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MEETING DOCUMENT

From:	General Secretariat of the Council
To:	Working Party on Company Law
Subject:	Proposal for a Directive on European cross-border associations - Document from the European Commission

Delegations will find underneath a document from the European Commission on the Proposal for a Directive on European cross-border associations.

Proposal for a Directive on European cross-border associations[1] (hereinafter "ECBA proposal")

Replies to Member States' questions transmitted to the Directorate General for Internal Market, Industry, Entrepreneurship and SMEs on 3.03.2025

PUBLIC

1. MONEY LAUNDERING

1.1. What are the risks of establishing an ECBA in connection with money laundering and how to address them in the proposal? How does the proposal protect against this risk?

Commission services reply:

The Union has robust rules for anti-money laundering and countering the financing of terrorism (AML/CFT)[2] that enables the identification and mitigation of money laundering and terrorism financing risks. These rules are part of a comprehensive package, recently reviewed, including the following legislative instruments:

- *Transfer of Funds Regulation (recast) (applicable from 30 December 2024)[3]*
- *Regulation establishing an EU AML Authority[4]*
- *Anti-Money Laundering (AML) Directive (applicable from July 2027, while Directive 2015/849 (as amended by Dir 2018/843) is still in force)[5]*
- *Anti-Money Laundering Regulation[6]*

According to the AML Directive, obliged entities shall apply customer due diligence requirements when entering into a business relationship (including requirements to identify and verify the identity of clients, monitor transactions and report suspicious transactions). This means that obliged entities providing services to associations (typically banks and financial institutions but also accountants, auditors and legal professionals, as these are often involved in the creation or management of associations) must apply customer due diligence requirements and other risk mitigating measures. These measures ensure that the obliged entities understand who is behind and who is acting for an association, that they monitor transactions and activities, understand or request information on the source of funds in certain situations, and report any suspicions to the Financial Intelligence Unit of the Member State

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1 Proposal for a directive of the European Parliament and the Council on European cross-border associations, COM/2023/516 final

2 The anti-money laundering rules currently in force are found in directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing , as amended by directive (EU) 2018/843

3 Regulation (EU) 2023/1113 on information accompanying transfers of funds and certain crypto assets

4 Regulation (EU) 2024/1620 establishing the Authority for Anti-Money Laundering and Countering the Financing of Terrorism

5 Directive (EU) 2024/1640 on the mechanisms to be put in place by Member States for the prevention of the use of the financial system for the purposes of money laundering or terrorist financing

6 Regulation (EU) 2024/1624 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing

where that obliged entity is established. Since associations take the form of a legal entity, they are also subject to beneficial ownership requirements under the AML rules. On the one hand, these rules require obliged entities to identify the beneficial owners of the association when entering into a business relationship with them, and on the other hand require the associations to provide information on their beneficial ownership to the beneficial ownership register set up in the Member State where they are established. These rules altogether contribute to greater ownership transparency, reducing the risk of misuse of legal entities by criminals for money laundering or terrorism financing purposes.

Associations are subject to the same scrutiny by obliged entities as other types of customers, although the extent of such measures may vary depending on the risks posed. In fact, the stakeholder consultation to the ECBA proposal and other relevant studies[7] have revealed that there is a certain degree of overreach by banks when it comes to applying due diligence requirements to associations. The EU AML framework's preventive measures are underpinned by a risk-based approach, requiring obliged entities to assess money laundering and terrorism financing risks associated with a business relationship or occasional transactions. Based on this assessment, they apply due diligence and other mitigating measures that are commensurate with the identified risks. As part of the risk assessment, obliged entities shall consider risk factors relating to the type of customer, the geographic links, as well as product, service, delivery channel and transaction risk factors.

At EU level, Article 6 of the AML Directive requires the Commission to assess money laundering and terrorist financing risks affecting the internal market and relating to cross-border activities. The 2022 Report on the assessment of the risk of money laundering and terrorist financing affecting the internal market and relating to cross-border activities (the 'Supranational Risk Assessment[8]) recommends that Member States should ensure that non-profit organisations are more involved in national risk assessments, especially as regards to the possibility of de-risking by financial institutions. Member States should develop information and awareness-raising programmes on the risk of abuse of non-profit organisations and provide awareness-raising material so that non-profit organisations are better equipped to address potential vulnerabilities.

At a national level, Article 7 of the AML Directive requires Member States to identify, assess and mitigate the risks of money laundering and terrorist financing that they are exposed to, and use that assessment to identify areas of greater or lower risk and coordinate national responses accordingly. [Please see below under question 2 some findings from national risk assessments].

The cross-border nature of associations would be a relevant factor for consideration during such risk assessment exercises, be it at the national, the EU's or at the obliged entity's level.

The AML/CFT rules are regularly reviewed to address and mitigate emerging risks relating to money laundering and terrorist financing. In June 2024, a revised package of AML/CFT legislation was adopted, including new rules set to apply as of 10 July 2027. The provisions of the current Directive as described above will be retained and further strengthened [9].

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7 Financial Action Task Force (FATF), *Protecting non-profits from abuse for terrorist financing through the risk-based implementation of revised FATF Recommendation 8*, November 2023, ; On derisking the EBA issued guidelines to challenge unwarranted de-risking and safeguard access to financial services to vulnerable customers (EBA/GL/2023/04)

8 Report from the Commission to the European Parliament and the Council on the assessment of the risk of money laundering and terrorist financing affecting the internal market and relating to cross-border activities, COM(2022) 554 final

During the stakeholder consultations for the ECBA proposal, no Member State authority signalled that associations raise particular money laundering risks. Similarly, the stakeholder consultations carried out as part of the review of the AML/CFT rules did not reveal any concern from Member State authorities regarding heightened risks specifically related to associations.

The issue of anti-money laundering is addressed several times in the ECBA proposal, notably in recitals 18, 20, 48 as well as in Article 3:

- *The rules applicable to ECBAs under the proposal 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 (Article 4(3))*
- *Persons convicted of money laundering may not establish an ECBA (Recital 18, Article 3 (1) (b) and (c)).*
- *It should not be possible to use ECBAs for money laundering (recital 20).*
- *The notion of "particularly serious crime", which the proposal refers to in different occasions[10] may include money laundering (recital 48)*

2. TERRORIST FINANCING

2.1 What are the risks of establishing an ECBA in connection with terrorist financing? How does the proposal protect against this risk?

Commission services reply:
The EU AML/CFT rules serve the objective of preventing and detecting money laundering and its predicate offences, as well as terrorist financing. The response outlined above therefore applies equally to the risks associated with terrorist financing.

The Union has developed a comprehensive approach to preventing and fighting terrorist financing, including where it is perpetrated by non-profit entities. In that regard, the Communication of 2005[11] is a corner stone and provides for several measures to improve the exchange of information, strengthen transparency and enhance the traceability of financial transactions. In line with the Communication and the recommendations of the Financial Action Taskforce,[12] each Member State has assigned responsibility to a unit or individual to act as a

10 This concerns Article 7(3) on the exclusion of certain persons from the possibility to be members of the executive body; Article 19(4) e) and Article 22(4) d) on respectively the rejection of an ECBA registration and the rejection of a request to transfer the registered office where a person authorised to represent the ECBA or any member of the executive body has been convicted of a particularly serious crime; Article 25(2) c) where the conviction for a serious criminal offence of the ECBA or the members of its executive body leads to the ECBA dissolution)

11 Commission Communication To The Council, The European Parliament And The European Economic And Social Committee The Prevention of and Fight against Terrorist Financing through enhanced national level coordination and greater transparency of the non-profit sector, COM(2005) 620 final

12 FATF, International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, FATF, 2025

single point of contact for managing international information requests within relevant authorities.

The Internal Market Information system (IMI)[13] and Single Digital Gateway (SDG)[14], as outlined in the ECBA proposal, could further facilitate such exchanges of information and offer greater transparency to Member States regarding the activities of associations that may raise concern.

Moreover, the ECBA proposal foresees several other measures aiming at mitigating any potential risks:

- *Article 3 (1) (b) and (c) provides that persons convicted offences relating to the financing of terrorism are prohibited from forming an ECBA.*
- *Article 3(2) obliges Member States to 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. The non-compliance of the non-profit purpose leads to involuntary dissolution of the ECBA according to Article 25(2).*
- *Article 4(3) provides that the rules applicable to ECBAs shall not affect the measures taken by Member States on grounds of public policy and security to prevent misuse and to ensure transparency of certain capital movements.*
- *Article 25(2) provides that a Member State may dissolve an ECBA in case of a serious threat to public order or public security caused by the activities of the ECBAs or a conviction for a serious criminal offence of the ECBA or of the members of its executive body. Recital 48 further explains that the notion of 'particularly serious crime' should be defined by Member States and may include terrorism.*
- *Recital 20 makes it clear that it should not be possible to use ECBAs for terrorist financing.*

During the stakeholders consultations for the ECBA proposal, no Member State authority signalled that associations raise particular terrorist financing risks. Similarly, the stakeholders consultations carried out as part of the AML/CFT framework review did not reveal any concern from Member State authorities regarding heightened risks specifically related to associations.

Furthermore, a recent study on the threats and vulnerabilities of the non-profit sector[15] provides further insights on the prevalence and scale of the use of associations for terrorist financing.

- *A review of existing reports revealed that the issue of terrorist financing abuses of non-profit organisations is **marginal**.*
- *Over 100 interviews with national authorities (law enforcement, financial intelligence, tax authorities, ministries) revealed **very few detected** or investigated cases. For example, the total number of investigations carried out in Germany, France and Spain over the past five years was fewer than 10 investigations. Cross-border elements in those detected cases have not been reported.*

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13 Regulation (EU) 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System ('the IMI Regulation')

14 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 ('the SDG Regulation')

15 European Commission: Directorate-General for Financial Stability, Financial Services and Capital Markets Union and ICF S.A, *Study of the threats and vulnerabilities of the non-profit sector for the purposes of terrorist financing – Final report*, European Commission, 2025

- *Despite the very low number of recorded cases, Member States **remain cautious** and mobilised. The numbers may not be fully reflective of the situation given the sensitivity of such cases and therefore **non-availability of reports**.*

National risk assessments such as the ones carried out by Italy, Austria and France on national money laundering and terrorist financing risks assessment revealed similar results describing the risk of non-profit organisations engaging in money laundering and terrorist financing as low.

- *The risk assessment report from Italy[16] indicated that the risk from non-profit organisations was negligible and the vulnerabilities were considered to be of low significance.*
- *The French[17] report also considered the overall threat from non-profits to be low (while identifying higher risks in the following areas: financial humanitarian assistance directed towards conflict zones, operations in conflict zones and non-profits abused and associations disguising their financing of terrorism with legitimate activities in the cultural or humanitarian field).*
- *In Austria,[18] the overall assessment of non-profit organisations was considered to be low (except for 0,06 per cent of non-profit organisations active in conflict or high-risk regions).*

*In light of this, it can be concluded that **the types of activity, and geographic links** are crucial elements in determining the level of risk of terrorist financing, rather than the type of entity, be that profit or non-profit entities. For example, higher levels of risk of terrorist financing may potentially be linked to activities carried out in conflict zones particularly where the activities entail raising, movement or use of funds. Non-profit entities are more likely to be engaged in conflict zones, providing aid and charitable services to the local populations, whereas for-profit entities typically tend to avoid legally uncertain environments due to the inherent risks and instability.*

3. PUBLIC ORDER

What are the risks of establishing an ECBA in connection with public order?

Assess risks for internal security and the public order of the Member States and the possibility for Member States to oppose activities that are undesirable, e.g. at odds with public order.

Also assess implications for existing national association law and preliminary controls: e.g. the possibility for Member States to retain safeguards laid down in national association law, such as the establishment through a civil law notary.

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16 Ministry of Economy and Finance, Italy's national money laundering and terrorist financing risks assessment drawn up by the Financial Security Committee, Ministry of Economy and Finance, 2019

17 Analyse nationale des risques de blanchiment de capitaux et de financement du terrorisme en France, Rapport du Conseil d'orientation de la lutte contre le blanchiment de capitaux et de financement du terrorisme, 2019

18 Bundesministerium Finanzen webiste, Vereine und Schutz vor Terrorismusfinanzierung

The impact assessment[19] should verify if the ECBA original proposal (or any feasible way forward) might be conducive of exposing Member States to risks threatening national security (for instance by facilitating frauds, fiscal appropriation or the pursing of criminal and terrorist activities), and what adjustments might be worth considering for mitigating or solving those risks.

Risks regarding the promotion of violent extremism and radicalisation for all types of activity covered by the Directive should be assessed, as well as the risks of foreign interference during the establishment and operation of an ECBA.

Assess the exclusion of certain sectors of activity, in order to preserve specific rules applicable under national law, in particular in very sensitive areas affecting the sovereignty of the State (for example: education, reception facilities for minors, and sports and physical activities facilities).

If several Member States have systems that guarantee the legal and financial control of their non-profit associations, and this proposal determines that this is not necessary, how does the proposal ensure security?

Commission services reply:

The Commission services have grouped the replies to these questions into three main segments:

3.1 What are the measures foreseen in the ECBA that can help prevent or mitigate security risks? Are further adjustments needed? Assess the exclusion of certain sectors of activity, in order to preserve specific rules applicable under national law, in particular in very sensitive areas affecting the sovereignty of the State (for example: education, reception facilities for minors, and sports and physical activities facilities)

*Recital 45 and Article 25 of the ECBA proposal provides for the **dissolution of an ECBA** by the competent authorities in case of risk to internal security and public order. This is the case when a) an ECBA is no longer complying with its non-profit objective; (b) there is a serious threat to public policy or public security caused by the activities of an ECBA; (c) there is a conviction for a serious criminal offence of the ECBA or the members of its executive body. The obligation to dissolve in such a case lies with the home Member State. Where a transfer has been requested, the home Member States is obliged to **block the transfer** of the ECBA, if the dissolution procedure under Article 25 has been launched against the ECBA. There is no requirement to wait until the dissolution procedure is completed to block a transfer. ECBAs intending to abuse their right of transfer to escape dissolution will be faced with an **immediate block**, ensuring a rapid and watertight safeguard mechanism and allowing the home Member States to complete the dissolution procedure. A seamless coordination mechanism between Member States will be ensured through the IMI (Article 28). To this end, the Commission has proposed a revision of the IMI Regulation to broaden its scope and adjust the necessary regulatory framework to include non-profit associations. In light of this, it can be asserted that the ECBA proposal offers stringent safeguards to prevent and mitigate security risks.*

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[19] Commission Staff working document, 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) 294 final} (part 1 & part 2)

Regarding sectors of activities, trade unions, political parties, religious organisations and associations of such entities are excluded from the proposal for the ECBA Directive (Article 3(1) and recitals 15 to 17). It is worth adding that Articles 12(2) and 12(3) leave the possibility to Member States to require registered ECBAs to make a declaration, provide information, request or obtain authorisations for engaging in particular activities in certain cases. In addition, persons who have been convicted of offences of money laundering, associated predicate offences, or terrorist financing and 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 are also prohibited from establishing an ECBA (Article 3(2) and 3(3)). Further sectoral exclusions have not been considered by the Commission's proposal. The Commission is ready to examine the position of the co-legislators on possible proposed adjustments to the proposal.

3.2 What is the discretion left to Member States in maintaining well-functioning national measures to prevent and mitigate such risks? Is it possible for Member States to maintain the requirement for registration through a civil law notary?

The ECBA proposal does not create an unfettered right to create an ECBA. For example, where the objectives of an ECBA are considered to contravene Union law or national law compliant with Union law, Member States must refuse the registration (Article 19 (4) (d)) of the ECBA . The right to establish an ECBA is, therefore, ***contingent on adherence to objectives that are considered as lawful under both Union and national law****.*

Moreover, Articles 3, 7, 19, 22, 25, of the ECBA proposal put restraints on ECBAs whenever there is involvement of a person convicted of a particularly serious crime. Member States may decide on what constitutes a "particularly serious crime" and impose the following limitations:

- *An ECBA may not be established by persons convicted of money laundering, associated predicate offences or terrorist financing (Article 3).*
- *Registration of an ECBA must be refused if any person authorised to represent the ECBA or any member of the executive body has been convicted of a particularly serious criminal offence (Article 19).*
- *The transfer of the registered office must be refused where, inter alia, the persons authorised to represent the ECBA, any member of the executive body or the ECBA itself, if provided for by national law, are subject to proceedings for a particularly serious criminal offence in the previous home Member State (Article 22 (4 (d)).*
- *Natural persons who have been convicted of a particularly serious criminal offence may not be members of the executive body or representatives of a legal entity that is a member of the executive body (Article 7).*
- *Involuntary dissolution must be ordered in the event of a conviction for a serious criminal offence of the ECBA or the members of its executive body (Article 25).*

It should be noted that the ECBA proposal does not harmonise all aspects of the legal regime governing associations, but only aspects that are necessary to ensure cross-border activity. The Commission's proposal notably differs on this aspect from the position of the European

Parliament[20]. The ECBA proposal is without prejudice to measures adopted by Member States on grounds of public policy and public security to prevent the risk of misuse of non-profit associations (Article 4 (3)). This means that ECBA proposal leaves both home and host Member States free to adopt measures on grounds of public policing and public security aimed at preventing the risk of misuse of non-profit associations, where required by Union or national law.

According to the study supporting the impact assessment[21] and the comparative legal analysis of national laws on associations[22], establishment in the form of a notarial deed is not a common practice in Member States. It is only mandatory in 3 out of 27 Member States:

- *In Germany, signatures need to be certified by a notary or other public official.*
- *In Estonia, the application must be notarised and deposited by a notary.*
- *In the Netherlands a notarial deed is only required to acquire full legal capacity (registration is mandatory but does not constitute the incorporation of the association).*

In addition, in Portugal, the notarial deed may be one mode of formation of associations that want the legal personality (Article 158, para. 1, Civil Code), but another mode is possible (the "immediate" formation of associations with legal personality provided for by Law no. 40/2007).

Article 18 of the ECBA proposal does not make the notarial deed of the application for registration mandatory. Article 18(4) provides that Member States shall ensure that the application for registration of an ECBA may be submitted online. In light of potential proposed adjustments from the co-legislators, their appropriateness in this regard could be carefully considered.

3.3 Could the establishment of an ECBA expose Member States to risks for internal security and the public order (including through violent extremism/radicalisation, terrorism/criminal activities and foreign influence)?

No Member State authority has signalled, or provided any concrete evidence, that the ECBA could lead to security risks in the stakeholders consultations carried out in the context of the ECBA proposal. Furthermore, there is no information available to the relevant Commission services indicating that the facilitation of cross-border activities of associations through the ECBA would trigger security risks, beyond those that may exist with regard to domestic associations.

4. TAX EVASION

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20 Texts adopted, European Parliament legislative resolution of 13 March 2024 on the proposal for a directive of the European Parliament and of the Council on European cross-border associations (COM(2023)0516 – C9-0326/2023 – 2023/0315(COD)), P9_TA(2024)0147

21 European Commission: Capgemini Invent, Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs, ECORYS, KU Leuven, University of Rome Tor Vergata, de Bas, P., Lee, S., Beernaerts, A., Ciocan, A., Pauer, A., Kruger, T., Turturro, L., Fici, A., van Veen, W.Van Baelen, B., *Study supporting an Impact assessment on cross-border activities of associations*, Publications Office of the European Union, 2023

22 European Commission: Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs and RAS Institute, *Comparative legal analysis of associations laws and regimes in the EU – Final report*, Publications Office of the European Union, 2022

4.1 How, in light of the content of the legislative proposal, can tax avoidance be excluded/minimized?

Commission services reply:

According to the non-distribution constraint principle, any surplus realized by an ECBA must be reinvested in the objectives of the ECBA as defined in its statutes (Article 3(2)). Such a surplus may or may not, according to the relevant income tax laws of the Member States, be subject to income taxation or tax exemption.

A similar approach is applicable for VAT: it needs to be assessed whether the ECBA carries out supplies of goods or services within the meaning of the national laws which transpose the VAT-Directive[23]. If such supplies of goods or services are made for consideration making them taxable, it needs to be assessed whether any exemption applies. If not, ECBA will have to account for VAT on the supplies made.

For tax purposes, "avoidance" is a term used to describe taxpayer behaviour aimed at reducing tax liability that falls short of tax evasion[24]. While the expression may be used to refer to "acceptable" forms of behaviour, such as tax planning, or even abstention from consumption, it is more often used in a pejorative way to refer to something considered "unacceptable", or "illegitimate" (but not in general "illegal"). In other words, tax avoidance is often within the letter of the law but against the spirit of the law. Typical forms of tax avoidance, for example, are the exploitation of differences in tax rates, loopholes or benefitting from mismatches.

From this perspective, it is somewhat difficult to conceive that an ECBA and its members would apply tax planning techniques resulting in tax avoidance, as first the non-profit status of an ECBA typically results in little or no surplus, and second, Member States' tax legislation often exempt such non-profit entities from taxation.

Nonetheless, any anti-tax avoidance rules applicable to taxable entities under Member States' national law is applicable to ECBAs. Moreover, it should also be noted that the Council adopted the Anti-Tax Avoidance Directive (ATAD) I and II in 2016 and 2019[25], according to which Member States agreed to include cross-border anti-tax avoidance provisions in their domestic tax legislation. Such provisions could apply to ECBAs in the same way as provisions that are not based on EU legislation.

As an example, Article 6 of the ATAD I-Directive provides for a general anti-abuse rule (GAAR) – therefore all Member States today necessarily have such a general anti-abuse rule in their tax legislation.

Furthermore, the Directive for Administrative Cooperation (DAC)[26] allows tax administrations to either exchange spontaneously, or for certain items automatically, information between the tax administrations of different Member States. The DAC Directive also give the tax

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23 Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax

24 See for further information, for example, the explanation given by the Council on "Combatting tax avoidance in the EU"

25 Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market and Council Directive (EU) 2017/952 of 29 May 2017 amending Directive (EU) 2016/1164 as regards hybrid mismatches with third countries

26 European Commission website, *Directive on Administrative Cooperation (DAC)*

administration of a Member State the possibility to request information on a specific issue regarding a taxpayer of another Member State to the tax administration of that Member State.

Under the Union AML framework, obliged entities, such as credit and financial institutions, accountants, auditors and legal professionals, must monitor their customers' activities and transactions. They are required to report any suspicions of money laundering, its predicate offences, that is, the underlying criminal offences that generate the illicit proceeds (including tax evasion), or terrorist financing to the Financial Intelligence Unit of the Member State.

4.2. What is the impact on tax issues in the Member States?

Commission services reply:

In terms of revenue, the introduction of ECBAs will have no to minimal impact, as ECBAs as non-profit entities will have no or minimal potentially taxable surplus and furthermore will be exempt from tax in many Member States.

Furthermore, the ECBAs will cover situations which traditional associations did not cover previously, in particular the "cross-border" context of operations of ECBAs. Nonetheless, the same tax treatment applies as to domestic associations – except that, due to the cross-border element, two tax jurisdictions and tax administrations may be involved. Potential overlapping competences would need to be assessed through bilateral agreements for the avoidance of double taxation.

Regarding more particularly employee taxation, the following rules apply. If an ECBA has two establishments, one in the Member State of the registered office and another one in another Member State, an employee may be active and physically present in both establishments. The question arises, in which Member States the employee will be subject to income taxes on his income from employment.

Any double (non-) taxation of the income from employment is avoided by the application of the relevant bilateral Double Taxation Conventions. The application of these Conventions clearly attributes the taxing rights to one of the Member States. The main criterion – though not the only one – is where the employee physically carries out the work. If the employee is physically active in both Member States, then the income will be attributed to each Member States pro-rata and taxed according to the applicable provision in force. The majority of the Double Taxation Conventions use the OECD Model Tax Convention.

Concretely, if an ECBA is established in Member State A and provide services in Member State B, the following rules apply:

- *Taxation of employees living in Member State A:*
    - *If the employee stays in MS B for more than 183 days: taxation in MS B on pro rata basis for activities carried out physically in MS B*
    - *If the employee stays in MS B for 183 days or less: the general rule is taxation in MS A. However, an exception applies and taxation takes place in MS B only if remuneration is paid by, or on behalf of, an employer resident of MS B*
- *Taxation of employees living in Member State B: the taxation is in the State of residence (MS B)*
- *Taxation of the ECBA: taxation only in MS A, provided that the ECBA has no permanent establishment in MS B, i.e., no office, no warehouse etc.*

4.3. How can potential conflicts in exit taxation with regard to the transfer of the ECBA registered office be avoided?

Commission services reply:

There might be rare cases, in which the transfer to the registered office of an ECBA from one Member State to the other can raise issues regarding exit taxation.

The idea of an exit tax is that hidden reserves of an asset should remain taxable in the State in which these hidden reserves were accrued. Against that background, the transfer of the registered office of an ECBA itself should not give rise to any taxation.

In order to raise exit tax issues, an ECBA would need to have assets, which have increased in value, without these hidden reserves having been realized by a sale or any other alienation. This could be the case for securities.

Once a transfer of the registered office is decided, these assets normally are part of the registered office to be transferred – the assets will "leave" one tax jurisdiction and "enter" into another tax jurisdiction. Any immediate taxation of such hidden reserves without any alienation is incompatible with the logic of the internal market and its fundamental freedoms.

The Court of Justice of the European Union repeatedly held that the transfer to another Member State itself should not give any rise to taxation (a move within the same Member State would not either). However, upon transferring the registered office from one Member State to another one, the fair market value of the transferred asset should be assessed; the taxable capital gain is determined by deducting the acquisition cost of the respective asset from the fair market value.

The ATAD I Directive regulates this issue and provides for a deferral of the taxation of any hidden reserve by prescribing the payment in instalments over five years.

It should be noted that hidden reserves often are accrued in land and buildings. However, as such immovable assets cannot be transferred to another Member State, the taxing rights of the original Member State remain secured. As a result, there is normally no exit tax applicable on such assets.

4.4 The rules of taxation will not be harmonized, thus what is the added value of the new Directive for the non-profit associations, considering, that the rules applicable to ECBA-s will still differ in all Member States?

Commission services reply:

The ECBA proposal aims to remove obstacles to cross-border activities of associations, making it easier for them to operate across Member States. While taxation can add complexity and costs, it has not been identified as a primary obstacle to cross-border activities for domestic associations.

The ECBA proposal was never intended to provide a common set of rules for the taxation of such entities. Instead, its added value lies in facilitating the cross-border activities of non-profit associations and reducing administrative burden placed on them, thereby simplifying their operations and ensuring greater legal certainty when operating in multiple Member States.

In concrete terms, if an ECBA has two establishments, one in the Member State of the registered office and another one in another Member State, it can occur that an employee may

be active and physically present in both establishments. The question arises, in which Member States the employee will be subject to income taxes on his income from employment.

Any double (non-) taxation of the income from employment is avoided by the application of the respective bilateral Double Taxation Conventions. These bilateral Double Taxation Convention in its vast majority use the OECD Model Tax Convention as a blueprint.

Furthermore, as the ECBA proposal does not seek to regulate taxation (Article 4(2)), it follows that ECBAs will be taxed similarly to the most similar legal form of non-profit association in Member States' domestic legal, as notified in accordance with Article 4(4) of the proposal, and in accordance with Article 9. This allows to avoid any taxation discrepancy between ECBAs and domestic associations, respect Member States approach on the matter and does not affect existing associations.

5. TRANSPARENCY OF FINANCING

5.1 How transparency of financing of ECBAs can be ensured (transparency about the donors and the amounts and purposes of their donations)? To what extent are we able to guarantee compliance with financial obligations?

Commission services reply:

Transparency rules of ECBAs will follow the same rules applicable to the most similar form of non-profit associations notified by Member States in accordance with Article 4(4). In addition, Article 4(2) empowers Member States to adopt measures on grounds of public policy and public security to ensure transparency of certain capital movements when required by Union law or national law in compliance with Union law.

Furthermore, associations will interact with the Union financial system through the services of banks and other financial institutions, as well as with gatekeepers such as accountants, auditors, tax advisors and lawyers and notaries (as set out in the response to question 1 on money laundering risks). These categories of operators are obliged entities and subject to EU anti-money laundering requirements emanating from Directive (EU) 2015/849. As customers of obliged entities, associations will be subject to customer due diligence requirements which include, among other measures, the identification of the beneficial owners of the association, transaction monitoring and where necessary, checks on the source of funds. This means that banks and other obliged entities providing services to associations may request information and documents pursuant to AML requirements to ensure or establish the legitimacy of the source. While this does not refer to specific obligations of the associations, these rules contribute to further increase transparency and to preventing and detecting potential misuse.

5.2 How does the proposal tackle danger of circumvention of domestic financing bans (the possibility of receiving funds of any kind also from illegitimate sources)?

Commission services reply:

Financing is covered by the Commission's proposal in Articles 13 and 15.

Article 13(1) lays down the principle that ECBAs shall have free and non-discriminatory access to funding from a public source within the European Union (therefore legitimate), in compliance

with the general principles of EU law, regardless of the Member State of registration. Article 13(2) lays down on Member States an obligation to refrain from imposing restrictions on an ECBA's ability to provide or receive funding, including donations, from any lawful source. This principle is accompanied by the exception that restrictions are possible, when they are cumulatively prescribed by law, justified by overriding reasons in the public interest and appropriate for ensuring the attainment of the objective pursued and do not go beyond what is necessary in order for it to be attained. Under the sanction framework established by Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine[27], it would be prohibited for an ECBA to accept Russian public funding.

Article 15 states that requirements of an authorisation or approval by a Member State authority as a condition for receiving donations from a (lawful) source within the Union are prohibited. Article 15 does not mean to extract donations to ECBAs from applicable rules on domestic financial bans which remain in any case applicable to ECBAs by virtue of Article 4(2). In addition, Article 4(3) leaves the possibility to Member States to further adopt measures on grounds of public policy and public security to ensure transparency of certain capital movements when required by Union law or national law in compliance with Union law.

5.3 How can the risk of interference by foreign actors or radicalisation under the influence of external actors be counteracted (with regard to the regulation on free access to public financing)

Commission services reply:

Regarding the concern related to foreign interference in general, an ECBA will be subject to the transparency obligations developed in the Defence of Democracy package[28] if it fulfils the requirements of the scope of application (i.e. be active in the field of interest representation activities on behalf of third countries). The proposal for a Directive[29], which was adopted as part of the "Defence of Democracy" package in December 2023, aims to provide EU common standards for economic influence activities like lobbying carried out on behalf of third countries.

Its objective is twofold: i) to improve the functioning of the internal market of interest representation activities carried out on behalf of third countries on the basis of EU harmonised transparency and democratic accountability standards; and ii) to improve the knowledge of the magnitude, trends and actors behind such activities.

The requirements apply to entities carrying out interest representation on behalf of third countries either as a service or similar activity with economic purpose, (Article 3).

The proposal provides for obligations of record-keeping (Article 7), requiring entities to maintain, for a limited period, records on the third-country entity's identity, the purpose of the interest representation, contracts, key exchanges and essential materials related to the interest representation activity. Entities within the scope will need to register in national registers (Article 9). Member States will be asked to establish or adapt existing national registers for this purpose. The intention is to build upon existing registers of Member States.

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27 Council Regulation (EU) of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine

28 European Commission website, *Protecting democracy*

29 Proposal for a Directive of the European parliament and of the Council establishing harmonised requirements in the internal market on transparency of interest representation carried out on behalf of third countries and amending Directive (EU) 2019/1937, COM/2023/637 final

Further, the proposal imposes obligations for registered entities and their subcontractors to disclose registration (EIRN) when approaching public officials or engaging in direct contact with them (Article 14).

The proposal lays down a harmonised set of data to be submitted (Article 10 – Annex I) and specific set of data to be made publicly available (Article 12 – Annex I). Member States must designate competent national authorities while ensuring compliance with the independence criteria of the supervisory authority (Article. 15).

A comprehensive system of safeguards for registered entities will include effective judicial review, independent supervisory authorities with carefully framed powers, and obligations to prevent stigmatisation (e.g. registers should be presented in a neutral way, and no labelling obligation should be imposed).

The proposal also provides for a harmonised sanctions regime, requiring Member States to lay down rules on sanctions limited to administrative fines and subject to a prior warning (Article 22).

In addition, with regard to the particular risk of foreign interference via access to public funding, it will be up to the national granting authorities to carry the usual checks applied to public funding, in line with the regime applicable to the most comparable form of non-profit association in their domestic order, as notified in accordance with Article 4(4). This will also be the case when an ECBA applies for public funding in another Member State than the one it is registered in. In such case, the ECBA will be subject to the same rules as those applicable to the most comparable form of non-profit association in the Member State in question. Therefore, the ECBA proposal prevents any additional exposure to risks of foreign interference or radicalization beyond what already exists for comparable domestic non-profit associations.

In addition, according to Article 25(2) of the ECBA proposal, involuntary dissolution must take place (inter alia) in case of serious threat to public order or public security caused by the activities of the ECBA and in case of a conviction for a serious criminal offence of the ECBA or of the members of its executive body, allowing Member States to consider dissolution in the case of malign foreign interference, provided general principles of law are respected.

5.4 Commission should consider how the access to public finance could be wrongfully exploited and what powers and remedies (if any) national authorities would be empowered to use to effectively supervise, prevent, or correct any wrongdoing (especially vis-à-vis association operating on a cross-border basis).

Commission services reply:

The Commission's proposal, via Article 13(1) lays down the principle that an ECBA, once lawfully registered in a Member State, may have free and non-discriminatory access to funding from a public source regardless of the Member State of registration. In this regard, the regulatory framework governing ECBAs will be identical to the one that applies to the most similar legal form of non-profit domestic associations as notified in accordance with Article 4(4). The potential risk for public finance to be wrongfully exploited by an ECBA is no greater than that posed by the national most similar legal form of non-profit association.

In addition, according to Article 4(2) of the Proposal, Member States are empowered to adopt measures on grounds of public policy and public security to ensure transparency of certain capital movements, thereby allowing them to supervise, prevent and correct wrongdoing

linked to capital movements. These safeguards ensure robust oversight while upholding the core objective of facilitating cross-border non-profit activities.

5.5 The IA doesn't include the influence of the principle of free and non-discriminatory access to funding (article 13) on the local non-profit associations [What are the Member States' options of giving more equal ground for the local non-profit associations that have less funds to compete with ECBA-s for national funding (given the article 13 of the directive)?].

Commission services reply:

The proposal regulates the legal regime of the new form of association created, the ECBA, and does not regulate on domestic forms of non-profit association, nor preclude Member States from regulating them in any way, including leveraging specific conditions for domestic non-profit associations. Member States are free to also apply the principle of free and non-discriminatory access to funding of Article 13 to domestic associations, should they wish so.

6. CROSS-BORDER POSTING OF EMPLOYEES

6.1 Need for assessment of the potential impact on cross-border posting of employees of ECBA and the accordance with posting rules and measures against labor exploitation or trafficking in human being.

Commission services reply:

The Posting of workers directive[30] (Directive 96/71/EC), which was adopted in 1996 and revised in 2018, is applicable in case a worker is sent by his/her employer to provide services in another MS (Host-MS) than the one where he/she normally works (Home-MS). The Directive defines core terms and conditions of employment applicable to the posted workers in accordance with Host-MS rules.

These terms and conditions of employment are established in Article 3(1) of Directive 96/71/EC and are the following:

(a) maximum work periods and minimum rest periods;
(b) minimum paid annual leave;
(c) remuneration, including overtime rates; this point does not apply to supplementary occupational retirement pension schemes;
(d) the conditions of hiring-out of workers, in particular the supply of workers by temporary employment undertakings;
(e) health, safety and hygiene at work;
(f) protective measures with regard to the terms and conditions of employment of pregnant women or women who have recently given birth, of children and of young people;
(g) equality of treatment between men and women and other provisions on non-discrimination;

30 Directive (EU) 2018/957 of the European Parliament and of the Council of 28 June 2018 amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services

(h) the conditions of workers' accommodation where provided by the employer to workers away from their regular place of work;
(i) allowances or reimbursement of expenditure to cover travel, board and lodging expenses for workers away from home for professional reasons.

In any case, if the host-MS rules are not more favorable than the law applicable to these employment conditions, usually the home MS law continues to apply.

Concretely, under the ECBA proposal, this means that where an ECBA established for instance in Belgium but provides services in for instance Germany, the situation is the following for employees originating from Belgium:

- *If the employee stays in Germany for more than 18 months: in addition to the core terms and conditions of employment under German law (host MS rules) referred to above (Article 1 of Directive 96/71/EC) , all the applicable terms and conditions of employment under German law (host MS rules) will apply (with some exceptions which are (i) procedures, formalities and conditions of the conclusion and termination of the employment contract, including non-competition clauses and (ii) supplementary occupational retirement pension schemes). As above, if the host-MS rules (German law) are not more favorable than the law applicable to these employment conditions, usually the home MS law (Belgian law) continues to apply.*
- *If the employee stays in Germany for more than 12 and less than 18 months: the principle is that, in addition to the core terms and conditions of employment under German law (Article 1 of Directive 96/71/EC), all the applicable terms and conditions of employment under German law (host MS rules) will also apply except if a motivated notification is submitted to the competent authority in Germany, in which case only the core terms and conditions of employment under German law (Article 1 of Directive 96/71/EC) will apply (and not all the applicable terms and employment conditions under German law as in the case of 18 months). In any case, Belgian law applies if the host-MS rules (German law) are not more favorable than the law applicable to these employment conditions in Belgium.*
- *If the employee stays in Germany for less than 12 months: Germany law applies regarding the core terms and conditions of employment (Article 1 of Directive 96/71/EC) unless Belgian law provides terms and employment conditions more favourable to the posted worker.*
- *For employees originating from Germany and employed in Germany: German law applies.*

Regarding the particular issue of trafficking in human being, which is not regulated by the proposal, following a proposal by the Council, the European Parliament and the Council approved an updated version of the EU anti-trafficking Directive[31] on 13 June 2024. This revision strengthens efforts to combat human trafficking by equipping law enforcement and judicial authorities with better tools to tackle emerging forms of exploitation, particularly those occurring online. Additionally, it enhances protections and support for victims. Key updates include:

- *Explicitly recognizing forced marriage, surrogacy, and illegal adoption as forms of exploitation covered under the Directive*

31 Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA

- *Addressing trafficking-related crimes that involve digital platforms and online facilitation, especially in cases of sexual exploitation*
- *Mandating the establishment of National Referral Mechanisms*
- *Criminalizing the intentional use of services provided by trafficking victims to curb demand for exploitation*
- *Expanding training programs for professionals likely to encounter trafficking victims and leveraging technology for enforcement*
- *Strengthening coordination between referral mechanisms and asylum authorities*
- *Instituting an annual EU-wide data collection on human trafficking, managed by Eurostat*

EU Member States have two years to transpose these new rules into their national law.

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7. ASSET-LOCK IN CASE OF DISSOLUTION

7.1 The impact assessment does not address the effect of the article 26 (6) on the private law principles (private autonomy) - addition required

Commission services reply:

Article 26(6) reflects the legal regime in several Member States where laws provide that in the absence of a decision by the General Assembly of the association or the body designated in the statutes of the association, the balance of the liquidation should be assigned to a purpose as close as possible for which the association was formed, or that it must be transferred to a non-profit entity with a similar activity or a local authority which must then use them for an activity similar to the original purpose of the association dissolved[32].

The Commission is ready to examine the position of the co-legislators and possible proposed adjustments to the proposal.

8. CROSS-BORDER ECONOMIC ACTIVITY

8.1 There should be a broader assessment of the economic activities of cross-border associations in the impact assessment and of the possibilities for Member States to impose restrictions in this matter.

Commission services reply:

The economic activities of associations were assessed in Section 1.4 and Annex 6 of the Impact assessment. However, the analysis faced challenges due to the limited availability of recent, qualitative and relevant data on associations at EU and Member State level[33]*. As a result, estimates were based on theoretical assumptions, analogies and benchmarking allowing extrapolations of input data available. To mitigate potential overestimation, the Impact assessment relied on the lower bound estimates and complemented the analysis with qualitative information (e.g. based on literature review as well as interviews), further enhancing the robustness of the findings.*

32 See footnote 22, Comparative legal analysis, page 36

33 On the issue of data availability, please also refer to Section 11

Regarding more particularly the issue of restrictions imposed on associations to their ability to conduct economic activities, the study supporting the Impact assessment found that in the vast majority of Member States, an association may conduct not only gratuitous activities but may also freely carry out economic activities that generate profits, provided that profits are not distributed to members, directors, workers, etc., but reinvested in the association's activity. The approach of most Member States is that the non-profit purpose implies the prohibition on the distribution of profits and is therefore perfectly compatible with the carrying out of commercial/entrepreneurial activities and also with the pursuit of profits from these activities (on the condition that these profits are not distributed), namely, with profit-making activities.

According to the Impact assessment findings, there are 13 Member States that do not impose any restrictions on economic activities. There are 13 Member States that have certain restrictions on economic activities. The typical restrictions are: (i) the requirement that economic activities must serve the primary purpose of the association, that economic activities are secondary and in three Member States both restrictions apply. There is one Member State that does not permit economic activities.

However, enlarging the scope of the activities permitted to associations by including commercial or entrepreneurial activities represented a trend at the national law level according to the study supporting the Impact assessment. The ECBA proposal has built on these practices and trends at Member State level.[34]

Building on the outcomes of the Impact assessment in this regard, the ECBA proposal forbids the following in relation to the exercise of economic activities in Article 15 (g):

- *general prohibitions on carrying out economic activities;*
- *allowing ECBAs to carry out economic activities only if such activities are linked to the objectives described in their statutes;*
- *requiring that the pursuit of an economic activity is not the primary objective or activity of the ECBA.*

Since the adoption of the proposal, the Commission has undertaken continuous efforts in order to address data gaps on associations. A recent report on "Benchmarking the socio-economic performance of the EU social economy", published in August 2024[35]*, has estimated the turnover of associations across 17 Member States for which data was available at 221.2 billion euros.*

8.2 Should be assessed the risks of using ECBA to circumvent prohibitions on the performance of certain activities by non-profit associations in Member States. Impact assessment should refer to the impact of ECBA on the competitiveness of national associations.

Commission services reply:

34 See footnote 21, Study supporting the Impact Assessment, pages 24-32

35 European Commission: CIRIEC, Euricse, European Innovation Council and SMEs Executive Agency, University of Valencia, Carini, C. et al., *Benchmarking the socio-economic performance of the EU social economy – Improving the socio-economic knowledge of the proximity and social economy ecosystem – Executive summary*, Publications Office of the European Union, 2024

The ECBA proposal is designed to facilitate cross-border activities of non-profit associations without interfering with national regulatory systems. As clarified under article 4(3), the rules applicable to ECBAs under the ECBA proposal 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.

Additionally, when it comes to specific authorisation, declaration regimes or request for certain information necessary under national law for engaging in particular activities, Article 12 of the proposal leaves the possibility to Member States to require registered ECBAs to make a declaration, provide information, or request or obtain authorisations when such requirements are prescribed by law, justified by overriding reasons in the public interest and appropriate for ensuring the attainment of the objective pursued and do not go beyond what is necessary in order for it to be attained.

Regarding the competitiveness of domestic associations, the Impact assessment addressed this in Annex 5 (Competitiveness check). The findings are that the costs for those associations that want to operate cross-border will decrease and hence their competitiveness can improve. In principle, domestic associations that do not wish to engage in cross-border activity may face higher competition. However, it has to be noted that any other new association set up can mean more competition for the existing ones. Importantly, the core objective of the ECBA proposal is to enhance the mobility and operational capacity of non-profit associations across borders, not to create an unfair competitive advantage. Member States maintain the competence to regulate domestic non-profit associations in any event, and can thereby ensure that domestic non-profit associations can thrive within their respective regulatory frameworks.

8.3 The approach of basing the association on economic activity could be problematic. It runs against the understanding of associations and therefore of the public benefit sector. Also, the matter of non-profit status and the related understanding of privileged tax treatment for civil society corporations is not clearly developed. We need to be sure that the proposal is not distorting the associations and will provide the proper way to dissociate them from profit companies.

Commission Services reply:

The legal form of the ECBA is clearly distinguished from for-profit companies in the proposal. ECBAs must 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 (Article 3 (2)). Article 2(c) of the ECBA proposal stipulates that the term "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. Thus, while ECBAs may engage in economic activity, they are distinguished from companies by their non-profit purpose. The ECBA proposal obliges Member States to dissolve an ECBA that does not comply with the non-profit purpose (Article 25 (2)).

Conversely, the ECBA proposal does not regulate the "public benefit" notion. The Impact assessment (Annex 12) has shown that the public benefit notion is strongly linked with taxation considerations, which raised questions linked to the EU's competences in this area. In

addition, the notion is understood and applied very differently across Member States. Not only do the denominations vary (public interest, common interest, public good, general interest, public utility, charitable purpose, or philanthropic and interest for the public good), but there is also a plurality of public benefit statuses that are identified for different purposes (taxation, access to public grants, public collection of funds), sometimes in the very same Member State. Furthermore, the public benefit status is usually acquirable not only by associations but also by other legal types of organisations that do not fall under the remit of the ECBA proposal, such as foundations, companies and cooperatives, provided they meet the mentioned requirements for qualification. The ECBA proposal therefore does not seek to harmonise the "public benefit" notion.

Instead, in June 2023, the Commission published two Staff Working Documents in this regard to improve the understanding of relevant tax rules for social economy entities and cross-border public-benefit donations.[36]

8.4 Having in mind the fact that a mid-term review of the implementation of the Action plan for the social economy is planned for 2025, would the European Commission agree that the data resulting from the review could improve the design of the proposal, especially as regards the economic weight of the associations that could not be assessed properly since according to the study Comparative legal analysis of associations laws and regimes in the EU final report, 2022, for numerous MS data are not available.

Commission services reply:

The mid-term review of the implementation of the Action plan for the social economy (SEAP) will assess the actions outlined in the plan, evaluate the progress achieved so far, and consider potential additional actions for the future. The Commission has recently published a report on "Benchmarking the socio-economic performance of the EU social economy"[37]*, which provides additional data on the economic weight of associations. The results of this report support the findings of the Impact assessment confirming the soundness of the ECBA proposal., The Commission services will carefully assess the outcome of the mid-term review and ensure that relevant data and outcomes inform the negotiation process of the ECBA proposal.*

9. PROPORTIONALITY

9.1 There is no analysis of the added value of the ECBA as national legal form compared to contract based cross-border cooperation of associations registered in different member states.

Commission services reply:

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36 Guidance : Commission Staff working documents, Relevant taxation frameworks for Social Economy Entities (SWD(2023) 211 final), Commission Staff Working document, on-discriminatory taxation of charitable organisations and their donors: principles drawn from EU case-law ((SWD(2023) 212 final)

37 See footnote 36, Benchmarking the socio-economic performance of the EU social economy – Improving the socio-economic knowledge of the proximity and social economy ecosystem – Executive summary

Contract-based cross-border cooperation have been identified as part of Option 0.1 of the Study[38] supporting an Impact assessment on cross-border activities of associations. In view of its very low score in terms of impact, this policy option has not been repeated in the Commission Impact assessment which focused on the three best scoring options identified in the Study.

9.2 What is the number of economically inactive associations in Member States and what is their economic effect on the Member States' economies (broken down by Member State), and on their economic importance in the operation of the internal market?

Commission services reply:

Data on the number of economically active or inactive associations were not available from Member States at the time of the preparatory work. In most cases, Member States gather statistical data based on the sector of activity of associations, which is different. The Impact assessment of the Commission explained that "Basic data on the number of associations presented in this IA can be considered robust, as building on available and recent official data for most Member States; and as half of the Member States have recent data available in terms of associations employment and contribution to the GDP. However, when it comes to other economic indicators such as size of the organisation, sectoral presence and cross border activities, data on associations is often outdated or completely missing for most Member States"[39].

The Study supporting the Impact assessment provides data on issues close to this one, such as the income breakdown of associations from Member States (table 14) and the revenue structure of non-profit organisations (therefore not only associations) per region (table 13).

The recent report on "Benchmarking the socio-economic performance of the EU social economy"[40] provides additional data, including the size of EU social economy entities, sectoral distribution of the social economy and the economic size of the EU social economy.

9.3 It must be clarified to what extent the directive and the establishment of the new legal form of an ECBA represent added value.

Commission services reply:

The Impact assessment identified and analyzed the following three options that emerged as the more efficient ones from the Study supporting the Impact assessment[41]. Section 5.3 of the Impact assessment also explains the options discarded at an early stage[42]:

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38 See for the detail of the analysis of the Study supporting an Impact assessment on cross-border activities of associations, page 167 to 178, see footnote 21

39 See footnote 19, Impact assessment, page 15.

40 See footnote 36, Benchmarking the socio-economic performance of the EU social economy – Improving the socio-economic knowledge of the proximity and social economy ecosystem – Executive summary

41 See footnote 21, Study supporting an Impact assessment on cross-border activities of associations

42 The Study supporting the Impact assessment identified more options: Option 0: no intervention; Option 0.1: information campaign and other non-legislative measures; Option 0.2: Council recommendation to Member States; Option 1.1: Enhanced cooperation; Option 1.2: Eu-level

- *Option 1: Establish an EU-level form of association.*
- *Option 2: Harmonise common minimum standards for cross-border activities of associations.*
- *Option 3: Create at Member State level an additional legal form of association designed for cross-border purposes ("the cross-border association") and recognised by Member States.*

The policy option 3 emerged as the most favourable policy option for the following reasons:

- Combination of benefits: Option 3 integrates elements from both Option 1 (creating a legal form) and Option 2 (harmonization of national laws), allowing for a balance between standardization and national flexibility. This means that Member States must introduce a new legal form for cross-border associations while still being able to adapt provisions to their national context, which would not have been the case with option 2 as Member States would have lost their competence on non-profit associations by virtue of the division of competences.

- Legal Certainty and Simplified Recognition: Once established and registered in a Member State, cross-border associations under option 3 benefit from mutual recognition, meaning they do not need to separately establish themselves in each Member State. This reduces administrative burdens compared to option 1, where a new EU-level form must be adopted, and option 2, which still relies on existing legal frameworks.

- Lower Costs and Administrative Burden: Associations converting to the new form can experience significant simplifications in compliance costs. Associations interested in launching cross-border operations but hesitant due to current regulatory burdens would see lower costs and more legal certainty. Unlike option 1, which requires a completely new EU legal entity, option 3 allows associations to retain their national structures while benefiting from streamlined cross-border operations.

- Proportionality and Subsidiarity: Option 3 scores highest in terms of proportionality because it specifically targets associations wishing to operate cross-border without forcing all Member States to overhaul their existing association laws (as would happen under option 2). Unlike option 1, which prescribes an EU-wide regulation, option 3 allows Member States to tailor the new legal form to their domestic frameworks while maintaining EU-level mutual recognition.

- Digital and Streamlined Procedures: Option 3 embraces digitalization, ensuring that registration can be done entirely online through standardized procedures. This makes the process faster and more accessible than traditional registration methods required under most of existing national laws.

- Economic and Growth Potential: Option 3 is expected to generate a significant number of new cross-border associations (157,000–176,000 in Scenario A). Additional GDP impact is

legal form covering only cross-border aspects; Option 2: Harmonisation directive; Option 3: – Creation of an additional national legal form of association designed for a cross -border membership and/or cross -border purposes or activities; Option 4 – Creation of a European legal status for certain associations: the "European public benefit or "European third sector" status. In addition to the overall impacts of the policy options, specific considerations when identifying the preferred policy option, in particular distributional effects and effects on sectorial competitiveness were taken into consideration. For more details, see page 138 to 267 of the study.

estimated at EUR 3.57 billion – EUR 4 billion. The cost reductions from compliance simplifications could reach up to EUR 770 million annually.

Based on this assessment, the ECBA proposal and the creation of a new legal instrument for European cross-border associations offer significant added value by addressing major obstacles to the cross-border activities of non-profit associations. At present, associations operating in multiple Member States encounter legal fragmentation, administrative burdens, and uncertainties regarding their recognition across Member States. The ECBA seeks to overcome these challenges by providing a legal framework that ensures automatic recognition across borders, streamlines cross-border operations, and reduces administrative costs, ultimately fostering societal and economic values across the internal market, thereby contributing to the political objectives of simplification and reduction of administrative burden.

9.4 Where in particular are associations confronted with obstacles?

Commission services reply:

The proposal explains in its recital 7 that "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. Currently, barriers within the internal market prevent non-profit associations from extending their operations beyond their national borders, thereby hindering their ability to effectively operate within the internal market".

Obstacles for the cross-border operations of associations include for instance[43]:

- *obstacles in the associations' domestic law: this concerns the possibility to operate abroad (for instance national legislation provides that an association's center of administration cannot be located abroad because this would cause the dissolution of the association – AT and DE), the transfer of seat (national law provides that the transfer of the seat of an association to a foreign country must be entered into the register as a dissolution – DE). This not only means the legal personality of an association is not recognized in another Member State, but also in these cases that its legal personality is annihilated beyond the jurisdiction's borders. It also concerns the possibility to receive donations from abroad (obligation for associations to disclose donations (whether domestic or from abroad) exceeding EUR 1,000 to the financial administration (EL).*
- *obstacles for associations from the law of the host country: this concerns the possibility to operate in the host country (that may be subject to a real establishment or a branch registration LV, LT, NL), the possibility to acquire the right of ownership (RO), the possibility to be recognised as a public utility.*
- *obstacles for foreigners from the law of the host country: this concerns imposing restrictions on nationality or residence of founding members (PL) or members and chairperson of the board of directors (FI), restrictions consisting in imposing physical presence in the decision-making body meetings.*

Further, additional fragmentation undermines the possibility to extend operations beyond national borders such as differences in the legal capacity of associations, differences in formation requirements, differences in registration requirements and procedures and administrative practice.

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43 See footnote 21, Study supporting an Impact assessment on cross-border activities of associations, page 101 to 110

10. COST OF TRANSPOSITION OF MEMBER STATES

10.1 Administrative and financial costs for possibly changing also Member States laws concerning local non-profit associations (in the part which is not compatible with proposal) should be assessed in IA

Commission services reply:

The ECBA proposal does not require Member States to change their legislation regarding associations established only under national law. For matters harmonised by the proposed Directive, Member States shall ensure that an ECBA shall be governed by the measures transposing the ECBA proposal in the Member State it is registered in or operates. For all other matters, national law applicable to associations applies to ECBAs.

The study supporting the Impact assessment made a comprehensive assessment of costs (Section 5.9.2., from page 231):

First, regarding costs from associations' perspective, it was estimated that the costs of operating cross-border would be reduced for associations by a total of EUR 770 million a year and 8.5 billion over a time span of 15 years. This estimation is based on cost reduction in the following areas:

- *Cost of operating cross-border:*
    - *Up to 50% for compliance cost due to facilitated information aggregation and flows, ability of staff to oversee various Member States and mutual recognition;*
    - *Up to 50% for information cost/administrative burden due to reduced need to communicate different information to different competent authorities;*
    - *Up to 25% for direct cost/external advisory cost due to the significant reduction of complexity and possibility to generate economies of scale.*
- *Costs of launching cross-border operations*
    - *Up to 50% for one-off internal setup cost/compliance cost (referring to cost of internal staff in terms of time spent to set up the operations);*
    - *Up to 25% for one-off direct cost of external advisory cost for setting up operations.*

For future registrations, this would lead to a reduce excess cost of some EUR 2,150 per launch.

These burden reduction gains align with the Commission's overall objective of reducing administrative burden by 25%.

Secondly, regarding costs from Member States' perspectives, changes in the legal framework may cause costs of adjustment and costs of compliance/administrative burden for competent authorities.

Member States will at first need to familiarise themselves with the new requirements. However, it is expected that the harmonised approach across the EU will lead to increased mutual recognition and decreased costs for competent authorities in the long run.

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When it comes to registers, as detailed in the study supporting the Impact assessment and Section 6 b and Annex10 of the Impact assessment, Member States already have dedicated registers in place. It is to be noted that recital 41 of the proposal clarifies that "Member States should be allowed to make use of their existing national registers for the purpose of this Directive" thus limiting the cost impact. Member States without a dedicated register (SE, DK and IE), may decide to set-up a dedicated register for cross-border associations or adapt existing registers e.g. used for associations.

Significant extra costs are therefore not expected for competent authorities, as the volume of operations will be either similar to the already existing procedures or even lighter as more simplified (and digitalised) procedures will be in place for cross-border associations and overall, less registrations will be needed.

10.2 What are the main reasons for omitting the BRIS as an option from the impact assessment? What are the Commission's plans regarding aligning different e-platforms at the EU level?

Commission services reply:

The ECBA proposal did not include the use of BRIS because:

- *The Business Registers Interconnection System (BRIS) connects business registers in all EU countries and is regulated by the codified Company Law Directive 2017/1132 (as established in accordance with Article 22 and subsequent articles). On the contrary, the ECBA proposal focuses on non-profit associations instead of companies. While in some Member States business registers are used to register associations, it is not the case in all Member States and others have a dedicated register. This means BRIS would not have been applicable in this last case or that those Member States would have needed to interconnect their specific registers to BRIS.*
- *Instead, the ECBA proposal provides that exchange of information on associations between Member States takes place at the level of administrative cooperation using the IMI and the SDG (Articles 23 and 28, such as allowing Member States to actively send notifications about actions related to ECBAs, e.g. registration, rejection of registration, transfer, dissolution) and allowing competent authorities to exchange information, on a case-by-case basis, in relation to an ECBA. The proposal thus amends the IMI and SDG Regulations and makes them applicable to non-profit associations. Following previous requests by Member States, the Commission presented a demonstration on how the IMI/SDG would be operated on 13 January 2025.*

  The proposal does not require interoperability of registers at MS level or centralised databases at EU level.

10.3 **Would it be possible to add the option for Member States who operate via BRIS, to use that for interconnection between registers/competent authorities?**

Commission services reply:

The Commission is ready to examine the position of the co-legislators on possible proposed adjustments to the proposal.

Since the BRIS is used by business registers for interconnection, Member States may wish to consider in their deliberations possible challenges to the efficient exchange of information involving other concerned competent authorities. A further element to consider would be how Member States using the BRIS could cooperate with Member States choosing to use the IMI/SDG and what costs the use of two systems would incur.

Were Member States to consider using the BRIS exclusively, this may mean that Member States who currently do not use the BRIS for the registration of non-profit associations may need to adjust their national laws and practices accordingly.

Moreover, Member States may wish to consider the necessity for possible adaptations to the functions of the BRIS, for example in the context of changing the seat of an ECBA, and the possible necessary changes to the legislation underlying the BRIS.

11. GENERAL REMARKS

11.1 The current IA does not sufficiently explain the necessity, effectiveness and proportionality of the proposal.

Commission services reply:

The necessity, effectiveness and proportionality of the proposal are explained in Sections 3.3 and 3.4 of the Impact assessment and in Section 6. Further information and additional information on the proportionality of the option chosen can also be found in the study supporting the Impact assessment in Sections 5, 6, 7 and 8.

11.2 A small number of contributions from stakeholders (only a very limited number of associations took part in the Public Consultation and the Targeted Survey). The Commission should bring more concrete evidence to support conclusions from IA. There is a need for more realistic estimations on the magnitude of the problem in relation to the impact on the EU economy and the single market as a whole. As it is pointed out in IA, associations that want to operate cross-border are faced with uncertainty about applicable rules and additional administrative burden and costs, but this problem definition is vaguely defined and doubts it is indeed an accurate representation.

Commission services reply:

The Impact assessment included a consultation process that covered a variety of different consultation activities aiming at gathering the views of relevant stakeholders, and in particular: associations, other Non-Profit Organisations (NPOs), EU citizens engaging in associations and other NPO activities, Member States and public authorities, businesses, experts, and researchers in non-profit law. The aim was to ensure that the views from different organisations and stakeholder types were presented and considered. Overall, the consultation activities included a Call for Evidence, a Public Consultation, a targeted consultation (i.e. an online survey) and 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.

The summary of the stakeholder consultation may be found in Annex 2 of the Impact assessment.

11.3 Effectiveness of the proposal should be re-assumed (concluding that potentially 185.000 associations would be created as a result of the proposal is questionable). It is unclear what justifies the strong focus on establishing rights and how the proposed rules would eliminate the barriers resulting from the difference in regulatory frameworks. It should be examined, if the differences in interpretation of such significant concepts, such as "non-profit purpose" could impede the effectiveness of this proposal. Commission should give concrete arguments which legislative option from CLS opinion would take away the barriers encountered by non-profit organizations.

Commission services reply:

Section 1.4 of the Impact assessment is clear about the data constraints of the exercise. It is specified that the analysis is challenged by the minimal availability of recent, qualitative and relevant data on associations at EU and Member State level.

The reasons that make it difficult to produce quantitative data on associations at EU level are the following ones: (i) absence of official statistics gathering data on associations (beyond registration) at Member State and EU level, (ii) economic indicators are usually not collected in traditional business statistics at Member State and EU level, with the exception of sectoral satellite accounts, ad-hoc research projects or databases of private federations and sectoral actors, (iii) lack of harmonised definitions and different traditions of the non-profit sector and different registration requirements in the Member States (e.g. Orbis database does not allow to distinguish organisations that could be defined as associations), and (iv) comparative studies at EU level are scarce and limited in economic indicators.

The Impact assessment (Section 1.4 and Annex 4) is informed by the two following existing studies, mostly using the same input data (2014-2015): (i) a study from the European Economic and Social Committee on recent evolutions in the social economy[44] and (ii) a study performed for the UN on the size and scope of the EU Third sector[45].

Basic data on the number of associations presented in the impact assessment can be considered robust, as building on available and recent official data for most Member States; and as half of the Member States have recent data available in terms of associations employment and contribution to the GDP. However, when it comes to other economic indicators such as size of the organisation, sectoral presence and cross border activities, data on associations is often outdated or completely missing for most Member States. Data in European databases such as Eurostat, e.g. Structural Business Statistics, or ORBIS do not allow to disaggregate data on associations, e.g. based on the legal form. In addition, there are no recent comparative studies on associations at EU level. Sectoral data or specific data on

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44 CIRIEC-International and European Economic and Social Committee, *Recent evolutions of the social economy in the European Union – Executive summary*, European Economic and Social Committee, 2017

45 Salamon, L.M., Sokolowski, W., *The Third Sector as a Renewable Resource for Europe*, Palgrave Macmillan, 2018

social economy, the third sector, NPOs, NGOs, CSOs, etc. are available and used where appropriate, but they do not represent disaggregated data specific to associations.

Consequently, data about cross-border activities of associations is mostly absent, specific data on internationalization and cross-border activities of associations is available for only four Member States (Germany, Austria, Italy and Estonia). Estimates in the Impact assessment regarding associations operating cross-border are, therefore, based on theoretical assumptions, analogies and benchmarking, e.g. parallels with similar sectors and activities, allowing extrapolations of input data available (Annex 4 provides for a detailed overview on how each estimate is calculated and for which data points theoretical assumptions had to be made). It is important to note that these data points may present a risk of overestimation. As mitigation measures, the analysis underpinning the Impact assessment builds on the lower bound estimates and complements with qualitative information (based on literature review as well as interviews and a targeted survey, as outlined in Annex 2) in order to further support the quantitative methodology. More details on the methodology are provided in Annex 4 of the Impact assessment.

To address the chronic data gaps on associations, and more broadly the social economy, the Commission has undertaken actions such as: (i) contribution since 2017 to the joint work of ESTAT and the OECD on the establishment of national satellite accounts for the social economy, also covering associations. A few Member States (e.g. FR, PL, PT) have concluded or are performing first pilots. Available data from these satellite accounts were used as input data in the methodology of this Impact assessment; (ii) a study on "Benchmarking the socio-economic performance of the EU social economy – Improving the socio-economic knowledge of the proximity and social economy ecosystem" [46] was published in September 2024. This study updates to some extent the figures from the Impact assessment and adds some new cues. However, it needs to be noted that this study focusses on the social economy as whole. It has some specific elements on associations (size, employment, added value, numbers and sectors like in the Impact assessment), but does not contribute to the specific research questions of the Impact Assessment. The limitations mentioned above related to the absence of official statistics gathering data on associations (beyond registration) at Member State and EU level and the fact that economic indicators are usually not collected in traditional business statistics at Member State remain valid.

Regarding the approaches presented by the Council Legal Service in document 5125/25[47] in January 2025, and their impact on the obstacles identified in the cross-border activities of non-profit associations, it is worth noting that the first approach has been discarded from the Impact assessment because creating a new legal form in this way may generate unwanted effects, not be entirely proportionate to the scale and nature of the identified problems, given that Member States would not able to adapt the requirements to their national settings and tradition. Section 6.1 of the Impact assessment provides further details. The second approach consisting in splitting the proposal into two legal acts, one adopted under Article 352 TFEU (containing the freedom of establishment and freedom to provide services aspects) and the

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46 See footnote 36, Benchmarking the socio-economic performance of the EU social economy – Improving the socio-economic knowledge of the proximity and social economy ecosystem – Executive summary

47 Namely: 1) use Article 352 TFEU as the sole legal basis; 2) split the proposal into two legal acts, one adopted under Article 352 TFEU (containing the freedom of establishment and freedom to provide services aspects) and the other under Article 114 TFEU (containing the free movement of goods and/or capital aspects); 3) use Article 114 TFEU and rebalance the proposal so that the freedom of establishment and the freedom to provide services are no longer objectives or components, or only incidental objectives or components

other under Article 114 TFEU (containing the free movement of goods and/or capital aspects) would not favour legal certainty and clarity and could have an impact on the final uptake of the proposed legal form. Finally, the third approach consisting in establishing common minimum standards regarding certain freedoms for all non-profit organisations in the Union and broadly corresponding to the option 2 identified in the Impact assessment, would impact all associations to the extent that the new requirements differ from the current national settings and would require partial harmonisation of laws on associations in the Member States, impacting domestic traditions.

11.4 Proportionality. To assess the proper balance between facilitating cross-border activities for non-profit organizations on the one hand and preventing the risks accompanying the initiative and stabilizing the impact on authorities on the other hand, broader assessments must be made, especially concerning risks of huge practical impact on administrative and supervisory authorities, in particular of the need of a new register and of certification. Possible security threats should be assessed, and potential burden of the proposal on administrative authorities (Clarification of the position and role of the competent authorities and the possibility for Member States to assign new tasks to different existing bodies). There is a significant probability that the proposal could go beyond what is necessary, e.g. to achieve recognition of legal personality and legal capacity of associations.

Commission services reply:

The Impact assessment has analysed the impact of the proposal on administrative and supervisory authorities, and in particular the need for a new register. As outlined in the explanatory memorandum of the proposal and underpinned by the Impact assessment analysis, minimal costs might occur for public administrations in case an online register needs to be developed or adapted. Impacts relating to the creation or adaptation of national (online) registers under all options are presented in the first part of Section 6 (Section 6 b) Impact on Member States). Furthermore recital 41 specifies that Member States should be allowed to make use of their existing national registers for the purpose of the proposed Directive.

Regarding competent authorities, Article 27 of the ECBA proposal provides that each Member States designates the competent authority responsible for the application of the proposal. Member States notify then the Commission of the names of the competent authority designated and the Commission publishes a list of the designated competent authorities. Furthermore, Member States 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.

11.5 IA should substantiate in a more effective, detailed, and evidence-based way the reasoning behind the ECBA proposal, the obstacles it aims to overcome, the goal it aims to achieve, and the appropriateness of the solutions envisaged therein to pursue them.

Commission services reply:

Section 5.2.3, Section 6, Section 7 and Section 8 of the impact assessment explain the appropriateness of the policy option chosen, ie. the creation of an additional legal form of association designed for cross-border purposes. The obstacles faced by associations when engaging in cross-border activities are presented under the reply to question 8.4. Additionally, recitals 7 to 13 of the proposal explain the rationale and goal of the proposal.

11.6 Request for more evidence on the claimed disproportionality of the option of a regulation based on Article 352 TFEU (Section 8 of the Impact Assessment Report).

Commission services reply:

The study supporting the Impact assessment provides a more comprehensive consideration of policy options in sections 5 and 6, in addition to the Impact assessment itself. Member States may in particular refer to Section 6 of the study supporting the Impact assessment.

11.7 How will this proposal ensure the consistency with the envisaged Shield of Democracy initiative (although the proposal was prepared alongside the Defence of Democracy package)?

Commission services reply:

The Commission is preparing the European Democracy Shield, as announced in the Political Guidelines. It will constitute a horizontal strategic framework to better protect and promote democracy, addressing the most severe risks to democracy in the EU. It will be underpinned by several concrete initiatives, building on the 2020 Democracy Action Plan and on the 2023 Defence of Democracy Package.

The Shield will address several issues, including foreign information manipulation and interference and disinformation, the fairness and integrity of elections and the strengthening of democratic checks and balances, societal resilience and preparedness and citizens' participation and engagement.

While preparing the Democracy Shield, the Commission will follow a whole-of-society approach, consulting broadly with stakeholders.

It is important to emphasize that the primary objective of the ECBA proposal is to facilitate cross-border activities of non-profit associations and reduce the administrative burden placed on them and that the proposal has no link with the European Democracy Shield.

11.8 From the context of the Public Consultation (64 replies) and the targeted survey is not clear how the European Commission decided to give priority to the chosen policy option.

Commission services reply:

See reply to questions 10.4, 10.5 and 10.6.

11.9 The aim and the scope of the proposal need further clarification - according to the Proposal, legal entities that may carry out economic activities as a primary objective, provided that the income shall not be distributed to their members, might be established as ECBA along with legal entities established to carry out only activities in the general interest or in the

interest of a collectivity. These two categories would be placed - under the same rules - in direct competition. Since according to Articles 4 and 9 of the proposal, ECBAs shall be governed by the national rules applicable to the most similar legal entity in national law and shall not be treated less favourably than the latter, one can hardly imagine how could this law be harmonized with the existing national law.

Commission services reply:

Regarding the issue of competition between legal entities that may carry out economic activities as a primary objective, provided that the income shall not be distributed to their members, with legal entities established to carry out only activities in the general interest or in the interest of a collectivity, it is to be clarified that the proposal does not put or impose economic activities as the primary objective of the ECBA. What the proposal does with respect to economic activities is to prohibit restrictions on the exercise of economic activities. In practice, an ECBA will have a purpose described in its statutes, which will be linked to activities of general interest, for the interest of a collectivity or for their personal non-patrimonial interest, together with a description of its non-profit purpose. When engaging in economic activities, the profits generated, if they exist, will have to be used only in pursuit of the objectives of the ECBA as defined in its statutes and not to be distributed among its members.

When it comes to the rules applicable to ECBAs, Article 4(1) and (2) require that 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. It is for all other matters that concern the establishment or operation of ECBAs for which each Member State shall ensure that the national rules applicable to the most similar non-profit association in national law apply to ECBAs.

11.10 Non-profit associations are also the largest in number of the four legal forms traditionally encompassed by the social economy. 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. Could the European Commission filter this result, that was one of the problem drivers solved by the proposal, by applying the principles of the Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making.

Commission services reply:

On 17 February 2022, the European Parliament adopted a resolution on cross-border associations and non-profit organisations[48], based on Article 225 of the Treaty on the Functioning of the European Union (TFEU).

48 The resolution stressed "that national legal provisions for non-profit organisations are patchy, and insufficient to build a real pan-European civil society. The report also refers to Court of Justice case law, in particular C-78/18 – in which the Court stated that Article 63 of the Treaty on the Functioning of the European Union (TFEU), and certain articles of the Charter of Fundamental Rights of the European Union, protect non-profit organisations from

Article 225 TFEU reads: "The European Parliament may, acting by a majority of its component Members, request the Commission to submit any appropriate proposal on matters on which it considers that a Union act is required for the purpose of implementing the Treaties. If the Commission does not submit a proposal, it shall inform the European Parliament of the reasons".

According to recital 10 of the Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission of 13 April 2016 on Better Law-Making: "The Commission will give prompt and detailed consideration to requests for proposals for Union acts made by the European Parliament or the Council pursuant to Article 225 or Article 241 of the Treaty on the Functioning of the European Union respectively".

11.11 In case of change of the legislative proposal (which is needed in light of the CLS opinion), a new proposal must be accompanied by a comprehensive updated impact assessment, considering the impact of this proposal on the EU's internal security (horizontally, regardless of the sector). It should reflect on especially the Anti Laundering Authority (AMLA) and the Money Laundering Directive. - The impact assessment must be specified in in the light of the conclusions of the CLS' opinion - regarding each solution of the legal basis proposed by these services. In particular, the analysis should verify the appropriateness of focusing exclusively or mainly on the freedoms of movements of goods and capital, and the interaction of such a choice with the current ECBA proposal, objectives, and features.

Commission services reply:

The assessment conducted in the Impact assessment must be proportionate, focusing on significant impacts rather than attempting to examine every potential implication. Given these limitations, the Commission needs to make the most appropriate methodological choice and adjust the level of the analysis accordingly.

According to the Interinstitutional agreement between the European Parliament, the Council of the European Union and the European Commission on better law-making interinstitutional agreement[49], the European Parliament and the Council will, when they consider this to be appropriate and necessary for the legislative process, carry out Impact assessments in relation to their substantial amendments to the Commission's proposal. The European Parliament and the Council will, as a general rule, take the Commission's Impact assessment as the starting point for their further work. The definition of a 'substantial' amendment should be for the respective Institution to determine.

The Impact assessment supporting the ECBA proposal has closely followed the Better Regulation Toolbox, in particular Tools 7, 8, 12, 13, 18 and others which were relevant. As the

discriminatory and unjustified restrictions within the EU, including regarding access to resources and free movement of capital. The report states that EU-level action would bring economic benefits and would also contribute to innovation, research and job creation". The Resolution called on the Commission to put forward a Directive on common measures for NPOs in the EU, based on Article 114 TFEU, and also a Regulation establishing a statute for a European association, on the basis of Article 352 TFEU. Source: European parliament website, Proposed directive on European cross-border associations, February 2025

49 Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making (OJ L 123 12.05.2016)

Impact assessment has received a positive opinion of the RSB (with reservations), from a procedural point of view, it is considered sufficient to inform the proposal.

PUBLIC