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Public consultation on EU framework for crossborder recognition of associations in the EU

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Introduction

Purpose of this Public Consultation

Under Article 225 of the Treaty on the Functioning of the European Union (hereafter TFEU), the European Parliament adopted on 17 February 2022 <u>a legislative initiative resolution</u> (2020/2026(INL), with 'recommendations to the Commission on a statute for European cross-border associations and non-profit organisations' aiming to harmonise and strengthen the legal situation of European associations and other non-profit organisations (hereafter NPOs). This consists in requests for two legislative proposals: A Regulation, which creates the legal form of "European Associations", and a Directive harmonising common minimum standards for NPOs.

In its reply to the European Parliament of May 2022, the Commission committed to propose, "within the respect of the principles of subsidiarity and proportionality and Member States' competences and better law making, a legislative initiative to allow associations to fully enjoy the single market freedoms, while protecting their fundamental rights and freedom of association more generally". Therefore, the legislative initiative, under consideration, will respond to the European Parliament legislative initiative resolution. Considering the broad diversity of the legal entities within the non-profit sector where associations occupy a predominant place, the initiative under consideration will focus on associations to meet the European Parliament objectives and goals. Previous failed legislative attempts to create EU legal forms should be taken into account when proposing the future legislative initiative. Furthermore, it will also complement non-legislative actions announced in the Action Plan on social economy (such as, a future Commission's proposal for a Council Recommendation on developing social economy framework conditions), and actions to strengthen the dialogue with civil society in the context of the Strategy to strengthen the application of the Charter of Fundamental Rights in the EU and the European Rule of Law Mechanism.

The initiative under consideration would aim primarily to create an enabling environment for associations to fully benefit from the single market freedoms. Improving the legal and administrative conditions for associations to engage in cross-border activities in the single market will unleash their economic and societal potential to create growth and jobs. It will also unleash their potential to support individuals to actively participate in the EU democratic life, while fostering the EU democratic space, addressing societal challenges, and protecting EU fundamental rights (such as freedom of association, expression, and information). In view of their specificity, trade unions, political and religious associations and foundations would be excluded.

Currently, 27 different set of rules for associations exist in the EU, with differing administrative and legal regimes and requirements, including for registration, transfer of seats or mergers. This creates additional burden for associations and non-profit entities when they operate across borders in the EU single market (e. g. they must register again in another Member State, which adds red tape and cost). This situation impacts a big number of associations operating across EU borders, with negative repercussions in terms of their economic and societal deployment and may deter them from extending their activities across borders and prevent them from benefitting from the Single Market freedoms.

The purpose of this consultation is to gather your views on the need for EU action and the envisaged options and to provide input on any further issues to consider in the development of this policy field. The European Commission will use this input in its assessment to identify the most appropriate solution to improve the EU framework for cross-border recognition of associations in the EU.

For the purpose of this public consultation, « association » refers to the legal form of associations or charities that are membership-based organizations of persons created for a specific purpose, usually for an indefinite period of time and having their own legal personality. They are established for a purpose other than sharing the potential profits from an economic activity, which leads to the qualification of "non-profit". The term "non-profit" does not mean that the entity cannot engage in economic activities but rather that it cannot distribute profit among its members, which is the reason why associations may perform any kind of activity, including economic activities that generate profits but should not be established for the primary aim of making profit (i.e., profit-making activities). If an association generates profit by an economic activity, the profits may not be distributed to founders and members but must be reinvested in the primary activity of the association, which is called the "non-distribution constraint" of associations.

Guidance on the questionnaire

This public consultation consists of some introductory questions related to your profile, followed by questions on content. Please note that you are not obliged to respond to all questions in the questionnaire.

At the end of the questionnaire, you are invited to provide any additional comments and/or to upload additional information, position papers or policy briefs that express the position or views of yourself or your organisation.

The results of the questionnaire as well as the uploaded position papers and policy briefs will be published online. Please read the <u>specific privacy statement</u> informing on how personal data and contributions will be dealt with.

About You

- *Language of my contribution
 - Bulgarian
 - Croatian
 - Czech
 - Danish
 - Dutch

•	English
0	Estonian
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	Consumer organisation
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	Non-governmental organisation (NGO)
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	Christmas Island		Italy	0	Paraguay	0	United Kingdom
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	Cocos (Keeling)		Japan	0	Philippines	0	United States
	Islands						Minor Outlying
							Islands
	Colombia		Jersey	0	Pitcairn Islands	0	Uruguay
	Comoros		Jordan		Poland	0	US Virgin Islands
0	Congo		Kazakhstan		Portugal	0	Uzbekistan
0	Cook Islands		Kenya	0	Puerto Rico	0	Vanuatu
0	Costa Rica		Kiribati	0	Qatar	0	Vatican City
	Côte d'Ivoire		Kosovo	0	Réunion	0	Venezuela

	Croatia	Kuwait	Romania		Vietnam
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The Commission will publish all contributions to this public consultation. You can choose whether you would prefer to have your details published or to remain anonymous when your contribution is published. Fo r the purpose of transparency, the type of respondent (for example, 'business association, 'consumer association', 'EU citizen') country of origin, organisation name and size, and its transparency register number, are always published. Your e-mail address will never be published. Opt in to select the privacy option that best suits you. Privacy options default based on the type of respondent selected

*Contribution publication privacy settings

The Commission will publish the responses to this public consultation. You can choose whether you would like your details to be made public or to remain anonymous.

Anonymous

Only organisation details are published: The type of respondent that you responded to this consultation as, the name of the organisation on whose behalf you reply as well as its transparency number, its size, its country of origin and your contribution will be published as received. Your name will not be published. Please do not include any personal data in the contribution itself if you want to remain anonymous.

Public

Organisation details and respondent details are published: The type of respondent that you responded to this consultation as, the name of the organisation on whose behalf you reply as well as its transparency number, its size, its country of origin and your contribution will be published. Your name will also be published.

I agree with the <u>personal data protection provisions</u>

Part I General issues linked to associations operating cross-border within

where it is located (whether for its members or more broadly)?

'An economic activity takes place when resources such as capital goods, labour, manufacturing techniques or intermediary products are combined to produce specific goods or services. Thus, an economic activity is characterised by an input of resources, a production process and an output of products (goods or services).

Source: Eurostat Glossary: Economic activity - Statistics Explained (europa.eu)

No
Provide the number of persons in your organisation (staff, volunteers,
members etc)
0-5051-000
© 51-300
© 301+
Among the persons working for your organisation, how many of them are
volunteers, i.e. not employed?
Less than 10%
Between 10-40%
Between 40-70%
More than 70%
Countries of operations (please also indicate their names)
in one Member State
in several EU Member States
in EU Member States and non-EU countries
Please specify your answer
Belgium
Does your organisation have a legal status under European law (e.g.
European Groupings of Territorial Cooperation, European Cooperative)?
Yes
No
If so, please describe the type of organisation it is:
500 character(s) maximum
Please explain your answer
500 character(s) maximum
We are registered as a Belgian ASBL

Yes

Part II General issues linked to associations operating cross-border within the European Union

1) To what extent do you agree with the following statements:

	l strongly disagree	I somewhat disagree	Neutral	I somewhat agree	I strongly agree	No opinion /I don't know
a) For reaching the objectives of an association, it is also necessary to be able to easily operate across different Member States/cross-border in the EU Single Market	©	0	•	0	•	•
b) Associations will likely increase cross-border activities in the EU Single Market in the future	0	0	•	0	0	0

Please explain your answer

500 character(s) maximum

We operate in Belgium only. The only activity we have had outside Belgium is in the UK to attract associations to Belgium following Brexit.

2. In your view, which are the most important needs for associations operating or willing to operate in more than one Member State? (several replies are possible)

Detween 1 and 8 choices
 ☑ Transfer of seat in another Member State
 ☑ Merge of associations operating in at least two different EU Member States
 ☑ Providing services in another Member State without registering in the second Member State
 ☑ Get equal tax treatment for donors in case of cross-border donations
 ☑ Access to funding in another Member State
 ☑ Register in an EU Member State, even if the founding members are located in another Member State
 ☑ There is no cross-border need for associations
 ☑ Other

Elaborate your answer

The transfer of seat to Belgium from another member state without the loss of legal person status is now possible since the enactment of the Belgian 2019 Code des Sociétés et Associations ("CSA"): indeed, the CSA has taken a major step forward in this respect by providing for a cross-border conversion procedure applicable to international non-profit associations (""INPA(s)""). This procedure takes a few months, in particular because of a two-month waiting period. It is not flawless- for instance, in the event of an emigration, the new articles of association, the report of the administration body and the report of the auditor must in practice be ready more than two months before the general assembly resolving on the cross-border conversion; the conversion takes effect in Belgium as from the deregistration from the Crossroads Bank for Enterprises, whereas it has generally taken effect earlier in the host country, i.e. on the date of the registration in this country; but it provides for a clear legislative framework in Belgium. The difficulty will rather lie in the compatibility of the Belgian procedure with the foreign law, which does not necessarily provide for a similar procedure, or which may provide for a procedure that is difficult to reconcile with the Belgian one. EU harmonisation would therefore be welcome.

Such an initiative would also be desirable for the restructurings of INPAs (for example, mergers and demergers), which are currently practically impossible to carry out cross-border.

One should note that this transfer procedure in Belgium facilitates continued access to public funding which may be lost if a new association is set up. However, the state which is "losing" an association may not make the dissolution of this association easy.

Simplification of VAT rules: arranging meetings in other member states for an association established elsewhere in the EU often is complex due to differing VAT regulations governing international meetings

Part III Restrictions faced by assoications operating cross-border

To what extent do you agree with the following statement:

	l strongly disagree	l somewhat disagree	Neutral	l strongly agree	No opinion /I don't know
1. An association registered in an EU Member State currently faces restrictions when seeking to operate in another EU Member State (e.g. registration, access to funding, membership)	0	•	•	•	0

Please explain your answer indicating the relevant activities

As stated in the European Parliament Policy Department for Citizens' Rights and Constitutional Affairs (IPOL) study: "Indeed, in a group of key judgements, the CJEU209 "has developed 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". The study does nevertheless add: "Notwithstanding the above, research on this specific point has shown that the non-discrimination principle established by the ECJ has not yet been implemented in the text of the national laws of all the MSs, and that the comparability test remains a barrier to cross-border philanthropy, as there is no formal or uniform approach to it (no two countries have the same procedures and there are even countries in which no procedure stated by law exists) and the burden of proof lies with the PBO or the donor claiming the tax-incentive. The comparability test is "lengthy, costly and accompanied by a certain level of legal uncertainty". The existing differences among national laws in the requirements for a PBO's recognition (as also shown by our comparative analysis) contribute to this result."

2. Regarding restrictions to the freedoms of the Single Market, what are the most significant type of restrictions associations face when engaging in activities across borders

at most 6 choice(s)

regimes

i) Other

employees

a) Administrative formalities to implement actions in another Member State without prior registration
b) Registration in another Member State (cost, case handling time, uncertainty about constitutive requirements etc.)
c) Access to funding in another Member State
d) Difficulty in obtaining recognition of tax benefits by competent authorities of another Member State
e) The uncertainty of the types of economic activities permitted
f) Differences between Member States in membership requirements
g) Differences between Member States in reporting obligations
h) Differences between Member States of liability, liquidation and dissolution

I) Differences between Member States in regulations related to hiring

Please explain your preferred choices (a-j)

a) Although this is not required under the AMLDs (anti-money laundering directives), Belgian requires all board members of associations to register as UBOs ("Registre des bénéficiaires effectifs"). Access to this register is done online and is extremely complex if one does not have a Belgian resident carrying out this registration. This is particularly a discriminatory procedure for international associations with foreign board members whether these are from an EEA or non-EEA jurisdiction.

What is also problematic in our view is the unclear definition of the beneficial owners of an international non-profit association: the AML law of 18 September 2017 mentions in particular:

- The directors, representatives and daily managers. One question remains as to the procedure to be applied when these are legal entities: must a full UBO identification of these legal entities be carried out up to their own UBOs-individuals? This can be very complex in the case of a large board of directors
- The natural persons or class of natural persons in whose main interest the INPA was constituted or operates, which may be difficult or burdensome to identify in practice; and
- Other natural persons who otherwise exercise ultimate control over the INPA. However, the concept of control under the Belgian Companies and Associations Code is currently not appropriate for INPAs.
- j) One of our members has reported that some associations are being used by some national or regional bodies to circumvent state aid/ and/or public procurement rules.

In the medical area (medicines and vaccines) there are reported to be issues with data exchange.

Most important: as a result of the "Know Your customer" (KYC) requirements imposed by AMLD, associations are finding it more and more difficult to open bank accounts in different countries and are even facing closure of their accounts on their home market.

3. Which restrictions do you see as most dissuasive?

500 character(s) maximum

The interpretation of Know Your Customer "KYC"

4. Do you know examples where operating cross-border for an association led to unequal treatment within the Single Market? If yes, please explain.

1000	character(s)	maximum
1000	Unanacion 37	Παλιπαπ

See above

- 5. Regarding restrictions to the fundamental rights of associations, to what extent do the following restrictions faced by associations when operating across borders in the EU have had a negative impact on the exercise of fundamental rights of associations and/or of individuals (such as the freedom of association, freedom of expression etc.), and more broadly on the ability of associations to carry out their work (e.g. in terms of civil engagement, representation of civil society and individuals' interests)?
 - a) Administrative formalities to implement actions in another Member State without prior registration

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	rtainty about constitutive requirements etc.)
	cess to funding in another Member State
,	fficulty in recognition of tax benefits by competent authorities of another ber State
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	fferences between Member States regarding asset management rements
i) Dif	ferences between Member States in reporting obligations
j) Dif	ferences between Member States of liability, liquidation and dissolution nes
k) Di	ferences between Member States in regulations related to hiring
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Yes

No
No opinion/I don't know
Please explain your answer
500 character(s) maximum
The main issue for many associations remains arranging often large meetings in a country other than their home country. There are cross border invoicing (VAT) issues in particular.
8. Do you think that restrictions faced by associations when operating cross-border in the Single Market dissuade them from extending their operations and carrying out their activities across other EU Member States?
© Yes
No
No opinion/I don't know
Please explain your answer
500 character(s) maximum
In general, one must not forget that most associations cater for their home market only. Those that organise cross-border activities would no doubt like to see simpler rules in a number of areas.
9. Do you think that associations operating in border regions are more
affected than others by the restrictions to operate in several Member States?
© Yes
No
No opinion/I don't know
Please explain your answer
500 character(s) maximum
10. In your view, restrictions faced by associations when operating across
borders in the Single Market are due to:
a) Incompatible legislation between Member States
b) Lack of administrative procedures taking into account cross-border activities of associations
c) Lack of recognition by Member States of an association's status in other Member States

d) Associations' lack of knowledge/understanding of legislation in other Member States
 e) Lack of Member States' measures to support the role of associations to tackle societal challenges
 f) Funding limitations (e.g. public funding applicable only to actions on national level)
 g) Other/not applicable

Please explain your preferred choices (a-g)

500 character(s) maximum

There are clear differences in the laws governing associations in different member states, as well as different approaches at the level of taxation. Nevertheless, as we believe that most associations operate at a local level, we are not sure that EU level legislation would be useful.

Part IV Ways to mitigate the restrictions faced by associations operating cross-border

- 11. In your view, do associations need a policy action at EU level to mitigate restrictions encountered either when currently operating in several Member States or planning to do so?
 - Yes
 - O No
 - No opinion/I don't know

Explain your answer

500 character(s) maximum

Ensure the application at national level of the ECJs rulings on non-discrimination and uniform interpretation and enforcement of VAT rules.

- 12. What kind of policy response would best address these needs?
 - Option 1: A new legal form for associations allowing for recognition in all Member States to fully benefit from the single market [For an association to benefit from a new legal form, it would likely require administrative formalities (e.g. registration or application). The creation of a new legal form allowing for recognition in all Member States would likely not affect existing national legislations on associations.

- Option 2: Harmonising common minimum standards for cross-border operations in the EU [Changes to Member States legislation would likely be needed in this case. Depending on the content, common minimum standards could involve governance and administration related changes for targeted entities.]
- Option 3: An EU information campaign, with strengthened cooperation among Member States [As a non-legislative initiative, this would not involve legal action. It could include raising the awareness of targeted entities of their rights and obligations when operating cross-border in the EU, as well as strengthened cooperation between the Member States, including providing better access to information for targeted entities.]
- Other

Please explain your preferred options

We are not at all convinced that a new legal form for associations would be beneficial or successful: in this context, it would be useful for the European Commission to examine the data on the number of "Societas Europaea" or "EEIGs" created and operating and to communicate this. A better option would in our view be to opt for mutual recognition within the internal market of non-profit organisations.

13. If you have any comments or supplementary information to add to your replies to the above questions, please insert your reply:

2000 character(s) maximum

Please note that, for many associations, the issue of the difficulties faced with opening and managing bank accounts pursuant to the AMLD and its national transpositions are the most relevant issue today.

Another comment linked specifically to the procedures in Belgium: the clerk's offices of the enterprise courts can be demanding about the supporting documents required in case of changes of directors or daily managers, and the requirements can vary depending on the judicial district. At the very least, the INPAs will have to provide a proof of identity and a proof of residency for the newly appointed persons. Some clerk's offices also request all or part of these documents in case of renewals of mandates or for persons leaving the INPAs.

The UBO register, on the other hand, is linked to the Crossroads Bank for Enterprises and, as far as directors and daily managers are concerned, can be easily updated after the update of the Crossroads Bank for Enterprises.

You can upload any files you may find relevant

- Yes
- [⊚] No

Contact

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