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COMMISSION STAFF WORKING DOCUMENT

EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT REPORT

Accompanying the document

Proposal for a Directive of the European Parliament and of the Council

on European cross-border associations

{COM(2023) 516 final} - {SEC(2023) 306 final} - {SWD(2023) 292 final} - {SWD(2023) 293 final}

Executive Summary Sheet

Impact assessment on a legislative initiative on cross-border activities of associations in the single market

A. Need for action

What is the problem and why it is being addressed?

An estimated 3 870 million non-profit associations are active in EU Member States, generating 2.9% of EU GDP (i.e. EUR 420 billion) in sectors such as health, care and social services, social inclusion, culture, sports and humanitarian aid. Associations are regulated through national laws in 24 Member States. When operating across borders in the single market, associations are faced with uncertainty about the applicable rules and additional administrative burden and costs, as national laws do not generally include rules on cross-border aspects (except for a few cases) or these aspects are addressed in different ways.

The impact assessment identified barriers in the single market in four areas: cross-border activities of associations in relation to their right to establishment and provision of services and goods; the movement of capital; cross-border membership and participation in governance bodies; cross-border mobility (conversions, mergers, divisions).

The impact assessment estimates that the identified problem concerns around 8% of associations that are currently engaged in cross-border activities (some 310 000 associations), and, in addition, at maximum another 185 000 associations that would potentially engage in such activities, if the barriers tackled by the initiative were removed. Removing barriers could create additional GDP and jobs and further, unlock the socio-economic potential of the non-profit sector in Europe of which associations are the dominant legal entities (around 87%).

What should be achieved?

The initiative seeks to improve the functioning of the single market by removing administrative and regulatory barriers for associations operating in more than one Member State in order to unleash their full potential to generate economic and societal value in the EU. This includes enabling them to fully benefit from the single market freedoms, in particular, the freedom of establishment, the freedom to provide and receive goods and services, as well as the free movement of capital (cross-border donations, membership fees).

In pursuit of this general objective, the initiative has the following specific objectives:

- *Improve possibilities for an association to have its legal personality recognised in other Member States, thereby ensuring equal treatment in the single market.*
- *Reduce the regulatory formalities for associations operating in more than one Member State*

What is the value added of action at the EU level (subsidiarity)?

Without EU action, Member States will keep their diverse national rules, resulting in continued fragmentation of requirements and limitations, thereby creating unequal conditions for associations who want to operate in the single market. As indicated in the European Parliament's resolution of February 2022 and as emerged from the Public consultation and the consultation activities conducted under an independent study supporting the impact assessment, cross-border activity of associations has not reached its full potential in the EU. Only action at EU level would enable harmonised or coordinated rules that would tackle existing barriers for cross-border activities by associations. Indirectly, it may also help strengthen the non-profit sector and civil society at large.

B. Solutions

What are the various options to achieve the objectives? Is there a preferred policy option or not? If not, why?

In addition to the baseline (no action), the impact assessment identified the following policy options:

Option 1: Establish an EU-level legal form of association

Sub-option 1a: An EU level legal form: 'The European Association". A European legal form of association would be introduced and would regulate all aspects relevant to the functioning of an association (formation, registration, constitution, functioning, financing, dissolution, liquidation and insolvency). Interested natural and legal persons could set up a European Association and existing associations could convert to being one. It would co-exist with other legal forms of associations at national level, while not replacing them, and would enjoy automatic recognition of its legal personality across the Union. This option would suit those associations interested in being active in many Member States.

Sub-option 1(b): An EU level legal form: "The European cross-border Association". This would be an EU level legal form but, instead of a fully prescribed legal form such as under sub-option 1a, it would cover only cross-border aspects and, where needed for coherence, it would prescribe main features of a European cross-border association. This new legal form would co-exist with legal forms of associations at national level and would not replace them. The European cross-border association would enjoy automatic recognition of its legal personality across the Union. Interested natural and legal persons could set up a European Association and existing associations could convert to being one. This policy option would suit those associations interested in being active in many Member States.

Option 2: Harmonize common minimum standards for cross-border activities of associations. It would harmonise common minimum standards for the cross-border activities and mobility of associations across Member States. and would help reduce the differences between national laws. Associations would automatically benefit from these harmonization measures without needing to set up or to convert to a new legal form. This option would imply removing or amending existing rules or introducing new rules in Member State law, thereby also affecting associations without cross-border purposes.

Option 3: Create an additional legal form of association designed for cross-border purposes and recognised *by Member States.* It would require Member States to introduce in their national legal systems a legal form of association for cross-border purposes. It would encompass only requirements and safeguards necessary for facilitating the said cross-border purposes, and it would co-exist alongside existing legal forms for associations in national law. Those interested would be able to form a 'cross-border association' in several ways (e.g. by setting up a new one, by converting or merging). Under this option, 'cross-border associations' would not need to establish in each Member State separately, as their legal personality would be recognised either automatically or through a simplified procedure.

The main differences between the three options concern their level of compliance with the proportionality and subsidiarity principles in relation to the identified problem. The preferred is option 3, which mostly contributes to solve the identified problem and addresses the specific objectives. It is targeted and also complies best with the proportionality and subsidiarity principles, while being the most balanced approach in terms of costs and benefits.

What are different stakeholders' views? Who supports which option

The Commission consulted stakeholders through a variety of consultation activities such as a Call for Evidence, a Public Consultation, a targeted consultation (i.e. an online survey) and 64 interviews which were carried out to further enhance the evidence base and support the preparation of the policy options. Altogether these consultation activities, covered a total of 3 026 associations (including individual associations and umbrella organisations) and 12 national authorities.

In the context of the Public Consultation (64 replies), the majority of respondents (i.e. 73%; 47 out of 64) support EU action to facilitate cross-border activities of associations in the single market. Responses indicated that "a new legal form for associations" is favoured by 36% (22 out of 64) of respondents and by 42% (16 out of 38) of respondents under the legal form of associations (policy options 1 and 3). The 'harmonisation of common minimum standards' (policy option 2) was the preferred option of 42% (26 out of 64) of all respondents and 32% (12 out of 38) respondents under the legal form of association.

In the context of the targeted survey (140 replies), responding associations supported an EU intervention, potentially favouring policy option 1 in terms of effectiveness in facilitating associations' operations in another Member State (on average 4 out of 5 respondents), while policy options 2 and 3 were also widely supported (respectively, 3.4 of 5 and 3.2 out of 5).

C. Impacts of the preferred option

What are the benefits of the preferred option (if any, otherwise of main ones)?

Compared to the baseline, policy option 3 is expected to lower both the launch costs and recurrent costs of associations operating across borders:

- 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 amount up to EUR 338 million – 378 EUR million in the best estimate scenario.
- The reduction of excess cost of 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 of EUR 8.5 billion

The impact assessment makes a best estimate of potential indirect economic benefits generated over a 15-year period: 185 000 additional associations operating cross border creating up to 75 000 jobs and EUR 4.2 billion added value. The impact assessment includes several scenarios reflecting the potential uptake of the preferred option and its unlocking potential, ranging from a best estimate scenario to a more conservative scenario to mitigate potential overestimations.

The impact assessment expects an indirect positive social impact, including on fundamental rights (non-quantifiable). Where indirect effects on the environment and climate are expected, they are considered to be positive (but non-quantifiable), albeit non-significant in magnitude. In general, policy option 3 is expected to have a positive impact on competent authorities in the long term without imposing significant adaptation costs on them.

What are the costs of the preferred option (if any, otherwise of main ones)?

The costs for associations that take this new legal form will depend on the extent to which the harmonised rules differ from national rules, and for those who do not wish to take this legal form, there would be no adjustment or administrative costs. Compared to the baseline, policy option 3 is expected to generate lower costs in terms of compliance and administrative burden, as well as compared to the other options and comparatively higher savings through excess cost reductions (as indicated above).

For competent authorities, option 3 is expected overall to have a positive impact in the long term and the magnitude of the (adaptation) cost should not is not constitute a significant cost.

What are the impacts on SMEs and competitiveness?

While the initiative does not specifically target nor imposes new administrative obligations on SMEs, its objectives directly affect associations that qualify as such(bearing in mind that associations engaged in economic activities may fall within the definition of micro, small and medium-sized enterprises). As the initiative aims to remove barriers to associations' activities across borders and small associations typically have fewer resources and capabilities to overcome existing barriers, adjustments to entry and operating requirements are expected to have a positive impact on the competitive position of SME size

associations. See also the benefits of the preferred option in terms of cost reduction for associations, mentioned above.
Will there be significant impacts on national budgets and administrations?
For the national competent authorities, the preferred option (as well as options 1 and 2) would lead to some adjustment costs, although these were not estimated to be significant in the impact assessment. Also when it comes to recurrent costs for on-line registers (e.g. maintenance, publishing and IT), significant extra costs are not expected for competent authorities.
Will there be other significant impacts?
No other significant impacts have been identified.
Proportionality?
Compliance with the proportionality principle would be ensured through the establishment of an additional legal form at national level that is designed for cross-border purposes. Doing so would introduce the recognition of legal personality and uniform standards only to the necessary extent and only to create an option for associations operating across borders in the single market.
D. Follow-up
The initiative will be evaluated in five years after its transposition by Member states, and will be periodically monitored.