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Re: The European Parliament's mandate on a proposed directive on European cross-border associations – Ju2023/00923

The Confederation of Swedish Enterprise (Sw. Svenskt Näringsliv) has got the opportunity to provide comments to the European Parliament's mandate on a proposed directive on European cross-border associations (ECBA). The Confederation of Swedish Enterprise has 60,000 member companies organized in 48 business and/or employer associations.

Below are a few comments to the European Parliament's mandate:

- The Confederation of Swedish Enterprise is positive to the creation of a new type of association that will be acknowledged within the European Union (the EU) through one single registration.
- The creation of a new type of association must, however, not force existing associations into a new format. The rules should merely constitute an additional possible association type and should not limit the current state in the Member States. Although we assume that this is not the intention, some of the recitals in the European Parliament's mandate seem to indicate that broader harmonization is sought (see for example Amendment 5, and Amendment 7, Amendment 8, and Amendment 12). It would be good if it could be made clear that this is not the case and that the cross-border association is just an additional possible form of association, not otherwise affecting the current state in the Member States.
- The Commission's proposal seems to require cross-border associations to be constituted by means of voluntary agreement by persons (legal persons and individuals) resident within the EU. It does not seem reasonable to exclude founders within the EEA (if this is how it is to be interpreted). It should further be considered whether it is appropriate to, as suggested, require that all founding members be resident within the EU. (Article 3(1))
- It should be considered why the founding members (as set out in the Commission's proposal and the mandate from the European Parliament) must have links to at least two Member States. It should be sufficient to require that the association's objective is to have activities in more than one Member State. (Article 3(3))

- It does not seem necessary to (as set out in the Commission's proposal) include address details of founders in the statutes of the association. This type of (sometimes) personal information are subject to change and are not suitable to be included in the statutes. (Article 6(2))
- The Commission proposed that all members of the executive body must be resident within the EU. We do not believe that this is reasonable. The European Parliament's mandate instead sets out that the executive body shall be composed of a minimum of three persons, of which at least two persons are EU residents. Requiring a certain number of EU residents does not seem to make sense. It should be contemplated to reference residency within the EEA rather than the EU and to require that "at least half" of the members be resident within the EEA instead of mentioning a specific number. As a comparison, current Swedish rules with respect to limited liability companies require (as a main rule) that at least half of the board members, the company president and his/her deputy be resident with the EEA. Requiring that at least half of the members of the executive body be resident within the EEA would be a more relevant requirement also for the cross-border associations. (Article 7(2) and Amendment 68)
- We believe that it is good that the European Parliament opens for the cross-border associations to be able to decide to allow differentiation of voting rights among members. There can be reasons for an association to have different forms of memberships, with different type of influence and voting rights and the possibility to have such membership structures should not be limited by the directive (which was originally proposed by the Commission). (Amendment 71, Article 8(1))
- It is not clear to us what is in this context looked for by the European Parliament when proposing that there should be access to "effective complaint mechanisms" in accordance with national law. (Amendment 73, Article 11(1))
- It should be considered whether it will be necessary to, as proposed, establish an "ECBA Committee" to assist the Commission. (Commission proposal, Article 30, and European Parliament mandate, Amendment 135, Article 29a (new))

In brief, although we are generally positive to the creation of a new type of association, any such new association type must be designed as an additional possible form of association and the directive must not limit or affect the associations and association types we have today. In addition, in order to secure an effective governance of this type of associations, the rules governing the association type must be fit for purpose and should not include too detailed regulations.

Kind regards,

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