

EC Proposal for a Directive on European Cross-Border Associations (COM(2023) 516 final), Brussels, 05.09.23

Reply to the EC Call for Evidence

Introduction

The non-profit sector has been following with great interest the process of the establishment of a European Cross-Border Association directive, as an important step for the creation of the ‘Single Market for the Public Good’. In particular, a broad coalition of civil society and non-profit organisations is contributing to the legislative process of the approval of the ECBA Directive. The organisation hereby co-signing this joint contribution are part of this coalition.

1) Positive elements

AIM, CSE, PHILEA, SEE, SSE and CEDAG welcome the proposed Directive for the establishment of a European Cross-Border Association (ECBA) and consider that this legislative initiative can pave the way for future similar legal initiatives for other non-profit organisations such as foundations and mutual benefit societies.

- The ECBA can help unlocking the potential of and can support the essential contributions of civil society organisations (CSOs) – including non-profit providers of social services, constituting a significant part of the social economy – to our democratic societies across Europe.
- We believe that it can be an important tool to support and mobilise transnationally citizens' collective engagement notably through all non-profit organisations, including foundations and mutuals, and in particular non-profit associations in the public and general interest in a variety of societal areas.
- AIM, CSE, PHILEA, SEE, SSE, and CEDAG recognise that it can be a helpful instrument to support the transnational operations of CSOs, through non-profit associations and a model for future similar legislation for foundations or mutual benefit societies.
- The ECBA legal form will also facilitate cross-border activities of European non-profit associations, foundations, and mutual benefit societies, such as European federations, networks, and other transnational activities of non-profit organisations, including for European projects and for cooperations of non-profit associations in border regions.
- We welcome the pragmatic and anticipatory approach taken by the European Commission (EC) in addressing the European Parliament Resolution of 17 February 2022 that allows – from an internal market perspective – to recognise European non-profit organisations.
- AIM, CSE, PHILEA, SEE, SSE and CEDAG are delighted to see that the proposal for a Directive formally recognises non-profit associations¹ for the very first time at the EU level and

¹ This is also done in view of their double function “in the field of social services across Europe. They are both 1) providers of services of general (economic) interest in which they play an important role for the lives and well-being of millions of European residents, for the welfare states and social protection systems in the EU; and, at the same time, 2) as promoters, facilitators, key actors and defenders of effective civil dialogue and participatory

acknowledges the fundamental feature of their non-profit purpose (“asset lock”)², as set out in Article 1. Another positive feature of the legislative proposal is that it promotes the statute of non-profit associations, covering core aspects such as governance, membership, funding, etc. Hence, the Directive recognises that in non-profit associations and organisations, profits must be reinvested in line with their objectives as a means for reinforcing the aim of public benefit and cannot be redistributed for private interests or to managers or shareholders. This defining feature would benefit to be further strengthened by specifying that non-profit associations provide services of general economic and non-economic interests³, complementary to the public benefit.

- We welcome the logic of mutual recognition used, as well as the equal and non-discriminatory treatment in the recognition and funding of ECBA’s compared to already registered non-profit associations in EU Member States (EU MS).
- AIM, CSE, PHILEA, SEE, SSE and CEDAG also welcome the proposed intention of the Directive to not be overly prescriptive, to be flexible enough to adapt to the different national situations and the diversity of non-profit organisations. Simplifying administrative procedures is key to ensure acceptance and use of the directive and of the new legal form of an ECBA, as well as its smooth implementation at the national level.
- The “only once principle” as set out in Article 12 is essential as simple and non-burdensome administrative procedures are key to ensure the smooth implementation of the Directive at the national level.
- We agree with the approach set out in Articles 6, 12 and 13 of the proposal for the Directive that there should be no restriction on the ECBA’s right to receive and provide funding, except where a restriction is prescribed by law, justified by an overriding reason in the public interest and proportionate for ensuring the attainment of the objective pursued without going beyond what is necessary.
- We welcome that this EU-level legislative initiative on an ECBA is formulated in a way to respect and maintain the diversity of existing legal frameworks for associations, public-benefit foundations and mutuals at national level, as long as they are in compliance with the EU-level fundamental rights and civic freedoms, and open for a system of mutual recognition of a new legal form, as suggested as one of the major features of the proposed Directive.

2) Aspects that would need to be amended or clarified

- Article 9⁴, building on the general principles of EU law “equal treatment” and “non-discrimination”, requests equal treatment of ECBA on all aspects of the operation compared to local/resident non-profit associations in an EU MS. This would include – in our reading –

democracy. They also offer opportunities for volunteering.” (cf. [SSE Contribution to the EC call for evidence on an EC proposal for a legislative initiative on cross-border activities of associations](#) of 28 October 2022, p. 2)

² The obligation for non-profit associations “to use their financial reserves and any possible profit only in accordance with their specific purpose (as laid down in the statutes) (...) in most cases and not least in the social services sector, is closely linked to the realisation of the general interest. Services of general economic interest (SGEI) also provided by associations, including those operating in the field of social services, are recognised in the Article 14 of the Treaty on the Functioning of the European Union (TFEU) and complemented by the Protocol (No. 26) on Services of General Interest.” (cf. [SSE Contribution to the EC call for evidence on an EC proposal for a legislative initiative on cross-border activities of associations](#) of 28 October 2022, p. 3)

³ Services of general interest are enshrined in the founding principles of the European Union

⁴ It reads (bold text by the signatory organisations): “Each Member State shall ensure that in any aspect of their operations, ECBA’s are not treated less favourably than the non-profit association in national law identified pursuant to Article 4(4).”

legislation, regulations and rules related to tax treatment and/or the public benefit status of an association, etc. The signatory organisations would thus like to ensure that there are no inconsistencies as tax-related issues are clearly out of the scope of the EC proposal for a Directive on an ECBA.

- Article 13 aims at ensuring that non-profit associations have “free and non-discriminatory access to funding from a public source, in compliance with the general principles of EU law”. There could be a risk of undermining the action of already-established local non-profit social services or of services provided by non-profit providers in other sectors, which could eventually lead to a “social dumping” in providing services of general interest. With the aim of preserving and improving the provision of quality social and general interest services for all, we would like to ensure that the non-discrimination principle of Article 9 cannot be used as a basis for an ECBA set up in another EU MS to by-pass or not fulfil the necessary recognition (i.e., authorisations, accreditations, certifications, etc.) as already requested for similar non-profit associations at the national level in order to access public fundings, grants and State aid, especially in the field of social services activities and of services of general (economic) interest.
- The directive as it stands cannot be applied to mutual benefit societies, even though the definition of non-profit associations contained in the text could include mutual benefit societies as well: “non-profit association” means a legal entity under national law that is membership-based, has a non-profit purpose and has legal personality” (art. 2 d)). Yet, the text of the directive only speaks about “Non-profit associations representing the predominant legal form among non-profit organisations in the European Union (...) and being also the largest in number of the four legal forms traditionally encompassed by the social economy.” (Explanatory Memorandum, p. 1). The other legal entities being cooperatives, mutual benefit societies and foundations are mentioned apart and are not included in the directive. The Directive proposal should therefore also explicitly mention that mutual benefit societies are included in the directive, so that it can be applied to them.”
- Mutual benefit societies are social economy undertakings that provide life and non-life insurance services, as well as complementary social security schemes. Considering that the legal form of mutual societies is not recognised in all Member States, the current European legal framework puts mutual societies in a position where they cannot reap the benefits of the internal market. The cross-border association option represents a step towards the specific recognition of mutual societies.
- It has to be made explicit that, beyond the requirements for the founding members, the membership criteria of an ECBA shall be regulated only by its statutes.
- In order to be effective for EU-level networks/umbrella organisations, many of which have members outside of the EU MS (both in countries with candidate status for the EU and other European countries) it has to be clarified that non-EU based members can be part of an ECBA, and it has to be ensured that non-EU based people or non-profit organisations (and other non-profit legal entities) can hold leadership positions.
- All the prohibitions to the national restrictions to the operation of ECBAs should be strengthened by adding a criterion of necessity and, for the dissolution of an ECBA, a judicial review pending finalisation.
- More flexibility should be done in terms of voting rights in the democratic decision-making bodies, to accommodate the diversity of the organisations that could register as an ECBA.

3) Avenues of further work beyond the directive

- Taxation⁵ is (rightfully) excluded from the Directive proposal⁶, as one element of the pragmatic and anticipatory approach taken by the EC. The signatory organisations consider it very important to work towards a situation where the tax legislation of EU MS ensures that foreign-based ECBAAs will be automatically considered comparable to local/resident ECBAAs. This would imply that donors giving to an ECBA registered abroad would receive the same tax advantages as if they were giving to a local/resident ECBA.
- While foundations as legal entities can create an ECBA, the ECBA proposal does not effectively cover foundations and does not provide for the creation of a European Cross-border Foundation. Therefore, AIM, CSE, PHILEA, SEE, SSE and CEDAG support the call that in the future, a specific legislative initiative, similar to the ECBA, should also be proposed for foundations and mutual benefit societies.

About us:

AIM: the [International Association of Mutual Benefit Societies](#) (AIM) is an international umbrella organisation of federations of health mutuals and health insurance bodies counting with 49 members from 26 countries around Europe, Latin America and Africa and the Middle East. AIM members are all not-for-profit organisations providing health coverage to around 240 million people, as well as services relating to compulsory and/or supplementary health insurance, some of them also managing health and social insurance services.

Civil Society Europe (CSE) is the coordination for civil society in Europe including the most representative European Platforms and networks in social rights, education, culture, health, the environment, international cooperation, civic participation, youth, disability, anti-racism, volunteering and governance.

Philea-Philanthropy Europe Association, is the organisation gathering a diverse and inclusive ecosystem of foundations, philanthropic organisations and networks working for the common good.

Social Economy Europe (SEE) is the organization at European level that works for EU policy on Social Economy and federates the different families within the SE. Currently, SEE has 24 members amongst European Groupings, National Umbrella Organizations and European Networks, and represents 2.8 million social economy enterprises and organisations in Europe. SEE is the secretariat of the European Parliament's Social Economy Intergroup. SEE is also member of the European Commission Expert Group on Social Economy & social enterprises (GECES), the Civil Society Liaison Group, the EU Industrial Forum, the Youth Entrepreneurship Policy Academy and the European Platform to Combat Homelessness. SEE is also an observer member of the UNTFSE.

Social Services Europe: [Social Services Europe](#) (SSE) is a network of eight European umbrella organisations – comprising [Caritas Europa](#), [CEDAG](#), [E.A.N.](#), [EASPD](#), [EPR](#), [Eurodiaconia](#), [FEANTSA](#) and the [Red Cross EU Office](#) – representing over 200,000 not-for-profit social and health care organisations. We are active in a sector employing over 11 million people, of which about half are employed by social economy organisations. This also means that more than a third of the (estimated) 13.8 million paid jobs in the social economy is in the sector of social services.

⁵ The EC has announced in the Social Economy Action Plan (SE AP) to publish "guidance on relevant taxation frameworks for social economy entities, based on available analysis and input provided by Member States' authorities and social economy stakeholders" (p. 7). This was done with two Staff Working Documents issued on 13 June 2023, "EC Guidance on relevant taxation frameworks for social economy entities" and "Non-discriminatory taxation of charitable organisations and their donors: principles drawn from EU case-law".

⁶ Quote from the Explanatory Memorandum: "This Directive does not seek to regulate certain areas of law pertinent to ECBAAs in the internal market, in particular taxation, employment law, competition, intellectual property, anti-money laundering and insolvency." (p. 3)



CEDAG: since 1989, the European council for services of general interest represents and defends the interest of non-profit associations and organisations as providers of service of general interest and as civil society actors at the European level and towards its institutions.