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MEETING DOCUMENT

From:	General Secretariat of the Council
To:	Working Party on Company Law
Subject:	Commission presentation at the Company Law Working party of 4 April 2025

Delegations may find attached the presentation made by the Commission at the Company Law Working Party of 4 April 2025.

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Proposal for a Directive on European cross-border Associations

CWP Company Law – 4 April 2025

European Commission

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Anti-money laundering and countering the financing of terrorism

Anti-money laundering and countering the financing of terrorism (AML/CFT)

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- **Robust EU AML/CFT framework** to enable the identification and mitigation of risks, including cross-border dimension.
- ECBA proposal provides **comprehensive safeguards** enabling MS to effectively prevent and address AML/CFT:
  - Using ECBAs for money laundering and terrorist financing is not be possible (recital 20).
  - Persons convicted of money laundering and financing of terrorism are not permitted to set up ECBAs (Art. 3 (1) (b) (c)).
  - Non-compliance with non-profit purpose leads to dissolution (Art. 3 (2), 25 (2).
  - MS can decide to dissolve an ECBA where they pose a serious threat to public order or security (Art. 25 (2)).

Anti-money laundering and countering the financing of terrorism (AML/CFT)

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- **General safeguard clause** allowing MS to take/maintain additional measures on grounds of public policy and security to prevent misuse of associations and ensure capital movements transparency (Art. 4 (3)).
- MS rules on transparency of financing will apply to ECBAs.
- **IMI system** will facilitate administrative cooperation, including efficient exchange of information and greater transparency.
- No MS authority signalled that associations raise particular money laundering or terrorist financing risks during the stakeholder consultations for the ECBA.
- No MS authority signalled heightened risks specifically related to associations during the stakeholder consultations carried out as part of the AML/CFT framework review.
- A study undertaken by the Commission and national risk assessments undertaken by MS assessed the **overall risk as low** (with some exceptions in high-risk zones).

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Public Order

Public Order

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- **Comprehensive set of safeguards** to ensure security and public order:
  - ECBAs can be dissolved (Art. 25 (2)), and their transfer can be blocked (Art. 22 (4)) for security reasons.
  - Through IMI/SDG, MS have better access to information relevant to security risks.
  - ECBA registration must be refused if its objectives are unlawful under national or Union law (Art. 19 (4) (d)).
  - Multiple restrictions on the involvement of persons convicted of a particularly serious crime (Art. 3, 7, 19, 22, 25).

- In certain cases, ECBAs may be required to **make a declaration, provide information, request/obtain prior authorisation** to carry out activities (Art. 12 (2) and (3)).

- General safeguard clause allowing MS to take measures on ground of public policy and security (Art 4 (3)) applies.

- Using a **notary** for the registration of an ECBA is not mandatory, in line with practices in majority of MS.

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Foreign interference

Foreign interference

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- ECBAs will be subject to the proposed **Directive on establishing harmonised requirements on transparency of interest representation carried out on behalf of third countries** (part of the **Defence of Democracy package**):
    - Concerns entities carrying out interest representation on behalf of third countries
    - Obligations of record-keeping
    - Harmonised saction regime

- **Democracy Shield**:
    - announced for Q3 2025 - public consultation just launched
    - 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

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Taxation

The taxation of ECBAs I

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- Terminology of **Tax Evasion** and **Tax Avoidance**:
  - Tax Evasion: term used to describe intentional illegal behaviour, to escape the payment of tax. Tax evasion is generally accompanied by penalties that may be criminal in nature
  - Tax Avoidance: term used to describe taxpayer behaviour aimed at reducing tax liability that falls short of tax evasion. Tax avoidance is often described as within the letter of the law but against the spirit of the law

- **Taxation of ECBAs**: the ECBA proposal does not seek to regulate certain areas of law pertinent to ECBAs in the internal market, in particular taxation

- Therefore, the taxation of ECBAs is based on the national tax rules applicable to domestic associations

The taxation of ECBAs II

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- The taxation of ECBAs : is there scope for tax avoidance ?
- ECBAs need to have a “non-profit purpose”
- With regard to **income taxes**: ECBAs can generate a surplus - whether this surplus is taxable and whether it is exempted or not, depends on the applicable national tax legislation
- With regard to **VAT**: it needs to be assessed whether the ECBA carries out the supply of goods and services against consideration and if taxable, whether an exemption applies.

⇨ **With no or very low levels of taxation, the scope of tax avoidance is non-existent or minimal.**

The taxation of ECBAs III

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- Despite the hereabove, any case of tax avoidance involving ECBAs is tackled by the domestic instruments for addressing tax avoidance. Due to the **Anti-Tax Avoidance Directives I and II - ATAD** - all Member States agreed to include anti-tax avoidance provisions in their domestic legislation, such as:
  - General anti-abuse rules (GAAR)
  - Rules on exit taxes where an ECBA transfers assets or its seat from one Member State to another

- Furthermore, the **Directive for Administrative Cooperation (DAC)** allows tax administrations to either exchange spontaneously, on request, or for certain items automatically, information between the tax administration of different Member States.

The taxation of ECBAs IV

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Taxation of ECBAs: the principle

- An ECBA in principle is subject to taxation in the MS in which it is established and will be taxed according to the tax rules applicable to associations in the respective Member State. Many MS exempt non-profit associations from income tax.

Taxation of an ECBA with establishments in 2 Member States

- An ECBA can also be subject to taxation in another Member State, if it has a permanent establishment in this other Member State, through which the business of an enterprise is wholly or partly carried on. The requirements would be:
  - An economic activity
  - Presence of a permanent establishment (more than a storage)
  - The activities must be subject to taxation in the MS of the permanent establishment without being exempt
  - The MS of the permanent establishment can only tax the profits attributable to the PE.
- The provision of the respective **Double Taxation Convention** on which Member State has taxing rights apply - these are largely comparable in the EU due to the OECD Model Tax Convention which serves as blue print.

The taxation of employees of ECBAs

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Taxation of Employees of ECBAs - the Principle:

- According to Art. 15 OECD MTC, income from employment is **taxable in the state of residence** of the employee.
- There are exceptions and the income is taxable in another Member State, if the employee exercised this activity physically in the other Member State (subject to reservations under the so-called 183-days rule of Art. 15 OECD-MTC).

Taxation of an employee of an ECBA with establishments in 2 Member States

- As a principle, an employee that is active for an ECBA with establishments in 2 Member States is subject to income tax in the Member State, in which the employee physically carries out the activity. If the activity is carried out in both establishments, there will be a pro-rata apportionment of the salary and income tax will be levied in both Member States.

⇨ **Scope of tax avoidance is practically non-existent due to coordinated rules under the OECD-MTC.**

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Economic activities

Economic activities

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- The **non-profit purpose** in the proposal means the prohibition of profit distribution, like in all national laws (Art. 2(c) and 3(2))
- The proposal **does not impose that ECBAs have a primary purpose of carrying out an economic activity** and an ECBA, just like non-profit associations in all national laws, may not be founded for the primary purpose to carry out economic activities
- The proposal **only prohibits certain restrictions on economic activities** (Art.15)
- The proposal does not regulate the notion of "**public benefit**" and national rules will apply to ECBAs.
- Commission published two Staff Working Documents: *Relevant taxation frameworks for Social Economy Entities* (SWD(2023) 211 final), *Discriminatory taxation of charitable organisations and their donors: principles drawn from EU case-law* ((SWD(2023) 212 final)

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Proportionality

PROPORTIONALITY

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- The Impact assessment anlysed the **3 options** that emerged as the most efficient ones:
  - Establish an EU-level form of association
  - Harmonize common minimum standards for cross-border activities of associations
  - Create at MS level an additional legal form of association designed for cross-border purposes

- Other options have been analysed in the study supporting the Impact assessment

- **The chosen option scored best**:
  - Combination of benefits
  - Legal Certainty and Simplified Recognition
  - Lower Costs and Administrative Burden
  - Proportionality and Subsidiarity
  - Digital and Streamlined Procedures
  - Economic and Growth Potential

- **Consultation activities**

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Costs

Costs

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- ***Costs from associations' perspective:*** IA estimated that associations would save a total of EUR 770 million a year and 8.5 billion over a time span of 15 years in cross-border operating costs. These savings account for both the costs of launching cross-border operations and operating cross-border.

- ***Costs from MS' perspectives:*** changes in the legal framework may initially cause costs of adjustment and costs of compliance/administrative burden for competent authorities, which will decrease in the long run. Significant extra costs are, therefore, not expected for competent authorities.

- ***Register:*** Member States should be allowed to make use of their existing national registers for the purpose of the proposed Directive (recital 41)

- **BRIS** (i.e. **Business Registers Interconnection System) is not used in the proposal** because business registers are used to register associations in some Member States but not in others which have a dedicated register. Instead, the ECBA proposal provides that information exchange on ECBAs (including e.g. registration, rejection of registration etc.) between Member States occurs trough administrative cooperation via **IMI** (Articles 23 and 28).

Costs

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- ***Data:*** Impact assessment data on the number of associations is robust, as based on available and recent official data from most MS. Half of the MS have recent data available on associations employment and contribution to the GDP. However, data on economic indicators – such as size the organisation, sectoral presence and cross border activities – is often outdated or completely missing in most Member States.

- ***Producing quantitative data on associations*** at EU level is challenging due to several factors:
  - Lack of official statistics (beyond registration)
  - Limited economic data (as usually not collected in traditional business statistics)
  - Lack of harmonised definitions and different traditions of the non-profit sector and different registration national requirements
  - Comparative EU-level studies are limited and often lack economic indicators

- ***Addressing data gaps on associations***, several actions have been undertaken :
  - Since 2017, we contributed to the joint efforts of Eurostat and the OECD to establish national satellite accounts covering associations. Data from these accounts were used in the Impact Assessment methodology.
  - In September 2024, we published Benchmarking the Socio-Economic Performance of the EU Social Economy – Improving the Socio-Economic Knowledge of the Proximity and Social Economy Ecosystem. This study updates some figures from the Impact Assessment and introduces new insights.

Costs

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Interinstitutional Agreement on Better Law-Making

- The Commission has exercised its responsibilities in full compliance with the agreement.
- The Commission has carefully assessed the Parliament's request, acted pursuant to **Article 225**, and presented this proposal

Better Regulation Guidelines and Toolbox

- The Impact assessment supporting the ECBA proposal has closely followed the BR Tools (e.g. 7, 8, 12, 13, and 18)
- The RSB positive opinion (with reservations) is considered procedurally sufficient to inform the proposal.

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Thank you

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