ TOTAL appropriations of an administrative nature financed from the envelope for specific programmes		(6)								
<b>TOTAL appropriations under HEADING 1</b> of the multiannual financial framework	Commitments	=4+6	0.425	0.225	0.100	0.100	0.1100	0,00	0,00	<b>0,850</b>
	Payments	=5+6	0.425	0.225	0.100	0.100	0.1100	0,00	0,00	<b>0,850</b>

<b>Heading of multiannual financial framework</b>	<b>7</b>	‘Administrative expenditure’
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This section should be filled in using the 'budget data of an administrative nature' to be firstly introduced in the [Annex to the Legislative Financial Statement](#) (Annex 5 to the Commission decision on the internal rules for the implementation of the Commission section of the general budget of the European Union), which is uploaded to DECIDE for interservice consultation purposes.

EUR million (to three decimal places)

	2024	2025	2026	2027	2028	2029	2030	TOTAL
DG GROW								
X Human resources	0,217	0,217	0,155	0,155	0,00	0,00	0,00	0,744
X Other administrative expenditure	0	0,054	0,054	0,054	0,00	0,00	0,00	0,162
<b>TOTAL DG GROW</b>	0,217	0,271	0,209	0,209	0,00	0,00	0,00	0,906

<b>TOTAL appropriations under HEADING 7</b> of the multiannual financial framework	0,217	0,271	0,209	0,209	0,00	0,00	0,00	0,906
(Total commitments = Total payments)								

EUR million (to three decimal places)

	2024	2025	2026	2027	2028	2029	2030	TOTAL
<b>TOTAL appropriations under HEADINGS 1 to 7</b> of the multiannual financial framework	0,642	0,496	0,309	0,309	0,00	0,00	0,00	1,756
Commitments								
Payments	0,642	0,496	0,309	0,309	0,00	0,00	0,00	1,756

3.2.2. Estimated output funded with operational appropriations

Commitment appropriations in EUR million (to three decimal places)

Indicate objectives and outputs	Average cost	OUTPUTS										TOTAL							
		2024		2025		2026		2027		2028			2029		2030				
		No	Cost	No	Cost	No	Cost	No	Cost	No	Cost		No	Cost	Total No	Total cost			
SPECIFIC OBJECTIVE No 1 and 2																			
Develop the IMI module	0.125	1	0.125	1	0.125												1	0.25	
Development cost Single Digital Gateway / Your Europe	0,150	1	0.300	1	0.100	1	0.100	1	0.100								1	0,6	
Subtotal for specific objective No 1		2	0.425	2	0.225	1	0.100	1	0.100									0,85	
<b>TOTALS</b>																			

<sup>55</sup> Outputs are products and services to be supplied (e.g.: number of student exchanges financed, number of km of roads built, etc.).

3.2.3. *Summary of estimated impact on administrative appropriations*

- The proposal/initiative does not require the use of appropriations of an administrative nature
- The proposal/initiative requires the use of appropriations of an administrative nature, as explained below:

EUR million (to three decimal places)

	2024	2025	2026	2027	2028	2029	2030	TOTAL
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<b>HEADING 7 of the multiannual financial framework</b>								
Human resources	0,217	0,217	0,155	0,155				<b>0,744</b>
Other administrative expenditure	0	0,054	0,054	0,054				<b>0,162</b>
<b>Subtotal HEADING 7 of the multiannual financial framework</b>	0,217	0,271	0,209	0,209				<b>0,906</b>

<b>Outside HEADING 7<sup>56</sup> of the multiannual financial framework</b>								
Human resources								
Other expenditure of an administrative nature								
<b>Subtotal outside HEADING 7 of the multiannual financial framework</b>								

<b>TOTAL</b>	<b>0,217</b>	<b>0,271</b>	<b>0,209</b>	<b>0,209</b>	<b>0,209</b>	<b>0,209</b>		<b>1,324</b>
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The appropriations required for human resources and other expenditure of an administrative nature will be met by appropriations from the DG that are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

<sup>56</sup> Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former 'BA' lines), indirect research, direct research.



### 3.2.3.1. Estimated requirements of human resources

- The proposal/initiative does not require the use of human resources.
- The proposal/initiative requires the use of human resources, as explained below:

*Estimate to be expressed in full time equivalent units*

	Year 2024	Year 2025	Year 2026	Year 2027	Year 2028	Year 2029	Year 2030
20 01 02 01 (Headquarters and Commission's Representation Offices)	1,5	1,5	1	1	1	1	1
20 01 02 03 (Delegations)							
01 01 01 01 (Indirect research)							
01 01 01 11 (Direct research)							
Other budget lines (specify)							
20 02 01 (AC, END, INT from the 'global envelope')							
20 02 03 (AC, AL, END, INT and JPD in the delegations)							
01 01 01 02 (AC, END, INT - Indirect research)							
01 01 01 12 (AC, END, INT - Direct research)							
Other budget lines (specify)							
<b>TOTAL</b>	1,5	1,5	1	1	1	1	1

**XX** is the policy area or budget title concerned.

The human resources required will be met by staff from the DG who are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

Description of tasks to be carried out:

Officials and temporary staff	1,5 FTES for the secretariat of the Comitology Committee and for overseeing the implementation of the proposal as well as to assist the IMI team and SDG/your Europe team for policy and business contributions both during the implementation for the project as well as after the IMI module has gone live.
External staff	

3.2.4. *Compatibility with the current multiannual financial framework*

The proposal/initiative:

- X can be fully financed through redeployment within the relevant heading of the Multiannual Financial Framework (MFF).

The Commission will use funds from the Single Market Programme to support this initiative, budget line 03.020102 'Internal Market Governance Tools'.

- " requires use of the unallocated margin under the relevant heading of the MFF and/or use of the special instruments as defined in the MFF Regulation.

Explain what is required, specifying the headings and budget lines concerned, the corresponding amounts, and the instruments proposed to be used.

- " requires a revision of the MFF.

Explain what is required, specifying the headings and budget lines concerned and the corresponding amounts.

3.2.5. *Third-party contributions*

The proposal/initiative:

- X does not provide for co-financing by third parties
- provides for the co-financing by third parties estimated below:

Appropriations in EUR million (to three decimal places)

	Year N <sup>57</sup>	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)			Total
Specify the co-financing body								
TOTAL appropriations co-financed								

<sup>57</sup> Year N is the year in which implementation of the proposal/initiative starts. Please replace "N" by the expected first year of implementation (for instance: 2021). The same for the following years.

**3.3. Estimated impact on revenue**

–  The proposal/initiative has no financial impact on revenue.

–  The proposal/initiative has the following financial impact:

“ on own resources

“ on other revenue

please indicate, if the revenue is assigned to expenditure lines “

EUR million (to three decimal places)

Budget revenue line:	Appropriations available for the current financial year	Impact of the proposal/initiative <sup>58</sup>							
		Year N	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)			
Article .....									

For assigned revenue, specify the budget expenditure line(s) affected.

Other remarks (e.g. method/formula used for calculating the impact on revenue or any other information).

<sup>58</sup> As regards traditional own resources (customs duties, sugar levies), the amounts indicated must be net amounts, i.e. gross amounts after deduction of 20 % for collection costs.