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COM(2023) 515 final

2023/0314 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulations (EU) No 1024/2012 and (EU) 2018/1724 as regards the use of the Internal Market Information System and the Single Digital Gateway for the purposes of certain requirements laid down by Directive (EU) .../... of the European Parliament and of the Council on European cross-border associations (COM(2023)516))

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

See Directive COM(2023)516.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

This proposal is based on Article 21(2) TFEU and Article 114 TFEU.

This proposal amends 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 and repealing Commission Decision 2008/49/EC ('the IMI Regulation')¹ which is based on Article 114 TFEU.

This proposal also amends Regulation (EU) 2018/1724 of the European Parliament and of the Council of 2 October 2018 establishing a single digital gateway to provide access to information, to procedures and to assistance and problem-solving services and amending Regulation (EU) No 1024/2012² which is based on Article 21(2) TFEU as well as on Article 114(1) TFEU.

As regards Article 114 TFEU, it lays down that the European Parliament and the Council adopt the measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market. Since this proposal aims at amending Regulation (EU) No 1024/2012 establishing the IMI which has a direct effect on the functioning of the internal market by facilitating the cooperation between Member States and addressing differences between Member States' provisions which obstruct the fundamental freedoms, Article 114 TFEU is the appropriate legal basis.

Since this proposal aims at clarifying and amending the scope of Regulation (EU) 2018/1724 in order to provide better online access to information and procedures to citizens, businesses and legal persons other than businesses exercising or intending to exercise their rights derived from Union law in the field of the internal market, within the meaning of Article 26(2) TFEU, it will facilitate the exercise of the rights of Union citizens to move and reside freely within the territory of the Member States. Therefore, it should be based on Article 21(2) TFEU.

- **Subsidiarity (for non-exclusive competence)**

See Directive COM(2023)516.

- **Proportionality**

See Directive COM(2023)516.

¹ 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 and repealing Commission Decision 2008/49/EC ('the IMI Regulation') (OJ L 316, 14.11.2012, p. 1).

² Regulation (EU) 2018/1724 of the European Parliament and of the Council of 2 October 2018 establishing a single digital gateway to provide access to information, to procedures and to assistance and problem-solving services and amending Regulation (EU) No 1024/2012 (OJ L 295, 21.11.2018, p. 1).

- **Choice of the instrument**

Article 114 TFEU lays down that the European Parliament and the Council adopt the measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market.

Given that this proposal would amend two regulations, a regulation is the appropriate legal instrument.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

See Directive COM(2023)516.

- **Stakeholder consultations**

See Directive COM(2023)516.

- **Collection and use of expertise**

See Directive COM(2023) 516.

- **Impact assessment**

See Directive COM(2023)516.

- **Fundamental rights**

See Directive COM(2023)516.

4. BUDGETARY IMPLICATIONS

See Directive COM(2023)516.

5. OTHER ELEMENTS

See Directive COM(2023)516.

- **Explanatory documents (for directives)**

See Directive COM(2023)516.

- **Detailed explanation of the specific provisions of the proposal**

This proposed Regulation is of technical nature and accompanies the Directive COM(2023)516. It amends Regulation (EU) No 1024/2012 which established the Internal Market Information System (IMI) in order to ensure that Member States' competent authorities cooperate and exchange information through the IMI when they apply the national rules transposed in accordance with the provisions of the Directive COM(2023)516 (Article 1). It also amends Regulation (EU) 2018/1724 which established the single digital gateway, to ensure that Member States give online access to information about European cross-border associations and non-profit associations and facilitate the exchange of evidence between competent authorities in the procedures laid down in the Directive COM(2023)516 (Article 2). By doing so, this amendment aims at ensuring the functioning of the internal market with regard to the provision of information, and procedures.

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(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 21(2) and Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee³,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Directive (EU) of the European Parliament and of the Council on European cross-border associations (COM(2023)516)⁴ lays down measures coordinating the conditions for establishing and operating “European cross-border associations” (ECBAs), with the aim of facilitating the effective exercise of freedom of movement of non-profit associations operating in the internal market.
- (2) Pursuant to Article 30(2) of Directive COM(2023)516, the administrative cooperation and the exchange of information between the competent authorities of the Member States is to be implemented through the Internal Market Information System (‘IMI system’) established by Regulation (EU) No 1024/2012 of the European Parliament and of the Council⁵. For that reason, the necessary administrative cooperation procedures should be established in the IMI system.

³ Ref. of the opinion

⁴ Directive of the European Parliament and of the Council of ... on European Cross-Border Associations (OJ reference).

⁵ 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 and repealing Commission Decision 2008/49/EC (‘the IMI Regulation’) (OJ L 316, 14.11.2012, p. 1).

- (3) In accordance with Articles 2 and 3 of Regulation (EU) 2018/1724 of the European Parliament and of the Council⁶, the single digital gateway shall give access to information, procedures as well as assistance and problem-solving services to citizens of the Union, natural persons residing in a Member State and legal persons having their registered office in a Member State. The operative part and Annex I of Regulation (EU) 2018/1724 should be amended to ensure that the scope is not understood as limited to citizens and businesses and concerns legal persons other than businesses, such as ECBAs.
- (4) Regulation (EU) 2018/1724 of the European Parliament and the Council⁷, which established the single digital gateway, provides for general rules for the online provision of information, procedures and assistance services relevant for the functioning of the internal market. The procedures covered by this Regulation should comply with the requirements of Regulation (EU) 2018/1724 so as to ensure that any ECBA can benefit from fully online procedures and the cross-border automated exchange of evidence, in accordance with the once-only principle. These procedures encompass the application for registration of an ECBA and the procedure of transfer of registered office of an ECBA.
- (5) Regulations (EU) No 1024/2012 and (EU) 2018/1724 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Amendment to Regulation (EU) No 1024/2012

In the Annex to Regulation (EU) No 1024/2012, the following new point (16) is added:

‘16. Directive (EU) of the European Parliament and of the Council on European cross-border associations (COM(2023)516) *: Article 19(2), Article 19(4), Article 23(5), Article 23(6), Article 23(7), Article 24(3), Article 25(6), Article 27.’

*(OJ reference).

Article 2

Amendments to Regulation (EU) 2018/1724

Regulation (EU) 2018/1724 is amended as follows:

⁶ Regulation (EU) 2018/1724 of the European Parliament and of the Council of 2 October 2018 establishing a single digital gateway to provide access to information, to procedures and to assistance and problem-solving services and amending Regulation (EU) No 1024/2012 (OJ L 295, 21.11.2018, p. 1).

⁷ Regulation (EU) 2018/1724 of the European Parliament and of the Council of 2 October 2018 establishing a single digital gateway to provide access to information, to procedures and to assistance and problem-solving services and amending Regulation (EU) No 1024/2012 (OJ L 295, 21.11.2018, p. 1).

(1) in Article 1(1), point (a) is replaced by the following:

‘(a) the establishment and operation of a single digital gateway to provide citizens, businesses and legal persons other than businesses with easy access to high quality information, to efficient procedures and to effective assistance and problem-solving services with regard to Union and national rules applicable to citizens, businesses and legal persons other than businesses exercising or intending to exercise their rights derived from Union law in the field of the internal market, within the meaning of Article 26(2) TFEU;’

(2) in Article 1(1), point (b) is replaced by the following:

‘(b) the use of procedures by cross-border users and the implementation of the ‘once-only’ principle in connection with the procedures listed in Annex II to this Regulation and the procedures provided for in Directives 2005/36/EC, 2006/123/EC, 2014/24/EU, 2014/25/EU and .../...*.’

* Directive of the European Parliament and of the Council of On European cross-border associations (OJ reference).’

(3) in Article 2(2), point (c) is replaced by the following:

‘(c) information on, and links to, the assistance and problem-solving services listed in Annex III or referred to in Article 7 which citizens, businesses and legal persons other than businesses can refer to if they have questions or problems related to the rights, obligations, rules or procedures referred to in points (a) and (b) of this paragraph.’

(4) in Article 14, paragraph 1 is replaced by the following:

‘1. For the purpose of the exchange of evidence for the online procedures listed in Annex II to this Regulation and the procedures provided for in Directives 2005/36/EC, 2006/123/EC, 2014/24/EU, 2014/25/EU and .../.../..., a technical system for the automated exchange of evidence between competent authorities in different Member States (‘the technical system’) shall be established by the Commission in cooperation with the Member States.’

(5) Annex I to Regulation (EU) 2018/1724 is amended as follows:

(a) the title is replaced by the following:

‘List of areas of information relevant for citizens, businesses and legal persons other than businesses having their registered office in a Member State exercising their internal market rights referred to in point (a) of Article 2(2).’

(b) the following areas of information are added:

‘Areas of information related to legal persons other than businesses having their registered office in a Member State:

AA. Starting, running	1. registering, changing the legal form of or closing a legal person
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<p>and closing a legal person other than a business</p>	<p>other than a business (registration procedures and legal forms)</p> <ol style="list-style-type: none"> 2. moving a legal person other than a business to another Member State 3. intellectual property rights (applying for a patent, registering a trademark, a drawing or a design, getting a licence for reproduction) 4. fairness and transparency in commercial practices, including consumer rights and guarantees related to selling goods and services 5. offering online facilities for cross-border payments when selling goods and services online 6. rights and obligations arising under contract law, including late payment interests 7. insolvency proceedings and liquidation of legal persons other than businesses 8. credit insurance 9. mergers of, or selling of a legal person other than a business 10. civil liability of directors of a legal person other than a business 11. rules and obligations regarding the processing of personal data
<p>AB. Employees</p>	<ol style="list-style-type: none"> 1. terms of employment stipulated by law or statutory instrument (including working hours, paid leave, holiday entitlements, rights and obligations regarding overtime work, health checks, termination of contracts, dismissals and redundancies) 2. social security rights and obligations in the Union (registering as employer, registering employees, notifying the end of contract of an employee, paying social contributions, rights and obligations related to pensions) 3. employment of workers in other Member States (posting of workers, rules on freedom to provide services, residency requirements for workers) 4. equal treatment (rules prohibiting discrimination in the workplace, rules on equal pay for men and women and equal pay for employees on fixed-term or under permanent employment contracts) 5. rules on staff representation
<p>AC. Taxes</p>	<ol style="list-style-type: none"> 1. VAT: information on the general rules, rates and exemptions, registering for and paying VAT, obtaining a refund 2. excise duties: information on the general rules, rates and exemptions, registration for excise tax purposes and payment of excise tax, obtaining a refund 3. customs duties and other taxes and duties collected on imports

	<ol style="list-style-type: none"> 4. customs procedures for imports and exports under the Union Customs Code 5. other taxes: payment, rates, tax returns
AD. Goods	<ol style="list-style-type: none"> 1. obtaining CE marking 2. product rules and requirements 3. identifying applicable standards, technical specifications and getting products certified 4. mutual recognition of products not subject to Union specifications 5. requirements regarding classification, labelling and packaging for hazardous chemicals 6. distance/off-premises selling: information to be given to customers in advance, confirmation of the contract in writing, withdrawal from a contract, delivering of the goods, other specific obligations 7. defective products: consumer rights and guarantees, after-sale responsibilities, means of redress for an injured party 8. certification, labels (EMAS, energy labels, Eco-design, EU eco-label) 9. recycling and waste management
AE. Services	<ol style="list-style-type: none"> 1. acquiring licences, authorisations or permits with a view to starting and operating a legal person other than a business 2. notifying the authorities of cross-border activities 3. recognition of professional qualifications, including vocational education and training
AF. Funding a legal person other than a business	<ol style="list-style-type: none"> 1. obtaining access to finance at the Union level, including Union funding programmes and grants 2. obtaining access to finance at national level 3. initiatives addressed to legal persons other than a business (exchanges, mentoring programmes, etc.)
AG. Public contracts	<ol style="list-style-type: none"> 1. participating in public tenders: rules and procedures 2. submitting a bid online in response to a public call for tender 3. reporting irregularities in relation to the tender process
AH. Health and safety at work	<ol style="list-style-type: none"> 1. health and safety obligations in relation to different types of activity, including risk prevention, information and training'

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Article 3

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President