

FAIB POSITION PAPER

Brussels , 26 April 2018

Executive summary

FAIB is the Federation of European and International Associations based in Belgium that counts some 280 full member associations – representing industry sectors, NGOs , finance cultural, scientific, philanthropic organisations, as well as other not for profit associations (“INPAs”) 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 here 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. With the growth of Brussels as the prime centre for the EU institutions, the association, foundation and NGO sectors have grown considerably, attracting many high paying jobs to Belgium in addition to increasing the tax base and increasing the need for many services such as construction, HORECA, and professional services.

We fear the proposed legislation does not make Belgium a more attractive location to carry out activities as it does nothing to reduce the high costs of employing staff or heavy bureaucracy and may contribute, despite Brussel’s natural advantage of home to the EU Institutions, to Brussels losing its prominence over the long term as a key European centre for foundations, associations and NGOs. .

The present position paper has been developed by FAIB in collaboration with members and with legal experts. We welcome the opportunity of collaborating with the Belgian government on the ongoing review of company and association legislation and, at the present time, feel that we should convey to regulators the core concerns of the wider international not for profit sector at a time when the company and association legislation is under review.

While FAIB understands the aim of creating greater coherence between legislation regulating companies and the not for profit sector through this ongoing review, we wish to stress that there are fundamental differences between the two which it is important to take into account.

We particularly wish to highlight the following:

- The not for profit associations sector’s, including associations and foundations, specificity goes well beyond the issue of non-distribution of profits. It is simplistic and even somewhat unappreciative not to recognise the social utility of the not for profit sector and the major contribution that over one million volunteers, as well as paid staff, make to Belgian society and the economy.
- The INPA (AISBL-/ i.v.z.w) statute developed by Belgian legislators has proven to be very successful at attracting associations to Belgium, making Belgium the second hub in the world for such activities. Nevertheless a number of recent issues are leading to a slowing down in the creation of INPAs, which we regret.
- The draft company/ association law should facilitate inbound cross-border conversion in order to reinforce the attractiveness of Belgium as an association hub. This will require certain amendments to the draft legislation.

We provide hereafter our detailed comments, which focus on our views as representative of the INPA sector .

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Introduction

As the EU institutions' presence has grown both due to the broadening of the scope of the EU (for example in the areas of energy and trade) and to the increased number of member states, so has Belgium and more particularly Brussels and its surroundings grown to become the second largest association hub in the world.

This was evidenced in FAIB's last economic survey published in 2013: the number of international associations (INPAs) based in Belgium is constantly increasing: 2.265 in 2013 versus 1.972 in 2008, therefore on average some 7 associations per year, with:

- 94% of INPAs are based in the Brussels-Capital region, representing a 9% increase on 2008;
- Most international associations (73%) have chosen the AISBL status

These organisations employ a considerable number of staff: Visit.brussels estimated most conservatively the number employed in 2016 at some 20,000 staff, while other organisations believe the numbers are larger. For example, :

- Transparency International in September 2016: stated "a conservative estimate for the number of Brussels lobbyists is 25,000" (with a budget of some 1.5 billion euro) . "A further 10-15,000 lobbyists across Europe that occasionally influence decisions in Brussels as well."
- And the Corporate Europe Observatory estimated the number of lobbyists at some 30.000.

While a number of these persons work for professional consultancies, the vast majority are employed by INPAs registered in Belgium. However, the growth in the number of INPAs has, we believe, slowed down considerably in the last few years, with an increasing number of alliances, managed by professional consultancies and limited local staff springing up, in many cases replacing the traditional route of the creation of permanent INPAs.

We therefore feel it is important to ensure that government (federal and regional) in Belgium should make more efforts to encourage and facilitate the setting up and operation of INPAs in Belgium.

The specificity of the not-for profit sector goes beyond the concept of distribution of profit

Since the beginning of the review aiming at "simplifying" the laws on companies and associations, we have been concerned by the fact that regulators seem to see the possibility of distributing profits as the key criterion which distinguishes companies from associations.

We continue to feel that focusing on this criterion negates the essentially philanthropic or societal nature (for example, many associations and NGOs to provide input to regulators as part of the democratic process) of not for profit organisations. This is of course of all the more of concern given that over a million citizens in Belgium are estimated to be providing volunteer support for such organisations.

We therefore put forward the following requests:

Request 1: Maintain the INPA (i.v.z.w / AISBL) statute as an attractive one

As highlighted by FAIB's last economic survey, the INPA statute is the one favoured by international associations. Although the review of the legislation on NPA/INPA in 2002 led to some erosion of the statute of INPAs, the majority of FAIB's membership, which have opted for this statute, are proud to have obtained it and very much appreciate it.

Request Nr. 2: Facilitate at a national level the conversion of companies into either an ASBL or an AISBL

At a national level, we appreciate the fact that the federal government seems intent on facilitating the conversion of companies into associations; however, we do not see the reason for only foreseeing the conversion into an ASBL/v.z.w and not into an AISBL/i.v.z.w (see Articles 14:31 and 14:32). Therefore, we also ask to complete this provision by including AISBL(s)/i.v.z.w.

Request 3: Include detailed provisions for inbound cross-border conversion into AISBLs

While provisions for cross border conversion of companies are clearly detailed, we do not see the same provisions spelt out for associations. FAIB very much regrets this and fails to understand the reason for dropping the original proposal for associations and foundations given that it is foreseen for companies. Such an approach is not consistent with the principle of considering associations and foundations as economic actors, as foreseen by article 2 of the draft legislation which seeks to establish, where possible, common rules for companies and associations.

Such an exclusion would significantly decrease the attractiveness and feasibility for a foreign not for profit entity to move its registered office to Belgium. In addition to the likely greater administrative burdens and higher costs linked to the creation of a new legal entity, those entities which benefit from EU funding may have to forfeit two years of funding. Indeed, the EU generally requires two years of audited accounts before they will fund an entity.

Given the opportunity for Belgium to attract more organisations due to the uncertainty surrounding Brexit, it is critical for Belgium to address these issues promptly, as already many organisations are choosing the Netherlands over Belgium due to the high costs of creating and running an organisation here. For example, a number of major NGOs - Euclid Network, Redress, International Alert and Field Ready, have moved some or all of their operations from the UK to The Hague – while one might have expected them, as they are significant beneficiaries of EU funding, to move to Belgium.

We therefore propose in Annex possible modifications to Book 14 of the draft legislation to include outbound and inbound cross border conversions and extend national conversions to AISBLs / i.v.z.w. With respect to inbound conversions, it should be noted that in some countries, such as the UK, companies are frequently used as the legal form to pursue not for profit or charitable objectives. In such a case, it is an external authority that will confer them the status of "charity" (for instance in England and Wales, the Charity Commission). Based on the foregoing, the wording of this part of the draft legislation as suggested for art 14:28 (conversion of a foreign legal entity into a legal entity under the Belgian rules) is important, since it would enable English charities (possibly set up as limited companies) to convert themselves into a Belgian non-profit organization, without losing the continuity of their legal personality.

Request 4: Speed up the processing of applications for the AISBL/ i.v.z.w statute

We have recently surveyed our members and legal experts as we have been informed of practical issues for applications for the AISBL/i.v.z.w statute: we are seeing the delay for processing applications becoming longer and longer and are receiving a number of reports that this can extend up to 6 months rather than the 1 to 2 months which had for many years been the norm. This is of concern and is proving frustrating for international associations seeking to establish themselves in Belgium or to relocate here. It is also delaying the growth of such associations in Belgium and therefore the economic impact that they have both directly at the level of employment and indirectly at the level of the hospitality industry.

Request 5: Simplify procedures for publication of changes to statutes and members

Finally, we are in the process of evaluating the practical issues facing associations for the publication of changes at the level of their statutes and the decisions of their General Assemblies in the Official Journal (MB/BS). We would appreciate the development of clear, codified, online procedures, including payment, for introducing notifications to be published: this would simplify the task of associations which often find these procedures a time consuming exercise. We understand this is planned and request that it be enacted before the end of the calendar year.

Conclusions

While FAIB appreciates a number of the steps towards simplification and modernisation which the Belgian government is proposing to enact, we very much hope that regulators will see fit to take account of our suggestions which are gaining widespread support, providing further evidence of the importance of this sector both to the economy and to Belgian society.

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**ANNEX: SUGGESTED MODIFICATIONS TO BOOK 14 OF THE DRAFT
LEGISLATION FOR NATIONAL AND CROSS BORDER CONVERSIONS**

« LIVRE 14 – Transformation des sociétés des associations et des fondations

Titre 1^{er} Transformation des sociétés : ajouter « **et autres personnes morales** »

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Chapitre 3 – transformation transfrontalière

Section 1^{re} Dispositions introductives

Modification de l'article 14 :15 : remplacer le second alinéa par ce qui suit : La section 3 du présent chapitre est applicable à **toutes les personnes morales** régies par un droit étranger dotées de la personnalité juridique qui veulent transférer leur siège en Belgique (immigration) à l'exception de la SE et de la SCE.

Article 14 :16 Remplacer le terme société par le terme « personne morale »

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Section 2 Emigration

Dans les articles 14 :18 à 14 :27 introduire les éléments propres aux associations et fondations ou séparer la section 2 en deux volets, le premier étant celui des sociétés et le second celui des associations et des fondations.

Section 3 Immigration

art 14 :28 remplacer le terme « société » par « personne morale » : « La transformation transfrontalière d'une **personne morale** étrangère en une **personne morale** régie par le présent code est constatée dans un acte authentique ».

art 14 :29 « à dater de l'immatriculation de la **personne morale** dans le registre des personnes morales belge » ajouter « laquelle ne peut se faire dans le cas d'une fondation d'utilité publique ou d'une AISBL qu'après la parution de l'arrêté Royal leur accordant la personnalité juridique »

Titre 2 Transformation d'une société en ASBL

Il conviendrait d'étendre la possibilité pour une société de se transformer en ASBL aux AISBL. Les articles 14 :31 et 14 :32 doivent être adaptés en y ajoutant « ou AISBL » chaque fois qu' « ASBL » est mentionné

Après l'article 14 :35 un article supplémentaire doit être prévu, lequel prévoit que : « en cas de transformation d'une société en AISBL, le dossier doit être transmis pour approbation au SPF Justice ».