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PART 1/2

# COMMISSION STAFF WORKING DOCUMENT

# IMPACT ASSESSMENT REPORT

***Accompanying the document***

**Proposal for a Directive of the European Parliament and of the Council**

**on European cross-border associations**

{COM(2023) 516 final} - {SEC(2023) 306 final} - {SWD(2023) 292 final} - {SWD(2023) 294 final}

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## Glossary

| Term or acronym | Meaning or definition |
|---|---|
| CJEU | Court of Justice of the European Union |
| CSO | Civil Society Organisations |
| EESC | The European Economic and Social Committee |
| EU | European Union |
| FTE | Full Time Equivalent (employment) |
| GDP | Gross Domestic Product |
| IA | Impact Assessment |
| MS | Member State |
| NGO | Non-governmental organisation |
| NPO | Non-profit/not-for profit organisation |
| R&D | Research and Development |
| SDGs | (UN) Sustainable Development Goals |
| SME | Small and medium sized enterprise |
| TEU | Treaty on the European Union |
| TFEU | Treaty on the Functioning of the European Union |
| UN | United Nations |
| VAT | Value added tax |

## Main working definitions

| | |
|---|---|
| Cross-border activity | This refers to, in particular, the following aspects of EU-based associations across Member States: (i) conducting economic activities (including the |

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|---|---|
| | provision of goods and services) in a Member State other than the one of it domicile or in multiple Member States; (ii) sending and receiving capital in another Member State (i.e. membership fees, funding, donations); (iii) having members or board members who reside in another Member State than the one of the association's domicile. |
| Cross-border conversion | This refers a situation where an association, without being dissolved or wound up or going into liquidation, converts its legal form under which it is domiciled and registered in a Member State into a legal form of another Member State and transfers at least its registered office to the said destination Member State, while retaining its legal personality. |
| Cross-border division | This refers to situations where: (a) an association being divided, on being dissolved without going into liquidation, transfers all its assets and liabilities to two or more recipient associations in different Member States; (b) an association being divided transfers part of its assets and liabilities to one or more recipient associations in different Member States. |
| Cross-border governance role | This refers to members of statutory management bodies of an association, such as a board of directors, supervisory board, or executive committee, who reside in another Member State than where the relevant association is domiciled. |
| Cross-border merger | This refers to situations where (a) one or more associations domiciled in different Member States, on being dissolved without going into liquidation, transfer all their assets and liabilities to another existing association, the acquiring association; or (b) two or more associations domiciled in different Member States, on being dissolved without going into liquidation, transfer all their assets and liabilities to an association that they form, the new association. |
| Cross-border membership | This refers to a situation where a member of an association resides in another Member State than the one where the relevant association is domiciled. |
| Cross-border mobility | This refers, in particular, to (i) a conversion of an association involving transferring its registered office to another Member State; (ii) when an association wants to merge with or divide from an association in another Member State. |
| Recognition of legal personality | This refers to the situation where an association, which has legal personality in the Member State where it is domiciled, has therefore legal personality in all Member States. |
| Social economy | The social economy is an umbrella term covering a wide range of private entities, with profit-making or non-profit making purpose, that prioritise people, social, and environmental causes over profit. While the scope and the terms used to describe the social economy concept can vary depending on national traditions, it typically comprises cooperatives, mutual benefit societies, associations (including charities), foundations, and social enterprises (with different legal forms). |
| Third sector | Although there is no common definition, it usually embraces institutional and individual-action components that embody, in general, three underlying attributes: a) private, b) primarily oriented to the public good and c) unpaid non-compulsory work. Non-profit organisations are at the core of the third sector. However, the third sector is wider and encompasses the non-profit |

| | |
|---|---|
| | sector, also including the social economy and uncompensated work performed through third sector organizations. |
| Non-profit sector | It includes entities that do not operate for the benefit of themselves but use profits in the pursuit of their purpose. |
| Non-profit organisations | Entities operating in the non-profit sector not meant to operate for the benefit of themselves, but that must use profits in the pursuit of their purpose. |
| Legal statuses/qualifications | They are created by national laws with the intention of awarding an accreditation scheme that can be adopted by the organisations that meet the requirements and must be distinguished from the notion of "legal form". A variety of entities, including foundations, companies and cooperatives that meet the necessary legal requirements can adopt the status – for profit and non-profit. |

## 1. INTRODUCTION

*The non-profit sector*

The non-profit sector is instrumental for bringing together the social, green and digital objectives of the European Union. It does so by showing "another way" to generate value and meet societal needs that the market and, in some areas, the State cannot address.[1] For instance, the non-profit sector enables grassroots initiatives to emerge and contributes to face challenges such as, more recently, the COVID-19 pandemic and the crisis originated by Russia's aggression in Ukraine, while it can also help ensure a just green transition for all parts of the society.[2] Unlocking the potential of the non-profit sector can strengthen its positive role in generating value in economic and societal terms across the European Union. It can also help underpin civic participation, EU values and fundamental rights.

*The legal form of association*

Out of almost 4.6 million organisations within the non-profit sector at EU level around 87% (3.87 million) have the legal form of associations.[3] Associations are also the largest in number of the four legal forms traditionally encompassed by the social economy,[4] which includes both non-profit and profit-making entities with or without economic activities that prioritize social or public interest goals and share common principles and features.[5] Associations are also present in the so called third sector.[6] It is important to note that, in some

[1] The non-profit sector is not strictly defined because the entities therein are very diverse and the rules outlined for members of this sector can vary depending on the country in which they are established. The common feature identifying entities in the non-profit sector is that they are not meant to make benefit for themselves, but they must use profits in the pursuit of their purpose.

[2] According to a recent Eurobarometer survey on "Fairness perceptions of the green transition", 88% of EU citizens agree that the green transition should not leave anyone behind (Special Eurobarometer 527, October 2022). Survey available at: Fairness perceptions of the green transition - Eurobarometer survey (europa.eu).

[3] These figures were developed in the context of the independent study supporting this impact assessment (hereinafter "IA study"). Concerning the figure of 87%, this is calculated based on Member State sources for number of associations and NPOs. The basis for this figure is very robust as most Member States have recent and reliable data. The relative number of organisations per country is factored in to yield the weighted average, see Annex 4 (Section 2.1). Placeholder for publication reference to the IA study when available

[4] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions *'Building an economy that works for people: an action plan for the social economy'* of December 2021. Hereinafter "the Social Economy Action Plan". The other legal entities present in the social economy are cooperatives, mutual benefit societies (or mutuals) and foundations.

[5] According to the Social Economy Action Plan, the social economy covers entities sharing the following main common principles and features: the primacy of people as well as social and/or environmental purpose over profit, the reinvestment of most of the profits and surpluses to carry out activities in the interest of members/users ("collective interest") or society at large ("general interest") and democratic and/or participatory governance.

[6] There is no common definition of the "third sector" which embraces institutional and individual-action components that embody, in general, three underlying attributes: a) private, b) primarily oriented to the public good and c) unpaid non-compulsory work (volunteering). Non-profit organisations are at the core of the third sector. However, the definition of the third sector is wider and encompasses in addition to non-profit

Member States, there are legal statuses connected, for example, with fiscal privileges or access to public funding, which associations may decide to acquire in addition to their legal form, provided that they satisfy specific requirements for such qualifications and depending on the jurisdiction where they operate.[7]

Figure 1 provides an overview of the legal forms commonly present in the social economy ) the non-profit sector and the third sector, as well as the legal statuses (or qualifications) that associations may decide to acquire. Annex 9 provides more information on the legal forms in the social economy and the non-profit sector.

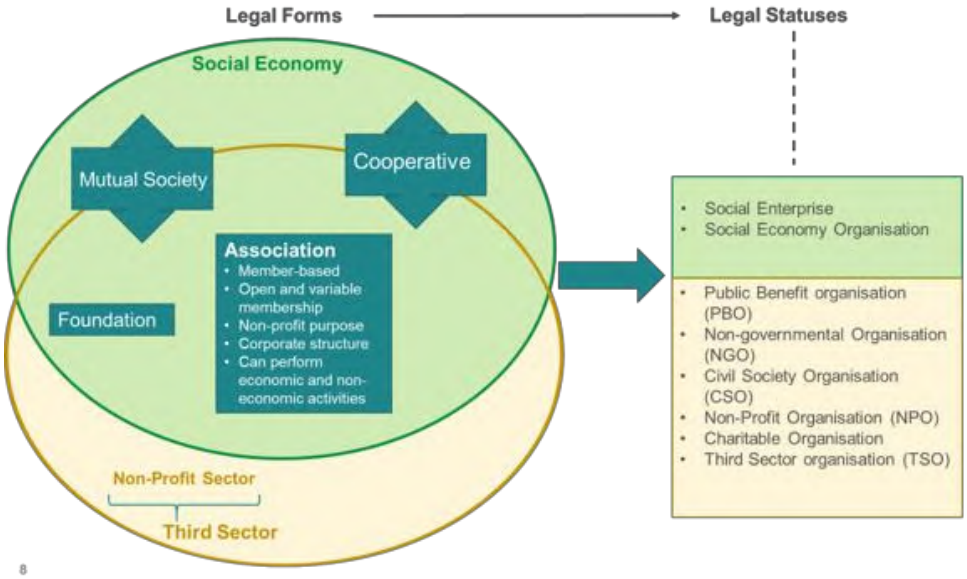


Figure 1: Overview of common legal forms and statuses present in the non-profit sector, the social economy and the third sector.

Non-profit associations are membership-based legal forms that may or may not perform entrepreneurial/economic activities, serving a collective or social interest or public benefit, and any revenues they generate exceeding expenses must be committed to the entity's purpose (contrary to entities operating as a business aiming to generate profit and distribute it to it owners or shareholders). Associations are active in all Member States, where they provide goods and services, addressing needs ranging from local communities to broader societal challenges, and lower the threshold for civic participation in sectors such as sports, recreation and culture, as well as in social and health services, education and training. While they largely operate at local and national level, there are already associations that operate in several Member States.

organisations the social economy and uncompensated work performed through third sector organizations (volunteerism). Beyond Non-profits: In Search of the Third Sector, Lester M. Salamon & Wojciech Sokolowski, 2018.

[7] As an example, entities legally established in the form of an association can assume the legal status or qualification of non-profit organizations (NPOs), public benefit organizations (PBOs), non-governmental organizations (NGOs), civil society organizations (CSOs), third sector organizations (TSOs), charities, provided they satisfy the legal requirements for such qualifications. Additionally, other legal statuses may be relevant when discussing about associations (e.g. social enterprise and social economy organization).

Associations are regulated through legislation and rules specific to them in 24 out of 27 Member States (Annex 10 provides an overview of the legal regimes of associations in the Member States).[8]

According to the legal comparative analysis conducted in the IA study underpinning the preparation of the impact assessment, national regulatory frameworks are, in principle, adequate for the development of associations operating at national level. At the same time, rules on cross-border aspects of associations are generally not provided for in national legislations or, when provided, they differ or they may be effectively constraining associations operating in more than one Member State. This results in regulatory fragmentation legal uncertainty about the applicable rules and unjustified administrative practices and costs for associations, creating barriers for those associations engaged or wishing to engage in activities in more than one Member State (Annex 11 summarises national rules on cross-border aspects of associations).

Against this background, the initiative assessed in this impact assessment report ('IA Study') focuses on non-profit associations as the predominant legal form in the non-profit sector and aims create an enabling framework for cross-border activities of associations in the single market.

### 1.1 Scope of the initiative

With the view to unlocking the potential of the non-profit sector in the EU, this initiative captures "non-profit associations" having a legal personality and seeks to address barriers that they face in their cross-border activities and mobility in the single market (as described in Section 2). The entities in the scope of the initiative will be hereinafter referred as "associations".

As associations represent the predominant legal form among non-profit organisations at EU level and through their membership-based structure, they have a direct leverage effect on citizens who are members, donors or beneficiaries of their activities. Therefore, creating an enabling framework for cross-border activities of associations has potentially a multiplying positive impact on the largest part of the EU non-profit sector.

This said, cross-border obstacles faced by associations in the areas of taxation and labour law will not be addressed by this initiative, taking into account the EU limited competence in these areas and the principles of proportionality and subsidiarity (notably taxation aspects will be tackled through specific factsheets on legislative frameworks and case-law, as explained in Sections 1.2 and 2 and in Annexes 9 and 12).

[8] With the exception of Ireland, Denmark and Sweden.

Other legal forms present in the non-profit sector and the social economy, such as foundations,[9] cooperatives and mutual societies, are excluded from the scope of this initiative (as explained in Annex 9).

Entities excluded from the scope of the initiative are outlined in Box 1.

Box 1: Non-profit sector and social economy entities and types of associations excluded from the scope of this initiative and not assessed in this IA.

- Foundations, cooperatives and mutual societies (as explained in Annex 9)
- Political parties, due to their particular status within national and EU law[10]
- trade unions[11]
- Churches and other religious communities and philosophical or non-confessional organisations (as referred to in Article 17.1 TFEU) due to their particular status within national law which the Union is bound to respect
- The so-called "economic associations" present in a few Member States (i.e. Germany, Denmark, Finland, and Sweden), due to their profit-making purpose[12]

### 1.2 Political context

The initiative is embedded in the broader political objectives of the European Green Deal and the Digital Decade 2030.

More specifically, it addresses the political priority "An economy that works for people"[13], contributing to the objective of "an economy that can fully respond to the needs of EU citizens thereby ensuring social fairness and prosperity". In this sense, the initiative interlinks with the other measures announced in the Social Economy Action Plan and forms with them the Social Economy framework as follows:

First, a proposal for a Council Recommendation on developing social economy framework conditions in the Member States which will recommend Member States to integrate the social economy into their socio-economic policies and create a favourable environment for the

[9] When it comes to foundations in particular, it is important to note the following elements to exclude them from the scope of the initiative (as further explained in Annex 9): important differences exist between foundations and associations; one of the major problems that for example foundations face when operating cross-border is taxation-related; a Commission proposal seeking to create a single European legal form for public benefit purpose foundations (i.e. the European Foundation) was withdrawn in 2015 due to the lack of consensus among MemberStates.

[10] Regulation (EU, Euratom) No 1141/2014 on the statute and funding of European political parties and European political foundations, under ongoing revision.

[11] In line with Article 153 TFEU relevant to the right of association for representation and defence of the interests of workers and employers.

[12] IA study. They are not considered as associations in the strict sense, because they do not share the same (non-profit) purpose and, therefore, fall within another category of private law organizations (such as cooperatives).

[13] The European Commission priorities for 2019-24.

sector, including through targeted public policies and adapted legal frameworks. Having as objective to foster access to the labour market and social inclusion, it will touch upon a variety of areas of relevance to the social economy, such as employment policy, education, skills and training, social services, green transition, territorial cohesion, data and research, access to funding, access to markets, State aid, taxation, public procurement, and social impact measurement. Despite the difference in scope, the proposal for a Council Recommendation is particularly linked with the current initiative in that it is promoting an enabling environment for social economy entities, including associations, but it does not touch upon cross-border activities of associations specifically and its recommendations are non-binding for the Member States. Therefore, there is no overlap between the two initiatives.

Second, two Commission Staff Working Documents (notably on "relevant taxation frameworks for social economy entities" and on "non-discriminatory taxation of charitable organisations and their donors: principles drawn from EU case-law,") are planned to be presented together with this initiative. They will provide factual information as to the state of play of legislative frameworks in Member States and the case-law on taxation matters, thus tackling cross-border taxation obstacles falling out of the scope of this initiative.[14]

The Social Economy Action Plan recognised that associations face constraints in operating cross-border and referred to a forthcoming European Parliament initiative[15], which was eventually adopted in February 2022. This **European Parliament resolution** aims to promote associations and other non-profit organisations in the EU in completing the single market, protecting their fundamental rights and fostering an EU democratic space. It asked the Commission, under Article 225 TFEU, to submit two new legislative proposals: a Regulation (under Article 352 TFEU), which creates the legal form of "European Associations", and a Directive harmonising common minimum standards for NPOs (under Article 114 TFEU).

Sharing the need to create an enabling environment for the non-profit sector, as stemming from the EP resolution, and building on the objectives of the Social Economy Action Plan, the Commission committed to pursue the matter. This initiative is, therefore, included in the **Commission work programme 2023**, as part of the Social Economy framework, and is complemented by the measures mentioned above. The Social Economy framework will address the broader scope of issues raised in the European Parliament resolution, combining legislative and non-legislative actions, in line with the principles of subsidiarity and proportionality (details are provided in Annex 9).

[14] SWD(2023) 211 on "Relevant taxation frameworks for social economy entities, which is based on available analysis and input provided by Member States' authorities and social economy stakeholders; and SWD(2023) 212 on "Non-discriminatory taxation of charitable organisations and their donors: principles drawn from EU case-law," which provides a description of this key principle as interpreted by the Court of Justice of the European Union.

[15] Social Economy Action Plan, page 5.

Furthermore, this initiative may have links with the 'Defence of Democracy package' (see the Call for Evidence of 16 February 2023), announced under the political priority of "A new push for European democracy".

Addressing cross-border aspects of non-profit associations as civil society actors, this initiative is also in line with the findings of the 2022 **Annual report on the application of the EU Charter of Fundamental Rights,** which stresses that civil society organisations may advocate policies and legislation beyond the borders of Member States and that their role is particularly relevant in the context of current challenges the EU if facing.[16] In this connection, the **Conference on the Future of Europe** recognises the important role of the civil society and mentions the need for a statute for European cross-border associations and non-profit organisations.[17]

This initiative further underpins the political priority "**a Europe fit for the digital age**" by seeking to facilitate the cross-border activities of associations and thereby enabling them to play an active role in responding to the opportunities and challenges of the digital transformation.[18] This is relevant for strengthening freedoms of information and expression in civil society (e.g. European Media Freedom Act), as well as for boosting civic engagement, especially for youth, and volunteerism in general. In this regard, the European Solidarity Corps, financing volunteering and solidary projects in the EU and partner countries aiming at addressing unmet societal needs, constitutes a concrete illustration.

This initiative also supports the objectives of the **EU Industrial Strategy** and its update of May 2021,[19] and in particular the Proximity and Social Economy ecosystem, one of the 14 industrial ecosystems identified as critical for post-COVID recovery, for the resilience of the EU economy and for the green and digital transition. In this context, the transition pathway for Proximity and Social Economy presented in November 2022,[20] mapped barriers and opportunities and identified, in co-creation with stakeholders, 14 areas of shared action to fulfil the potential for the green and digital transition of the actors in this ecosystem, including associations.

Lastly, the initiative contributes to the Sustainable Development Goals (SDGs) and it particularly supports the SDG 8 (Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all), by supporting job creation and improving equal and inclusive access to economic opportunities. It further addresses the SDG 16 (Peace, justice and inclusive societies), by strengthening civil society through protecting associations among other entities. This initiative also indirectly supports SDG 3 (Ensure healthy lives and promote well-being for all), by facilitating cross-border activities of associations mainly active in sectors such as health, care and social services.

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[16] See Charter of Fundamental Rights of the European Union, OJ C 202, 7.6.2016, p. 389–405.
[17] See Conference on the Future of Europe, Report on the final outcome, May 2022.
[18] EESC, Exploratory opinion Presidency of 18.09.2020, Digitalisation and Sustainability – status quo and need for action in civil society perspective
[19] COM (2021) 350 of May 2021, Updating the 2020 New Industrial Strategy: Building a stronger Single Market for Europe's recovery.
[20] SWD(2021) 982 of December 2021, Transition pathway on Proximity and Social Economy ecosystem.

### 1.3 Legal context

*EU level*

The right to freedom of assembly of association is a fundamental right enshrined in the EU Charter of Fundamental Rights (Article 12).[21] The Court of Justice of the European Union (CJEU) has recognised it as one of the essential foundations of a democratic and pluralistic society.[22]

In terms of the regulatory conditions for associations in the single market, there is no dedicated EU-level legislation, such as there is for companies[23] and cooperatives[24]. The Commission proposed creating a European legal form for associations, the European Association, in 1992, based on the current Article 114 TFEU.[25] The proposal was, however, criticised by some Member States on grounds of subsidiarity and unsuitability of the legal basis compared to its scope and purposes and because according to their view it did not answer to any proven need, its provisions did not embody the diversity of national legislations and it laid excessive administrative burden on associations.[26] The European Parliament was supportive and continued to ask for progress on the proposal until 2005 when it was eventually withdrawn by the Commission due to lack of progress at the Council. Section 5 and Annex 9 provide further information on the Commission proposal of 1992 and explain differences with the current initiative, including the reasons why it failed and how the situation has evolved since then.

Furthermore, there are additional legal forms at EU level that aim to facilitate cross-border co-operation and which do not exclude associations: in particular, the European Digital Infrastructure Consortia (EDIC)[27], the European Research Infrastructure Consortium (ERIC)[28], European Grouping of Economic Interest (EEIG),[29] and European Territorial

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[21] Article 12 of the Charter reads as follows "1. *Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests. 2. Political parties at Union level contribute to expressing the political will of the citizens of the Union*".

[22] Judgment of 18 June 2020, Commission v Hungary, C-78/18, EU:C:2020:476, quoting ECtHR, 17 February 2004, *Gorzelik and Others v. Poland*, CE:ECHR:2004:0217JUD004415898, §§ 88, 90 and 92, and ECtHR, 8 October 2009, *Tebieti Mühafize Cemiyyeti and Israfilov v. Azerbaijan*, CE:ECHR:2009:1008JUD003708303, §§ 52 and 53).

[23] Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE).

[24] Council Regulation (EC) No 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society (SCE).

[25] Proposal for a Council Regulation on the Statute for an European Association (91/273). It specified the rules of the formation, registration, constitution, functioning, financing, dissolution, liquidation and insolvency of the association.

[26] For further details on the history of this file, see e.g. Tim Wöffen (2018), 'European Associations: The Political Debate and Basic Legal Questions'.

[27] Decision 2022/2481 of 14 December 2022 establishing the Digital Decade Policy Programme.

[28] Council Regulation 723/2009 of 25 June 2009 on the Community legal framework for a European Research Infrastructure Consortium (ERIC).

[29] Council Regulation 2137/85 of 25 July 1985 on the European Economic Interest Grouping (EEIG).

Cooperation Grouping (EGTC)[30]. As their names imply, these focus on cooperation of entities. As such, their personal scope may partially cover associations with cross-border activities, to the extent that these are eligible entities, but they do not address the specific challenges faced by associations wishing to extend operations in more than one Member State and that this initiative targets. For a detailed overview of existing legal forms and how they relate to the entities and the scope covered by this initiative, see Annex 9.

Regarding the cross-border activities of associations in the single market, CJEU case law has confirmed that the right to establishment and the free movement of services apply to "*undertakings",* which are defined broadly as not limited to persons seeking to make a profit, as long as activities are remunerated.[31] Moreover, CJEU jurisprudence in EU competition law establishes that NPOs - associations in this case - may be considered 'undertakings'.[32] A further analysis of the specificities of associations and, broadly, the non-profit sector under EU law is found in Section 3 of this IA. Associations benefit from the freedom of movement of capital in the single market. Article 63 (1) TFEU states that all restrictions on movements of capital with a cross-border dimension are prohibited. In this context, the term "movement of capital"[33] is to be understood in cross-border contexts as including, inter alia, inheritances and gifts, and funding, as well as financial loans or credits, sureties or other guarantees, while the concept of "restriction"[34] is intended to cover any obstacle to the free movement of capital with a cross-border dimension.

*Member State level*

Associations are subject to dedicated regulation in 24 Member States (in the majority of cases separate laws, otherwise their regulation can be either found in the civil code or in a few Member States they are regulated in one legal act together with foundations[35]), with the exception of Denmark, Ireland and Sweden. In general, these are comprehensive laws, regulating associations in detail. Fundamental aspects and features of association regimes have common points across the 27 Member States, including the possibility for associations to undertake economic activities, although usually with varying limitations. This said, cross-border aspects essential to mobility and activities of associations are not comprehensively regulated in any Member State. Individual cross-border aspects are regulated to some extent with different approaches, with eighteen Member States having some rules on different aspects (see comparative table of national rules on cross-border aspects for associations in Annex 11).

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[30] Regulation 1082/2006 of 5 July 2006 on a European grouping of territorial cooperation (EGTC).
[31] CJEU C-179-14
[32] See cases C-180/98 and C-184/98 and C-222/04 para. 125 and C-74/16, para. 41-50), as well as for example Commission/Italy (C 119/06, EU:C:2007:729) para. 37-41 and CoNISMa (C 305/08, EU:C 2009:807) para.45.
[33] Based on a settled case-law including C-318/07 paragraph 29 and C-235/17 paragraph 54.
[34] Both between Member States and between Member States and third countries. See "Nomenclature of The Capital Movements", Annex 1 of Directive 88/361/EC, as well as cases C-105/12 and C-45/17.
[35] One unique case is that of Belgium where there is the "Code of Companies and Associations" which regulates different types of legal forms, including foundations, cooperatives and other European legal forms. As to the Member States where associations are regulated in one legal act together with foundations, this is the case for: Bulgaria, Cyprus, Latvia, Luxembourg and Romania.

Overall, from the perspective of an association active in more than one Member States, the applicable legal rules and resulting administrative practices vary depending on where (i.e. the specific Member State) it is domiciled and where (i.e. the specific Member State) it is active.

*International level*

The freedom of association is a human right, recognized by the Universal Declaration of Human Rights (Article 20), the International Covenant on Civil and Political Rights (Article 22) of the United Nations and the European Convention on Human Rights (Article 11) of the Council of Europe.[36]

The Council of Europe has adopted initiatives to facilitate within its membership the cross-border operation of non-governmental organisations, including associations. These initiatives emphasize a non-profit making objective, while the possibility to conduct economic activities is present to support the said objective. The European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations of 1986 includes elements of mutual recognition and attempts to harmonise many aspects of association law: contracting parties agree to recognise "as of right" the legal personality and capacity as acquired by the contracting party where the organisation has its statutory offices. So far, only twelve Council of Europe Member States (out of 46) have ratified the Convention, eight being EU Member States.[37] In addition, two non-legally binding initiatives are: the Recommendation on the legal status of non-governmental organisations in Europe,[38] suggesting minimum standards for non-governmental organisations on a number of topics such as formation, legal personality, governance, funding, and transparency, and the Fundamental Principles on the Status of Non-governmental Organizations in Europe[39] building on the above Recommendation.

### 1.4 Market Context

This Section provides the measure of the socio-economic value of associations in the EU and thereby an indication of their untapped potential in terms of activities offered for citizens' participation, services, goods and assets for the public benefit. First, this is done by analysing the "socio-economic impact of associations in the EU" in terms of their presence at EU level, their economic contribution to the EU Gross Domestic Product (GDP) and to the European labour force; second, by focusing on the main cross-border activities that they perform across

[36] Article 11 ECHR reads as follows: "*1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests. 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State*."

[37] CETS 124 - European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations (coe.int), European Treaty Series - No. 124.

[38] Council of Europe, Recommendation CM/Rec(2007)14 of the Committee of Ministers to member States on the legal status of non-governmental organisations in Europe.

[39] Fundamental Principles E (cartercenter.org).

Member States. The Section is complemented by Annex 6 which provides evidence on the market context, looking at those associations operating cross-border and sectors where they are most active.

*Box 2: Treatment of data constrains on associations in the market context.*

*The analysis in this Section of the IA is challenged by the minimal availability of recent, qualitative and relevant data on associations at EU and Member State level.*

*Producing quantitative data on associations at EU level is difficult for the following reasons: (i) absence of official statistics gathering data on associations (beyond registration) at Member State and EU level, (ii) economic indicators are usually not collected in traditional business statistics at Member State and EU level, with the exception of sectoral satellite accounts, ad-hoc research projects or databases of private federations and sectoral actors, (iii) lack of harmonised definitions and different traditions of the non-profit sector and different registration requirements in the Member States (e.g. Orbis database does not allow to distinguish organisations that could be defined as associations), and (iv) comparative studies at EU level are scarce and limited in economic indicators.*

*The IA (Section 1.4 and Annex 4) is informed by the two following existing studies, mostly using the same input data (2014-2015): (i) a study from the European Economic and Social Committee on recent evolutions in the social economy and (ii) a study performed for the UN on the size and scope of the EU Third sector.*

*Basic data on the number of associations presented in this IA can be considered robust, as building on available and recent official data for most Member States; and as half of the Member States have recent data available in terms of associations employment and contribution to the GDP. However, when it comes to other economic indicators such as size of the organisation, sectoral presence and cross border activities, data on associations is often outdated or completely missing for most Member States. Data in European databases such as Eurostat (e.g. Structural Business Statistics) or ORBIS do not allow to disaggregate data on associations, e.g based on the legal form. In addition, there are no recent comparative studies on associations at EU level. Sectoral data or specific data on social economy, the third sector, NPOs, NGOs, CSOs, etc. are available and used where appropriate, but they do not represent disaggregated data specific to associations.*

*Consequently, data about cross-border activities of associations is mostly absent (specific data on internationalisation and cross-border activities of associations is available for only four Member States (Germany, Austria, Italy and Estonia). Estimates in the IA regarding associations operating cross- border are, therefore, based on theoretical assumptions, analogies and benchmarking (e.g. parallels with similar sectors and activities), allowing extrapolations of input data available (Annex 4 provides for a detailed overview on how each estimate is calculated and for which data points theoretical assumptions had to be made). It is important to note that these data points may present a risk of overestimation. As mitigation measures, the analysis underpinning this IA builds on the lower bound estimates and complements with qualitative information (based on literature review as well as interviews and a targeted survey, as outlined in Annex 2) in order to further support the quantitative methodology. More details on the methodology are provided in Annex 4.*

*To address the chronic data gaps on associations, and more broadly the social economy, the*

*Commission has undertaken actions such as: (i) contribution since 2017 to the joint work of ESTAT and the OECD on the establishment of national satellite accounts for the social economy, also covering associations. A few Member States (e.g. France, Poland, Portugal) have concluded or are performing first pilots. Available data from these satellite accounts were used as input data in the methodology of this IA; (ii) a study on the economic performance of the Proximity and Social Economy industrial ecosystem (including associations) is launched in Q2 2023. Its first results will feed the future monitoring of the initiative (see Section 9).*

Based on the methodology of this IA, when it comes in particular to the impact of associations at EU level, the analysis establishes and builds on an estimated number of **3.87 million associations at EU level** (see table 1).[40] These data suggest that, while NPOs encompass other types of organisations (as explained in Section 1), data for NPOs are likely to be mostly driven by associations.

*Table 1: Overall estimates of the number of NPOs and associations in the EU-27.*

| | Lower bound | Central estimate | Upper bound |
|---|---|---|---|
| **NPOs** | 4 500 000 | 4 600 000 | 4 700 000 |
| **Associations** | 3 800 000 | **3 870 000** | 4 000 000 |

Concerning their growth, the number of associations in the EU remained roughly stable in the last years[41] and they are most present in the social and health sectors, communication and information (i.e. advocacy), culture, education, recreation (i.e. sports) and entertainment.[42]

**Associations' economic contribution to the EU GDP is estimated at EUR 420 billion (i.e. 2.9% of EU GDP)[43].** In terms of job creation, the IA study estimates that associations are **employing about 5% of the European labour force** (8.8 million employees)[44], without

[40] Figure considered as very robust. Official and recent data for number of associations is available for 26 MS (not for IE). For DK, AT, LU, CY, BG, RO, no data for NPOs exist. For the missing data points estimates have been developed using two different estimation techniques; for IE the weighted average share of associations among NPOs across countries is used to estimate the number of associations. Where the total number of NPOs is not available the average number of associations per capita for similar countries is used as a proxy value to estimate the number of associations. For more details see Annex 4 (Section 2.1).

[41]Considering growth in number of associations, only 8 Member States have data at hand. The weighted average of the values yields an annual growth rate of 0.4%. However, recent data also suggests that the growth rate for associations might slow down. For example, a recent report for Germany notes that it is likely that in the coming years, the number of associations might actually decrease. Therefore, the IA uses a conservative 0 % growth assumption.

[42] Recent data on sectoral activity is available for 20 Member States, be it at most aggregated NACE code.

[43] Figure considered as robust. Official and recent data for GDP contribution of NPOs is available for 22 Member States. For the missing data points of EE, CY, EL, NL and IE estimates have been developed. The estimate for GDP contribution of associations is deducted from the collected data for NPOs. For a detailed overview see Annex 4 (Section 2.2).

[44] Figure considered as robust. Estimated based on recent sources for 16 Member States combined with an EU comparative study: The Size and Composition of the European Third Sector, Lester M.Salamon and Wojciech Sokolowski, 2018 (figures for associations and foundations. UK and Norway are excluded from the

counting the non-paid jobs their volunteers represent. However, there is considerable variation across Member States in the number of employees per association, as well as the share of all employees that associations account for. For example, in Belgium, people employed by associations accounted for about 11% of the total employees in 2022, and the average employment per association is above the EU average. Contrary to this, in Croatia, on average less than one person is employed per association, and the total number of people employed by associations account for only 1% of employment overall. Besides paid staff, many associations rely fully on volunteers to perform their activities.[45] For example, data for France[46] and Austria[47] suggest that the work delivered by volunteers amounts to an additional 580 000 and 230 000 Full Time Equivalent workers (FTEs)[48] per year respectively.[49]

Annex 6 and Annex 4 offer more details and additional indicators on market context.

## 2. PROBLEM DEFINITION

*Box 3: Treatment of data constrains on associations in the problem definition.*

*The analysis in this Section of the IA is challenged by the limited availability of input data. Robust data sets concerning the magnitude of the problem do not exist and this also links to the limitations described in the Market Context above (Section 1.4). Moreover, the Public Consultation yielded a limited sample in terms of absolute number of individual contributions, albeit relatively representative in terms of the nature of respondents (including 13 umbrella associations representing the voice of around 1,958 associations) As mitigation measures, the analysis of the nature and magnitude of the problem is complemented with qualitative and quantitative information coming from a dedicated survey and interviews, desk research and literature review and the use of anecdotal evidence and of case studies. Where assumptions need to be made, this is duly indicated and relevant conclusions are nuanced. For more information on the methodology, see Annex 4.*

calculations). These figures are also confirmed by the EESC study on Recent Evolutions of the Social Economy in the European Union, 2016. For a detailed overview of the calculations, see Annex 4 (Section 2.3).

[45] A recent Eurobarometer survey suggests that almost half of the population of the EU were engaged with civil society organisations in one way or another in 2020 (on average 47% of respondents), including donating money, engaging in volunteering, or taking part in activities civil society organisations offer. European Parliament (2018), Civic Engagement, Flash Eurobarometer (FL4023) last accessed on 17/03/2023.

[46] Institut national de la statistique et des études économiques (2018) Les associations actives en 2018. Last accessed on 17/03/2023.

[47] BÜNDNIS FÜR GEMEINNÜTZIGKEIT (2022), last accessed on 17/03/2023.

[48] See glossary.

[49] Data are available for the EU Third sector, shows that a total of 16 million FTE workers in the EU are volunteers (EU-28, including UK). The Size and Composition of the European Third Sector, Lester M.Salamon and Wojciech Sokolowski, 2018.

### 2.1 Preliminary remarks

Stakeholders' views collected through the Public Consultation and further substantiated by a targeted survey and interviews underpinning the IA study, identified a clear need for associations to operate and perform activities in different Member States or having the potential to do so, as follows:

*Table 2: Stakeholders' views on the need to operate and perform activities in other Member States.*[50]

| | |
|---|---|
| **EC PUBLIC CONSULTATION**[51] | 73% out of 64 respondents (among them, 29 out of 38 associations) agree that associations **need to be able to easily operate cross-border in the single market** in order to reach their objectives.<br>To note that, in total 13 out of those 38 associations are umbrella organisations and thereby representing a reach of approximately **1,958** individual associations in the EU. |
| **TARGETED SURVEY OF THE IA STUDY** | 49% of responding associations (43 out of 88) **have operations in more than one EU Member State**. |
| | Out of the 50% of responding associations (45 out of 88) operating in one single Member State, 19 % (8 out of 45) **have considered expanding their operations to another Member State.** |

For the purpose of understanding the scale of cross-border activities of associations, this IA reflects the input of a total number of 3 026 associations (including individual associations and umbrella organisations) throughout the overall consultation activities[52], either in cases where an association directly contributed to a consultation activity, or indirectly, when the contribution was made via the umbrella organisation the association is a member of. In total, 29 umbrella organisations representing the interests and needs of their members were reached out during the consultation activities (more details in Annex 2, Table 1), thereby reinforcing the representativeness of the collected evidence. The following Member States competent authorities contributed to the consultation activities: Estonia, Denmark and France[53] (Public Consultation[54]); Belgium, Croatia, Italy, Denmark, Finland, Cyprus, France, Latvia (Targeted

[50] The data limitation disclaimer under Market Context applies.

[51] Given the low number of respondents, any derived conclusion should be read with caution ('re. representativeness').

[52] These activities included a Call for Evidence (50 replies) and a Public Consultation (64 replies). Moreover, a Targeted Survey (140 replies received out of which 88 are associations) and 64 in-depth interviews (replies from 41 associations) were carried out to further enhance the evidence base.

[53] France authorities specifically provided a position paper during the Public Consultation.

[54] To note that Member State authorities did not provide a contribution to the Call for Evidence.

Survey[55]); and for the in-depth interviews: Belgium, Bulgaria, Cyprus, Denmark, Finland, France, Germany, Latvia, Lithuania, Sweden.

To further support the collected evidence base, the need to facilitate associations to engage in activities and move across different Member States is further corroborated by recent literature.[56]

### 2.2 What is the problem?

Based on the stakeholder input gathered from different sources – the Public Consultation, the preparation of the IA study, the European Parliament Resolution and its supporting study, as well as two recent independent studies commissioned by the European Commission[57] the following problem has been identified:

**ASSOCIATIONS THAT WANT TO OPERATE ACROSS BORDERS IN THE SINGLE MARKET ARE FACED WITH UNCERTAINTY ABOUT APPLICABLE RULES AND ADDITIONAL ADMINISTRATIVE BURDEN AND COSTS**

*Figure 2: Problem statement.*

The problem refers to both conducting cross-border activities and the possibility for cross-border mobility for associations across the Union, as described below.

*Associations concerned by the identified problem*

To identify current **associations with cross-border activities[58], there is no direct data available for most EU Member States.** An estimate was developed based on reliable data for Austria and Germany, assuming that 8% of EU associations perform cross-border

[55] Two different bodies provided information for Belgium, Finland and Denmark.

[56] See e.g. Breen, O. B. (2018). 'Enlarging the space for European philanthropy', European Foundation Centre (EFC) and Donors and Foundations Network of Europe (DAME); Charrad, Kristina (2014), 'Why Is There No Statute for a European Association?', M. Freise, T. Hallmann (eds.), Modernizing Democracy, DOI 10.1007/978-1-4939-0485- 3_16, Berlin and New York: Springer Science+Business Media.; and Simon Loubris (2003) 'European Association Status: the neglect of Europe's associations'.

[57] European Commission, Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs, Comparative legal analysis of associations laws and regimes in the EU: final report (hereinafter "Comparative legal analysis of associations laws and regimes in the EU: final report"), Publications Office of the European Union, 2022; Directorate-General for Internal Market, Industry; Entrepreneurship and SMEs, Study on promoting cross-border activities for social economy (to be published by 2023).

[58] For instance, when associations provide goods and services beyond their de jure or de facto Member State of establishment, when their members come from different Member States, as well as when they collect assets, notably in the form of donations. The data scarcity also translates into an absent single definition of a 'cross border activity' that can be applied to the available data and research used and developed in Annex 4. Consequently, a relatively broad definition is applied when it comes to data gathering for associations with cross border activities (based on the studies available for Austria and Germany).

operations: **310 000 cross-border associations in the EU**.[59] These associations appear to be organised in several Member States. They are active at the EU or international level in areas such as healthcare and social services, social inclusion, sports, humanitarian aid, as well as in cross-border innovation and research projects. It is important to note that these figures are best estimates and, therefore, present a risk of overestimation, as extrapolations had to be made, as explained in Annex 4, Section 2.5.

*Table 3: Estimated total number of associations and number of cross-border associations at EU level.*

| Estimate | Total number of associations | Number of cross-border associations |
|---|---|---|
| | | Cross-Border Share: 8% |
| **Lower bound** | 3 800 000 | 304 000 |
| **Central estimate** | **3 870 000** | **310 000** |
| **Upper bound** | 4 000 000 | 320 000 |

The consequent contribution of cross-border associations to EU GDP is estimated between **EUR 5.7 billion and EUR 7.0 billion** (see table below).[60] These estimates should be treated with cautiousness, as there might be a risk of overestimation due to limited official data.

*Table 4: Estimated contribution of cross-border associations to the EU GDP (2021).*

| Lower bound estimate | Upper bound estimate |
|---|---|
| EUR 5.7 billion | EUR 7.0 billion |
| 0.04% of total GDP (2021) | 0.05% of total GDP (2021) |

Among cross-border associations, there are associations active in border regions. The IA study survey showed that 70% (30 out of 43 replies) of the associations acting cross-border had activities in at least one border region.[61] In addition, qualitative and quantitative information, building on the participation of civil society organisations, including associations, to implement Interreg programmes,[62] supports that associations active in border

[59] IA study. Estimates are based on data available for Austria and Germany. Data for Estonia and Italy were also available, however not reliable nor representative and were therefore excluded from the estimation exercise. This figure also includes 4 996 so called International NPOs associations, which are established across the EU countries in 2020 (UIA, 2021). Their number has increased about 30 % since 2010 (about 100 INPOs per year). For a detailed overview see Annex 4 (Section 2.5).

[60] IA study. Estimates based on the combination of data on the share of FTE working cross-border with the estimated contribution of associations to GDP. As the estimates for cross-border employment are likely to underestimate the true cross-border activities considerably, the upper bound estimate should be seen as more reliable. For more info see Annex 4 (Section 2.7).

[61] IA study. However, due to the limited sample, the study information is insufficient to achieve proper estimations on the total number of associations active in border regions.

[62] For example, http://www.at-cz.eu/

regions are (or desire) undertaking cross-border activities in neighbouring Member States (see box 2).

*Box 4: Associations present in Interreg Cross-Border Programmes.*

Data from keep.eu database[63] for the programme period 2014-2020 provide a good picture about associations involved in different Interreg programmes, thereby indirectly showing that associations have clear incentives to operate cross-border, including cross-border activities in neighbouring regions. A minimum 1 335 or **15% of all projects had associations** as a partner or consortium leader.[64] Looking at projects in NUTS III regions from at least two different Member States directly on the borders or adjacent to them (neighbouring regions), associations were engaged in 536 or 6% of the overall projects. Main areas of cross-border, transnational and interregional cooperation involving associations: tourism (10%), cultural heritage and arts (8%), SME and entrepreneurship (6%), sustainable management of natural resources (4%), education and training (4%), social inclusion and equal opportunities (4%), clustering and economic cooperation (4%).

A second group to be considered as concerned by the identified problem are associations that are not yet active in more than one Member State, but which would potentially expand cross-border, if barriers to be specified below were removed. These are associations active domestically with an interest to go cross-border. Arguably, estimating the size of this group of associations is the most challenging, as no clear-cut information is available. Several estimation techniques (based on company data and surveys)[65] were used to arrive at a "**theoretical maximum potential" of 350 000 associations** that could be engaged in cross-border activities, should identified barriers be removed. This corresponds to 9% of the total number of associations[66] in the EU. This is the most conservative approach (e.g. compared to the stakeholder survey showing 17%). This corresponds to a theoretic maximum 'opportunity cost' of EUR 7.9 billion (annual contribution to EU GDP) and 140 000 jobs (FTEs working

[63] The Keep.eu database contains data for 9 079 Interreg projects (out of the 9 485 or 96%). It serves all professional audiences in need of aggregated data regarding projects and beneficiaries of European Union cross-border, transnational and interregional cooperation programmes among the member States, and between member States and neighbouring or pre-accession countries.

[64] This is most likely an underestimation as selection could only be based on projects in English, German and French. Projects registers in another language are not selected. These figures are at project level, where at least 1 association is engaged as a (lead) partner. This means that actual participation of associations will be a multitude to the figures above. From the program period 2021-2027 onwards such figures will also become available at partner level.

[65] In order to estimate the maximum theoretic potential of associations willing to go cross-border, various sources were employed, including Eurobarometer and Eurochambers surveys which explored the interest to go cross-border for companies not yet active. A further breakdown by size of organisations was used. Data on micro-enterprises were used as proxy for associations, as associations can be conceptualised to be most similar to micro-enterprises, given their resources available and number of employees. See Annex 4 (Section 3.2) for detailed steps and sources.

[66] This figure of 350 000 associations (or 9% of the total number of associations) was triangulated with information collected via the stakeholder survey specifically targeted to associations, which showed a slightly higher share of associations willing to go cross-border (~17%). In terms of size, over 90% of associations responding to the survey were small or micro-organisations, reflecting the typical (micro) structure of associations. However, due to the topic of the survey and the stakeholders reached out to, a certain selection bias is likely towards respondents from organisations that are interested in the topic of cross-borders activities, leading to a slightly overestimated figure. For this reason the **more conservative estimate of 9% was used.** For more details see Annex 4 (Section 3.2).

cross-border)[67]. This estimate is the most conservative result that could be used amongst applied methods.

Furthermore, as it is not realistic to assume that any policy option assessed in the IA could solve all identified barriers (as some of them are outside the scope of intervention such as those relating to taxation or labour), the IA study estimated[68] that **at maximum 185 000 associations could be expected to consider operating cross-border** in the event of sufficient policy intervention.[69] A further element to mitigate the risk of a potential overestimation builds on the fact that, as compared to SMEs in the service sector, associations (i) have more limited operational and financial capacity (ii) are mostly small to micro-organisations and (iii) are much rooted to the territory with missions and business models addressing local markets.

Based on the above qualitative arguments, the table below shows three lower growth scenarios for associations expected to consider operating cross-border in the event of sufficient policy intervention.

*Table 5: Different scenarios of associations that could realistically consider operating cross-border in the event of sufficient policy intervention (as a share (%) of "current cross border associations" of 310 000 associations).*

| **Scenario 1: Benchmark (60%)** | **185 000 SCENARIO A** |
|---|---|
| Scenario 2: -5p.p. (55%) | 170 500 |
| **Scenario 3: -10p.p. (50%)** | **155 000 SCENARIO B** |
| Scenario 4: -15p.p. (45%) | 139 500 |

*N.B.: to note that only scenarios 1 and 3 will be further used to measure the impacts (IA, Section 6). As scenario 2, 3 and 4 are more conservative scenarios proportionate to the benchmark scenario, only one lower scenario will be further used in the assessment of impacts. For clarity purposes, scenario 1 and 3 will be referred to thereafter as 'scenario A' and 'scenario B', respectively.*

*Table 6: Summary of best estimates for associations operating and potentially operating cross border.*

| **Total number of associations (EU)** | **3 870 000** | **% of total** | **IA Impact Section 6** |
|---|---|---|---|
| **Associations currently engaged in cross-border** | **310 000** | **8%** | **Basis for impact calculations for** |

[67] Deducted from data on employment and GDP contribution of associations already operating cross- border. For more detail, see Annex 4 (Section 3.2).
[68] Based on a benchmark of small and medium sized enterprises in services sectors increasing their cross-border trade over a 15-year timeframe.
[69] Estimate based on developments for SMEs in the service sector. The "30 years of Single Market" report was used as the most suitable benchmark. The report estimated that companies' trade in services within the Single Market increased from 5% to 8% (as a share of the GDP) within 2004-2019 in the EU, representing an increase of 60% of trade in services within the Single Market. The same 60% increase is applied to the number of associations estimated to be already active cross-border (310 000). See Annex 4 (Section 2.5).

| activities | | | "recurrent costs" |
|---|---|---|---|
| *Associations that could potentially operate cross-border (theoretical maximum)* | *350 000* | *9%* | |
| **Associations that could potentially operate cross-border (maximum unlocked in case of policy intervention)** | **185 000 (scenario A)**<br><br>**155 000 (scenario B)** | **5%**<br><br>**4%** | **Both scenarios are used as a basis for impact calculations for "one-off costs" and potential benefits** |

When considering the **sectors and size** of associations active or willing to operate across-borders, the IA study highlights that no clear evidence exists at hand. In terms of sectoral activity, assumptions can be made that associations operating in sectors with comparable internationalisation degree in the for-profit sector might be more likely to pursue cross-border ambitions, despite of associations generally being rooted to the territory and with potentially fewer international ambitions. In terms of size, the IA study offers arguments supporting the assumption that bigger and more professionalised associations are more likely to operate across border than small ones, as they have more capacity, resources, scaling potential and are more likely to operate in international context driven by trade or knowledge sharing. The deterring effect of costs to operate cross-border is likely to be bigger for smaller associations with little or no paid employees that need to spend additional time to gather information, establish the cross-border activities and comply with any potential legal requirements if no policy intervention occurs. Furthermore, according to interviews during the scoping phase underpinning the IA study, the need to carry out cross-border activities mostly concerns: (i) fields which tend to cover a cross-border dimension (e.g. education, culture, health, environmental and fundamental rights) and (ii) associations with presence in many Member States (as an indication, around 5 000 International NPOs[70] exist in the EU. Their number has increased by about 30 % since 2010).

*Description of the identified problem*

As emerged from the Public Consultation, the survey conducted for the IA study and further corroborated by anecdotal evidence, associations face a fragmented landscape of diverse rules or the lack of enabling rules in the Member States applying to their cross-border activities, mobility, and cross-border internal organisation elements (i.e. membership or governance functions).[71] This fragmentation creates an uneven playing field for associations preventing

[70] The Union of International Associations defines NPOs that are set up in more than one Member State with objectives and activities framed in a European or wider context as International NPOs (or INPOs).

[71] IA study: 36% (16 out of 45) of the surveyed associations active cross-border, indicated to have encountered difficulties with establishing, registering, and/or continues running of operations cross-border. Public Consultation: "a*n association registered in an EU Member State currently faces restrictions* when seeking to operate in another EU Member State", more than half of the respondents (58% - 37 out of 64) strongly agreed with the statement.

them from enjoying their freedoms in the single market and resulting in regulatory and administrative barriers and unnecessary excessive costs.[72] This is further confirmed by the legal analysis conducted.

Based on the comparative analysis of laws in the Member States, as conducted in the IA study and building on a recent comparative legal analysis of associations laws and regimes in the EU,[73] it appears that, while the legal framework in the Member States is, in principle, adequate for the development of associations in a domestic context, barriers in the single market exist in four areas: 1) the cross-border activities of associations in relation to their right to establishment, thereby hampering associations' capabilities to provide services and goods in the single market; 2) the movement of capital in the single market; 3) the possibilities for cross-border membership and participation in governance bodies; and 4) associations' possibilities for cross-border mobility.

As it will be described in more detail under the respective problem drivers below, barriers consist of de jure or de facto uncertainties, restrictions or requirements resulting in burdensome administrative processes and costs, in particular, regarding the recognition of the legal personality, registration formalities, secondary establishment, cross-border mobility, cross-border donations, membership and governance. Overall, it is rare that a specific restriction is present across all Member States. On the contrary, in many cases, only a few Member States retain a certain type of restriction, as is explained in Annex 11.

The above-mentioned barriers are distinct to associations and have been invoked by interviewed associations[74] as one of the causes of their reduced cross-border capacity, including to be active in the single market as providers of services and goods. Other barriers are in line with generic barriers in the single market, such as difficulties in obtaining information on the relevant regulatory requirements, problems related to registration of economic activities in another Member State, and burdensome procedures due to differences in tax systems and administrations.[75] Furthermore, associations present in services sectors face general barriers, as do entities established in other legal forms, including those related to

[72] The importance of costs was raised by 31% (9 out of 33) of the interviewed associations conducted for the IA study. The nature of those costs can significantly vary, ranging from legal establishment costs to legal consulting services for instance. An association that tried to expand to other Member States, but eventually did not, stated that the costs of starting activities in a new Member State would have cost them EUR 30 000. Small associations, as pointed out by one of the interviewed stakeholders, are not able to cope with such expenses. Even if their cashflow is consequent due to their funding model, they do not have the sufficient reserves to disburse important sums and therefore chose not to expand.

[73] Comparative legal analysis of associations laws and regimes in the EU: final report

[74] IA study. For example, 33 associations participated in the interview. The most prominent problem they raised was the different set of national rules for establishing the legal personality of associations (14 associations), followed by the different set of rules defining the associations themselves in the various Member States. For more details see Annex 2.

[75] COM/2020/93. Commission Communication on Identifying and addressing barriers to the Single Market of 10.03.2020.

requirements of having a specific legal form, as indicated by reports published by the European Commission.[76]

Main barriers encountered by associations operating across borders (as identified in the IA study) are:

*Figure 3: Barriers encountered by associations operating cross- border.*

To note that some of the identified barriers, such as obtaining recognition of tax-benefits (e.g. value added tax [VAT], income tax and tax breaks linked with charitable donations) and administrative procedures and controls when opening or closing bank accounts will not be addressed by the current initiative, taking into account the limited EU competencies in the area of taxation, as well as the overall single market focus of the initiative. To note that a common denominator in many Member States[77] is the so-called public benefit status, which often unlocks access to both of the said aspects.[78] There are significant challenges in having this status recognized in cross-border contexts, despite CJEU case law establishing a principle of non-discrimination (details are found in Annex 12). This said, these aspects will be covered by the Commission Staff Working Documents on the state of play of taxation frameworks in Member States and on non-discriminatory taxation of charitable organisations and their donors, as explained in section 1.2 and elaborated further in Annex 9. Furthermore, regarding VAT, as of 2025, associations engaging in economic activities that qualify as SMEs can benefit from the new simplification rules which will open the VAT exemption to small businesses established in other Member States and help reduce VAT compliance costs,[79] thereby also positively affecting the situation for associations operating cross-border. When pertaining to the EU anti-money-laundering and counter-terrorism legislation, the stakeholder consultation of this IA has raised problems associations face when opening bank

[76] European Commission, Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs, Mapping and assessment of legal and administrative barriers in the services sector: summary report, Publications Office, 2021.

[77] (Austria, Bulgaria, Germany, Spain, France, Croatia, Hungary, Ireland, Luxembourg, Romania), see Comparative legal analysis of associations laws and regimes in the EU: final report.

[78] Indirectly, via fiscal facilities tax-privileged status for private donors (e.g., Estonia, Spain, Hungary, Romania, Sweden, Slovenia) or recipient associations (Austria, Germany, Bulgaria, Denmark, Estonia, Spain, Finland); and/or directly preferential access to public funds and use of public assets (e.g., Bulgaria, Hungary, Romania).

[79] VAT scheme for Small Businesses (europa.eu).

accounts and accessing other financial services.[80] These will also not be covered under this initiative.

The identified barriers, as developed under the problem drivers below, illustrate the range and scale of the problems faced by associations in the single market. This situation hampers associations currently active across borders in the Union (310 000 already active across borders) or discourages associations wishing to go cross-border (350 000 estimated as theoretical maximum potential number to expand their activities cross border, yet the IA takes 185 000 as a more realistic proxy to base the analysis) to benefit from the freedoms granted by the single market and reach their full potential as economic and civic actors.

## 2.3 What are the problem drivers?

The relationship between the problem itself, its drivers, as well as its consequences is set out below in the problem tree table, Figure 4.

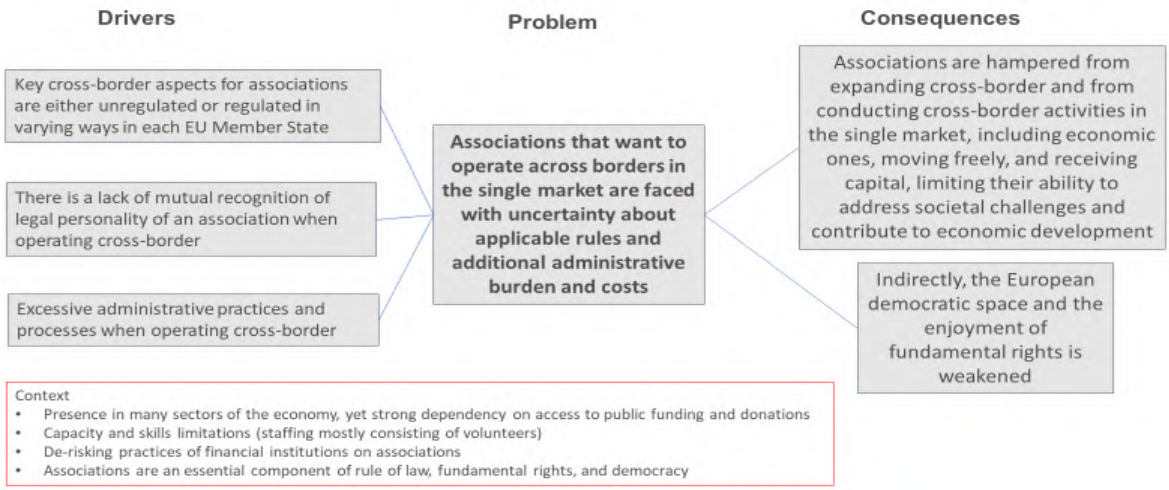


*Figure 4: Tree table of the problem definition.*

### *2.3.1 Driver 1: Key cross-border aspects for associations are either unregulated or regulated in varying ways in each EU Member State*

The differences in legislation across Member States concerning the recognition of their legal personality and related formalities, economic activities (provision of services and goods), cross-border mobility, cross-border capital transfers and internal organisation elements of associations create legal uncertainty and burden cross-border associations in several ways, including through additional costs or effort in order to find basic information about applicable

[80] Associations raised these points during the in- depth interviews regarding compliance complexity related to banks as one of the main difficulties associations face when acting in a single Member State (6 out of 15). For more details see Annex 2.

rules on regulatory requirements and administrative procedures in the Member State(s) in which an associations seeks to operate.[81]

More specifically, when asked in the context of Public Consultation about the most important needs for associations that operate or want to operate in more than one Member State, about one fourth (i.e. 24% - 48 out of 64) of respondents indicated the provision of services in another Member State without registration as most important. In this context, it is worth noting that challenges SMEs are facing when it comes to understanding regulatory requirements[82] also apply to associations engaging in economic activities and concurrently falling within the definition of SMEs.[83] Among the needs based on the replies to the Public Consultation, were also cross-border mergers (i.e. 39% 25 out of 64 respondents) and conversions (i.e. 40% 26 out of 64 respondents).[84]

According to the comparative analysis of national laws and as outlined earlier in Section 2, while there is a number of common traits when it comes to association laws at Member State level (illustrated in Annex 10), significant differences exist. Furthermore, most national legislations do not attempt to facilitate cross-border issues, which is the targeted focus of this initiative.

As said above, regulatory and administrative barriers concerning this driver and affecting cross-border associations exist in four particular areas: 1) related to the right to establishment and thereby hampering associations' capabilities of the provision of services and goods; 2) related to the movement of capital (i.e. donations, membership fees), 3) related to the possibilities for cross-border membership and participation in governance bodies, and 4) related to their possibilities for cross-border mobility.

Regarding establishment, a key challenge is the variation in the Member States of the recognition of a non-domestic association's legal personality. While no mechanism exists at EU level, practices vary from automatic recognition to no recognition, requiring expanding associations to set up a new legal entity or branch in the other Member State. This point will be elaborated separately under Driver 2 below.

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[81] IA study: 36% (i.e. 16 out of 45) of the surveyed associations active across borders indicated to have encountered difficulties with establishing, registering, and/or conducting activities cross-border. Results from the Public Consultation show, among the identified causes of restrictions that associations face when operating across borders, the following ones: associations' lack of knowledge/understanding of legislation in other Member States (53% - 34 out of 64), lack of administrative procedures taking into account cross-border activities of associations (52% - 33 out of 64), incompatible legislation between Member States (50% - 32 out of 64).

[82] COM/2020/93. Commission Communication on Identifying and addressing barriers to the Single Market of 10.03.2020.

[83] Based on the definition of an SME in the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (Text with EEA relevance) (notified under document number C(2003) 1422): "…an enterprise should be considered to be any entity, regardless of its legal form, engaged in economic activities, including in particular entities engaged in a craft activity and other activities on an individual or family basis, partnerships or associations regularly engaged in economic activities."

Concerning cross-border mobility, key aspects are largely unregulated, including cross-border conversions, mergers and divisions.[85] This causes legal uncertainty for interested associations. Moreover, a few Member States explicitly impose restrictions, such as excluding the possibility for an association to transfer its registered office abroad, without going through a process of liquidation.[86]

Concerning movement of capital (i.e. donations, including gifts, and inheritances), which is a crucial foundation of the existence of many associations[87], they face varying requirements such as transparency duties,[88] additional duties of care[89] or even State approval[90] which, although applied also for domestic associations, especially affect foreign associations,[91] thereby restricting the free movement of capital relied upon by associations. [92] This links also to Driver 3. According to the in-depth interviews conducted with associations, 22% (4 out of 18) reported difficulties in receiving donations from other countries.

*Box 5: Example of restrictions for an association to receive donations.*[93]

Example: In Belgium, associations need State approval for donations from individuals exceeding EUR 100 000, which is a restriction on an association's possibility to receive capital and on foreign donors to donate across borders in the EU.

Source : Arrêté ministériel du 14 avril 2005 exécutant les articles 16, 33 et 54 de la loi du 27 juin 1921 sur les associations sans but lucratif, les associations internationales sans but lucratif et les fondations.

Furthermore, legal restrictions that associations face exist in relation to their cross-border governance and membership. In Poland, non-nationals cannot establish an association, but can join it only after it is established. In Finland, the chairperson of the executive committee of an association must be resident in the country. These issues are further specified in Annex 11. Further, results from the Public Consultation show that 23% (15 out of 64) of the respondents identified *differences between Member States in membership requirements* as one of the restrictions when associations engage in activities across borders. Further

[85] Results from the Public Consultation show that 28% (i.e., 18 out of 64) reported differences between Member States of liability, liquidation and dissolution regimes as one of the most significant restrictions faced associations when engaging in activities across borders.
[86] Austria and Germany.
[87] For the purposes of this IA, donations are the most relevant cross-border capital transfer, including gifts and inheritances. See e.g. C- 78/18.
[88] This is the case for Cyprus and Greece, for more details see Annex 11.
[89] This is the case for Germany, for more details see Annex 11.
[90] This is the case for Luxembourg and Belgium, for more details see Annex 11.
[91] In this respect, it should be recalled that also national measures which apply equally to domestic and imported goods could inhibit the free movement of goods based on the differences between the national rules of the Member States, see case C-120/78.
[92] IA study. In some MSs there are some restrictions to donations from abroad, e.g. in Cyprus the source of any revenue shall be known and lawful, in Greece there is an obligation for associations to disclose donations above a certain amount, in Belgium and Luxemburg the state approval is required for donations above a certain threshold, and finally in Germany donations may trigger additional duties of care for banks and accountants. See Annex 11 for more details.
[93] IA study.

challenges arise from the differences and legal limitations in possibilities to use modern technology in the governance of associations, such as arranging meetings of the general assemblies virtually.[94]

### *2.3.2 Driver 2: Lack of mutual recognition of legal personality of an association when operating cross-border*

When asked what they considered to be the causes of the restrictions that associations face when operating across borders in the single market, 58% (i.e. 37 out of 64 respondents) of the respondents to the Public Consultation identified the lack of recognition of an association's legal personality in other Member States. There is a general absence of rules at EU level and at Member State level allowing for automatic recognition of an association's legal personality in the EU, which creates uncertainty and fragmentation. For cross-border associations, this results in either mandatory legal requirements for establishing a new legal entity or a branch, as is the case in a few Member States[95] or legal requirements for registration in a public register, only after which the association's legal personality is recognized, which is the case in another few[96]

The main exception to this concerns eight EU Member States that have ratified the Council of Europe Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations (see also Section 1.3), given that these Member States have agreed to mutually recognise "as of right" the legal personality and capacity of associations meeting the criteria set in the Convention (such as non-profit aim of international utility, and activities in at least two Member States), as acquired by the Member State where the organisation has its statutory offices. To benefit, associations would need to operate between these Member States which have ratified the Convention, which leaves the single market fragmented.

[94] IA Study.
[95] e.g. Greece, Slovakia, and Spain.
[96] e.g. Croatia, Cyprus, Romania.

Example: **Establishment of a single cross-border entrance for the European Archaeological Park at Bliesbruck-Reinheim**

The aim was to create a European Archaeological Park between the region of Bliesbruck in France and Reinheim in Germany, including a single cross-border point of entry, using the legal form of an association. The different legal frameworks in France and Germany make it difficult to choose the best possible legal structure. The establishment of a joint entrance involves various legal matters to be addressed and various potential barriers were identified.

Full recognition in a Member State of the legal personality of an association established in another Member State and equal treatment with the associations of the respective Member State could arguably reduce these challenges.

[Source: b-solutions: solving border obstacles – a compendium 2020-2021, Case study: Establishment of a single cross-border entrance for the European Archaeological Park at Bliesbruck-Reinheim, p. 59-61.]

*Box 6: Example of an association facing various challenges in border regions.*[97]

*Box 7: Example of burden resulting from absence of recognition of an association's legal personality.*

A pan-European association active in the democracy and fundamental rights sector needed a full year to be registered in one Member State, while the same process lasted on average 3 months in another Member State. This was due to the absence of recognition of the legal personality and the lack of knowledge of the local administration about legislation in another Member State which was different.

[Source: IA study]

### *2.3.3. Driver 3: Excessive administrative practices and processes when operating cross-border*

In the Public Consultation, when asked about the most often mentioned types of restriction faced by associations when engaging in economic activities across borders, more than half (i.e. 52% - 33 out of 64) of respondents referred to: administrative formalities to implement actions in another Member State without prior registration and registration procedures in another Member State (cost, case handling time, uncertainty about constitutive elements etc.). The replies from the Public Consultation refer to registration requirements as a condition for being able to operate in another Member State, in some cases for the purpose of achieving recognition for their legal personality (as also described in Driver 2 above). In addition, close to half (i.e. 47% - 30 out of 64) of respondents reported as barrier registration requirements in relation to VAT when conducting activities abroad.

Another example concerns the transfer of seat, which is restricted in some Member States,[98] requiring an arduous process of dissolution. This is supported by evidence from the Public

[97] See also Annex 8 on challenges faced by associations present in border regions.

Consultation, where 40% of the respondents (26 out of 64) identified 'transfer of seat' as one of the most important needs for associations operating or willing to operate in more than one Member State.

This leads to the understanding that administrative practices and processes are a barrier in cross-border contexts. To be precise, it is not the case only for associations. When identifying existing barriers in the single market, several surveys consistently quote complex administrative procedures as being one of the most serious obstacles in the single market, particularly for SMEs.[99] The scale is however magnified for associations when taking into account their limited operational and financial capacity and their non-profit character, as well as in comparison with those of other actors in the single market.[100] For example, the requirement to set up a distinct legal entity or a branch regardless of the nature of operations in question or the obligation to seek approval for or register cross-border capital transfers in certain Member States, as described under Driver 1. In the Belgian example below the process for seeking approval for receiving a donation from abroad may take up to three months.

Box 8: Examples of excessive administrative practice.

An association active in the democracy and fundamental rights sector pointed at particular requirements of the registration process in Belgium: an association is required to have a physical address in Belgium to register (and ultimately to operate in Belgium).

[Source: IA study.]

The notary procedure is a regular obstacle for pan-European boards and slows down communications with association registers. For example, it is not possible to use German notarial servicesfrom Belgium or to submit documents via the diplomatic representation as an alternative. A mixed-national board must therefore appear in person at a notary's office in Germany "in a number authorised to represent" (in vertretungsberechtigter Zahl) in order to submit amendments to the articles of association to the German registry court.

[Source: Call for Evidence.]

Finally, the burden emanating from administrative formalities, for instance from the effort needed to organise and collect documents and arrange for translations, is linked to an insufficient degree of administrative cooperation between authorities of the Member States. In-depth interviews in connection with the IA Study highlighted that language capacity is observed as a barrier for both associations' staff and administration employees. Formal documents usually need to be submitted in the official language of the relevant Member State.[101] In part, this burden could be alleviated by improving the access to information and administrative cooperation, by leveraging digitalisation and digital tools.

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[99] European Commission: Identifying and addressing barriers to the Single Market. COM (2020)93.
[100] IA study.
[101] IA Study

### 2.4 How likely is the problem to persist?

Without any policy intervention, the identified barriers associations are facing in the single market are likely to persist. These barriers are of legal or administrative nature resulting from the application of law, hence it cannot be expected that non-binding initiatives, such as those announced in the Social Economy Action Plan or the mentioned initiatives of the Council of Europe (as outlined in Section 1), can resolve them fully or to a meaningful extent.

There is no indication of Member States planning legislation in this space and there is currently a general lack of legislative measures in Member States addressing specifically the cross-border activities and mobility of associations. Only one Member State (Belgium) has a dedicated legal form concerning international activities and only three Member States (Bulgaria, Croatia and Cyprus) regulate individual elements, such as explicitly mentioning the possibility to establish a branch in another country. Overall, Member State-level measures are of limited benefit, in the absence of a simple way to obtain recognition of the legal personality of associations, facilitating mobility as well as the free movement of capital, and the provision of goods and services cross-border. Moreover, as already indicated, a cross-border conversion requires dissolution of the association and liquidation of its assets in two Member States. (These cases are described in Annex 11).

Furthermore, the magnitude of the social and economic consequences is expected to grow for the following reasons:

- Bearing in mind data limitations, there appears to be an increasing need for associations to operate cross-border – involving not only recurring activities, but also cross-border restructuring and mobility – based on the results from the Public Consultation, where 45% of the respondents strongly agree that associations are likely to increase cross-border activities in the EU single market in the future and that these organisations might be inclined to enhance their activities further if barriers were removed.[102]
- The nature and scale of successive crises (pandemic, the Russian aggression on Ukraine, high energy prices, disrupted supply chains), current challenges (fight against climate change, digital divide, migration, aging demographics, disinformation) and a "Just Transition leaving no one behind" require mobilisation of all actors, including the non-profit sector. These challenges call for long-term action across Member States, especially in sectors in which the presence of associations is strong such as health, fundamental rights, humanitarian aid, communication and advocacy, education, culture.[103]
- The civic space is reported to be shrinking in parts of the Union, and pressure on civil society organisations, associations included, from state authorities and non-state actors is increasing.[104] Overall civil society organisations report a range of challenges, obstacles

[102] 19% respondents somewhat agreed (12 out of 64), 11% indicated neutral (seven out of 64), 8% somewhat disagreed (five out of 64), 9% strongly disagreed (six out of 64) and 8% indicated no opinion or did not know (five out of 64).
[103] Examples, most of which are cross-border, in the context of the UA war have been included in the 2022 Charter report 1_1_201131_2022_charter_report_en.pdf (europa.eu), p. 4.
[104] EUROPE'S CIVIL SOCIETY: STILL UNDER PRESSURE — Update 2022 (europa.eu)

and restrictions in certain Member States that have limited their ability to carry out their activities, thereby hampering associations capacity to fulfil their purposes and restrict their fundamental rights and those of their members.[105]

- While the IA study generally suggests that the developments in the number of associations have been dynamic across Member States between 2011 and 2017,[106] the growth trend seems to slow down in recent years. As suggested in the IA study, although year-on-year changes in their numbers are relatively small, associations seem to remain an important social and economic driver. However, when it comes to International NPOs, there is a growth trend (30% increase in 10 years time). This trend confirms the growing interest of associations to operate across borders, and more precisely in a pan European context.[107]

## 3. WHY SHOULD THE EU ACT?

### 3.1 Legal basis

In light of the identified problem and objectives, as well as their socio-economic value in the single market created by associations, the initiative could be based on Article 114 TFEU on the approximation of national rules for the establishment and well-functioning of the single market, Article 50 TFEU on attaining the freedom of establishment for associations in the single market or on article 352 TFEU, which provides an appropriate legal base when no other provision in the Treaty gives the necessary powers for EU institutions to adopt a measure, depending on the precise content.

The main aim of this initiative is to address the barriers described in section 2 which create fragmentation with regard to applicable rules on associations in the single market, resulting in legal uncertainty, undue administrative burden and costs. Therefore, Article 114 TFEU could be an appropriate legal basis for measures aiming at harmonising aspects of national legislations on cross-border activities of associations, for instance the conditions for recognition of the legal personality of associations, which is the one of the most basic conditions, if an association seeks to conduct activities in another Member State and thus enable associations to enjoy their freedom to provide services and goods in the single market. Article 114 TFEU could also be the appropriate basis for measures aiming at the approximation of national laws concerning the freedom of movement of capital (excluding any measure on taxation) and the capacity of associations to send/receive capital in the single market, in particular to benefit from cross-border funding and donations.

Article 50 TFEU could serve as legal basis for measures that facilitate the exercise of the right of establishment of associations and their mobility (cross-border conversions and mergers of associations). This could also cover rules on the registration and the formalities

[105] 2022 Charter report 1_1_201131_2022_charter_report_en.pdf (europa.eu), p. 4.
[106] IA study. E.g. the number of associations in France and in Germany grew respectively by 2.4% and by 3.4% in the same period.
[107] UIA, 2021.

linked to the registration which limits the possibility for associations to operate cross-border and thus enable them to enjoy their freedom of establishment and association in the single market.

Article 352 has been used for the creation of new forms of legal entities at EU level,[108] which leaves unchanged the different national laws in existence and does not aim to approximate the laws of the Member States.[109]

The legal basis will depend on the final content of the proposal. For each of the available policy option, it is necessary to assess which could be the appropriate legal basis. In light of the single market objectives, the scope, and the approach of preferred option (see section 8), this initiative is likely to be based on either Article 114 TFEU, Article 50 TFEU or on a combination of the two. This initiative is subject to the shared competence of the EU, and therefore the subsidiarity and proportionality principles apply.

### 3.2 Subsidiarity: Necessity of EU action

The key problem drivers result from regulatory diversity and/or restrictions among Member States. The current situation, as described in previous sections, demonstrates that the problem is not properly addressed at national level and that, in the absence of mutual recognition mechanisms among Member States, its cross-border character requires a European solution to remove identified barriers to the cross-activities and cross-border mobility of associations in the EU single market.

The problem is not only limited to certain territories or regions but appears widely as associations are present in all Member States. There is little coordination by individual Member States to facilitate cross-border activities, mobility and capital transfers of associations. Such coordination, although theoretically possible, appears unlikely in the near future[110]. For instance, notwithstanding the withdrawal in 2005 of the Commission proposal for a Council regulation on the statute for a European association, only few Member States have legislated in ways to facilitate cross-border aspects of associations: either by enacting provisions to allow establishing branches abroad[111], s to allow associations' cross-border mobility to another Member State in some way[112], or by ratifying the Council of Europe Convention on the recognition of international non-governmental organizations (which may

[108] For instance Regulation 2157/2001 on the European association, Regulation 1435/003 on the European cooperative society.

[109] CJEU C 436/03

[110] Although the existence of legal forms at EU level for cross-border cooperation such as the Territorial Grouping for Territorial Cooperation (EGTC), they ultimately cannot meet the objectives of the current initiative (as explained in Annex 8). Furthermore, Annex 9 details existing EU legal forms that may be partially used by non-profit associations for cross-border purposes and their specific limitations.

[111] Bulgaria, Croatia and Cyprus.

[112] Luxemburg, Italy and Portugal.

cover also associations)[113] have introduced measures allowing cross-border mergers and divisions, whereas one Member State expressly prohibits merger and division of domestic associations with associations which are not entered in the national register.[114] In particular, individual action or inaction by Member States, most often, focuses on their specific national context and usually would not seek to facilitate the cross-border dimension. Relying on Member State action alone, it is likely that the legal, administrative, and economic barriers for associations would therefore persist.

The objective of this initiative cannot be achieved sufficiently by the Member States and can be better achieved at Union level.

### 3.3 Subsidiarity: Added value of EU action

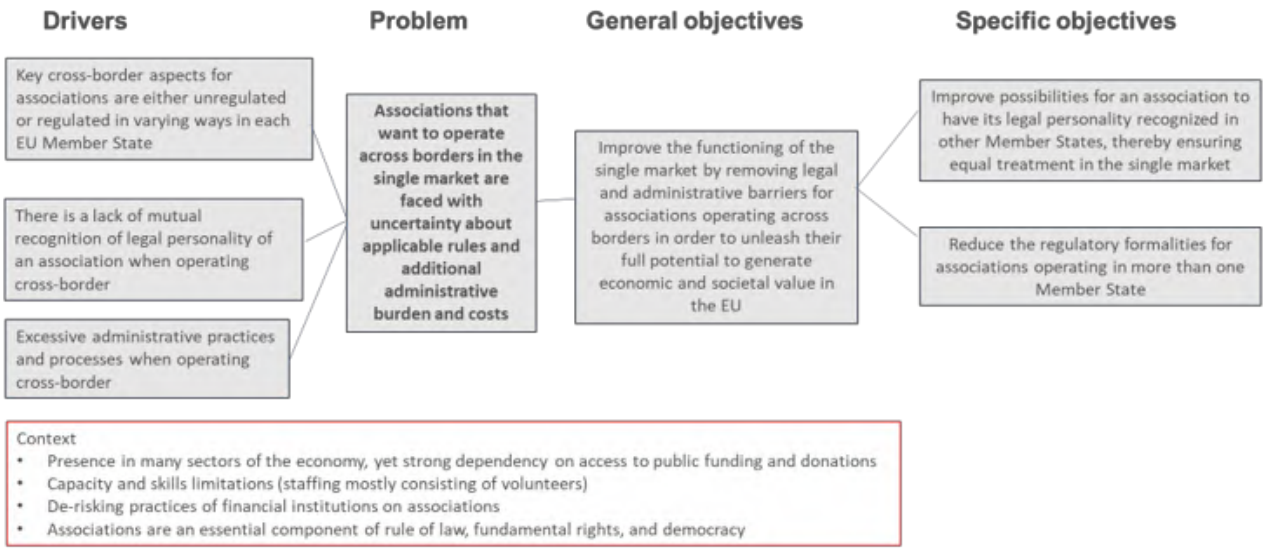
Without intervention at Union level, Member States will keep their national rules, resulting in the continuation of fragmentation of requirements and limitations, therefore not allowing a level playing field for associations in the single market. As indicated in the European Parliament's resolution, the intensity and volume of cross-border activity of associations does not reach its potential. Only EU action would enable the adoption of common or mutually recognised rules that would ease the cross-border activities and mobility of associations. By acting, the EU would provide a clear and predictable framework enabling associations to fully benefit from their single market freedoms. Indirectly, EU intervention may potentially help to promote the diversity and strengthen the potential of the non-profit organisations, of which associations are the dominant legal entities, thereby contributing to unleashing the full potential of the non-profit sector.

## 4 OBJECTIVES: WHAT IS TO BE ACHIEVED?

The links between the identified problem and the objectives of this initiative are presented in Figure 5 below.

*Figure 5: Tree table of the links between problems and objectives.*

[113] Netherlands.
[114] Estonia.




### 4.1 General objectives

The general objective of the initiative is to **improve the functioning of the single market by removing legal and administrative barriers for associations operating in more than one Member State**. This includes enabling associations to fully benefit from the single market freedoms, in particular the freedom of establishment (including facilitating mobility of associations), the freedom to provide and receive services and goods, as well as the free movement of capital (such as cross-border donations and membership fees). Removing these barriers would make it easier for associations to engage in activities across Member States and enable them to unleash their full potential to generate economic and societal value in the EU.

Although no direct cause-effect link may be established and while this initiative is centred on the functioning of the single market for associations, improving the conditions for associations to operate in the single market could have indirect spill-over effects on strengthening civil society in the EU and its potential to lower the threshold of citizens' engagement in different sectors across the Union.

### 4.2 Specific objectives

The specific objective of the initiative are:

1- **Improve possibilities for an association to have its legal personality recognized in other Member States, thereby ensuring equal treatment in the single market**

Associations conducting cross-border activities do not benefit from the same legal recognition across the EU. Recognition of legal personality – whether automatic across the Union or mutual between Member States – can overcome burdensome bureaucratic procedures to be repeated in each Member State in which associations wish to expand their

activities, by notably avoiding multiple registrations or setting up multiple legal entities, resulting in red tape and additional costs.

**2- Reduce the regulatory formalities for associations operating in more than one Member State**

An enabling regulatory framework for the cross-border activities and mobility of associations is necessary in order for them to operate seamlessly in the single market. Reducing the regulatory formalities, in particular regarding existing barriers to their cross-border activities, such as administrative formalities related to registration, service provision, receiving capital, as well as related to the recognition of legal personality, cross-border conversions, and cross-border mergers.[115] Digital solutions when addressing these administrative and regulatory formalities should be also considered to address problems described under Driver 3 in Section 2.3.3.

The progress to achieving the specific objectives can be measured through the monitoring indicators described in Section 9.

# 5 WHAT ARE THE AVAILABLE POLICY OPTIONS?

## 5.1 What is the baseline from which options are assessed?

In the baseline scenario, no policy intervention is introduced at the EU level, with associations continuing to be governed exclusively by national law. Existing barriers (as described in Section 2) will most likely remain or in some cases worsen in light of societal challenges, future crises and market developments (see Section 2.4).

The baseline includes a brief description of the wider socio-economic context and the relevant policy action at EU and international level that might impact on the magnitude of the problem.

### *5.1.1 Socio-economic context*

Associations will continue to play an active role in the society and, many of them, will continue to provide goods and services in areas of limited profitability (i.e. the goods and services they provide are partially at market prices, partially below).[116] In addition, when this is part of their mandate, associations will continue to build awareness and advocate for policies and legislation, as well as the protection and promotion of fundamental rights. They will promote engagement and effective participation of citizens in the policy-making processes and in so doing contribute to the democratic foundations of the Union.[117] They will

[115] These are all defined in the Glossary.
[116] IA study.
[117] Europe's civil society: still under pressure - 2022 update | European Union Agency for Fundamental Rights (europa.eu) and 2022 Rule of law report (europa.eu).

do all the above either nationally or beyond the borders of individual Member States. Associations will offer essential services for society and will play an instrumental role in the fight against current or new societal challenges. For example, ageing demographics will exponentially increase the need for elderly care and healthcare services, both of which are sectors where associations are key service providers.[118] Such trends will also continue in the absence of policy intervention, with associations continuing to face the identified regulatory and administrative burden when operating across borders.

Although the vast majority of associations operate in a domestic setting, an increasing role for international NPOs and findings from the Public Consultation and the survey conducted under the IA study, are an indication that a growing number of associations are expected to either operate or are exploring opportunities to operate in another Member State, therefore magnifying the identified problem.[119] Not removing the identified barriers burdening associations already active cross-border (an estimated of 8% of all associations in the EU) and discouraging those who would be interested to expand cross-border, would ultimately limit the distribution of the value created by these associations and by their potential individual and corporate donors, instead of diffusing these services, goods and assets across different Member States. Consulted associations expressed the need for a level-playing field to carry out their purposes which often require by nature a cross-border dimension.[120] Solidarity going in principle beyond borders and the societal challenges linked with a 'perma-crisis mode' in recent years – including challenges related to the green and digital transitions – require scaling of action of all actors.

Some relevant megatrends are, therefore, identified to strengthen the dynamic baseline through foresight-based analysis. First, associations play an important role in prospects and anticipation when it comes to "*Changing nature of work*"[121]. In this regard, associations, as social economy actors, offer participatory business and management models which increase employees' wellbeing and improve employability for those with a distance to the labour market, thereby contributing to sustainable working environments. Also, associations will continue to play an important role by upskilling and reskilling people with a distance to the labour market and in jobs transition. Associations active in the area of *"Climate change and environmental degradation"*[122] will continue to play a crucial role in the development of political agendas at the local level (e.g., nature preservation, biodiversity) or EU and global level (e.g. climate and environmental protection action, wildlife protection); and they can act as innovators when it comes to raising awareness, designing new circular and ecological products, services and business models. In doing so, associations active in the environmental sphere are also contributors when coping with resources and environmental challenges related to the *"Growing consumption"*[123]. For example, agrifood related associations may

[118] Increasing demographic imbalances | Knowledge for policy (europa.eu).
[119] The European Parliament resolution of February 2022 is also based on this assumption.
[120] Indicated by multiple associations interviewed during the scoping phase of the IA study.
[121] Changing nature of work, Megatrends hubs, Competence Centre on Foresight of the Joint Research Centre, European Commission.
[122] Climate change and environmental degradation, Megatrends hubs, Competence Centre on Foresight of the Joint Research Centre, European Commission.
[123] Growing consumption, Megatrends hubs, Competence Centre on Foresight of the Joint Research Centre, European Commission.

bring alternative solutions through innovative methods applicable in agriculture and in support of a sustainable food supply. The experience of many associations in the circular economy is also expected to bring valuable contributions in terms of recycling, upcycling, eco-design, shared and collaborative economy. Other megatrends where associations are expected to offer a major contribution in the future are the *"Shifting health challenges"*[124] as many associations are operating in health, care and social service provision where they drive innovation and bring new organisation methods, techniques and services. Finally, associations are expected to continue playing a major role in the anticipation towards the *"Increasing demographic imbalances"*[125]: for example, by offering a major contribution to aid and development programmes for most vulnerable countries and regions in the world.

### *5.1.2 Costs of operating cross border (baseline)*

Estimates in the IA study show that, without policy intervention, up to 75 000 new jobs (i.e. additional FTEs working cross-border) and an additional contribution to the EU GDP of EUR 4.2 billion would not be generated, as up to 185 000 new associations would not be created. This reflects the "opportunity cost" of no action, in line with the maximum theoretical potential. Given the risk of overestimation, a second scenario was developed (see Section 2). This scenario shows that without policy intervention, up to 63 000 jobs, 3.5 billion GDP of EUR and 155 000 new associations would not be created.

Based on desk research, interviews and stakeholder surveys conducted in this IA, the most relevant costs related to identified barriers are categorised in two main cost types and several costs subtypes:

1) Associations operating across borders that are bound to allocate resources to unnecessary or excessive compliance activities and administrative burden. They experience costs grouped in three subtypes: (i) information cost (internal), (ii) compliance cost (internal), (iii) direct cost/external advisory cost (external running cost).
2) Associations that want to operate and cooperate in the single market but are hindered in doing so due to high (perceived) cost of expansion. They experience: (i) internal staff costs, including the time spent to familiarise with national legislation (e.g. labour and tax laws) applicable in the Member State where the association wish to expand its operations and the time spent to prepare such expansion, (ii) registration costs/ administrative fees, (iii) external advisory services (e.g. legal and/ or tax advisory, accounting services etc.)

The above cost categories are mainly related to the three problem drivers described in Section 2.3 informing the problem definition (i.e. cross-border aspects for associations are either

[124] Shifting health challenges, Megatrends hubs, Competence Centre on Foresight of the Joint Research Centre, European Commission.
[125] Increasing demographic imbalance, Megatrends hubs, Competence Centre on Foresight of the Joint Research Centre, European Commission.

unregulated or regulated in varying ways across Member States; lack of mutual recognition of legal personality of an association when operating cross-border; and excessive administrative practices and processes when operating cross-border).

*Operating costs*

It is important to note that associations face costs of operating cross-border that consist of (i) *fixed costs* that cannot be reduced by policy intervention, (ii) *excess cost*[126] that exist (or potentially exist) and can potentially be avoided, due to policy intervention. When looking at the cost for the launch of operation in another Member State, the excess cost also represents a barrier to entry in the single market. Therefore, cost reductions do not necessarily equal 'cost savings' as these costs block off an entry rather than being reduced.

When it comes to (recurrent) cost of operating cross-border, factors linked to country specificities and the size and types of activity of the associations are determining and may vary greatly. While some contextual factors may improve the situation (e.g. digitalisation, more cooperation between certain Member States), others may worsen costs and administrative burden. Moreover, the factor whether an association is active in two or more Member States plays a role. Typical costs reported consist of staff dealing with cross-border complexity and external services, including legal, accounting and tax advisory services faced by associations to run operations in another Member States. In addition, there are also annual legal, accounting, tax or other advisory services that associations require. As the targeted survey and in-depth interviews of the IA study show, a clear improvement of the situation cannot be expected without policy intervention.

Bearing these considerations in mind, under an assessed timeframe of 15 years, no action is expected to lead to the excess cost for associations operating cross-border, as outlined in the Table 6 below:

*Table 7: Excess cost for associations operating cross-border (recurrent).*[127]

| | Per year | 15 years |
|---|---|---|
| Information cost (internal staff) | ~ EUR 350 million | ~ EUR 5.2 billion |
| Compliance cost (internal staff) | ~ EUR 190 million | ~ EUR 2.8 billion |
| Direct cost/External advisory cost (External running cost) | ~ EUR 230 million | ~ EUR 3.5 billion |

[126] IA study. "Excess costs" are defined as the unnecessary cost which could be avoided by solving the problem. These need to be distinguished from the actual cost which include also the unavoidable component of the cost category. More details in Annex 4.

[127] IA study. "Staff costs": input figures based on surveyed associations, expert interviews (time spent on cross border activity and complexity: information and compliance). Direct costs: annual legal, accounting, tax or other advisory services that associations require. Input figures based on surveyed associations. Calculations based on 310 000 current associations operating cross border. For more detail see Annex 4 (Section 2.4).

*Launch costs*

The current legal and policy framework requires familiarisation with the national requirements, the set-up of a correct legal form and registration in the Member State where the association wishes to expand. Registration costs (and obligations) vary across Member States, ranging from 0 (free of charge) to EUR 300 – EUR 350.[128] Most associations also need to rely on external legal or tax advisory support for their establishment in a new jurisdiction, while it is estimated that associations' own staff spends between 9-20% of FTE to organise the establishment of operations in another Member State (per launch).[129]

The elements above determine the estimation of current average **(one-off) cost**[130] **for setting up cross-border operations** (per launch). This baseline is calculated at EUR 5 650 capturing an excess cost[131] of EUR 2 150.[132] This means that an association willing to expand cross-border could save up to a maximum estimated EUR 2 150, in case of policy intervention, compared to the current situation, which brings excessive (unnecessary) cost due to the unresolved problem.[133] It should be noted that the costs for launching cross-border operations are not expected to significantly change in the absence of policy intervention. While some cost linked to the establishment of operations or even the necessity of establishing for certain activities may be reduced over time due to increasing digitalisation, other factors such as further stringent rules in certain Member States may increase the complexity of the situation and the launch of new activities in certain Member States.

### *5.1.3 EU level action*

When it comes to legislation at EU level, there is no harmonisation or approximation of the national laws regarding the cross-border dimension of associations, whether related to

[128] IA study. With the exception of few countries where registration fees depend on the value of associations/foundation's assets and can exceeds EUR 1 000 (e.g. Malta), or notarial deeds are prescribed by the law for specific cases (e.g. Belgium for INPAs, ranging EUR 2 000 – 2 500). Various Member States (e.g. Belgium, Bulgaria, Estonia, Finland, Hungary, Latvia, Lithuania, Poland, Slovenia) offer the opportunity of digital registrations, generally at lower fees compared to paper forms.

[129] IA study. This entails one off costs for staff to familiarise with the legislation in the new country, as well as to check, prepare and conduct the administrative formalities required by the Member State where the associations intend to expand. Examples from the conducted interviewees (14 out of the 33 associations), reported that associations in cases had to rely on pro-bono law firms to understand the requirements of establishment.

[130] IA study. The estimates are based on figures provided by associations on their costs for launching cross-border operations, via the survey and in-depth interviews. Launching costs were structured according to the three main cost items identified to set up the operations in another Member State. For more detail see Annex 4 (Section 3.3).

[131] IA study. Starting from total cost (EUR 5 550) it is estimated how and if these costs could be reduced through policy intervention based on evidence from in-depth interviews, backed by assessment based on the legal analysis, resulting in a (maximum) cost reduction of EUR 2 150, or "excess cost" reduction.

[132] The current excessive levels of inflation and predictions on inflation development are expected to cost increases. The cost expressed should thus be interpreted in real term cost at 2023 price levels.

[133] Costs of staff and external providers differ significantly depending on the local economic circumstances and requirements. The estimates thus provide an indication of what can be expected and must not be taken as exact cost structures for any association across the EU.

activities mobility or movement of capital.[134] The status quo would likely continue without EU action of binding nature.

At the same time, a number of ongoing and forthcoming initiatives at EU level are relevant and potentially conducive to a more dynamic baseline. First, the Single Digital Gateway facilitates online access to information, administrative procedures, and assistance services that EU citizens and businesses (also possibly capturing associations engaged in economic activities to an extent) need when trading, establishing themselves or expanding their business across borders. By the end of 2023, online access to the most important administrative procedures in 21 areas will be ensured in all EU Member States including certain registering procedures. This has the potential to somewhat help associations, among other actors, depending on its implementation and the relevance of these administrative procedures to associations. Second, the European Media Freedom Act,[135] which aims at alleviating the fragmentation of national rules undermining the efficiency of the European internal media market, sets out, among others, the framework for a structured dialogue with stakeholders and explicitly civil society (including associations). Freedoms of expression and information will continue to be strengthened in this framework and will, therefore, contribute to an enabling environment for associations operating cross-border in the single market.[136] Third, the non-binding measures that the Social Economy Action Plan envisages (as indicated in the Introduction and in Annex 9), will complement this initiative by providing non-binding recommendations to Member States to better design and implement enabling policies for the social economy, including associations, (Council Recommendation) and provide a clearer understanding of the rules for cross-border taxation of non-profit organisations like foundations and associations (two Staff Working Documents). Furthermore, regarding VAT, associations engaging in economic activities that qualify as SMEs can benefit from simplified rules which will help reduce VAT compliance costs as of 2025 (as explained in Section 2.2).

Depending on the exact content, the measures mentioned above could facilitate the potential of associations to operate cross-border in the single market. However, their positive impact is likely to be limited in relevance to the objectives of this initiative, as these measures neither target cross-border aspects directly nor are all of them legally binding.

#### *5.1.4 International level*

The Council of Europe initiatives mentioned in the Introduction (1.3 Legal Context) did not have much uptake by EU Member States (8 have thus far ratified the Council of Europe Convention introduced in 1986).[137] A recent report of civil society's perception of their

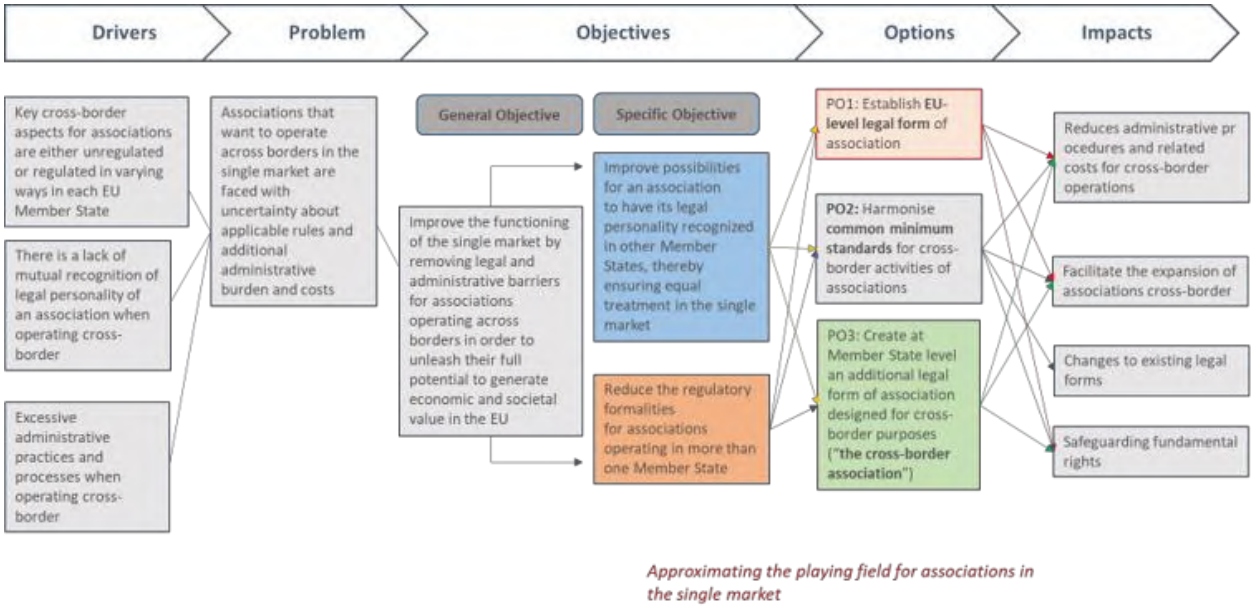
[134] Although the Commission has proposed a Statute for a European Association (91/273), unsuccessfully.
[135] EUR-Lex - 52022PC0457 - EN - EUR-Lex (europa.eu)
[136] See European Parliament resolution of February 2022: i) underling the importance of impartial and independent information on the activities of non-profit organisations in the private and public media as well as the access to pluralistic information as key pillars of democracy; ii) highlighting the Parliament resolution on SLAPPs of 11 November 2021.
[137] CETS 124 - European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations (coe.int), European Treaty Series - No. 124; Recommendation on the legal status of non-governmental organisations in Europe, CM/Rec (2007)14 of the Committee of Ministers; Fundamental Principles on the Status of Non-governmental Organizations in Europe

implementation shows that Council of Europe Member States have largely not taken these instruments into account in their policymaking, though it does not specify the reasons.[138] This situation is not expected to change, given the non-binding nature of these initiatives.

### 5.2 Description of the policy options

The following alternative policy options have been constructed from a list of policy measures, based on the findings of the IA study. These measures were screened[139] to identify policy options that should be retained for further analysis. The screening process resulted in a list of three self-standing policy options retained for impact assessment (see Figure 6 below as a part of the intervention logic).

Figure 6: Intervention logic.




All retained options address the general objective and the specific objectives, as further described under each option below.

#### *5.2.1 Option 1: Establish an EU-level legal form of association*

*Sub-option 1a: An EU level legal form: 'The European Association"*

This sub-option of policy option 1 (hereinafter "PO1a") fully prescribes an EU level legal form, i.e. "The European Association". Under this sub-option, the initiative would introduce

[138] Council of Europe Expert Council of NGO Law: The Legal Space for Non-Governmental Organisations in Europe. Civil society's perception of the implementation of Council of Europe CM Recommendation (2007)14 to Member States on the Legal Status of Non-Governmental Organisations in Europe, p. 39.
[139] Screening was developed in accordance with Tool #17 of the Better Regulation Toolbox. The longlist of measures was assessed against seven criteria, namely: feasibility, stakeholder acceptability, effectiveness, efficiency, proportionality, EU value added, and coherence.

a European legal form of association (the "European Association"), which would regulate all aspects relevant to the functioning of an association, including rules on the formation, registration, constitution, functioning, financing, dissolution, liquidation and insolvency, and would co-exist with legal forms of associations at Member State-level while not replacing them (details in Annex 9). It would also ensure non-discrimination and equal treatment, when it comes to European Associations as service providers, in line with the Services Directive.[140]

Regarding formation, interested natural and legal persons could set up a European Association and existing associations may form one by conversion. The main criterion to form a European Association would be to have a link to at least two Member States. This can be one of the following: citizenship or residence of members, employees, or volunteers; the location of its activities or the registered location of established branches; formation through merger of existing associations domiciled in at least two separate Member States.

The European Association would enjoy automatic recognition of its legal personality across the Union. While it would be regulated by EU law, with regard to rights, it would enjoy at minimum, equal treatment with national associations in the Member States where it would be domiciled and/or engage in activities (i.e. provision of services or goods). Furthermore, it would have rules on cross-border mobility (mergers, divisions and conversions in cross-border contexts). European Associations would enjoy non-discrimination as receivers of capital transfers, such as donations, including the non-discrimination of their donors.[141]

Regarding implementation, Member States would designate a competent authority, with defined powers. Competent authorities would be required to cooperate and exchange information with each other.

Registration of the new legal form would be done at Member State level, in line with the 'digital by default' principle: setting up the European Association would be possible in a fully digital manner, using standardised on-line procedures and entailing standardised information required for the registration of the new legal form. Member States will be required to establish a digital register (or adapt an existing register) and make publicly available essential information about the associations registered under this legal form. To facilitate access to information about registered European Associations, Member State registries would be interoperable with or connect to an EU level platform/portal either to be established or building on existing initiatives (i.e. the Single Digital Gateway).

The European Association would be well suited for those associations interested in being active in many Member States. Given the relevant cost and administrative effort of setting it up, it would be less beneficial for small associations or those with only occasional activities across borders.

Although this sub-option shares with the Commission proposal of 1992 (and its revision in 1993) the general objective to regulate all aspects for associations by creating a European

[140] Directive 2006/123/EC on services in the internal market of 12.12.2006.
[141] Following the principles of the CJEU, inter alia in C- 78/18.

statute for associations, it differs in its policy focus, and in particular in the following elements:

- As regards key provisions on mobility, the former proposal did not mention the possibility for the European Association to merge. On the contrary, PO1a would provide for rules in order for associations established in the new legal form to merge with other associations, both domestically and cross-border, without such merger resulting in the involuntary termination, prohibition or dissolution, or suspension of the activities of the organisation.
- As regards online registration and the digitalisation of the registries. PO1a, as stated above and given the digitisation of the society, would ease the access to information on associations for the public. The former proposal did not provide for online registration or for rules concerning an EU level platform.
- Regarding the rules governing the financing of the European Association, while the past proposal allowed the European Association to avail itself of all forms of financing under the most favourable conditions applying to associations in the Member State in which it has its registered office (Article 41 of the Commission proposal of 1992), sub-option PO1a is more specific and goes deeper. It would oblige Member States to allow a European Association established, registered or operating in their territory to solicit and receive capital transfers, such as donations. In terms of procedure, PO 1a would be based on Article 352 TFEU,[142] requiring unanimity; while the former Commission proposal was based on Article 100a of the Treaty establishing the European Economic Community (current Article 114 TFEU), which links with the ordinary legislative procedure of qualified majority.

*Sub-option 1b: An EU level legal form: "The European cross-border Association"*

This sub-option of policy option 1 (hereinafter "PO1b") establishes an EU level legal form covering only cross-border aspects: "The European cross-border Association".

Under this sub-option, the initiative would introduce a European legal form of association at EU level, as under sub-option 1a, but instead of a fully prescribed legal form, this sub-option would exhaustively prescribe at EU level only cross-border aspects[143] and, to the extent needed for coherence, main features of the new legal form,[144] while otherwise referring to existing Member State law, as it regulates comparable entities. The new legal form would co-exist with legal forms of associations at Member State-level and would not replace them.

[142] This legal basis has been confirmed by the CJEU as the appropriate legal base for new legal forms created at EU level. See Case 436/03.
[143] Inter alia ability to open branches abroad, cross-border mobility procedures, ability to provide services without a local establishment, and ability to solicit and receive funding across borders.
[144] Inter alia non-profit aim, non-distribution constraint, full ability to engage in economic activities and right to acquire legal personality

Member States would enact the necessary provisions for the effective application of the new legal form where relevant matters that the Regulation refers to are not sufficiently regulated.

The European cross-border Association would enjoy automatic recognition of its legal personality across the Union.

Key elements of the new legal form to be prescribed at EU level would under this sub-option include, in particular, the following:

- specific rules concerning the formation of the new legal form; for instance, the main criterion to form a "European cross-border association" may be to have a link to at least two Member States. This can be one of the following: citizenship or residence of members, employees, or volunteers; or based on the registered location of established branches; formation through a merger of associations domiciled in at least two separate Member States.
- specific rules allowing for cross-border membership and governance roles (nationality and residence).
- non-discrimination and equal treatment, when it comes to European associations as service providers, in line with the Services Directive[145].
- non-discrimination of the new legal form, as receiver of capital transfers (excluding taxation), such as donations, in cross-border contexts, including the non-discrimination of donors based on nationality or place of residence.
- cross-border conversions without undergoing a dissolution and liquidation procedure, by providing relevant safeguards.
- rules and safeguards on the process of mergers and divisions of the new legal form.

Regarding implementation, Member States would designate a competent authority with defined powers. Competent authorities would be required to cooperate and exchange information with each other.

Registration would be at Member State level as for PO1a, in line with the 'digital by default' principle: setting up the European cross-border Association would be possible in a fully digital manner, using standardised on-line procedures and entailing standardised information required for the registration of the new legal form. Member States will be required to establish a digital register (or adapt an existing register) and make publicly available essential information about the associations registered under this legal form. To facilitate access to information about registered European cross-border Associations, Member State registries would be interoperable with or connect to an EU level platform/portal either to be established or building on existing initiatives, such as the Single Digital Gateway.

The European cross-border Association, similarly to sub-option PO1a, would be well suited for those associations interested in being active in many Member States. As such, it would solve current obstacles concerning the right of establishment and free provision of goods and services across the EU. It would also partially solve issues related to the cross-border receipt

[145] Directive 2006/123/EC

of capital to the extent those issues concern seeking approvals and reporting in some Member States with regard to donations.

As in PO1a, this sub-option would be based on Article 352 TFEU, and would take the form of a regulation, as this option would not approximate national rules as required for Article 114 TFEU. The fact that this policy option would exhaustively prescribe at EU level the cross-border aspects and the core features of the new legal form further justifies the choice of this legal basis.

The Commission proposal of 1992 (and its revision in 1993) and this sub-option differ in their scope and procedure in ways already described concerning PO1a. In addition, in terms of policy focus, a key additional difference concerns a more limited scope on elements relevant for cross-border contexts.

#### *5.2.2 Option 2: Harmonise common minimum standards for cross-border activities of associations*

Under this option (hereinafter "PO2"), the initiative would harmonise common minimum standards for the cross-border activities and mobility of associations across Member States. It would contribute to reducing the differences between national association laws. PO2 would imply in practice removing or amending existing provisions or introducing new provisions in Member State law, in particular for the purpose of facilitating cross-border mobility of associations, the provision of services and goods and the free movement of capital (i.e. donations), but also rules on membership and governance roles to allow for cross-border dimension.

In detail, the initiative would harmonise national association laws to the extent needed to facilitate the cross-border aspects mentioned above. The key provisions to be required mirror those mentioned under PO1b, mutatis mutandis.

Existing registration requirements related to e.g. establishment and provision of goods and services, would not be prohibited as such, but they would be required to serve justified purposes and be non-discriminatory and proportionate, and in line with existing EU legislation, such as the Services Directive.[146]

Moreover, the possibility for a fully online registration and the existence of digital registers and standardised on-line procedures should be encouraged under this option, in line with the 'digital by default' principle and bearing in mind proportionality and subsidiarity, for the purpose of facilitating the registration of cross-border associations, as well as exchange of information among Member States and at EU level. This could possibly be facilitated by the Internal Market Information System.[147] Compatibility of the said registers with the Single Digital Gateway would be explored. Overall, digital procedures and tools would also

[146] An example: proportionate registration requirements could be required by MS for taxation purposes or when the foreign association hires local staff.
[147] Regulation (EU) No 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System.

facilitate administrative formalities linked with registration, cross-border merger, cross-border conversion, or cross-border donations.

Associations could automatically benefit from these harmonisation measures. Depending on the scope of harmonisation, all associations may be affected by the new rules, as the respective rules governing them would partially change. Under this option, partial harmonisation of national laws would lead to a regulatory simplification for associations in cross-border contexts, thanks to an approximation of relevant rules and given that sufficient rights and safeguards would be provided for their cross-border mobility and activities regulated at EU level. It would be relatively straightforward even for smaller associations or those with only occasional engagement across borders.

The legal instrument would likely be a directive. Implementation of this Directive would require Member States to transpose its provisions into their national law thereby reducing regulatory fragmentation for associations operating across Member States. The likely legal base of this option would be either Article 114 or 50 TFEU, or a combination thereof, taking into account the material scope of the initiative[148], as this option would approximate national laws by laying down minimum standards.

#### *5.2.3 Option 3: Create at Member State level an additional legal form of association designed for cross-border purposes ("the cross-border association") and recognised by Member States*

This option (hereinafter "PO3") combines elements from PO1 (creation of legal form) and PO2 (partial harmonisation of national laws). It would require Member States to introduce in their national legal systems a new legal form of association for cross-border purposes ('the cross-border association'). Member States would transpose common provisions set by EU law into their national law (with relative flexibility to adapt them to the national setting), thereby approximating rules and administrative procedures for associations operating across Member States and improving legal certainty and the level-playing field in the single market.

The new legal form would be specifically designed for cross-border membership, governance, activities and would also allow for cross-border mobility.[149] It would encompass only requirements and safeguards necessary for facilitating the said cross-border purposes, and it would co-exist alongside existing legal forms for associations in national law and would not replace them.[150] Those interested could form a 'cross-border association' in several

[148] See Legal Context under Section 1 for details.

[149] See also Belgian law entitled « Loi sur les associations sans but lucratif, les associations internationales sans but lucratif et les fondations » of 2.05.2002 establishing the "International association without a profit purpose" (AISBL/IVZW). The AISBL is a Belgian legal form which requires associations to specify in their statute and to concretely pursue an objective of international public utility. It allows people and organizations from any country to form such an association. It differs from our initiative because our scope is the EU territory and the European associations.

[150] Importantly, this also differentiates this option from the Commission proposal for a Directive on single-member private limited liability companies (COM(2014)212), based on Article 50 TFEU, which was withdrawn in 2018. Creating legal forms at national level, it concerned, first, general rules for single-member private

ways, including by setting up a new one, converting from an existing association, or by a merger of several existing associations.

Key elements of the new legal form to be prescribed by EU law would be the same as descibed under PO1b (in Section 5.2.1 above).

Once established and registered in the Member State of domicile, 'cross-border associations' would not need to establish in each Member State separately, as their legal personality would be recognised either automatically, with limited discretion for justified exceptions for Member States or, alternatively through a simplified procedure (mutual recognition).

The principle of equal treatment of 'cross-border associations' vis-à-vis existing legal forms of associations in the Member States, as well as safeguards concerning procedures for recognition of legal personality, would be established. For instance, PO3 would set a maximum duration by which the recognition procedure for 'cross-border associations' must be completed and safeguards to lead to a duly substantiated decision by the competent authority in the host Member State (e.g. within three months after the date on which the applicant's complete file was submitted).

Registration would be done at Member State level, in line with the 'digital by default' principle: setting up the "cross-border association" would be possible in a fully digital manner, using standardised on-line procedures and entailing standardised information required for the registration of the new legal form, to facilitate the registration of the "cross-border associations", as well as sharing information between Member States and to the EU level. In order to further facilitate the recognition of the legal personality and the registration of cross-border associations, as well as exchange of information among Member States and at EU level, Member States would be required to establish a digital register (or adapt an existing register) and make publicly available essential information about the "cross-border associations" registered. Compatibility with the Single Digital Gateway would be considered as well as potential use of the Internal Market Information System, for the same purposes as explained for PO1 above (see Section 5.2.1).[151]

Regarding implementation, Member States would designate a competent authority, with defined powers. Competent authorities would be required to cooperate and exchange information with each other.

Existing registration requirements related to e.g. establishment and provision of goods and services, would not be prohibited concerning this new legal form, but they would be required to serve justified purposes and be non-discriminatory and proportionate, and in line with existing EU legislation, such as the Services Directive.[152]

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limited liability companies and, second, rules on the formation, registration, articles of association, single share, share capital, structure and operational procedures.

[151] Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System.

[152] An example: proportionate registration requirements could be required by MS for taxation purposes or when the foreign association hires local staff.

In light of its scope and approach and depending on the exact content of the proposal, the likely legal base of this option would be either Article 114 or 50 TFEU, or a combination thereof, due to the purpose of approximating certain aspects of national laws,.[153] With regard to PO1b, PO3 would prescribe cross-border aspects at EU level on a very targeted manner. It would only encompass those requirements and safeguards needed to approximate national laws by introducing the cross-border aspects necessary for this new legal form to operate. To be noted that legislative proposals based on Article 50 TFEU are limited to directives.

### 5.3 Options discarded at an early stage

In the course of this IA, some of the originally conceived options, as identified in the IA study, were not retained for a full assessment as they were not considered feasible or realistic in light of their advantages, but also crucial disadvantages. The said discarded options are:

- Non-legally binding options (i.e. Council recommendations, information campaigns, and guidelines);
- European legal status for public-benefit associations;
- Harmonisation of common standards for associations.

In particular, the non-binding options were discarded due to their lack in effectiveness, whereas the creation of a European legal status for public-benefit associations was considered not feasible in light of the limited competence of the EU in the area of taxation. Finally, the harmonisation of common standards for associations was considered unlikely to be accepted by Member States given the strong cultural roots embedded in the national association law and the scope of the envisaged harmonisation under this option. For more details see Annex 13.

## 6 WHAT ARE THE IMPACTS OF THE POLICY OPTIONS?

*Box 9: Treatment of qualitative and quantitative analysis regarding the impact of the policy options.*

*The following assessment provides a qualitative analysis of the specific economic impacts generated by each proposed policy option, based on the evidence gathered from diverse sources. It also provides, to the extent possible, a quantitative analysis of benefits and costs relating to the main economic impacts. The cost/benefit analysis is not fully comprehensive, due to significant data gaps and limitations, as explained in section 1.4. Therefore, the quantification of costs and benefits is based on a number of assumptions (see Annex 4) deriving from different sources of input: the Commission's assessment of stakeholder feedback to the Public Consultation, additional targeted stakeholders survey*

*and interviews, existing literature, and other relevant sources of knowledge on the matter (e.g. sectoral studies and data gathering). When it comes to the indirect economic benefits, the aim of this assessment is to provide ranges of the magnitude of potential impacts generated by each policy option, rather than exact monetisation.*

*Despite the mitigation measures (developed in this section) and application of conservative estimations, a potential overestimation for the potential reduction of costs and potential benefits cannot be fully excluded.*

*A detailed breakdown for the calculation of costs and benefits for associations can be found in Annex 4. All costs are considered administrative costs since they relate to registration, information, and adapted administration requirements. Annex 3 provides an overview of costs and benefits per target group assessed for the preferred option.*

*Nominally, the current excessive levels of inflation and predictions on inflation development are expected to cost increases. The cost expressed should thus be interpreted in real term cost at 2023 price levels.*

This Section assesses the impacts of each retained policy option in relation to the identified barriers and the drivers leading to the identified problem in Section 2. The Section analyses the potential economic and social impacts on relevant target groups per policy option (associations, Member States, citizens). Environmental and climate change impacts are only present in an indirect manner and, therefore, are briefly addressed for all policy options. Additionally, the Section assesses per policy option the impacts on Member States (e.g. in terms of adaptation of legislation and compliance, administration and monitoring).

The Section is structured as follows: the first part summarises the main similarities or non-significant impacts of all policy options together, taking into account the objectives and scope of the initiative; the second part presents specific or significant impacts per policy option. As section 5 outlined, Policy Option 1 (PO1) has 2 sub-options: PO1a and PO1b. The sub-options will only be referred to separately when there is a difference in terms of impact. Consequently, references to 'PO1' are made for those impacts valid for both sub-options.

**Taking into account the objectives and scope of the initiative, the main similarities or non-significant impacts for all policy options are presented below:**

*a. Economic impacts on associations*

Based on a combination of stakeholder surveys, expert interviews and literature, the IA study concludes that **excess cost reductions** for associations are present for all POs and will result in reduction of time allocated by their staff for the management of the cross border-related administrative procedures, as well as in related reduced direct costs. However, when it comes to total excess cost reduction estimates over 15 years, one needs to consider the caveats in available data (mentioned in section 2 and section 5) and the consequent uncertainties resulting in a possible overestimation. The direct economic impacts (excess cost reductions) for associations per policy option are detailed in the second part of this Section.

Considering **indirect economic impacts**, all POs present an improvement for associations operating or with the ambition to operate across borders in terms of:

- **less burdensome access to new cross-border markets** and cross-border provision of goods and services,

- **more financial and human resources** that can be allocated to core activities and purpose.

- **improved safeguards for the freedom of establishment and security of operations.** Besides economic value, the impact of promoting civil rights and democracy, environmental policy, equality, the European civil society, etc. will be leveraged, especially for those associations active in these sectors.

For associations engaged in economic activities specifically, all POs (be it in different degrees, as described in Section 5) would have a positive effect on the level playing field in the single market in sectors where associations compete with for-profit companies. More precisely, cost reduction and improved access to the single market for associations may lead to:

- increased offer of services and products in certain economic sectors (e.g. health, care, social services), leading to considerable positive effects in terms of quality and price, and enlarged geographic scope of the offer (e.g. new markets are reached), as well as convergence of quality service delivery across the Union in sectors in which non-profit associations are an active operator;

- increased specific know-how in certain sectors (e.g. healthcare, social services) and Research and Development (e.g. international research and technology associations, work integration), as well as economies of scale and business opportunities in various sectors;

- increased pool of potential employees, volunteers and members engaging in the association.

For PO1 and PO3, the scale of impacts depends mainly on the uptake of the new legal forms (the scenarios for the uptake are detailed per option in the second part of the section).

Having this in mind, all POs are expected to have a positive effect on the completion and functioning of the single market, as they bring considerable harmonising effects to enhance cross-border activities for associations, though to a different extent. Harmonisation effects are broadest for PO1 as it implies automatic recognition of an additional European legal form, prescribed fully (PO1a) or partially (PO1b) at European level and through a legal instrument more impactful in terms of implementation and level-playing field (regulation). PO2 would imply partial harmonisation of laws on associations in the Member States regarding specific cross-border aspects, impacting domestic and cross-border associations. PO3 would imply an additional legal form for cross-border purposes at Member State level, thereby not affecting the functioning of domestic associations not interested in cross-border activities, but rather creating an option for those associations operating or wishing to operate in more than one

Member States, who could take on the new legal form which will be recognised in other Member States. Possible risk of fragmentation and divergent interpretation linked with the choice of the legal instrument in PO2 and PO3 may be overcome through setting safeguards and achieving the right balance between rules prescribed by EU law and by Member State law.

*b. Impacts on Member States*

**Changes in the legal framework** may cause **costs of adjustment and costs of compliance/administrative burden for competent authorities** depending on the magnitude of these changes. In the case of this initiative, these impacts largely depend on (i) the extent of adaptation of existing procedures for the recognition of legal personality and for registration, (ii) the number of future registrations for cross-border associations and (iii) information costs, when comparing the baseline with the policy options and specific changes brought by each policy option.

Associations operating across-borders generally need to re-establish/register in the Member States in which they expand, depending on the scope of their activities. Policy options (PO1 and PO3) that reduce this necessity will consequently reduce the burden on public authorities in the long run. In the short term, policy options changing the requirements completely by introducing a separate legal form (i.e. PO1 and PO3) will require competent authorities to familiarise themselves with the new framework.

Considering **one-off costs for adapting registration procedures and registers**, costs depend on the need for adaptation of current registers or for setting up a new register. This is mostly relevant for PO1 and PO3, while PO2 will also have similar impacts (existing registration procedures might need to be adapted), but to a lesser extent as it does not imply the creation of a new additional legal form.

To note that, for none of the policy options an EU level registration will be foreseen, mainly for reasons of proportionality and subsidiarity. Consequently, Member States will be responsible for the registration of a new legal form (PO1 and PO3), as well as for the adaptation of registration procedures in PO2. The intention is to leave Member States the flexibility whether to adapt existing registers or establish new ones, while requiring Member States to offer the option of online registration in case of a newly created legal form.

As detailed in the IA study and Annex 10, **24 EU Member States already have dedicated registers[154] in place** (except for Ireland, Denmark, and Sweden). Member States without a dedicated register (Sweden, Denmark, and Ireland), may decide to set-up a dedicated register for cross-border associations or adapt existing registers used for associations. For instance, in Denmark, associations must register with the Danish Business Authority to obtain a unique 'CVR-number' if they conduct commercial activities or wish to obtain public subsidies. Similarly, the same practice takes place in Sweden for non-profit associations. This means that also in countries where no association-specific register is established, mechanisms exist already to allow associations to register. Consequently, also for these Member States, the

[154] That can be a specific register for associations.

obligation to register the new legal forms (in case of PO1 and PO3) is likely to have non-significant costs.

To conclude that legislative changes would lead to the adjustment of existing, rather than the creation of a completely new[155] system. The IA study substantiates that policy options creating a need to adapt registers (PO1 and PO3, and PO2 to a lesser extent) implies minor adjustments, including adding a separate section or entry to the existing registers. Consequently, this is not deemed to be particularly burdensome, since once this adjustment is implemented, the public authority is expected to return to its business as usual. Hence, no significant additional annual running costs can be expected.

In cases where registers need to be established (Ireland, Denmark and Sweden), converted or a new "registration line" should be created in an existing register, it is anyhow recommendable to promote digital registers, as a 2017 study shows that "e-procedures" could reduce costs by yearly EUR 19 million for cross-border businesses and EUR 810 million for domestic businesses. Moreover, research has shown that digital registration processes are less subject to fraud because of harmonised safeguards on electronic identification. As shown by the Danish conversion towards digital business registers: between 2011-2015 the average time for case handling decreased by 69% and the average ramp-up time for a new employee decreased by 90%.[156]

To make an estimation of costs of online registration (assuming a register already exists), an indication can be offered by the assessed costs for setting up an online registration possibility for limited liability companies.[157] For Member States the set-up costs for such an online registration tool varied from EUR 42 000 in Ireland to EUR 100 000 in Poland, or around EUR 120 000 in Latvia.[158] For those policy options (PO1 and PO3) that concern setting up a new legal form, the provision of the option of **online registration would become compulsory**, while for harmonising minimum standards (PO2), it could be encouraged. In the short to medium term, competent authorities may be required to invest in acquisition of

[155] In the event of a new register to be established, few data for the actual costs are available, as many organisation of business registers were setup decades ago and evolved over time. Looking at comparable EU initiatives (in terms of prescribed need to establish a register) can provide some perspective. (i) The impact assessment accompanying the Proposal amending Directive (EU) 2015/849 estimates the costs for setting up a public registry for national authorities to be limited (EUR 28 000 for IT/software setup, one-off cost). Hence, this datapoint might present an underestimation of the true set-up costs as it is less numerous and expected to be less complex than for associations.

[156] European Commerce Registers' Forum report, 2017, p. 45 and 56, as referred to in the Commission SWD: Impact Assessment - Proposal for a Directive of the European Parliament and of the Council amending Directive (EU) 2017/1132 as regards the use of digital tools and processes in company law, p. 17.

[157] It is to be noted that all MS already provide for electronic business registers since 2007 following a requirement introduced into EU law at the time. Directive 2003/58/EC of the European Parliament and of the Council of 15 July 2003 amending Council Directive 68/151/EEC, as regards disclosure requirements in respect of certain types of companies, OJ L 221, 4.9.2003, p. 13

[158] Commission SWD: Impact Assessment - Proposal for a Directive of the European Parliament and of the Council amending Directive (EU) 2017/1132 as regards the use of digital tools and processes in company law. A DK government position paper addressed to the Danish Parliament regarding the same proposal estimates that changes in the Danish Business Authority's IT systems, are estimated at DKK 2 million (approx. EUR 270 000).

such tools and adjust processes including training of staff. Considering annual maintenance for digital registries in Member States are found to be non-significant.[159]

Consequently, the European Commission may **encourage or mandate interoperability of national registers with** an EU level platform/portal either to be established or building on existing initiatives, such as the Single Digital Gateway to allow for automated data access and exchange, and/or the use of agreed (minimum) standards to ensure comparability of data.

Besides the elements above, **other (in)direct economic impacts** for Member States can be expected for all policy options:

- Increased service and product offer in the national markets as well as cooperation and competition in critical sectors of high public relevance (e.g. healthcare and social services, social work, work integration, training and education services, employment services and research and development). This includes increased presence of service providers in public markets as well as influx of specific know-how improving quality and capacity.

- Indirect Revenues: the reduced need for full establishment in all Member States where the association is active, certainly for PO1 and PO3, is likely to have a negative impact on direct revenues of authorities as overall less registrations will be needed (with corresponding loss of fee income).[160] However, such impacts are expected to have a low magnitude (e.g. fees are largely used to compensate the administrative procedure and are not considered as a revenue) and are likely to be offset by the increased indirect revenues by new market players. While individual associations might be inclined to move their seat for these reasons, interviews and the very nature of associations suggest that they are often-times deeply rooted in their regional or national contexts.

**Impacts on individual Member States** are hard to predict as many factors play in the decisions of individual associations where to establish (favourable local environment, cultural links, and roots, ambitions of scale and roll out of operations). For 'pan-European' or international associations, it might be argued that Member States hosting many International or inter-governmental Institutions (e.g. France, Germany, Netherlands, Luxemburg, and Belgium) will be more likely to become the main location for associations following the rules proposed in the context of this initiative. Additional pull- and push factors might influence the decisions of associations to optimise their basis of operations. Amongst others, these could be economic (e.g. tax optimisation, market demands), legal, or political (e.g. to safeguard activities against political pressure). The factors that might affect the decisions of associations to maintain or move their seat are manifold and complex, which could lead to different results. Therefore, it is not possible to judge the direction of these decisions and identify clear-cut patterns or trends for different groups of Member States.[161] Other elements

[159] As indicated by a Danish Government position paper assessing the costs of maintenance for the Central Business Register (CVR), estimating EUR 40 000 on annual basis in relation to implementing Directive COM/2018/239.
[160] This impact will favour potentially those Member States with international political institutions and well-developed international communities.
[161] IA study

are related to neighbouring countries and border regions that might have more cross-border activity amongst associations, for example those Member States that share the same language, host minority populations of a neighbouring country or have traditionally strong cross-border civil society ties.

To conclude, and considering the elements mentioned above, in the short-term[162] non-significant adaptation costs may occur for competent authorities. However, all POs are expected to reduce in the long run recurrent costs for competent authorities related to compliance and monitoring of cross-border activities and mobility of associations (such as for the creation of legal personality, registration, merger, monitoring, informing associations and establishment procedure costs). Significant extra costs are not expected for competent authorities, as the volume of operations will be either similar to the already existing procedures or even lighter as more simplified (and digitalised) procedures will be in place for cross-border associations and overall, less registrations will be needed. As argued, predicting differences between Member States is highly speculative, as many different direct and indirect factors are at stake as well as very contextual elements in relation to cross-border relationships of associations in neighbouring regions.

### *c. Potential economic benefits*

To estimate to what extent each **policy option can be expected to unlock the maximum potential of 185 000[163] associations, 75 000 jobs and 4.2 billion GDP[164] contribution,** an "unlocking percentage" is estimated for each policy option, corresponding to the anticipated uptake of the policy option over a 15-year time frame. This percentage is based on surveys, expert interviews and legal analysis.[165] Despite this approach, a potential overestimation cannot be excluded, given the uncertainties of these unlocking percentages. To mitigate this

[162] Short term adaptation costs (one-off) are found to be as non-significant by the IA study. E.g. most Member States have already have a (digital) register for associations or register associations in more generic registers (e.g. NL) and have already acceptance and monitoring procedures in place that can be adapted with minimum costs. DK, IE, and SE do not have a register for associations. In the case of DK associations are required to register in the Central Business Register (CVR), which collects primary data on businesses in Denmark regardless of economic and organizational structure, including associations under certain cases. In the case of SE, non-profit associations are required to register in the Swedish Companies Register, if they conduct commercial business activity, exceed certain thresholds in terms of number of employees, balance sheet total and net turnover.

[163] See market context and problem definition Sections: After having estimated the theoretic maximum potential (350 000), the maximum potential of policy intervention is the basis to calculate potential benefits under scenario A (185 000).

[164] The estimates for job creation and GDP are linked to the number of associations that would be unlocked due to a given policy intervention. Job creation was then calculated assuming an equal employment need for new cross border associations in comparison to the given ones. Constant estimates for currently operating cross border associations are applied to the newly unlocked by the policy option (i.e. a constant FTEs/ (current) cross-border association ratio was applied to the new ones).

[165] Responses from the IA study survey are used as a starting base, which then were validated in the IA study with responses of in-depth interviews and the legal analysis and translated into percentages. More detail on the justification of the percentages is included in the methodological Annex 4 (Section 4.4).

risk, a 10 p.p. lower scenario was introduced (resulting in an A and B scenario of potential cross -border associations, see also Section 2). A second element to anticipate uncertainty is the use of a range with an upper and lower bound for each potential benefit (- 5p.p and + 5 p.p. to the central estimate per policy option, resulting in ranges of potential benefits.[166]

SCENARIO A

Table 8: Estimated economic benefits regarding the unlocking potential of cross-border activity of associations[167]

| **Estimated benefits**<br><br>**Scenario A** | **Estimated PO / scenario** | **Additional n. of cross- border associations** | **Additional annual GDP in EUR billions** | **Additional employment** |
|---|---|---|---|---|
| **70% - 80% policy uptake** | PO1 & PO2 = central estimate 75% | 130 000<br><br>149 000 | 2.9<br><br>3.4 | 53 000<br><br>60 000 |
| **85% - 95% policy uptake** | PO3 = central estimate 90% | 157 000<br><br>176 000 | 3.57<br><br>4 | 64 000<br><br>71 000 |
| **Maximum potential of policy intervention** | 100% | 185 000 | 4.2 | 75 000 |

A second scenario is added mitigating a possible overestimation of the maximum potential explained above. This is based on 155 000 associations as maximum unlocked potential by policy intervention (10 p.p. lower scenario[168] as regards scenario A see also Section 2) and gives the following range of potential benefits.

SCENARIO B

Table 9: Estimated economic benefits regarding the unlocking potential of cross-border activity of associations.

| **Estimated benefits**<br><br>**Scenario B** | **Estimated PO / scenario** | **Additional n. of cross- border associations** | **Additional annual GDP in EUR billions** | **Additional employment** |
|---|---|---|---|---|

[166] Figures for both scenarios A and B based on a policy uptake range corresponding to a 5p.p. margin to the central estimate (75% for PO1 and PO2 and 90% for PO3) as suggested by the IA study. Central estimate based on targeted survey and in-depth interviews, as well as legal analysis.
[167] See annex 4 (Section 3.2) for more details.
[168] Scenario B corresponds to 50% of current cross border associations (310 000) instead of 60% (scenario A). See also Annex 4 (Section 2.5) for details.

| | | | | |
|---|---|---|---|---|
| **70% - 80% policy uptake** | PO1 & PO2 = central estimate 75% | 108 000<br><br>124 000 | 2.4<br><br>2.8 | 44 000<br><br>50 000 |
| **85% - 95% policy uptake** | PO3 = central estimate 90% | 132 000<br><br>147 000 | 3<br><br>3.3 | 54 000<br><br>60 000 |
| **Maximum potential of policy intervention** | 100% | 155 000 | 3.5 | 63 000 |

### *d. Environmental-, climate- and social impacts and fundamental rights*

In the context of this IA, the difficulty generally emerged to determine a causal relationship between an EU intervention aiming at simplifying regulatory and administrative rules on cross-border operations of associations, on the one hand, and the potential environmental, fundamental rights and social impacts, on the other hand. It can, anyway, be assumed that an EU intervention under the three policy options will trigger indirect and non-measurable positive effects.[169]

*Environmental and climate impact*

In principle, the nature and objectives of the initiative are not expected to generate measurable direct environmental and or climate impacts.

When looking at the potential indirect benefits, all policy options are expected to generate a positive impact by improving the position and presence of cross-border associations active in the environmental and climate change sphere[170], such as promotion of biodiversity, nature preservation and the fight against climate change.

*Social impact*

Similar potential benefits will occur for all POs in terms of social impacts. More precisely by improving the access for citizens in sectors offering social services across Member States (e.g. health, care and -services, community service social work, education and training, employment services, etc.). Consequently, this impact will foster convergence between the different models and offers in the Member States, including mainstreaming of innovation,

[169] For example, by simplifying the creation of cross border alliances and partnerships between organisations, mobilising volunteers, improving the representation at EU level and having a more efficient outreach in Member States.

[170] E.g. on climate, quality of natural resources (water, soil, air etc.), biodiversity (including flora, fauna, ecosystems, and landscapes), animal welfare, sustainable consumption and production, efficient use of resources, etc.

leading to an overall enhanced quality and offer of such services in the EU. Given the strong presence of associations in areas described above, PO2 is expected to foster positively the access to those services offered by smaller organisations which, for instance, could be offered without the need for establishment. Finally, all POs are expected to foster participatory and citizen oriented civic space (e.g. participation in civil society, sports, arts and culture) potentially being interlinked across borders.

Looking at different options, PO1 (and to certain extent PO3) would be likely to benefit associations with an explicit social impact mission and organised at EU level with action in all (or multiple) Member States (e.g. social enterprises, social service providers, health, care and household service, social protection and rights). In this sense, PO1 and PO3 would strengthen the right to freedom of assembly and association in a non-discriminatory manner, as associations using the new legal forms would be treated in an equal manner with associations that already exist under national laws, albeit by automatic recognition under PO1 as opposed to mutual recognition in PO3. Still, at Member State level, limitations to the type of activities performed by the associations may occur when the association is not established. For example, in case such activities may be subject to specific national legislation (e.g. labour law, social security, taxation rules, etc.) implicitly requiring establishment.

*Fundamental rights*

Although this initiative is centred on the functioning of the single market for non-profit associations, all POs would have an indirect positive effect on the protection and promotion of fundamental rights. For instance, by improving the conditions for associations to operate in the single market, they will strengthen the enjoyment of the right to freedom of expression and information (Article 11 of the Charter) and right to freedom of peaceful assembly and to association (Article 12 of the Charter) in the EU.

From this viewpoint, all POs would indirectly strengthen the civil society and mitigate the overall shrinking civic space trends observed in Europe,[171] by facilitating cross-border activities and mobility of associations and enabling them to mobilise members, volunteers and interest groups across different Member States. The options would ultimately have an indirect positive impact on the EU democratic space.[172]

When it comes to fundamental rights impacts of the different policy options, it has to be noted that creating a new legal form at EU level (i.e. PO1 sub-options), according to desk research and Public Consultation results[173], is considered as a strong contribution to the Europeanisation of the civic space.[174] The effects of PO2 are not expected to be as

[171] As observed by the reports/opinions by the Council of Europe (Resolution 2226 (2018). New restrictions on NGO activities in Council of Europe member States of 27 June 2018), European Parliament (2021/2103 INI resolution on the shrinking space for civil society in Europe of 8 March 2022), European Commission (COM(2022) 716. "A thriving civic space for upholding fundamental rights in the EU 2022. Annual Report on the Application of the EU Charter of Fundamental Rights of 6.12.2022)

[172] Democracy Index 2021: less than half the world lives in a democracy

[173] Among the respondents' preferred choice of the envisaged policy options 36% (22 out of 64) of respondents indicated that their preferred policy option would be a new legal form for associations.

[174] It would "provide the most democratic and citizen-powered kind of association".

pronounced as those of PO1 and PO3, as it would only harmonise certain national rules (listed in Section 5). Similarly to PO1, PO3 would be expected to have a strong positive - although indirect - impact in terms of safeguarding the fundamental right to freedom of assembly and association and right to freedom of expression and information of associations and their members. It will in fact allow associations with cross-border ambitions to effectively expand and conduct their activities in other Member States, thereby also contributing to the exercise of fundamental rights that they advance through their activities, by benefitting from a uniform and sufficiently complete legal framework which, differently from PO1 sub-options, would not neglect the national specificities. The new rules would however not be applicable to pre-existing associations, unless they convert to the new form, which would create minor negative effects from the perspective of equality among associations.

PO2 and PO3 might not as directly favour a "European brand" through a "European legal form" (in comparison with PO1), however they would still simplify procedures in the single market by reducing administrative burden and costs for cross-border associations, indirectly benefitting those associations active in the area of fundamental rights at pan European scale.

**Taking into account the objectives and scope of the initiative, the specific and significant impacts per policy option are described as follows:**

### 6.1 PO1a and PO1b: Establish an EU-level legal form of association: 'the European Association' (PO1a)" or 'The European cross-border Association' (PO1b)

*This section will first discuss the impacts that are equal for both PO1a and PO1b, as outlined in Section 5. Consequently, when "PO1" is used this refers to both sub-options, unless stated otherwise. Under Section 6.1.4 only specific impacts for PO1b will be discussed.*

Overall, PO1 would introduce a supranational legal form of association facilitating operations across borders that would co-exist with other legal forms in the Member States. Once a European Association would be established and registered, it would be automatically recognised in all Member States, and it should be treated the same as associations incorporated under their national laws (principle of non-discrimination). Associations not using the new legal form remain unaffected.

The legal instrument for both PO1a and PO1b would be a regulation. It is the only legal instrument available for creating a new legal form at EU level, as confirmed by the CJEU. The benefit of this instrument is legal clarity resulting from its direct applicability and uniformity in content across the Union. However, creating a new legal form in this way may generate unwanted effects, not be entirely proportionate to the scale and nature of the identified problems, , given that Member States would not able to adapt the requirements to their national settings and tradition. At the outset, the said unfamiliarity could involve adjustment costs and may raise the threshold to take up this form.

The consequence (and downside) is that PO1 requires from already established associations wishing to benefit to take the new legal entity, with all related administrative implications and cost. The creation of a new legal form has, therefore, uncertainty of uptake and might

create potential confusion for stakeholders as more legal forms will exist in parallel. Furthermore, it can create 'competition' between existing legal forms for associations in the Member States and the new legal form prescribed and regulated by EU law.

### *6.1.1 Economic impacts on associations*

The overall impact on the **costs of cross-border operations** is expected to be significant, allowing associations active cross-border to substantially reduce their cost of compliance and administrative burden. Moreover, it is expected that the reduced barriers to entry will unlock a significant share of associations interested in operating cross-border. In particular:

1. Associations already active cross-border: when transforming to the new legal form, substantial simplification in terms of compliance cost and administrative burden can be expected in terms of running cost of operating cross-border;
2. Associations interested in launching cross-border operations, but hesitating due to existing barriers: in addition to the significantly reduced cost of operating cross-border also the need for establishment and the activities to be undertaken to act cross-border for those making use of the new legal form will be significantly reduced;
3. Associations not interested in launching cross-border operations: this policy option does not affect such associations as they are not obliged to transform.

This would be particularly beneficial for associations whose scope extends over the territory of several or all Member States. The voluntary nature of using the EU legal forms (PO1a and PO1b) means that it would not impose any additional compliance costs on associations that do not want to obtain them.

**Costs of operating cross-border (recurring) for associations active cross borders (310 000):** PO1 has the potential to significantly reduce costs for associations using the EU legal form and thus simplifying gathering information, less internal staff working on compliance and less needs for regular external advisory support. The extent to which such benefits materialise depends, however, on the extent of uptake of the new legal forms (PO1a or PO1b). As a potential **cost reduction**, the IA study estimates an order of **magnitude leading to up to EUR 770 million per year (for the assessed timeframe of 15 years)**, see Annex 4 for calculations).[175]

*Table 10: Excess cost reduction per year (for the assessed timeframe of 15 years).*

[175] This cost reduction is not applicable to those associations not acting across borders or without the ambition to develop such initiatives in future. The basis for calculations are those associations estimated to be already active cross borders (310 000). For detailed calculations see annex 4 (Section 2.5). The main source of information for the assessment of the operation costs was primary data collection, via the targeted survey and in-depth interviews, which also focused on costs assessment. Costs were also assessed against available secondary data (IA study). However, it is not likely to expect such effect to materialise from year one. We can assume a lag effect of one year where no effects can be observed, due to the time to effectively implement the appropriate policy intervention and produce the desired effects on relevant stakeholders (e.g. stakeholders to familiarise with new legislation). Therefore, starting from year one, we can expect a linear increase from the current situation to the full cost reduction potential (i.e. EUR 770 million per year) until year five. As of year five, we can expect the policy intervention to be fully effective and to produce the maximum expected results.

| | Max cost reduction per year for PO1 (relative to the baseline) |
|---|---|
| Information cost (internal staff) | ~EUR 350 million |
| Compliance cost (internal staff) | ~EUR 190 million |
| Direct cost / External advisory cost (External running cost) | ~EUR 230 million |

As additional impacts, for future cross-border operations of associations (associations not yet active cross-border but potentially interested to do so, if barriers are removed), the launch cost is estimated at EUR 3 500, which is a **cost reduction of EUR 2 150 per launch[176],** compared to the baseline of EUR 5 650 (for detailed overview see Annex 4). [177] Within the assessed 15-year time frame, this excess cost reduction could potentially range between EUR 278 million and EUR 318 million, in case of scenario A, and between EUR 233 million and EUR 267 million, in case of scenario B[178] (for detailed information about the two scenarios see introduction section 6).

### *6.1.2 Indirect economic effects*

Given the fact that both legal forms under PO1 are expected to significantly lower the barrier for cross-border associations active in multiple Member States, it is expected that particularly large associations will make use of the European legal forms. The extent to which it trickles down to smaller associations will depend on the complexity of transforming a national legal form into one of the two legal forms under PO1 prescribed fully or partially by EU law.

As described in tables 7 and 8, for this PO1 estimated benefits range as follows: number of additional cross-border associations between 130 000 – 149 000 for scenario A and 108 000 – 124 000 for scenario B; additional GDP between EUR 2.9 billion - EUR 3.4 billion for scenario A and EUR 2.4 - EUR 2.8 billion for scenario B; and additional employment GDP between 53 000 – 60 000 for scenario A and 44 000 – 50 000 for scenario B.[179] In terms of the speed of uptake, an exponential growth rate can be expected with some associations being 'early birds' and others hesitating and waiting to see the 'proof of concept'. Another element which will play a role in the uptake depends greatly on what type of activities will be

[176] IA study. Estimates based on association responses to the targeted survey and in-depth interviews.
Internal setup cost (compliance cost): EUR 1 500 and external advisory cost (direct cost): EUR 650

[177] In case the legal form allows associations to operate in other Member States (without establishment) this saved costs would be multipliable by the amount of Member States where a registration had to be done under the baseline scenario.

[178] Applying this excess cost estimate (2 150) to the estimate range (considering both scenario A and scenario B) of new associations that are expected to launch cross-border given this policy option.

[179] Figures for both scenario's A and B based on a policy uptake range between 85% and 95%. This range corresponds to a central estimate 75% uptake of the policy intervention as suggested by the IA study based on targeted survey and in-depth interviews, as well as legal analysis.

deployed. For example, in case local staff would be hired or in case non-tax exempt services are offered (of an otherwise need for a local presence), the need for registration or establishment in some form will at least partially remain.[180] A counter example is, when services are offered in a digital context, it is likely that registration in each Member State will not be needed and this PO1 could have a very positive effect.

### *6.1.3 Impacts on Member States*

As explained in the first past of this Section, the magnitude of the cost for all policy options is not expected to constitute a significant cost for competent authorities at Member State level. This Section will, however, provide a short overview of different costs and benefits for PO1.

Information costs: the EU and/or competent authorities will likely need to set up awareness-raising activities to make the new legal form better known among associations.

Adjustment costs (monitoring and supervision): the creation of an additional form at EU level can increase the complexity for authorities' monitoring and supervision, as different regimes will exist next to each other. However, as assessed in the introduction of Section 6, it is expected that this should be a low one-off investment. In the medium and long term, depending on the uptake of the legal form, PO1 will require minimal additional costs related to mainly legal and administrative monitoring and supervision of the newly established associations under the EU legal form (e.g. the registration and establishment procedures, fiscal declarations). Differences might occur between Member States, e.g. those Member States (mainly Belgium, France, Luxembourg, Netherlands, and Germany)[181] with many international institutions might have a better uptake compared to others.

Adjustment costs (registration): an EU legal form would require the creation of a framework for registration in the Member States. Please note that impacts relating to the creation or adaptation of national (online) registers under all options are presented in the first part of Section 6.

### *6.1.4 Stakeholders' views on policy option 1*

PO1 would be particularly favoured by associations established in more than one Member States or with activities at a pan- European level (multiple Member States). In terms of its effectiveness in facilitating associations establishing operations in another Member State, this policy option was ranked the highest in the targeted survey conducted for the IA study (on average 4 out of 5).[182] Results from the Public Consultation show that 36% (22 out of 64) of respondents indicated that their preferred policy option would be *a new legal form for associations*.

[180] Although in most countries employers are obliged to register in that country for tax purposes when hiring employees, it is not always required to establish a legal entity. There are, however, quite a few countries where no separate legal entity is to be established for the purpose of hiring employees, but a branch office is to be opened instead. International Employment Law Guide (deloitte.com).
[181] Study_StatuteforEuropeancross-borderassociationsandnon-profitorganisations_EN.pdf (europa.eu).
[182] IA study.

Among the 38 respondents who defined themselves under the legal form of association, 42% (16 out of 38) favoured "*a new legal form for associations"*.

### *6.1.5 Specific impacts related to Policy option 1b: EU level legal form covering cross-border aspects: 'The European cross-border Association'*

The technique of creating a legal form at EU level by partially prescribing applicable rules and otherwise relying on Member State law has both advantages and disadvantages. In that sense, this sub-option represents a limited variation of PO1a, prescribing at EU level only cross-border aspects and main features of the new legal form to the extent needed for coherence. Otherwise, it would refer to existing Member State law.[183] Just like PO1a, this sub-option would be directly applicable without transposition. Therefore, it would be uniform in content across the Union regarding the elements it prescribes. Implementation would require Member States to make necessary provisions to ensure effective application (for example, in cases where they lack relevant provisions in national law) and designating a competent authority.

Like for PO1a, the legal instrument would be a regulation, with similar benefits as described for PO1a with regard to its uniform application and the additional benefit that the scope would be smaller (limited to cross-border aspects), meaning that this sub-option responds better to the criteria of subsidiarity and proportionality, compared to PO1a. Compared to PO3, PO1b would likely be roughly equally effective, efficient, and coherent. However, due to the choice of legal instrument and the introduction of the new legal form at EU level, PO1b would be slightly less proportionate, given that it does not allow Member States to adapt the legal form to their national specificities through transposition. Moreover, its impact in terms of legal clarity is not straightforward.. Stakeholder feedback shows that this technique adds complexity for those using such legal form created at EU level and may have a negative effect on uptake, as shown in the input to consultations concerning the evaluation of the European Cooperative Society..

While this sub-option is more targeted and proportionate compared to PO1a, it can be expected to have similar effects as the broader PO1a regarding the key cost-benefit indicators of cross-border operation.

Consequently, **the impact on operating costs for individual associations** is expected to be similar to PO1a and PO3 (as this IA makes the theoretical assumption that PO1 and PO3 have similar impacts in terms of operating costs for associations).

When it comes to the **launch cost**, the excess cost reduction per launch could also be assumed to be similar as for PO1a and PO3 (EUR 2 150). However, there is more uncertainty as regards the overall total impacts, as this depends on the potential uptake of both policy options.

[183] Inspiration regarding the level of detail and material scope could be taken from the regulatory approach of the European Cooperative Society, but stretched in a way that references to Member State law cover major elements and provisions prescribed at EU level cover only what is essential for cross-border purposes.

Assuming that the estimated potential uptake is higher for PO3 than for PO1, PO1.b would result in a lower total estimated excess cost reduction for launching operations over a 15-year time frame compared to PO3.

It should be noted that, given the similarities in how PO1b and PO3 address the cross-border barriers in terms of scope and magnitude (given that PO1b and PO3 essentially regulate the same cross-border aspects), it is plausible to assume that the uptake for PO1b might reach similar levels and thus approach potentially the uptake of PO3, which would be higher than for PO1.a. Consequently, this would result in higher reduction of excess launch cost for PO1b, compared to PO1a, and similar launch cost to PO3. However, as the targeted stakeholder consultation for this IA did not include a specific question for PO1b to test this plausibility, this IA will hold the most prudent approach which assumes a similar policy uptake (and the excess cost reduction of launch costs) of PO1b and PO1a. The same reasoning could be made for potential benefits in terms of GDP and job creation. Another element defending the more conservative approach is that PO1b does not provide harmonisation for the more 'occasional' cross border activities and therefore will not be equally effective.

The expected result is that particularly larger associations eager to operate at international level will make use and benefit from such a new legal form, similarly to PO1a. As argued before, PO1b has a more proportionate character than PO1a, but still remains an EU legal form. The extent to which these benefits will trickle down to smaller associations will depend on the complexity and cost of converting into such a legal form, or, for newly established associations, the extent to which this is more complex than using national legal forms. Stakeholder feedback on comparable precedents shows that this kind of technique adds complexity for those using such legal form, given that it requires relying on an EU Regulation in part and on national law otherwise, which may have a negative effect on uptake.[184] Hence, in summary, due to lack of specific evidence that would point otherwise, and the assumed similarity in the uptake potential between PO1a and PO1b, the long-term estimated impacts of PO1b are not likely to differ from PO1a.

Considering impacts on Member States, they are largely the same as under PO1a: limited costs can be expected arising from the need to introduce a new legal form and allow for registration and monitoring of this legal form. In this sub-option, such cost should however be somewhat lower than in PO1a, given its scope limited to cross-border aspects requiring adaptation and information costs of small scale. Differences arise concerning the elements that are not prescribed at EU level, but which rather refer to Member State law concerning comparable entities. Some Member States might still need to create some additional legislation for these elements, given that not all Member States currently comprehensively regulate on association law.

[184] As shown by consultations concerning the evaluation of the European Cooperative Society.

## 6.1 PO2: Harmonisation regarding common minimum standards for cross-border activities of associations

As PO2 would harmonise national association laws (see Section 5.2.2 for an overview of standards identified to be subject of the harmonisation), it would have the main advantage (unlike PO1 and PO3) of not requiring setting up a new legal form for cross-border operations. It would address barriers by setting common minimum standards for cross border aspects.

The legal instrument would be a directive. The benefit of this legal instrument is that it allows for adapting the prescribed rules to national settings, which may also facilitate uptake and reduce adjustment costs, given the general lack of resources associations are facing. This is also very much compliant with the principle of subsidiarity. The downside concerns the risk of fragmentation resulting from divergent application among the Member States, as well as administrative burden for the Member States, as a result of the transposition process. This may be mitigated through the overall level of precision of the proposed instrument, which may promote legal clarity regarding the prescribed rules and their application . Given the intended content, it is likely that a directive is the only available legal instrument for this policy option.

The most significant impact of PO2 would stem from a partial harmonisation leading to simplification of recurring activities for associations (e.g. gathering information, compliance and need for regular external advisory support in cross-border contexts, such as registrations). Consequently, PO2 would impact all associations to the extent that the new requirements differ from the current national settings (baseline scenario).

Yet, the impact on associations not interested in operating cross-border is expected to be non-significant, as the changed requirements are in principle only tackling elements relevant for cross-border activities, given the targeted scope of harmonisation under this option.

For associations operating cross border, PO2 would lift the identified obstacles that they face when operating across borders and would allow for a mechanism for mutual recognition of legal personalities. Harmonisation would not address taxation or labour law and in this respect, barriers will essentially remain. Also, administrative burden will not entirely be prevented. For example, specific registration requirements could still exist for associations that want to operate cross-border (e.g. linked to national requirements concerning taxation, employment), but they should serve justified purposes and be reasonable in terms of burden.

At the level of the Member States, PO2 would directly generate impacts in terms of adaptation (e.g. they would be required to take specific action by making the relevant amendments to their national laws). Harmonisation may imply removing or adjusting existing provisions or introducing provisions that are absent. Only a few Member States already have provisions or a separate legal form for cross-border associations, while most do not have established provisions tackling cross-border aspects, as mentioned in previous Sections of the IA.

### *6.2.1 Economic impacts on associations*

Under PO2, the direct economic costs of cross-border operations are expected to be significantly reduced compared to the baseline. In particular:

1. Associations already active cross-border: harmonisation of rules in the single market leading to substantial simplification in terms of compliance cost and administrative burden for the running cost of operating cross-border;
2. Associations interested in launching cross-border operations but hesitating due to existing barriers: barriers to entry are significantly reduced thanks to harmonisation of rules in the single market. No need to convert into a new legal form. Particularly beneficial for small associations or those aiming to occasionally work across borders as no costs of converting into a new legal form;
3. Associations not interested in launching cross-border operations: may be affected by the adaptation of national rules on associations, depending on the transposition of the legal instrument by the Member States.

**Costs of operating cross-border (recurring) for associations already active cross-border (310 000):** PO2 has the potential to significantly reduce excess costs of operation compared to the baseline due to its harmonisation effect and thus simplifying gathering information, less internal staff working on compliance and less needs for regular external advisory support. The potential cost reduction is estimated at an order of **magnitude of up to EUR 465 million per year (for the assessed timeframe of 15 years)**, see Annex 4 for calculations).[185].

*Table 11: Excess cost reduction per year (for the assessed timeframe of 15 years).*

| | Max cost reduction per year for PO2 |
|---|---|
| Information cost (internal staff) | ~EUR 210 million |
| Compliance cost (internal staff) | ~EUR 115 million |
| Direct cost/External advisory cost (External running cost) | ~EUR 140 million |

[185] This cost reduction is not applicable to those associations not acting across borders or without the ambition to develop such initiatives in future. The basis for calculations are those associations estimated to be already active cross borders (310 000). For detailed calculations see Annex 4 (Section 2.5). The main source of information for the assessment of the operation costs was primary data collection, via the targeted survey and in-depth interviews, which also focused on costs assessment. Costs were also assessed against available secondary data (IA study). However, it is not likely to expect such effect to materialise from year one. We can assume a lag effect of one year where no effects can be observed, due to the time to effectively implement the appropriate policy intervention and produce the desired effects on relevant stakeholders (e.g. delay of uptake that can be expected due to the transposition timeframe of the Directive). Therefore, starting from year one, we can expect a linear increase from the current situation to the full cost reduction potential (i.e. EUR 465 million per year) until year five. As of year five, we can expect the policy intervention to be fully effective and to produce the maximum expected results.

It should be stressed that this cost reduction is not applicable to associations not acting across borders or without the ambition to develop such operations.

For future cross-border operations of associations, the launch cost is estimated at EUR 3 800 which is a **cost reduction of EUR 1 850** per launch[186], compared to the baseline of EUR 5 650 (for detailed overview see Annex 4).[187] Within the assessed 15-year time frame, this excess cost reduction could potentially range between EUR 240 million and EUR 274 million, in case of scenario A and between EUR 201 million and EUR 229 million, in case of scenario B.[188]

### *6.2.2 Indirect economic effects*

PO2 is expected to significantly lower the barrier to launch cross-border operations as it would benefit also associations that only occasionally are interested in cross-border activities. This could be often smaller associations (small number of paid employees or budget), which account for by far the largest share of associations overall.

As described in tables 7 and 8, for this PO2, the estimated number of additional cross-border associations range between 130 000 – 149 000 for scenario A and 108 000 – 124 000 for scenario B, additional GDP range between EUR 2.9 billion – EUR 3.4 billion for scenario A and EUR 2.4 billion – EUR 2.8 billion for scenario B and additional employment GDP range between 53 000 – 60 000 for scenario A and 44 000 – 50 000 for scenario B.[189]

### *6.2.3 Impacts on Member States*

In general, PO2 is expected to have the strongest impact on Member States as it would require adaptation of the national rules on associations. This said, and as illustrated in the first part of this Section, the magnitude of the cost is not such that it constitutes a significant cost for competent authorities at Member State level.[190]

This section will, however, provide a short overview of different costs and benefits.

<u>Information costs</u>: all associations with or without cross-border activities will need to be informed about changes in the legislation and subsequent compliance. Differences between Member States will greatly depend on the degree to which existing legislation should be adapted to guarantee a homogeneous way of introducing the new provisions in the respective

[186] IA study. Estimates based on association responses to the targeted survey and in-depth interviews.
Internal setup cost (compliance cost): EUR 1 200 and external advisory cost (direct cost): EUR 650.
[187] In case the legal form allows associations to operate in other Member States (without establishment) this saved costs would be multipliable by the amount of Member States where a registration had to be done under the baseline scenario.
[188] Applying this cost estimate to the estimate range (considering both scenario A and scenario B) of new associations that are expected to launch cross-border given this policy option.
[189] Figures for both scenarios A and B based on a policy uptake range between 85% and 95%. This range corresponds to a central estimate 75% uptake of the policy intervention as suggested by the IA study based on targeted survey and in-depth interviews, as well as legal analysis.
[190] IA study.

legal systems of Member States (for example when introducing new rules on cross-border aspects or amending existing one, when there is not yet a register, or the registration processes needs to be fully or partially adapted). The information "weight" (complexity of changes) is expected to be relatively higher than for PO1 and PO3 as it would imply informing all associations about changes made in the national framework for associations, despite the targeted elements of compliance (those harmonised) of potential interest for those associations with cross-border needs.

Adjustment costs (monitoring and supervision): PO2 will impact competent authorities as adjustment costs related to monitoring and supervision framework are to be expected in this respect, given that new procedures concerning mutual recognition may be established. This, in turn, may give rise to an increased number of associations to monitor and supervise. On the other hand, with improved possibilities to recognise the legal personality for cross-border associations, therefore less procedures in terms of full establishment (setting up new legal entities or establishing branches) will need to be managed by the supervising authority in the long run (less costs).

Adjustment costs (registration): in the short term, considering adjustment costs for authorities related to the registration of associations, PO2 will require the adaptation of current registers (or for those without a register: create a register or adapt another existing register) to the common standards allowing recognition and equal treatment across borders.[191] Please note that impacts relating to the creation or adaptation of national online registers under all options are presented in the first part of the section 6.

#### *6.2.4 Stakeholders' views on policy option 2*

In terms of its effectiveness in facilitating associations to establish operations in another Member State, this policy option received on average a score of 3.4 of 5 in the targeted survey. Results from the Public Consultation show that 32% (12 out of 38) of the respondents who identified themselves under the legal form of associations chose '*harmonisation of some common minimum standards'* as their preferred policy option. And 42% (26 out of 64) of all of respondents to the Public Consultation indicated as preferred option the harmonisation of common minimum standards for cross-border operations in the EU.

### 6.3 PO3: Creation of an additional national legal form of association designed for a cross-border membership and/or cross-border purposes or activities

This policy option would require Member States to introduce in their legal systems a legal form for associations specifically designed for cross-border membership and/or for cross-border activities and/or purposes ('cross-order association'). PO3 would be based on limited provisions essential to cross-border activities and based on mutual recognition among Member States (see Section 5.3.3), while respecting varying national traditions in association

[191] Those Member States without a register (such as Ireland, Denmark and Sweden), will need to establish one to allow the mutual recognition or integrate it in existing registers (see also cost estimates in the intro of this Section).

law (as it leaves existing legislation in the Member States untouched). It offers a combination of PO1 and PO2, in that it creates an additional new legal form of association (similar to PO1), but with provisions relevant to cross-border aspects, which Member States may adapt to their respective national setting through transposition (similar to PO2), but without amending rules on existing legal forms on associations in the Member States.

The legal instrument would be a directive. The benefit of this legal instrument is that it allows for adapting the prescribed rules to national settings, which may also facilitate uptake and reduce adjustment costs, given the general lack of resources associations are facing. This is also very much compliant with the principle of subsidiarity. The downside concerns the possible risk of fragmentation resulting from divergent interpretation among the Member States, as well as administrative burden for Member States, as a result of the transposition process. This may be mitigated through the overall level of precision of the proposed instrument, which may promote legal clarity with regard to prescribed rules and their application. Given the intended content and appropriate legal basis, it is likely that a directive is the only available legal instrument for this policy option.

Under PO3, no full streamlining of all administrative procedures for (cross-border and national) associations will be achieved, as PO3 does not touch existing legislation. Finally, the creation of an additional legal form (as for PO1) could create 'competition' between existing legal forms for associations in the Member States and this new legal form may lead to a sort of 'jurisdiction shopping' by the associations wishing to take up the new legal form. It is important to note that PO3 will not affect associations that do not want to operate across borders.

### *6.3.1 Economic impacts on associations*

Under PO3, the direct economic costs of cross-border operations are expected to be significantly reduced compared to the baseline. In particular:

1. Associations already active cross-border: if converting to the new legal form at national level, substantial simplification in terms of compliance cost and administrative burden can be expected.
2. Associations interested in launching cross-border operations, but hesitating due to existing barriers: if converting to the new legal form at national level, significantly reduced costs thanks to the recognition of new legal form among Member States, legal certainty and reduced red tape;
3. Associations not interested in launching cross-border operations: this policy option does not affect these associations as they are not obliged to transform.

Consequently, the compliance and administrative burden will decrease. This is particularly relevant for associations active in multiple or all Member States, though they would first have to invest in their conversion to the new form to benefit (similar to PO1).

**Costs of operating cross-border (recurring) for associations active across borders (310 000):** PO3 has the potential to reduce costs of operation particularly for associations operating in multiple Member States, due to its harmonisation effect and simplification in

terms of gathering information, internal staff working on compliance and needs for regular external advisory support. The extent to which such benefits materialise depends, however, largely on the extent of uptake of the new legal form. The potential cost reduction is estimated at an order of **magnitude of up to 770 million per year (for the assessed timeframe of 15 years)**, see Annex 4 for calculations.[192]

*Table 12: Excess cost reduction per year (for the assessed timeframe of 15 years).*

| | Max cost reduction per year for PO3 |
|---|---|
| Information cost (internal staff) | ~EUR 350 million |
| Compliance cost (internal staff) | ~EUR 190 million |
| Direct cost/External advisory cost (External running cost) | ~EUR 230 million |

This cost reduction is not applicable to associations not acting across borders or without the ambition to develop such initiatives in the future.

For future cross-border operations of associations, the launch cost is estimated at EUR 3 500 which is a **cost reduction of EUR 2 150**[193] per launch compared to the baseline of EUR 5 650 (for detailed overview see Annex 4).[194] Within the assessed 15-year time frame, this excess cost reduction could potentially range between EUR 338 million and EUR 378 million, in case of scenario A,[195] and between EUR 283 million and EUR 317 million, in case of scenario B.[196]

[192] This cost reduction is not applicable to those associations not acting across borders or without the ambition to develop such initiatives in future. The basis for calculations are those associations estimated to be already active cross borders (310 000). For detailed calculations see Annex 4 (Section 2.5). The main source of information for the assessment of the operation costs was primary data collection, via the targeted survey and in-depth interviews, which also focused on costs assessment. Costs were also assessed against available secondary data (IA study). However, it is not likely to expect such effect to materialise from year one. We can assume a lag effect of one year where no effects can be observed, due to the time to effectively implement the appropriate policy intervention and produce the desired effects on relevant stakeholders (e.g. introduction into national law). Therefore, starting from year one, we can expect a linear increase from the current situation to the full cost reduction potential (i.e. EUR 770 million per year) until year five. As of year five, we can expect the policy intervention to be fully effective and to produce the maximum expected results.

[193] IA study. Estimates based on association responses to the targeted survey and in-depth interviews.
Internal setup cost (compliance cost): EUR 1 500 and external advisory cost (direct cost): EUR 650.

[194] In case the legal form allows associations to operate in other Member States (without establishment) this saved costs would be multipliable by the amount of Member States where a registration had to be done under the baseline scenario.

[195] With a central value for this range of EUR 358 million.

[196] Applying this cost estimate to the estimate range (considering both scenario A and scenario B) of new associations that are expected to launch cross-border given this policy option.

### *6.3.2 Indirect economic impacts*

PO3 is expected to significantly lower the barrier to launch cross-border operations for associations that aim to establish in more than one Member States, but also for those that work and act in border regions and may more occasionally operate cross border. The extent to which associations interested in cross-border activities can be reached will lie on their capability of transforming to the new legal form. However, it is important to note that, for PO3, the effectiveness greatly depends on the harmonisation effect (see Section 5.2.3) and thus, on the extent that barriers do not remain in areas that are not covered by this policy option.

As described in tables 7 and 8, estimated benefits in terms of number of additional cross-border associations range between 157 000 – 176 000 for scenario A and 132 000 -147 000 for scenario B, additional GDP range between EUR 3.57 billion – EUR 4 billion for scenario A and EUR 3 billion – EUR 3.3 billion for scenario B and additional employment range between 64 000 – 71 000 for scenario A and 54 000 – 60 000 for scenario B.[197] In terms of the speed of uptake an exponential growth rate can be expected with some associations being 'early birds' and other hesitating and waiting to see the 'proof of concept'.

### *6.3.3 Impacts on Member States*

In general, and as illustrated in the first past of the Section, under PO3 the magnitude of the cost is not such that it would not constitute a significant cost for competent authorities at Member State level.

This section will, however, provide a short overview of different costs and benefits.

Information costs: associations would not be familiar with this new legal form. Member States will need to set up awareness-raising activities to make the new legal form created at national level better known. Information costs are expected to be similar to PO1 and less impactful than PO2 as the creation of the new legal form is of interest to associations with cross-border activities and ambitions.

Adjustment costs (monitoring and supervision): will be equal as described in PO1.

Adjustment costs (registration): in the short term, considering adjustment costs for authorities related to the registration of associations under the new legal form, PO3 would require the adaptation of current registers or setting up a new register, in line with the newly created common standards allowing for recognition and equal treatment of the new legal form across borders. Please note that impacts relating to the creation or adaptation of national registers under all options are presented in the first part of the Section.

[197] Figures for both scenario's A and B based on a policy uptake range between 85% and 95%. This range corresponds to a central estimate 90% uptake of the policy intervention as suggested by the IA study based on targeted survey and in-depth interviews, as well as legal analysis.

### *6.3.4 Stakeholders' views on policy option 3*

In terms of effectiveness in facilitating associations to establish operations in another Member State, this policy option received on average a score of 3.2 out of 5 in the targeted survey. Results from the Public Consultation indicate that the most favoured policy option by associations is a 'new legal form for associations' (out of the 38 respondents who defined themselves under the legal form of association, 42% (16 out of 38) favoured the creation of 'A new legal form for associations'[198], 32% respondents (12 out of 38) chose the "Harmonisation of some common minimum standards"[199] and 18% respondents (seven out of 38) showed support for an "EU information campaign".[200]

## 7 HOW DO THE OPTIONS COMPARE?

Based on the assessment of Section 6, the following table provides a comprehensive and consistent overview on how the impacts of each policy option compare in detail relative to the baseline:

*Table 13 Comparison of the impacts of each policy option relative to the baseline.*

| **Main impacts on:** | **PO 1[201]: 'the European Association' (PO 1a)" or**<br><br>**'The European cross-border Association' (PO1b)** | **PO 2: Harmonisation regarding common minimum standards for cross-border activities of associations** | **PO 3: Creation of an additional national legal form of association designed for a cross-border membership and/or cross-border purposes or activities** |
|---|---|---|---|
| **i. Associations active cross border** | Need to set up new legal form (administrative procedure and cost). | No need to change statutes or legal form. Adaptation based on familiarisation of new rules, as transposed by the relevant MS. | Need to set up new legal form (administrative procedure and cost). |
| | Automatic recognition in all MS (freedom of establishment and mobility in the single market). | Mutual recognition for associations to enjoy freedom of establishment and mobility in the single market. | Mutual recognition for associations to enjoy freedom of establishment and mobility in the single market. |
| | After setting up a new legal form, substantial simplification in terms of compliance cost and administrative burden for cross border activities. | Substantial simplification in terms of compliance cost and administrative burden for the running cost of operating cross border, depending on the extent of harmonisation and the transposition. | After setting up a new legal form at national level, substantial simplification in terms of compliance cost and administrative burden for cross border activities. |

[198] Option 1 in the Public Consultation questionnaire.
[199] Option 2 in the Public Consultation questionnaire.
[200] Option 3 in the Public Consultation questionnaire.
[201] PO1 captures both the sub-options PO1a and PO1b.

| | | | |
|---|---|---|---|
| | International and large associations with presence in several Member States and an explicit European character (PO1a) and associations with targeted cross-border needs and ambitions (PO1b). | Associations with only occasional cross-border needs or with interaction with only a limited number of Member States. | International and large associations with presence in several Member States and an explicit European character, and associations with targeted cross-border needs and ambitions. |
| | Legal certainty about freedom of establishment and full mobility across Member States when converting into a 'European association'. | Advantageous for small associations or those aiming to occasionally work across borders as these would incur otherwise a relatively high one-time cost from setting up a new legal form through conversion. | Legal certainty about freedom of establishment and full mobility across Member States when converting into the new legal form. |
| **ii. Associations interested in launching cross border operations, but hesitating due to existing barriers** | Same as above | Same as above | Same as above |
| **iii. Associations not interested in launching cross border operations** | Not affected (as they are not obliged to convert). | Effects may occur depending on the transposition (e.g. should a MS wishes to update its rules on a given element overall). In case the requirements change because of the new harmonised rules – then the existing associations would also need to adapt. | Not affected (as they are not obliged to convert). |
| **Member States** | Need to introduce a new legal form fully or partially regulated by EU law and allow for registration and monitoring of such a form. | Need to adapt their current national laws on associations to new harmonised requirements, for (all) associations. | Need to introduce a new legal form within the national legal framework partially regulated by EU law and allow for registration and monitoring of such a form. |
| | Short-term cost increase, adaptation of current registers to common standards and possible reduction of revenues from registrations.<br>Long-term costs reduction thanks to automatic recognition of new legal form and online registration (digital registers). | Information cost about changes in the legislation and subsequent compliance (in terms of monitoring and supervision).<br>Short-term cost increase, adaptation of current registers to common standards. | Short-term cost increase, adaptation of current registers to common standards and possible reduction of revenues from registrations.<br>Long-term costs reduction thanks to recognition of new legal form and online registration (digital registers). |

| | | | |
|---|---|---|---|
| **Citizens** | EU citizens would have the possibility to establish associations facilitating transnational activities (including cross-border provision of services, cross-border collaboration among associations from different MSs, tackling shared challenges across Member States and EU regions etc.)<br><br>EU citizens would enjoy improved access and offer, thanks to potential new service providers from other Member States, especially in sectors where associations are most present (e.g. social and health services). | | |
| **Other entities which are active in the same sectors/markets will be impacted,** | Other market actors active in the same sectors and markets as non-profit providers such as associations will experience greater competition (given that would more easily offer their services in the single market Member States). All policy options are expected to generate a positive impact in intensifying competition and price quality of services and goods (taking into account the differences in effectiveness, as described for each policy option in this Section below). | | |
| | Improved public procurement market at EU level, given that all policy options would allow associations to compete more easily for contracts tendered by public institutions also in other Member States (particularly in specific sectors such as care, health and social services, employment services and social work, where in recent decades a large increase of (cross-border operating) for-profit providers has been observed). | | |
| **ASSOCIATIONS: ESTIMATES OF MAXIMUM POTENTIAL EXCESS COST REDUCTIONS PER YEAR** | | | |
| | **PO1 (a) and (b)** | **PO2** | **PO3** |
| **Operating costs (recurrent)** | **EUR 770 million** | **EUR 465 million** | **EUR 770 million** |
| Compliance cost (internal) | EUR 190 million | EUR 115 million | EUR 190 million |
| Information cost (internal) | EUR 350 million | EUR 210 million | EUR 350 million |
| Direct cost/External advisory cost (External running cost) | EUR 230 million | EUR 140 million | EUR 230 million |
| **ASSOCIATIONS: ESTIMATES OF MAXIMUM POTENTIAL EXCESS COST REDUCTIONS OVER 15 YEARS[202]** | | | |
| **Operating costs (recurrent)** | EUR 8.5 billion | EUR 5.1 billion | EUR 8.5 billion |
| **ASSOCIATIONS: ESTIMATES OF MAXIMUM POTENTIAL EXCESS COST REDUCTIONS PER OPERATION LAUNCH** | | | |
| | **PO1** (PO1a & PO1b) | **PO2** | **PO3** |
| **Launching launch costs[203] (one-off):** | **EUR 2 150** | **EUR 1 850** | **EUR 2 150** |

[202] Figures represent the total excess cost reductions over 15 years. Calculations of totals over 15 years take account of potential lag effects as it is not likely to expect such full excess cost reduction materialise from year one. A lag effect of one year is assumed where no effects can be observed, due to the time to effectively implement the appropriate policy intervention and produce the desired effects on relevant stakeholders (e.g. delay of uptake that can be expected due to the transposition timeframe of the Directive). Therefore, starting from year one, we can expect a linear increase from the current situation to the full cost reduction potential (i.e. EUR 770 million for PO1 and PO3 and EUR 465 million per year for PO2) until year five. As of year five, we can expect the policy intervention to be fully effective and to produce the maximum expected results.

[203] Nominally, the current excessive levels of inflation and predictions on inflation development are expected to cost increases. The cost expressed should thus be interpreted in real term cost at 2023 price levels.

| | | | |
|---|---|---|---|
| Internal setup cost (compliance cost) | EUR 1 500 | EUR 1 200 | EUR 1 500 |
| External advisory cost (direct cost) | EUR 650 | EUR 650 | EUR 650 |
| **ASSOCIATIONS: ESTIMATED OF MAXIMUM POTENTIAL EXCESS COST REDUCTIONS PER OPERATION LAUNCH[204] OVER 15 YEARS** | | | |
| | **PO1** (PO1a & PO1b) | **PO2** | **PO3** |
| Launching costs (one-off) – *Scenario A* | EUR 278 million<br>EUR 318 million | EUR 240 million<br>EUR 274 million | EUR 338 million<br>EUR 378 million |
| Launching costs (one-off) – *Scenario B* | EUR 233 million<br>EUR 267 million | EUR 201 million<br>EUR 229 million | EUR 283 million<br>EUR 317 million |

The assessed policy options are compared below in both qualitative and quantitative ways for: effectiveness in reaching the objectives stated in Section 4; benefit-cost ratio and cost-efficiency; proportionality, including feasibility and subsidiarity; and coherence with other EU policy objectives and with other policy objectives, such as the SDGs (see Section 1).

Scores are allocated based on an internal assessment, building on Section 6, as well as available sources – in particular the IA study and the stakeholder consultation.

Legend: 0 no / neutral impact; + minor positive impact; ++ positive impact; +++ significant positive impact; - minor negative impact; -- negative impact; --- significant negative impact.

Table 14: Comparison of PO1(a and b), PO2, and PO3.

| | PO 1a | PO 1b | PO 2 | PO 3 |
|---|---|---|---|---|
| **1. Effectiveness (in achieving the objective)** | **+++** | **+++** | **++** | **++** |
| **Specific Objective 1: Improve possibilities for an association to have its legal personality recognized in other Member States, thereby ensuring equal treatment in the single market** | +++ | +++ | ++ | ++ |
| **Specific Objective 2: Reduce the regulatory formalities for associations operating in more than one Member State** | +++ | +++ | ++ | ++ |

[204] Applying this cost estimate to the number of new associations that are expected to launch cross-border operations under this policy option (see below).

| | | | | |
|---|---|---|---|---|
| 2. Efficiency (cost/benefit ratio)[205] | +++ | +++ | ++ | +++ |
| 3. Coherence | +++ | +++ | +++ | +++ |
| 4. Proportionality | 0 | ++ | ++ | +++ |
| 5. Subsidiarity | 0 | + | +++ | +++ |
| TOTAL SCORE | ++ | ++ | ++ | +++ |

***Effectiveness (in reaching the objectives).*** All policy options will contribute to achieving the policy objectives of the initiative, albeit in different manner and extent. Therefore, all received a reasonably high score. A legislative instrument to remove identified barriers for associations operating cross-border in the single market – whether through the creation of a new legal form (both PO1 sub-options and PO3) or harmonisation of common minimum standards (PO2) – will reduce the existing regulatory barriers and will improve possibilities for an association to have its legal personality recognized in other Member States. PO1 scores highest and has a significant positive impact, compared to the positive impact of PO2, for the following reasons. Regarding Specific Objective 1 (SO1), PO1 scores the highest, as it is based on automatic recognition of the new legal form applied in a uniform manner (regulation). For the same reason, being a fully or partially prescribed supranational legal form, both sub-options of PO1 have the most immediate harmonisation effect in the single market linked with the choice of the legal instrument (regulation) and therefore score the highest regarding the specific objective 2 (SO 2).

***Efficiency (cost/benefit ratio).*** All policy options will have a considerable positive impact in terms of cost efficiency for associations and for competent authorities in the Member States. Differences between the options in terms of cost reduction depend, to a certain extent, on the cross-border ambitions and current/future activities of associations. Also the uptake of the policy option is a factor that will greatly decide upon this cost/benefit ratio. These are to certain extent uncertain factors that can only be indirectly influenced by the legal framework that the policy options aim to improve and thus depends inevitably on a series of assumptions made in this IA (as outlined in Annex 4).

As presented in Section 6, it is estimated that all policy options will have a positive effect, as all are expected to lower considerably excess costs and administrative burden for associations (biggest relative impact through the creation of an EU legal form as well as an additional legal form at Member State level), and neither is imposing new costs on relevant stakeholders.

[205] For the efficiency (cost/benefit ratio) in table 14, PO1 and PO3 score equally high (+++) as the excess cost reductions for cross-border operations over a 15-year time span are equal for PO1 and PO3 (EUR 8,5 billion ) , compared to EUR 5,5 billion for PO2. There is a difference between PO1 and PO3 as concerns the launch costs, however it is of a considerably smaller size . Consequently, in the sum of total excess cost reductions for PO1 and PO3 that difference is non-significant. Therefore both policy options have an equal score in terms of efficiency (cost/ benefit ratio) of +++ versus ++ for PO2, for which cost reductions in both operational and launch costs are significantly smaller.

From the point of view of **expected overall excess cost reduction of associations' operating cost**, PO1 and PO3 emerge as the most effective. The uncertainty of this potential of PO1 in terms of take up is however higher than for PO3, certainly for smaller associations. On the other hand, the implementation of PO3 at national level may generate unforeseen differences and complexities, likely reducing the full potential. Over a 15-year time span **a reduction of excess costs up to 770 million per year for PO1 and PO3 and 465 million per year for PO2 is estimated**. For the assessed timeframe of 15 years that potentially results in a total excess cost reduction of up to **EUR 8.5 billion under PO1 and PO3** versus up to EUR 5.1 billion under PO2[206].

From the point of view of **cost of launching cross border operations**, while overarching effects are similar for various options, the underlying drivers and affected stakeholder groups differ. Both sub-options of PO1 are particularly relevant to large associations willing to operate cross border (e.g. International NPOs). They provide an option for those looking for an international legal form and allow for managing centrally by using economies of scale at European level. PO2, on the other hand, provides a lowering of the barrier to entry without a need for active choice to advance ones' own position for an association. This facilitates ad hoc cross-border operations and can be more beneficial for micro and small associations, as PO2 provides a reduction of the barrier without a need for action by the associations interested (no need to convert into a new legal form). In monetary terms, the excess cost reduction for the best estimate scenario over a timeframe of 15 years of PO3 is largest and is estimated to range between EUR 338 million and EUR 378 million, followed by PO1 (EUR 278 million - EUR 318 million) and PO2 with the lowest expected reduction (EUR 240 million - EUR 274 million).

In table 13 an overview of the effects on excess cost reductions is displayed, being clear that all policy options have a considerable positive effect on the two main types of costs: operational costs and launch costs, of which operational costs are a larger part. When considering both cost option accumulatively, the estimates show that PO1 and PO3 are equally favourable, followed by PO2 (minor difference occur because of the launch costs as described above). Their target groups differ however. Given that PO3 is expected to be more inclusive for smaller associations because of its likely relative substantive familiarity vis-à-vis that of PO1, the actual expected excess cost reductions (emerging by new associations to launch cross-border activities) are expected for a 15-year time span to be higher than for PO1(more registrations of small associations compared to fewer registrations of large associations). See table 12 of this Section for a detailed comparison of excess cost reductions for scenario A and scenario B. As argued before, PO1b has a more proportionate character than PO1a, but still remains an EU legal form. However, the extent of "inclusiveness" to

[206] Figures represent the total excess cost reductions over 15 years. See table 9 for PO1 10 for PO2 and11 for PO3 in Section 6 for sub costs. Calculations of totals over 15 years take account of potential lag effects as it is not likely to expect such full excess cost reductions materialise from year one. A lag effect of one year is assumed where no effects can be observed, due to the time to effectively implement the appropriate policy intervention and produce the desired effects on relevant stakeholders (e.g. delay of uptake that can be expected due to the transposition timeframe of the Directive). Therefore, starting from year one, we can expect a linear increase from the current situation to the full cost reduction potential (i.e. EUR 770 million for PO1 and PO3 and EUR 465 million per year for PO2) until year five. As of year five, it can be expected that the policy intervention is fully effective and produces the maximum expected results.

which these benefits will trickle down to smaller associations will depend on the complexity and cost of converting into such a legal form, or for newly established associations the extent to which this is more complex than using national legal forms. Hence, in summary, one might assume that PO1b is not as inclusive as PO3 and, due to lack of further specific evidence that would point otherwise, the IA assumes similarity in the uptake potential between PO1a and PO1b. Consequently, the long-term estimated impacts of PO1b are not likely to differ from PO1a.

Finally, PO3 and PO1 will reduce operations costs mostly for associations operating in more than one Member State. PO3 has the specific advantage to stimulate the associations operating across borders by offering them a vehicle vested with reduced administrative burden and costs, while also be mostly adapted to the national context and traditions related to associations. At the same time, it should be noted that for both PO1 and PO3 benefiting would entail that existing associations would need to change their statutes and re-register, if relevant, to meet the requirements of the new legal form or create a new association under the new legal form. This would generate one-off costs and administrative burden.

***Coherence.*** Issues with coherence were not detected and therefore all policy options scored well and equally so. Improving the functioning of the single market is a priority for the EU, which this initiative contributes to. Further, improving the possibilities for associations to operate cross-border contributes to the functioning of civil society and thereby, indirectly, to upholding an enabling civic space. All policy options would support a fair transition for all, given the sectors in which associations are most present. Finally, all policy options are aligned with the Social Economy Action Plan and with the other measures mentioned therein, including the proposal for a Council Recommendation on developing social economy framework conditions and Commission Staff Working Documents providing factual information on relevant taxation frameworks for social economy entities and on the existing case-law on non-discriminatory taxation of charitable organisations and their donors.

All three policy options facilitate exercising the freedom of assembly and of association, as defined in the Charter, the Universal Declaration of Human Rights and the European Convention on Human Rights. Further, measures encouraging intensified cross-border activities of associations directly support the work of the Council of Europe, and in particular the European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations, the Recommendation to its Member States on the legal status of non-governmental organisations in Europe, and the Fundamental Principles on the Status of Non-governmental Organizations in Europe.

All policy options support SDG 8 on Decent work and Economic Growth and, indirectly, SDG 16 on Peace, Justice, and Strong Institutions as well as indirectly SDG 3 on healthy lives and promote well-being for all, by facilitating cross-border activities of associations mainly active in sectors such as health, care and social services.

***Proportionality.*** In terms of proportionality, PO3 (establishment of an additional legal form at Member State level) scores highest. This policy option is most targeted at associations who wish to operate cross-border and would not necessarily lead Member States to change their existing association law nor would it have direct implications on associations not interested in

cross-border activities (as in PO2), in proportion with the scale of the identified problem (8% of all associations in the EU are estimated as currently engaged in cross-border activities). This is also in contrast to PO1a, which would regulate matters beyond what would be essential to facilitate cross-border activities, but also to PO2, which would harmonise common standards for cross-border activities and mobility of all associations, thereby resulting in partial amendment of existing rules on associations in all Member States. Regarding PO1b, which would also create a legal form focusing on cross-border aspects at EU level, it would be slightly less proportionate than PO3, given that it would be applied in a uniform manner (i.e. choice of the legal instrument), which does not allow Member States to adapt the legal form to their national specificities (i.e. through transposition) and therefore may be considered as non-proportionate in relation to the scale and nature of the identified problem in Section 2.

A new legal form for cross-border associations at Member State level (PO3) would allow for flexibility for Member States to adapt it to their respective settings, vis-à-vis an EU-level legal form applied in a uniform manner envisaged in both sub-options of PO1. Moreover, PO3 would not require changing Member States legislation for all associations, as it would be the case for PO2. Therefore, PO3 scores highest on proportionality.

***Subsidiarity.*** In terms of subsidiarity, all policy options answer to the same key problem drivers which have been described above and therefore the necessity of an EU action is covered by all policy options as well as the fact that a solution can be better achieved at Union level (for more explanation, see section 3.1). Furthermore, a Union action would prevent the regulatory fragmentation that currently exists in the EU and only such an action would enable the adoption of common or mutually recognised rules that would ease the cross-border activities and mobility of associations (for more explanation, see section 3.2). However, PO2 and PO3 arguably respect the principle of subsidiarity better than either sub-option of PO1, given that the proposed legal instrument of PO2 and PO3, i.e. a directive, allows Member States flexibility in transposing the requirements set, and therefore score the highest in that regard.

## 8 PREFERRED OPTION

Overall, all policy options score rather positively as outlined in Sections 6 and 7, as they do not impose significant costs for Member Stares, while rather reducing excess costs for associations, albeit to a differing extent. This is particularly the case for options PO1 and PO3, which do not impose costs on all associations, as the choice of taking-up the new legal form will be voluntary. Associations that would choose to convert to or merge with the new form would encounter those administrative costs as assessed in Section 6. Furthermore, costs on authorities are not significant in any policy option, as the objective is regulatory and administrative simplification. PO1 relies on a regulation, while PO2 and PO3 rely on directives.

Although both a directive and a regulation allow for achieving the policy objectives (as outlined in Section 4) in an efficient manner, on balance, a regulation can be seen as more effective and efficient in terms of enforcement and possible divergent interpretation leading to fragmentation. This is due to its direct applicability and uniformity in content. Using a

directive may entail risks in transposition, including gold-plating. However, the comparison is not entirely clear-cut. Transposition allows for adapting the prescribed rules to national settings, which may also facilitate uptake and reduce adjustment costs, given the general lack of resources associations are facing. The risk of fragmentation and divergent interpretation among the Member States may be mitigated and legal clarity may be promoted through the overall level of precision of the proposed instrument.

The main differences between the three options concern their level of compliance with the proportionality and subsidiarity principles and their political and legal feasibility in relation to the nature of the identified problem. In light of the foregoing and considering the absence of a sharp difference in terms of efficiency (costs/benefits) between the options, the preferred option appears to be PO3, as described below.

Firstly, PO3 is most suitable in addressing the objectives, when taking into account proportionality. This also takes into account the scale of the identified problem (estimated numbers of associations currently active cross-border and with potential). PO3 allows those associations interested in operating in more than one Member State to benefit from recognition of their legal personality across the Union, as well as to have improved clarity on administrative procedures applying when operating cross-border, including providing goods and services, receiving capital, welcoming members, merging with associations cross-border[207] and converting cross-border.

Although they score similarly overall for effectiveness, a substantive advantage of PO3 compared to PO2 concerns the recognition of legal personality. The legal personality of associations under the new legal form would be recognized in other Member States, while national associations under PO2 would only benefit from a standardized procedure for obtaining such recognition on a case-by-case basis. Applying the 'once only' principle leads to a minimal number of registrations, hence PO3 is more advantageous over time for existing associations, also smaller ones, despite the higher one-off cost stemming from converting to the new legal form. Both sub-options of PO1 score slightly higher for effectiveness, for the reasons described in Section 7.

Thirdly, PO3 does not interfere with national regimes for associations and traditions in the Member States and furthermore allows for them to be duly considered. This also applies to Member States with existing provisions concerning cross-border aspects of associations, given that the said provisions concern existing legal forms. It would rather require adjustment from Member States to incorporate the new legal form in national legislation, and adaptations to ensure mutual recognition of the legal personality, including adaptations to the existing national registries for associations. As there is very little harmonisation in the Union concerning association law and there is a history of an unsuccessful attempt to create a European Association at EU level, the need for proportionality is underscored. PO1b, which would also create a legal form focusing on cross-border aspects, would likely be less proportionate, given the notion of subsidiarity and that it does not allow Member States to

[207] DG GROW has commissioned an ongoing independent study to describe and compare the 27 national legal regimes for non-profit associations in the EU concerning their legislative approach to mergers and demergers. Results are expected in Q2 2023 in order to feed into the preparation of the initiative.

adapt the legal form to their national specificities through transposition. Its impact in terms of legal clarity is therefore not clear. Precedents show that this technique adds complexity for those using such legal form, thereby having a negative effect on uptake.[208]

PO3 is therefore targeted and complies the most with the proportionality and subsidiarity principles. All aspects considered, PO3 meets best the objectives of addressing the identified problem and meeting the objective of improving the functioning of the single market for associations, thereby also promoting EU civil society and strengthening economic development in the EU.

**Application of the 'One In, One Out' Approach**

Given the voluntary nature of the preferred option establishing an additional new legal form specifically designed for a cross-border membership and/or for cross-border activities and/or purposes ('cross-order assocations'), no costs would be imposed on existing associations. Associations could however incur direct adjustment costs should they desire to convert to this new legal form, thereby enjoying the potential of reduced costs. (see Annex 3 and 4).

*Table 15: Excessive costs reduction related to the 'One In One Out' (OIOO) assessment.*

| **Associations: one-off launching costs[209]** | **Excessive cost reduction [210] (relative to baseline)** | **Associations: recurrent yearly administrative and compliance cost reduction.** | **Excessive cost reduction [211] (relative to baseline)** |
|---|---|---|---|
| Staff cost*: time spent to familiarise with new legislation, check and prepare admin formalities)* | ~ EUR 1 500 | Compliance cost (internal): | ~ EUR 190 million |
| Other setup costs: *external services: advisory on labour, accounting and tax laws in countries where associations wish to expand + registration costs* | ~ EUR 650 | Information cost (internal): | ~ EUR 350 million |
| **Total per launch** | **~ EUR 2 150** | Direct cost/External advisory cost (External running cost): | ~ EUR 230 million |

[208] Stakeholder consultation in the context of the European Cooperative Society, see Report on the application of Regulation No 1435/2003 on the Statute for a European Cooperative Society (SCE) of 23.2.2012.

[209] According to insights collected from stakeholders consulted, in the best scenario with policy intervention setup costs can be expected to be reduced by up to 25% (external services) and 50% (internal costs).
[210] Excessive cost are defined as the unnecessary cost which could be avoided by solving the identified problem (as outlined in Section 2). These need to be distinguished from the actual cost which include also the unavoidable component of the cost category.
[211] Idem.

| | | | |
|---|---|---|---|
| **Total one-off excess cost reductions** (new associations that are expected to launch cross border operations under this policy option) – 15 years | **Scenario A:** EUR 338 million – EUR 375 million[212]<br><br>**Scenario B:** EUR 283 million - EUR 317 million | **Total recurrent excess cost reductions** | **~ EUR 770 million (1 year)**<br><br>**EUR 8.5 billion (15 years)** |

## 9 HOW WILL ACTUAL IMPACTS BE MONITORED AND EVALUATED?

As with any new regulatory initiative, if the preferred option is implemented, there will be periodic evaluation and monitoring. Monitoring could be undertaken by the Commission in conjunction with the EU and national authorities, and the non-profit sector, i.e. representatives of associations and clients or members of associations to get feedback regarding how well (or otherwise) associations are operating across borders and are making the most of the single market opportunities and freedoms. The importance of regular feedback loops between the Commission and key stakeholders (e.g. associations, other actors of the non-profit sector, Member States authorities) can be highlighted. This would provide an opportunity to learn about the impact of the new regulatory initiative on associations operating cross-border in the single market, including advantages, drawbacks and any practical implementation challenges for Member States and associations. This would also allow for further data gathering in order to capture the size and economic value of associations operating cross-border in the single market (e.g. an independent study on the economic performance of the Proximity and Social Economy industrial ecosystem, including associations, has been Commissioned by the Commission under the Single Market Programme. Its first results are expected in 2024 and will feed the future monitoring of the initiative).

There should be an EU legislative intervention, an evaluation will be carried out by 5 years since its entry into force or its transposition by Member States (depending on the nature of the chosen instrument) in order to allow for sufficient period for awareness raising of potential beneficiary associations, and such an evaluation will gather evidence to assess how this specific intervention has performed.

| *Table 16: Objectives and Indicators.* **Objectives** | **Indicators** | **Sources of information** |
|---|---|---|

[212] With a central value for this range of EUR 358 million.

| | | |
|---|---|---|
| **Reduce the regulatory formalities for associations operating in more than one Member State** | Compliance level by Member States (i.e. transposition pace, infringement cases).<br><br>excess cost reductions for associations realised due to reduced regulatory formalities.<br><br>Number and geographic spread of registered cross-border associations) | Evaluation/ desk research /consultation of stakeholders and authorities<br><br>(Online) registries in MS (with aggregated information at EU level<br><br>Information collected through surveys |
| **Improve possibilities for an association to have its legal personality recognized in other Member States, thereby ensuring equal treatment in the single market** | Perceived satisfaction of associations operating cross-border | Evaluation / desk research / consultation of stakeholders and authorities |

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Annex 8: Associations operating or wishing to operate cross border in the single market – territorial dimension

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Annex 10: Legal regimes of associations in EU Member States

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Annex 12: Notion on Public Benefit status

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[213] Annexes are not included in this document but provided separately.