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European Economic and Social Committee

OPINION

European Economic and Social Committee

European cross-border associations

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a) Proposal for a Regulation of the European Parliament and of the Council amending Regulations (EU) No 1024/2012 and (EU) 2018/1724 as regards the use of the Internal Market Information System and the Single Digital Gateway for the purposes of certain requirements laid down by Directive (EU).../... of the European Parliament and of the Council on European cross-border associations
[COM(2023) 515 final – 2023/0314 (COD)]

b) Proposal for a Directive of the European Parliament and of the Council on European cross-border associations
[COM(2023) 516 final – 2023/0315 (COD)]

INT/1046

Rapporteur: **Giuseppe GUERINI**

Referral	a) European Parliament, 23/11/2023 a) Council of the European Union, 20/09/2023 b) European Parliament, 02/10/2023 b) Council of the European Union, 20/11/2023
Legal basis	Articles 50 and 114 of the Treaty on the Functioning of the European Union
Section responsible	Single Market, Production and Consumption
Adopted in section	20/12/2023
Adopted at plenary	17 January 2024
Plenary session No	584
Outcome of vote (for/against/abstentions)	225/1/2

1. Conclusions and recommendations

1.1 The European Economic and Social Committee (EESC) welcomes the European Commission's proposal to facilitate the cross-border activities of non-profit associations in the EU by creating a new legal form of "European cross-border association". It advises the co-legislators to move swiftly towards its adoption.

1.2 The EESC recognises the difficulties that non-profit associations and entities face in participating in the internal market and recommends that the Commission and the Member States remove the legal and administrative obstacles, thereby promoting the role that these associations play in the EU when it comes to generating economic and social value.

1.3 The proposal contributes to the objectives of the Social Economy Action Plan and is connected with some of its measures, such as the proposal for a recommendation on developing social economy framework conditions in the Member States and two Commission working documents on taxation.

1.4 The EESC recognises the potential of non-profit organisations in the context of the single market and stresses the need to foster the creation of a European ecosystem for this kind of entity in order to make the single market more "social".

1.5 The EESC welcomes the Commission's proposal to introduce an additional legal form of European cross-border association (ECBA) in Member States' national legal systems to reduce the legal and administrative burdens involved in the recognition and establishment of non-profit associations carrying out activities in another Member State.

1.6 The EESC proposes that all organisations that meet ECBA criteria, and have their registered office in the European Union, should be able to acquire ECBA status. This includes organisations that have members of the executive body who are natural persons residing in non-EU countries, especially when such members reside in European Economic Area countries.

1.7 The EESC recommends that, in accordance with the principles of democracy and freedom of association, the statutes of the organisations themselves and of their partners should be able to freely determine the different types of membership of associations and how voting rights work.

1.8 This initiative will help to obtain recognition of the role of non-profit associations, which, by statute and by legislative mandate, play general interest roles in Europe. The initiative is a point of reference for future measures that may facilitate the development of cross-border activities for other entities that have a general-interest role, such as mutual societies and foundations.

1.9 The EESC supports and welcomes the creation of an ECBA certificate, which will allow this new legal form to be recognised throughout the EU, once the ECBA has been registered in a Member State; nevertheless, it recommends that classification and registration systems be improved by setting up comparable databases.

1.10 The EESC, aware of the complexity of the different positions of Member States when it comes to foundations, considers that the ECBA proposal could be a valid point of reference for reopening talks between the EU institutions on the European statute for foundations.

2. General comments on the Commission's proposal

2.1 The proposal analysed in this opinion complements the measures set out in the European Commission's 2023 Legislative Programme with regard to updating the Social Economy Action Plan. The proposal consists of a directive and a regulation, and has the merit of filling a legislative gap. This is clearly shown in the impact assessment accompanying the proposal. There are no specific EU rules allowing non-profit associations to operate across borders in the internal market.

2.2 The impact assessment identified four obstacles that non-profit associations and entities face in participating in the internal market, which make the following difficult and, in certain cases, impossible for them: (i) non-profit associations' right of establishment when operating across borders; (ii) providing goods and services; (iii) participating in and contributing to a single market for capital; (iv) participating in governance bodies of non-profit associations when they operate across borders. This results in the lack of cross-border mobility for non-profit associations, but also in less chance for them to develop a market of social impact investments in Europe, as can sometimes be seen from the limited use of the EuSEF Regulation[1], specifically created to promote social entrepreneurship investments.

2.3 The EESC therefore welcomes the Commission's proposal, which brings together and implements a number of points that have been highlighted in several opinions[2] in recent years, as it agrees with the fact that such a proposal is needed: one that aims to make cross-border activities easier for non-profit associations in the EU by creating a new legal form of "European cross-border association". Cross-border associations are organisations that operate across national borders, often with the aim of promoting cooperation, information exchange and the sharing of resources between neighbouring countries or regions. The proposal seeks to improve the functioning of the internal market by removing legal and administrative obstacles for non-profit associations that operate, or would like to operate, in more than one Member State, thus promoting the role that such associations play in the EU when it comes to generating economic and social value. This will also help to create a level playing field for associations.

2.4 In addition to non-profit associations, it is important to recognise the important "public benefit" role played by other philanthropic organisations and foundations, which sometimes face obstacles similar to those recorded as facing associations when it comes to recognition of legal personality, transfer of registered office or cross-border mergers. The EESC therefore believes that solutions must be developed for these bodies as well, as originally called for in the European Parliament's report[3].

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1 European Social Entrepreneurship Fund.

2 EESC Opinion on *European philanthropy: an untapped potential* (exploratory opinion requested by the Romanian Presidency), OJ C 240, 16.7.2019, p. 24.

3 For more information on the environment in which European philanthropy operates, see Philea, *Country profiles on the legal and fiscal landscape for philanthropy* and *Comparative Highlights of Foundation Laws*.

2.5 The proposal contributes to the objectives of the Social Economy Action Plan and is connected with some of its measures, such as the proposal for a recommendation adopted by the EPSCO Council on 9 October 2023 on developing social economy framework conditions in the Member States and two Commission working documents on "relevant taxation frameworks for social economy entities" and on the "non-discriminatory taxation of charitable organisations and their donors: principles drawn from EU case law". While many non-profit associations refer to the key principles of the social economy, certain non-profit associations also pursue different aims, for example promoting and protecting consumers, businesses and citizens' rights.

2.6 Non-profit associations create social and economic value as service providers in the social, health, care, culture, employment, education, sport, environmental, international cooperation and humanitarian assistance sectors. They also create places for civil society to be involved and take the lead, fostering an active role for citizens and thus creating a social infrastructure for democracy.

2.7 This social infrastructure plays a decisive role in responding to the main challenges Europe is facing – from climate change to the digital transition, from the fight against poverty to skills growth. It can often provide key solutions for social innovation and to support change: these are all decisive contributions to the smooth operation of the single market.

2.8 The EESC considers that this initiative and the Council recommendation on developing social economy frameworks and other key actions for associations and foundations included in the Social Economy Action Plan (SEAP) are complementary and reinforce each other. The legislative initiative seeks to help non-profit associations overcome the obstacles they face as key players in the social economy when operating across borders in the single market, by creating an enabling environment that respects the rich diversity of organised forms of civil society in the EU.

2.9 As acknowledged by the SEAP, the social economy is one of the main enablers for creating an inclusive and non-discriminatory Europe, given its strong focus on dealing with social challenges. These challenges involve helping disadvantaged groups to enter the labour market and provide assistance and support to certain groups at risk of social exclusion, such as older people and people with disabilities, migrants and refugees, and those far away from the labour market. The potential of non-profit organisations and philanthropic entities still remains untapped in the single market: they mostly develop in local contexts. This proposal aims to foster the creation of a European ecosystem for these types of entities, and contributes significantly to making the single market more "social".

2.10 The current Commission's commitment to developing this legislative initiative should be ambitious, and should seek to create a single market with a level playing field for the different types of organisations pursuing objectives of general interest, creating a common benefit in the community in which they operate. Alongside the SEAP, this proposal needs to be a real turnaround, enabling EU civil society and non-profit entities and European philanthropy to contribute to a society that works for people and the planet. It should also enable the social economy as a whole to work towards achieving an inclusive and diverse Union that works in an

effective and inclusive way. In this regard, the EESC calls on the co-legislators to proceed swiftly towards its adoption.

2.11 It is vital to make it easier for a non-profit association to have its legal personality recognised in the other Member States, thereby ensuring equal treatment in the internal market. It is also important that acquiring ECBA status remains voluntary and that no association is obliged to change its legal nature.

2.12 Mutual societies are social economy undertakings that provide life and non-life insurance services, as well as complementary social security schemes. In view of the fact that the legal form of mutual societies is not recognised in all Member States, the current European legal framework puts mutual societies in a position where they cannot reap the benefits of the internal market. The cross-border association option could be a step towards the specific recognition of mutual societies.

2.13 3.8 million non-profit associations exist in EU Member States, contributing 2.9% of EU GDP. It is estimated that the new rules will enable around 310 000 non-profit associations currently encountering such obstacles when operating in another country to reduce administrative costs by up to EUR 770 million per year and potentially up to EUR 8.5 billion over 15 years. Additionally, if the obstacles identified by the proposal are removed, a further 185 000 non-profit associations could begin working across borders and generate up to EUR 4.2 billion in added value over 15 years[4].

2.14 There are 24 different regulatory regimes in the EU that apply to non-profit associations, as well as, in many cases, regional regimes. This legal patchwork impedes cross-border civic engagement and, ultimately, limits civic space. Currently, when non-profit associations carry out activities in a Member State that is different to the one they are established in, they do not receive uniform recognition of their legal personality and capacity and often need to register for a second time or even form a new legal entity in that Member State.

2.15 Some associations comprised of networks of national and European organisations, which often have members that operate within a wider Europe framework, extend beyond EU borders. In order for these organisations to acquire ECBA certification, the limit laid down in Article 7 of the proposal for a directive, which provides that only natural persons that are Union citizens may be members of the executive body of an ECBA, should be revised. This restriction seems excessive. The EESC believes that this provision needs to be extended to include the European Economic Area iin order to achieve the objective of participation in the single market, in line with Article 114 of the TFEU.

2.16 It is also important to guarantee flexibility when it comes to deciding who has the right to vote, in compliance with the principle of demcracy, in order to respect the different types of membership of associations operating in Europe. The current wording of Article 8, which provides for one vote per ECBA member, is too narrow.

4 COM(2023) 516 final.

3. The role of ECBAs

3.1 The Commission's proposal introduces an additional legal form of European cross-border association (ECBA) in Member States' national legal systems, whose considerable differences were taken into account extensively in the documents accompanying the proposal and in the text of the proposal for a directive. The ECBA classification has been specifically designed for cross-border purposes. It will reduce the legal and administrative burdens involved in the recognition and establishment of non-profit associations carrying out activities in another Member State.

3.2 As well as developing an additional legal form for cross-border associations, a suitable instrument for foundations should be considered. As early as 2012, there was an unsuccessful attempt to adopt a European statute for foundations. Now, thanks to the impetus created by the Social Economy Action Plan and recommendation, the time could be ripe to launch another initiative to resume that path.

3.3 The EESC recognises the importance of abolishing unjustified restrictions to the freedom of establishment and the free movement of services, goods and capital that still exist in the legal systems of some Member States. In this regard, it considers particularly useful the fact that Article 12 of the proposal provides for Member States to ensure that an ECBA is only required to register once.

3.4 Non-profit associations wishing to carry out economic activities in another Member State are required to form and register a brand new non-profit association in that Member State, involving additional administrative costs and formalities.

3.5 This also has 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 non-profit associations encounter difficulties when in accessing financial loans, credits and guarantees within credit institutions.

3.6 The EESC believes that creating a new legal form of non-profit association that can be recognised by all Member States could further unlock the potential of civil society organisations of all sizes and support their key contribution to our society. It could be a key tool for mobilising the collective engagement citizens, particularly through associations and foundations, to carry out more public benefit activities and work together in all the different spheres of society. Moreover, associations in cross-border regions will be able to work together further, building an even deeper sense of European spirit and citizenship in these unique areas. This initiative will help to recognise the role that non-profit associations of general interest play in Europe and could serve as a reference for future initiatives involving other types of entities, such as foundations.

3.7 We welcome in particular the fact that the proposal for a directive states that legal personality and capacity are acquired by an ECBA from the moment the ECBA is registered in a Member State. Once established in a Member State, a European Cross Border Association will be automatically recognised and can carry out activities in all Member States, including economic activities. This will allow ECBAs to unlock their full social and economic potential in the EU.

3.8 ECBAs will co-exist with other national associations in the Member States. As regards issues that are not covered by the proposal for a directive, such as tax treatment, Member States treat the ECBA in the same way as similar national non-profit associations, while respecting the rules of each Member State in this sector and without consequences for existing associations.

3.9 Thanks to the ECBA certificate, the new rules mean that this new legal form will be swiftly recognised throughout the EU, once the ECBA is registered in a Member State; they also provide for harmonised rules on the transfer of registered office, allowing ECBAs to reap all the benefits of the freedom of establishment and freedom to provide services, goods and capital in the EU.

3.10 An ECBA will enjoy all the benefits of the single market, regardless of which Member State it is registered in, benefiting from free and non-discriminatory access to public funding in each Member State in which it operates.

3.11 The EESC considers that data on entities that are eligible to become ECBAs, should be more available in order to improve information on and awareness of the multiple forms of non-profit associations, and encourage the establishment of appropriate, comparable registers and statistics systems. The registers and classification systems of profit-making associations should serve the purpose of avoiding the abuse of benefits granted to ECBAs. However, they may not be used to impose restrictions, as clearly stated in Article 15 of the proposal for a directive.

3.12 Along with the proposal for a directive, the Commission adopted a technical regulation amending the regulations on the Internal Market Information System (IMI) and on the single digital gateway, to allow the competent authorities to work together and exchange information through the IMI system and to carry out digital operations through the single digital gateway, allowing the public to access information on the ECBAs online.

3.13 The EESC welcomed the establishment and management of a single digital gateway to provide individuals, businesses and legal entities other than businesses with easy-to-access, high quality information, efficient procedures and effective assistance and problem-solving services in the area of EU and national laws that apply to individuals, businesses and legal entities.

Brussels, 17 January 2024

Oliver RÖPKE
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