

FAIB POSITION PAPER

on the Commission proposal for a Directive on European cross-border associations – COM(2023) 516 final

Brussels , 3 January 2024

Executive summary

FAIB is the Federation of European & International Associations based in Belgium that counts some 330 full member associations – representing industry sectors, NGOs, finance cultural, scientific, philanthropic organisations, as well as other not for profit associations with a European and international scope of activities.

FAIB was originally set up in 1949 at a time when Belgium was beginning to become a hub for international; associations attracted both by the development of inter-European relationships and the legal framework resulting from the June 1921 Belgian legislation on not for profit (ASBL –v.z.w/ AISBL- i.v.z.w) associations. FAIB's core role is to represent such associations essentially in their dealings with Belgian authorities and regulators, but also for items of common interest to its members at EU level. It is in this context that FAIB participated in the October 2022 survey questionnaire of DG GROW – on the cross-border activities of associations and now wishes to comment on the Commission proposal for a Directive on European Cross Border Associations.

While FAIB understands the aim of the Commission in facilitating the cross-border activities of associations in the not for profit sector through the setting up of an additional legal form of a European cross-border association (ECBA) in Member States' national legal systems and welcomes the intentions underpinning to this proposal, we nevertheless believe that the proposal addresses only a limited number of associations and does little to address some of the most important issues on which we commented in our submission of October 2022 and in particular:

- The administrative complexities introduced by the AML Directives which impact the access to and operation of a bank accounts by associations;
- VAT regulations in different Member States which impact international meetings and events;
- The application in all member States of a general non-discrimination principle, according to which an EU-based foreign Public Benefit Organisation (PBO) is entitled to hold the same tax-privileged status as a national PBO, provided that it can be shown to be comparable to a national PBO.

We provide hereafter our detailed comments, which focus on our views as representative of the international association and NGO sector based in Belgium .

Introduction

The European Commission's proposal for a Directive and Regulation on European cross-border associations (ECBAs) aims to improve the functioning of the internal market of non-profit associations by laying down measures coordinating the conditions for establishing and operating ECBAs; FAIB welcomes the Commission's aims to facilitate thereby the effective exercise of freedom of movement of non-profit associations operating in the internal market. According to the Commission, there are an estimated 3.8 million non-profit associations active in the EU of which some 310,000 currently operate in more than one Member State, and an additional 185,000 that could potentially engage in cross-border activities if the identified barriers tackled by the proposal are removed.

To improve the functioning of the Internal Market without unduly upsetting existing national legislation governing associations, the proposal introduces an additional legal form of a European cross-border association (ECBA) in Member States' national legal systems, which is optional and specifically designed for cross-border purposes: it aims to reduce legal and administrative burden when it comes to the recognition and establishment of non-profit associations wishing to engage in activities in another Member State.

The proposal addresses some of the issues that those non-profit associations operating across borders face. Nevertheless, the proposal does not address some of the most important issues on which we commented in our submission of October 2022 and in particular:

- Access to and operation of a bank account by associations owing to banks' blanket approach to derisking based on KYC (Know Your Customer Requirements) and their commercial approach to the non-profit sector. The lack of harmonisation in KYC procedures and UBO requirements is also problematic;
- VAT regulations for international meetings which remain a complex issue;
- The application in all member States of a general non-discrimination principle, according to which an EU-based foreign "Public Benefit Organisation (PBO)" is entitled to hold the same tax-privileged status as a national PBO, provided that it can be shown to be comparable to a national PBO. This inevitably limits the ability for associations and incentives for donors to engage in cross-border philanthropy.

Whereas, the proposal does not cover certain areas which are essential for ensuring that civil society representatives in the form of associations can effectively operate in the Internal Market, it should facilitate the setting up of associations wishing to undertake cross-border activities. We therefore welcome this, but wish to comment hereafter on certain articles of the proposal which we believe might be improved in order to better achieve the proposal's aim.

Detailed comments and requests on certain Articles of the proposal

1. Statutes (Article 6.2.c) and provisions under Article 18.1.d

In some Member States and notably in Belgium, founding members or Directors representing members who are natural persons may provide as their address, the address of the association rather than their own personal address. This provision is essential in order to protect the rights of such Directors under the GDPR and, in some cases, for their own safety and that of their family.

FAIB would therefore recommend that this provision is included under Articles 6.2.c and 18.1.d.

2. Governance of an ECBA (article 7.2)

FAIB believes that the requirement that members of the Executive Body of an ECBA must be Union citizens or legally resident in the Union is discriminatory towards international associations which have members originating from third countries.

FAIB would therefore recommend that this provision is deleted from Article 7.2.

3. Membership of an ECBA (article 8.1)

The Commission's proposal requires that each member of an ECBA should have one vote. FAIB believes this is too prescriptive and does not take into account the realities of associations where different categories of voting rights exist based on either the representativeness of members (for example according to the population of the country of a member) or on the membership fee paid.

We would therefore suggest that Article 8.1 be modified as follows:

"Member States shall ensure that each member of an ECBA has at least one vote"

4. Clarify the provisions of Article 18.3 and 23.4 to ensure that the application of an ECBA for registration in a Member State is not rejected without valid reasons

To ensure that the present proposal does in effect enhance the freedom of associations to operate in the internal market, it is essential that an ECBA's application for registration should not be rejected except pursuant to duly motivated and exceptional circumstances. An ECBA should also have the right of appeal in case its registration is refused.

FAIB therefore would suggest that such a right of appeal is included in the Directive

Conclusions

While FAIB appreciates the intention of the Commission to improve the operation of associations in the Internal market, we very much hope that the co-legislators will see fit to take account of our suggestions which are based on the practical feedback from our members, which include a wide range of associations and NGOs based in Belgium, today's prime centre in the world for civil society advocacy

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