

European Cross-Border Associations (ECBA) Directive:
Introductory **HANDBOOK** for national non-profit organisations

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Introduction to the ECBA Directive

What is the ECBA Directive?

In September 2023, the European Commission (EC) published a proposal to

“improve the functioning of the internal market of non-profit organisations (NPOs) by laying down measures coordinating the conditions for establishing and operating European cross-border associations (ECBAs)”[1].

The proposal aims to facilitate the effective exercise of freedom of movement of non-profit associations operating in the internal market in the EU. The European Cross-Border Associations would be non-profit associations made of at least two natural or legal persons [2] from two different Member States.

Crucially, the Directive does not establish a single regulatory regime for all the ECBAs. Each Member State will establish a new national legal form for the ECBA, with **common features agreed upon at the European level**, based on the most relevant or most used type of Association already existing in the country. ECBAs will enjoy the **automatic recognition of their legal personality and capacity**, and the possibility to **exercise economic (commercial) activities with non-profit purposes across the whole EU**. Such principles have already been seen successfully in practice with the Single-member Private Limited Liability Companies.

The Directive is accompanied by a technical regulation amending the Internal Market Information System and the Single Digital Gateway. The Single Digital Gateway already facilitates online access to information, administrative procedures, and assistance services that EU citizens and businesses may need to operate in another EU country, and will be extended to the ECBAs.

The European Parliament (EP) has already adopted its position on the Directive. On the other hand, the other co-legislator, the Council of the EU (also known as ‘the Council’), made of the Member States’ ministers, is still discussing its position.

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What is Civil Society Europe's view?

The EU proposal establishing a new, partially harmonised legal form that allows associations to make a profit, but not to distribute to their members, is in line with both the EU Treaties and the CJEU jurisprudence, as well as the commonly shared concept of 'non-profit organisation' in the EU Member States[3].

We welcome the legal proposal as it formally recognises cross-border non-profit associations[4] and supports citizens and legal entities to effectively organise their action at the transnational and European levels, ensuring mutual recognition and equal treatment vis-a-vis national associations across the EU, while providing enough flexibility to adapt it to the variety of associations and national models. It can contribute to unlock the potential of civil society across the EU and establish an important step towards finally creating the 'single market of the public good'.

We, therefore, **support the adoption of the Directive, in a form as close as possible to the first reading of the European Parliament**, as it betters the Directive by making it more apt to the reality of civil society organisations.

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ECBAs and national non-profit organisations

Can the ECBA Directive be of interest to my organisation?

If your organisation has a European or cross-border dimension (i.e. involving at least two EU Member States) in its mission, membership, or recurrent activities, then, the ECBA Directive can be of your interest.

If you want to establish structural partnerships with similar organizations or with groups of people in other Member States to support common causes and actions, you can consider founding an ECBA with them. The Directive will allow you to be recognised as an entity throughout the EU without the need to establish a local organisation in each country.

The ECBA will allow you to more easily organise different activities such as trainings, study trips, exchanges, fundraising activities, and festivals across borders. If you want to run transnational campaigns, for instance, a European Citizens' Initiative or to raise funds for a specific purpose: you could establish an ECBA to dedicate specific staff and resources for managing the campaign and to freely operate across Member States.

If you have members in more than one (EU) Member State and you have (or would like to have) activities across borders, you could consider converting your association into an ECBA: It will also facilitate moving your legal seat across Member States without discontinuities in legal personality and capacity, without losing your staff or assets, and without endangering ongoing projects and funding.

More in general, the proposed ECBA Directive would likely increase the activities of non-profit organisations already engaging in activities across borders, i.e. involving at least two Member States. It should also encourage other associations who would like to operate cross-border but are currently dismayed by the obstacles they encounter.

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Can the ECBA Directive be of interest to my organisation?

According to the study commissioned by the European Commission, it is estimated that the ECBA Directive would bring a total cost reduction of at least 770 million euros, as well as the creation of an additional 170,000 associations operating across borders. That would result in an increase of 3.8 billion euros in estimated gross value added and an estimated additional employment of 70,000 units. Examples of such benefits include the **retention of the legal personality and the assets of the association if the seat is moved from one Member State to another, as well as the recognition of legal personality and capacity**, both in the home country and when operating activities in a different Member State.

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Cases of obstacles to cross-border cooperation

and how they could be overcome by ECBAs^[6]

Some Member States require the creation of a local branch of a foreign Association to operate in that country such as, for instance, to employ staff. Nonetheless restrictions remain and it may be subject to specific administrative requirements.

The ECBAs will be recognised all over the EU and be equally treated as national ECBAs.

Most Member States do not allow Associations to change their seat to another Member State. Also when this is possible in the country of origin this may be denied by the country of destination.

The recognition of the legal personality and capacity throughout the EU will allow the transfer of the legal seat and of the assets of the organisation (such as ongoing contracts) among the Member States.

Cross-border merger for associations is uncertain, contrary to business.

If the legislation is adopted with the proposals of the European Parliament, it will be possible to merge associations from different (EU) countries.

Some Member States administrative practices prevent Associations from organising their activities in another (EU) country (e.g. requesting that the general assembly modifying statutes takes place in the country where they are based, while it is practice that European organisations organise these meetings in different EU countries).

The ECBA legislation will provide a uniform set of rules that will allow such transnational activities.

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Often Associations have to rely on a local partner when organising activities abroad that require the signature of commercial contracts, as providers require the use of a local VAT number. Partners have then to make advance payments and deal with all the administrative burden.

ECBAs will have a single registration number valid in all the EU.

Associations face difficulties in receiving funding from foreign entities and donors within the EU. Furthermore derisking practices by banks limit access to banking and financial services.

The Directive recognises the freedom to receive public and private funding from a country different from that of registration. Paired with the recognition of the legal personality in all the Member States, it should make it easier for banks to consider ECBAs less 'risky'.

Due to interpretation of competition rules, state aid rules and procurement rules, Non Profit Association from other (EU) countries are often considered as enterprises instead of being treated as national Associations.

The principle of equal treatment in the Directive will ensure that ECBAs from a third country will be subject to the same rules as national ECBAs (and therefore as the recognised most similar or most used national legal form for Associations that the national ECBAs are equated to).

Some Member States apply Restrictions to the advocacy activities of Associations.

In addition to the country specific recommendations within the Rule of Law report, the Directive as amended by the European Parliament clearly bans any restrictions or additional requirements regarding the ECBAs' participation in matters of public debate, whether carried out on a regular or on an occasional basis

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How can my association establish an ECBA or convert into an ECBA?

To establish an ECBA, you must first make sure that the new association you are establishing respects the required criteria for ECBAs (Art. 3). The membership of the new association must include at least three (natural or legal) persons from two Member States. Furthermore, its executive body (e.g. the Board) must include at least two (natural or legal) persons established or citizens of an EU Member State[7].

The same criteria apply if you want your own association to convert into an ECBA. **The conversion to an ECBA** (or the merging of your organisation with an existing ECBA or with another organisation to create a new ECBA) **must be approved by the decision-making body of your organisation**. The conversion will ensure continuity in the legal personality and assets of your organisation.

Will my association have to adapt to new rules when the ECBA is adopted?

No, you will not need to change your legal form if you do not wish to do so. Conversion into an ECBA is an option, not a duty. Furthermore, the proposed Directive does not establish a new European legal form, but rather a new national legal form in each Member State, which has some harmonised features (regulated by the Directive). The other issues typically regulated by laws on associations will be subject to the same rules of the legal form closest to the ECBA in its features (or, under the EP proposal, as the most used one by associations).

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What will be the impact of a foreign ECBAs on the work

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The proposed Directive applies a **general principle of equal treatment, valid for both national and foreign ECBAs**: in any aspect of their operations, ECBAs shall not be treated less favourably than the identified closest (or most used) national legal form for non-profit associations in your country. This means that, when operating in your country, foreign ECBAs will be subject to the same rules as national ECBAs. Therefore, **it is crucial that, upon implementation of the Directive in your country, the reference national legal form is well chosen.**

Furthermore, **the proposed Directive does not create or change European or national rules on taxation, employment law, competition, intellectual property, anti-money laundering and insolvency.** All the national rules on taxation, employment law etc. will equally apply to ECBAs and non-profit associations (with the identified national legal form).

In addition the proposed legislation does not cover the so-called 'public benefit status', that can give access to tax preferential treatment. This may be accessible through further requirements and registration.

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In my country, there is no specific law for non-profit Associations:

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Yes, you will be able to set up an ECBA, as your Member State will need to implement the Directive at the national level. The proposed Directive states that the Member States will have to use the most similar (or, in the European Parliament version, the most used) legal form in their national legislation for that purpose). This applies also in situations where such legal forms are the result of case law or other type of legislation.

Furthermore, all **ECBAs will have full legal personality and capacity.** In case whether a country chooses a national legal form without full legal personality and capacity, the ECBAs established in those Member States would still have legal personality and capacity.

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Specific rules on the ECBAs

Will I need a notary to establish an ECBA or become an ECBA?

The proposed Directive, in its current form, does not seem to require (or allow the request by the competent authority of) a notary deed. That could change in the final version of the Directive, as some Member States plea for a notary deed in line with the requirements for their own national associations.

What are the rules for the dissolution of an ECBA?

Only the authorities of the Member State where the ECBA is registered can dissolve the ECBA. If another Member State finds evidence of unlawful operations that could make grounds for the dissolution of the organisation, they can relay them to the authority of the competent Member State. The Directive explicitly states that **the dissolution of an ECBA entails the liquidation of its assets** and its redistribution to an NPO or a local authority to carry out activities similar to those (legitimate) that were pursued by the dissolved ECBA. It cannot therefore be reconstituted.

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Footnotes

[1] Proposal for a Directive of the European Parliament and of the Council on European cross-border associations, p. 1.

[2] 'Natural persons' means individuals, while 'legal persons' means groups recognised by the law, e.g. associations, businesses, foundations.

[3] For a more detailed explanation, see Study supporting an impact assessment on cross-border activities of associations, p.29-31, 110-111.

[4] It also recognises for the first time in EU legislation non-profit associations and, as one fundamental feature, their non-profit purpose (realised by means of an "asset lock"), as set out in Article 1.

[5] Study supporting an impact assessment on cross-border activities of associations, p. 267-268.

[6] The examples are taken from CSE Contribution to EC Consultation on a proposal for a legislative initiative on Cross-border activities of associations.

[7] According to the EP version; in the original version, all the members of the executive body had to fulfill this criterion.

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