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From:	European Commission
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To:	General Secretariat of the Council
Subject:	Public feedback on the Directive proposal on European cross-border activities of Associations (COM(2023)516) and on the related Regulation proposal (COM(2023)515) amending the Internal Market Information System (IMI) and the Single Digital Gateway (SDG)

Delegations will find attached the above-mentioned document, as received from European Commission services.

Encl.: letter from Ms. Kerstin Jorna, Director-General for Internal Market, Industry, Entrepreneurship and SMEs (DG GROW), on the above-mentioned subject.

E-MAIL

Ref. Ares(2024)4041569 - 05/06/2024

EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR INTERNAL MARKET, INDUSTRY, ENTREPRENEURSHIP AND SMES
Ecosystems II: Tourism, Textiles, Digital Transformation of Industry, and Social Economy
G.2 – Proximity, Social Economy, Creative Industries

IM 006221 2024
05-06-2024

Brussels
GROW.G.2/MR

His Excellency Ambassador
Willem van de Voorde
Permanent Representative of Belgium
to the European Union

Subject: Public feedback on the Directive proposal on European cross-border activities of Associations (COM(2023)516) and on the related Regulation proposal (COM(2023)515) amending the Internal Market Information System (IMI) and the Single Digital Gateway (SDG)

Dear Ambassador,

With this letter I would like to inform you about the public feedback on the proposal for a Directive of the European Parliament and of the Council on European cross-border associations COM(2023)516 and on the related proposal for a Regulation (COM(2023)515) amending the Internal Market Information System (IMI) and the Single Digital Gateway (SDG), so that these views could be taken into account in the interinstitutional debate.

The two proposals were published on the "Have your say" platform of the European Commission from 6 September 2023 to 8 April 2024 ([1]). In the Annex, you will find a summary of the feedback received on the Directive proposal, which also includes feedback received via e-mail directly by my services, outside the platform. No feedback was received for the Regulation proposal.

My services remain at your disposal in case of questions (Michael Ristaniemi, GROW.G2, email: michael.ristaniemi@ec.europa.eu).

Yours sincerely,

Kerstin Jorna

([1]) Single market – proposal for a legislative initiative on cross-border activities of associations (europa.eu)

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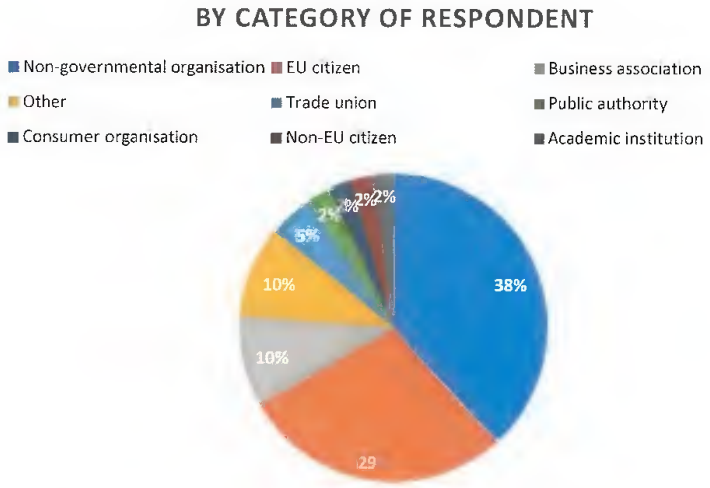
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Stakeholder feedback on the proposal for a Directive on European cross-border associations

Overview of respondents

The feedback period for the consultation on the proposal for a Directive on European cross-border associations (hereinafter the "proposal")[1] ran from 6 September 2023 to 8 April 2024[2]. Contributions from 41 stakeholders were received via the Have Your Say portal[3] and a further submission was received by email, bringing the total to 42.[4] Of the contributions, 21 were from umbrella organisations for non-profit associations, and this input reflects the voice of approximately 613 individual associations.[5] Breakdowns of the feedback by type of respondent and by the country of respondents are presented below.



Breakdown of feedback by country:	
Belgium	11
Germany	7

[1] COM(2023)516.

[2]Due to technical reasons, the deadline for submission of contributions was extended from the originally foreseen eight-week period after the publication of the last language version.

[3] Single market – proposal for a legislative initiative on cross-border activities of associations (europa.eu)

[4]To be noted that a separate public consultation was organized for the proposal for a Regulation of technical nature COM(2023)515 amending the Internal Market Information System (IMI) and the Single Digital Gateway (SDG). No feedback was received.

[5] Building on the assumption that, during consultation activities, umbrella organisations stay in close contact with their members on any issues of importance and of relevance to their activities as the support and views of their members is essential for their functioning. To be noted that available data on umbrella organisation memberships is only approximate.

France	4
Czechia	4
Spain	3
Italy	2
Hungary	2
Croatia	2
Sweden	1
Romania	1
Portugal	1
Netherlands	1
Latvia	1
Indonesia	1
Austria	1

SUMMARY OF RESPONDENTS' FEEDBACK

This section contains a summary of feedback collected on **key elements** of the proposal.

a. General

Close to 70% of respondents explicitly welcome the proposal as well as the proposal's objectives in terms of protection of freedom of association, protection of civil dialogue and promotion of social economy. For many, it means a recognition of the non-profit sector at large. Several respondents call the proposal a pragmatic approach and several civil society umbrella organisations refer to the approach taken not being overly prescriptive and therefore flexible in terms of preserving national law and tradition.

Some respondents explicitly welcome the internal market approach of the proposal. One bar association had concerns about the appropriateness of the legal basis chosen. Social welfare organisations agreed with the digital by default approach – citing that it could lead to a 'positive spill-over and a digitalization boost'.

b. Scope

Among the respondents, there was a general acceptance for the chosen scope focusing on the legal form of non-profit associations and several respondents welcomed the proposal's scope. Albeit, a number of civil society umbrella organisations, covering over 20% of respondents, pointed to the need for legislation at Union level covering also other legal forms active in the non-profit sector, especially foundations, and called for envisaging that in the future.

c. Features of and rules applicable to ECBAs

Over 50% of respondents welcome that the proposal defines the notion of "non-profit purpose" at Union level, including the non-distribution constraint that is at its core, stressing that the proposal brings legal certainty and addresses a gap in this regard. More broadly, several respondents considered that the proposal focusing on non-profit associations will bring legal certainty and clarity in an area where national rules are very heterogeneous.

The feedback on the notion of public benefit/interest was mixed. Some social welfare and healthcare organisations welcomed the fact that the proposal did not regulate this aspect, while

some civil society organisation and foundations specialized in civil society were in favour of regulating it. Several respondents agreed the proposal should not regulate taxation, while some called for a clarification in this regard in view of the application of the principle of equal treatment with that of national non-profit associations, which is enshrined in the proposal.

Several respondents ask for the concept of 'general interest' to be defined and used to further define an ECBA's scope of activities. Several civil society respondents call for differentiating non-economic activities with economic ones and a public body responsible for associative life asks for defining 'economic activities'. Further, two respondents suggested adding 'disinterested management' to the definition of an ECBA.

Four respondents suggested that it is unclear what rules apply to ECBAs and that the interplay of home and host Member State's legislation should be clarified, while one bar association asked for regulating more aspects of the ECBA, compared to the current approach that leaves Member States more flexibility. Some social welfare organisations found it difficult to identify the most similar legal form in Germany, unless economic activities of ECBAs are linked to its statutory objectives.

A public body responsible for associative life asked for the concept of 'overriding reasons in the public interest' to be defined and clarified in guidelines, while two civil society umbrella organisations asked for further limitations to Member States' possibilities to restrict ECBAs activities.

d. Governance of ECBAs

Approximately 30% of respondents disagreed with the feature of an ECBA that requires Union citizenship or legal residence as a requirement for acting on the executive body. Several respondents called for more flexibility regarding the membership criteria and categories, as well as voting rights of members, citing the freedom of association.

e. Treatment compared to other entities

Approximately 15% of respondents, especially civil society organisations, supported the proposal's approach towards equal treatment and non-discrimination vis-à-vis national non-profit associations.

However, close to 20% of respondents asked for clarifications and cautioned against that leading to a competitive disadvantage for other actors by competing against for-profit actors, while receiving preferential tax treatment, funding or other financial support.

f. Registration and register

Close to 25% of respondents welcomed the mutual recognition logic of the proposal and the single registration leading to recognition of an ECBA's legal personality and capacity throughout the Union. In terms of formation, several respondents welcomed the possibility for existing non-profit associations to convert into an ECBA and that the registration process may be done fully online, resulting in a standard form certificate. However, one public body responsible for associative life asked for for-profit legal entities to be able to be founding members. Two respondents suggested to ensure notaries are avoided in the registration process.

There was not much feedback received on the decentralized approach towards registers, with administrative cooperation and a single access point through the Single Digital Gateway. Three respondents supported the online availability of information about registered ECBAs. One

respondent suggested that a centralized register at Union level would be more appropriate, while the European business register organisations suggested to assess interconnection systems and their implications for stakeholders.

g. Transfer of registered office

Several respondents agreed with the proposal's approach allowing a transfer of an ECBA's registered office to another Member State without undergoing a dissolution and liquidation process. An employers' organisation suggested to clarify safeguards for employees and cautioned against the 30-day period reserved for authorities to issue its decision following a request for a transfer.

h. Dissolution and liquidation

There was not much feedback received on the chapter on dissolution, but two respondents – from France and Germany – did state that the proposal's approach to involuntary dissolution does not correspond to their national law. A third respondent asked for the concepts 'serious threat to public order' and 'serious criminal offence' to be further clarified and defined.

i. Implementation

Three respondents suggested that stakeholders and civil society should be closely involved in the monitoring and reporting of the implementation of the Directive. A public body responsible for associative life suggested deepening the provision on administrative cooperation to include monitoring and supporting implementation. The European business register organisations suggested to aligning the timeline for implementing online registration with other applicable Union initiatives.

Finally, one respondent suggested that the period (7 years) before the first report on the implementation of the directive is too long.