Dispelling Possible Security Based Arguments against the ECBA Directive

Study Commissioned by the Offices of
Sergey Lagodinsky MEP

THE GREENS/EFA in the European Parliament

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Authors:
Dr. Jacquelyn D. Veraldi and
Prof. Dr. Dimitry V. Kochenov,
Central European University
Democracy Institute, Budapest

Edited by
Sergey Lagodinsky, MEP
The Greens/EFA in the European Parliament
Rue Wiertz 60, 1047 Brüssel

Preface

On 5 September 2023, the European Commission published its proposal for a Directive on European Cross-Border Associations (COM (2023) 516). It answered a long-standing demand of European civil society, taken up by the European Parliament in its legislative-initiative resolution and carried by Greens/EFA rapporteur Sergey Lagodinsky: the creation of a European legal form for associations and Union-wide recognition for the organisations that form the connective tissue of our democracies.

Today the proposal stands at a crossroads. In its 2026 Work Programme, published on 21 October 2025, the Commission announced its intention to withdraw the Directive within six months, pointing to Member States' concerns over national security competences and the risk of terrorist financing. This study sets out to dismantle that narrative and, should negotiations resume, to offer concrete solutions for carrying the file forward.

These concerns do not withstand scrutiny. As the analysis that follows shows, the security-based objections rest on an outdated and discredited assumption about the vulnerability of non-profits rather than on any concrete risk the Directive would create. Parliament adopted its position in record time and with broad cross-party support, and more than 250 civil society organisations have since called on the Commission to reverse course. What is needed now is to translate these legal arguments into clear political demands capable of countering an unfounded narrative before it calcifies into a decision the Union will regret.

The stakes extend far beyond a single file. The ECBA is not an instrument of terrorism. It is a vehicle of cross-border, European, federal democracy, and an internal-market instrument that finally recognises the substantial economic and social contribution of Europe's not-for-profit sector. To abandon it now would be a self-inflicted blow to the very civic space the Union claims to champion.

Sergey Lagodinsky

Dispelling key possible security based concerns

The proposed ECBA Directive, as it stands, cannot meaningfully be said to undermine national security competences, limit anti terrorism instruments, or generate disproportionate risks. Moreover, enhancing the Directive to dispel any remaining concerns could be relatively easy.

1. **ECBA Directive does not bring the loss of meaningful control / unconditional mutual recognition able to harm public policy or security of the Member States,** as Article 4 of the proposed Directive expressly acknowledges that the prevention of security risks related to the misuse of associations remains a legitimate national concern that is capable of justifying restrictive measures where appropriate

2. **No shrinking of the freedom of action in the domain of national security:** The ECBA Directive does not seek to harmonise national security policy, nor does it regulate counter terrorism measures, expressly preserving national competences in the field of national security and unable to encroach on them.

3. **No reason to fear judicial scrutiny of the use of exceptions in ECBA Directive:** If the Member States are confident in their assertion that certain ECBAs may give rise to terrorist financing risks, they should not be doubtful about their ability to invoke the public security exception in Article 4 of the proposed Directive, which must be interpreted in line with Article 4(2) TEU.

4. **The meaningful margin of appreciation for the Member States is preserved:** Article 4 of the proposed Directive, read in conjunction with the ECJ case law, preserves a meaningful margin of appreciation for Member States.

5. Accepting the argument that even a low probability of terrorist misuse of the ECBA must outweigh the internal market benefits would risk bringing about a form of **absolute precaution, at odds with the essential mutual trust framework applicable across the board in multiple sub fields of EU law.**

6. **The assumption of increased risk also neglects the existence of EU anti money laundering and counter terrorist financing frameworks,** which remain in force and do their job independently of the ECBA Directive. When such robust safeguards already exist, the risk attributable to the creation of the ECBA may be regarded as limited, implying that the asymmetry between the economic benefits and security risks is overstated.

7. **Possible claims of unfair externalisation of security risks onto host Member States overlooks the availability of the targeted derogation clauses** allowing these States to intervene where concrete risks materialise, the existence of which supports the conclusion that the proposed Directive strikes a fair balance by enabling market integration while preserving Member State capacity to respond (proportionately) to genuine security threats.

8. **Enhanced administrative cooperation or the creation of EU level databases could serve as valuable complementary tools to safeguard security.**

1 Introduction

We were retained by the offices of Sergey Lagodinsky MEP to identify the most important plausible security based arguments that EU Member States may invoke in opposition to the adoption of the ECBA Directive. Although commissioned to produce these arguments, we feel compelled to state outright that we do not find them convincing, as they contradict the core modalities of the EU's functioning in a sweeping array of key contexts from criminal justice to the internal market. Dispelling these arguments is thus the crucial part of this report.

After this brief introduction we proceed as follows. We demonstrate that opposition to ECBA could be based on the early approach of the Financial Action Task Force (FATF) to combatting terrorist financing and briefly recall its evolution and underlying logic (Section 2). Anti ECBA arguments related to alleged terrorist financing risks are then situated in the context of EU constitutional principles and the case law of the Court of Justice of the EU on national security and proportionality (Section 3). We then offer a series of counterarguments to dispel the plausible threats identified (Section 4). It is suggested that a possible solution to address these concerns without undermining the purpose and functioning of the Directive consists of reframing the language used in the provisions related to administrative cooperation (Section 5). It would be a shame to turn away from ECBA Directive in response to such concerns, instead of perfecting the text further to make sure that possible concrete threats are effectively and reliably mitigated.

It is likely that Member states are particularly reluctant to adopt the ECBA in light of the fact that it operates like the core of EU law in many other fields on the basis of a requirement of mutual trust. This reluctance must be understood against the broader constitutional context of EU internal market, criminal, asylum and a number of other areas of European law, in which mutual recognition presupposes a baseline level of confidence in the adequacy of regulatory and enforcement frameworks across all Member States and Union institutions alike: a presumption, which is not always based on facts. The ECBA Directive proposed by the Commission and amended by the European Parliament will require Member States to 'recognise the legal personality and legal capacity of ECBAs registered in another Member State, without any further procedures or assessment or requiring any further registration.'[1] This mutual recognition obligation contained in Article 5 can be identified as the most foundational issue for Member States, in that it removes the possibility for host Member States to subject an ECBA to ex ante scrutiny through national authorisation or registration procedures traditionally used as preventive oversight tools.

Combined with the global narrative highlighting NPOs as being especially vulnerable to terrorist financing risks the origins of which lie in the realm of international politics and are detailed in Section 2 below there is likely a fear amongst Member States that the Directive will facilitate forum shopping, whereby NPOs linked to terrorist actors will identify and register in a low capacity home Member State that has insufficient oversight. In this scenario, the home Member State would effectively become the primary 'gatekeeper' for an association's EU wide operations, notwithstanding divergences in administrative capacity, enforcement culture, and resourcing across national authorities. At that point, only ex post controls are available to the host Member State. Such *ex post* measures – while potentially effective in addressing proven abuses – are often perceived by national authorities as less suitable for preventing harm in areas involving high-impact security risks. In essence, Member States do not wish to lose their gatekeeping role and be required to trust the quality of other (home) Member States' controls in that regard.

[1] Article 5(1) of the proposed ECBA Directive, including the amendments made by the European Parliament.

2 The origins of the claim that non-profit organisations are vulnerable to the terroristic financing

The position that the ECBA could increase risks of terrorist financing likely stems from an unproven and since amended claim that NPOs are at a high risk of terrorist financing forwarded 25 years ago and perpetuated for many years by the global FATF.[2] The FATF, a G7 initiative starting in 1989, is an intergovernmental body that sets and oversees the implementation of international standards related to global money laundering and terrorist financing.

In the immediate aftermath of 9/11, the FATF issued a Special Recommendation that made an overly broad and unsubstantiated claim that NPOs are 'particularly vulnerable' to terrorist financing and instructed countries to take action against their misuse by terrorist actors.[4] This label of particular vulnerability was reiterated over many years by the FATF.[5] Such framing is in conflict with prevailing academic consensus that there remains a severe lack of evidence to support the claims made by FATF.[6]

FATF standards often operate as de facto binding norms, exerting considerable pressure on states to adopt precautionary regulatory approaches. While it only issues 'recommendations' that are not legally binding, findings of non compliance can have significant economic consequences for relevant grey – or black – listed countries, such as a reduction in foreign direct investment, development assistance, company market capitalisation, and exchange rates.[7]

In 2021, the FATF began to acknowledge that their approach to NPOs led to substantial and widespread 'unintended consequences' for NPOs.[8] Consequences of particular note include de – risking (whereby financial institutions avoid instead of manage risk by restricting relationships with NPOs)[9] and other forms of exclusion by financial institutions[10] as well as intrusive monitoring of and restrictions on NPO activities.[11] These measures have had a chilling effect on civil society, undermining fundamental rights such as freedom of association. The

[2] On this, see e.g. Jeanne Nel, 'Charities, Non profit Organisations and the FATF: Testing the Evidence Base and Proportionality of Risk Based Counter Terrorist Financing Regulation' in Doron Goldbarsht, Louis de Koker, and Jamie Ferrill (eds), Combating Financial Crime: Intended and Unintended Consequences (Springer Nature 2025) 147.

[3] Financian Action Task Force, 'Who we are', available at *https://www.fatfgafi.org/en/the fatf/who we are.html* (last accessed 31 January 2026).

[4] Financial Action Task Force, 'FATF Standards: FATF IX Special Recommendations' (October 2001), available at *https://www.fatfgafi.org/content/dam/fatfgafi/recommendations/FATF%20Standards%2%20IX%20Special%20Recommendations%20and%20IN%20rc.pdf* (last accessed 31 January 2026) 3.

[5] See e.g. Financial Action Task Force, 'FATF Report: Risk of Terrorist Abuse in Non Profit Organisations' (June 2014), available at *https://www.fatf gafi.org/content/dam/fatf gafi/reports/Risk of terrorist abuse in non profit organisations.pdf.coredownload.pdf* (last accessed 31 January 2026) 43; FATF, 'Best Practices: Combating the Abuse of Non Profit Organisations (Recommendation 8)' (June 2015) available at *https://www.fatfgafi.org/content/dam/fatfgafi/guidance/BPP combating abuse non profit organisations.pdf* (last accessed 31 January 2026) 11.

[6] Peter Romaniuk and Tom Keatinge 'Protecting charities from terrorists … and counterterrorists: FATF and the global effort to prevent terrorist financing through the non profit sector' (2018) 69 Crime Law Soc Change 265, 268. Is has been observed that evidence is similarly lacking in terms of the claims by the UN monitoring related to NGO involement in supporting Al Shabaab: Peter Romaniuk, 'The State of the Art on the Financing of Terrorism' (2014) 159 RUSI Journal DOI: 10.1080/03071847.2014.912794, 16-20.

[7] Louis de Koker, John Howell, and Nicholas Morri, 'Economic Consequences of Greylisting by the Financial Action Task Force' (2023) 11 Risks DOI:10.3390/risks11050081, 2.

[8] Financial Action Task Force, 'High Level Synopsis of the Stocktake of the Unintended Consequences of the FATF Standards' (21 October 2021) available at https://www.fatf gafi.org/content/dam/fatf gafi/reports/Unintended Consequences.pdf (last accessed 31 January 2026).

[9] Ibid, 2.

[10] Ibid, 3.

[11] Ibid, 4.

financial institutional exclusion effects are especially remarkable, in light of their ability to in fact increase risks of terrorist financing due to NPOs having to have recourse to cash payment systems.[12]

Any security – related arguments against ECBA should necessarily be viewed in the light of the damage that the overly broad and unsupported FATF recommendations have done. It is true that the current FATF Recommendations – published in 2025 – are more nuanced, noting the 'potential vulnerabilities' of NPOs and calling for a proportionate and risk – based approach that does not disrupt or discourage legitimate NPO activities.[13] Still, the damage of the 25 – year narrative identifying NPOs as particularly susceptible to terrorist financing appears to have been done. Countries quickly adopted new regulatory frameworks for NPOs that largely took the blanket assumption of NPO riskiness as a starting point.

[12] Commission. 'Report on the assessment of the risks of money laun dering and terrorist financing affecting the internal market and relating to cross border activities' (COM (2017) 340 final) 7.

[13] Financial Action Task Force, 'The FATF Recommendations' (October 2025) available at *https://www.fatfgafi.org/content/dam/fatf gafi/recommendations/FATF%20Recommendations%202012.pdf.core download.inline.pdf* (last accessed 31 January 2026) 13 and 63.

3 Potential member states arguments

The strongest arguments that could be invoked by the Member States against the ECBA Directive that are connected to alleged terrorist financing risks relate to i) the Treaty requirement to respect Member State competence in the area of national security and ii) the proportionality of the proposed Directive, both of which could hypothetically affect the validity of the measure.

3.1. The requirement of respect for Member State competence in the area of national security

Key References	Core Argument	Framing of the Argument	Practical Concern
Article 4(2) TEU; ECJ case-law on national security.	The Directive interferes with Member States' exclusive responsibility for safeguarding national security.	Article 4(2) TEU obliges the EU to respect essential State functions, including national security, which remains the sole responsibility of Member States. Any EU measure constraining preventive oversight in sensi-tive areas may exceed EU competence.	Preservation of sovereign control over core security functions.
Prohibition on hindering essential State functions under Article 4(2) TEU.	Mutual recognition reallocates decisive risk-assessment powers in a way that is incompatible with Article 4(2) TEU.	The ECBA's automatic recognition model shifts ex ante scrutiny to the home Member State and obliges host States to rely on foreign authorities despite potential security risks.	Reduced autonomous preventive oversight in host Member State.
ECJ acceptance that Article 4(2) TEU may be invoked to challenge EU measures.	The Directive would be invalid in light of insufficient respect for national security considerations.	By excluding *ex ante* control in the host State, the Directive restricts autonomous risk evaluation relating to terrorist financing, rendering it incompatible with Article 4(2) TEU and hence invalid.	Diminished capacity for early intervention.
Commission v *Poland, Czech Republic and Hungary.*	Insufficient deference by the Court in practice. High threshold for "national security".	The Court's reasoning in this case may be cited as evidence that national security arguments receive limited engagement.	Fear of weak judicial protection of core interests.

3.2. The principle of proportionality

Member States may also invoke the principle of proportionality in their opposition to the proposed ECBA Directive. The proportionality principle has two main functions under EU law: i) to determine the validity of an EU legal measure; and ii) to determine the lawfulness of a Member State or EU restriction of a natural or legal person's rights. Here, we are concerned with the former.

Key References	Core Argument	Framing of the Argument	Practical Concern
General EU proportionality principle.	The Directive is disproportionate to the extent that it would be invalid.	Even if internal market integration is legitimate, the ECBA may go beyond what is necessary or fail to strike a fair balance between economic integration and security interests.	Excessive interference relative to benefits pursued.
Necessity (least restrictive means).	Less restrictive alternatives exist.	The Directive excludes all *ex ante* host-state control and therefore exceeds what is necessary.	Excessive delegation of oversight.
	Enhanced safeguards could be introduced.	A conditional model of mutual recognition could require disclosure of beneficial ownership, proof of AML compliance, or identification of funding sources.	Preserve preventive oversight while maintaining integration.
	A risk-based ECBA regime is possible.	Cross-border facilitation could be limited to low-risk NPO categories or entities below financial thresholds.	Prevent automatic access for higher-risk entities.
	Cooperation could substitute full automaticity.	Authorities could cooperate in ex ante checks through greater information-sharing, joint risk assessments, or an EU-level database.	Shared oversight without restoring host authorisation.
Proportionality *stricto sensu*	The Directive fails to strike a fair balance between the interests at stake.	Security risks linked to possible terrorist financing outweigh the internal market benefits.	Primacy of life and public safety over economic integration.
	Security interests deserve greater weight.	Internal market objectives are primarily economic, whereas terrorist financing threatens human life and public safety. Even low-probability risks should carry substantial weight.	Severity and irreversibility of potential harm.
	Benefits are modest compared to risks.	Cross-border NPO activity is already legally possible, though administratively burdensome. Additional gains may not justify heightened security risks.	Marginal benefit versus existential risk.
	Burdens fall unevenly.	Security risks would be borne primarily by host States, while integration benefits accrue mainly to associations.	Unequal allocation of risks and rewards.

4 Countering the arguments of the member states

Let us now set out how these arguments related to national security and proportionality can be rebutted in turn.

4.1. National security and Article 4 of the ECBA Directive proposal

The ECBA Directive cannot be said to undermine national security competences. Instead, it requires that those competences be exercised in a justifiable way.

a. No loss of meaningful control / No unconditional mutual recognition

Firstly, as the Directive proposes a model of mutual recognition that is accompanied by security based derogations, it would be incorrect to allege that the Directive imposes unconditional mutual recognition. Article 4 of the proposed ECBA Directive *already* allows Member States to adopt measures on the grounds of public policy or public security to prevent the risk of misuse of ECBAs. This provision reflects a deliberate legislative choice to preserve Member State discretion in sensitive areas while embedding that discretion within the framework of EU law. Contrary to the suggestion that the ECBA Directive deprives host Member States of meaningful control, Article 4 expressly acknowledges that the prevention of security risks related to the misuse of associations remains a legitimate national concern that is capable of justifying restrictive measures where appropriate.

b. No shrinking of the freedom of action in the domain of national security

The ECBA Directive does not seek to harmonise national security policy, nor does it regulate counter terrorism measures. Instead, it operates within the internal market while expressly preserving Member State competences in the area of national security. Under EU law, Member States remain free 'to define their essential security interests and to adopt appropriate measures to ensure their internal and external security'.[14] This freedom is repeatedly affirmed by the Court of Justice.[15]

c. No reason to fear judicial scrutiny of the use of exceptions in ECBA Directive

Judicial scrutiny does not negate national security competence; rather, it ensures that such competence is exercised in a manner consistent with the rule of law. The mere fact that the invocation of the Directive's Article 4 public security exception would be subject to judicial review does not amount to an encroachment on national security competence, instead reflecting the settled principle that derogations from EU law must be justified. In that regard, it should be highlighted that the Court only rejects attempts at national security derogations where Member States are unable to demonstrate their proportionality. If the Member States are confident in their assertion that certain ECBAs may give rise to terrorist financing risks, they should not be doubtful about their ability to invoke the Article 4 exception, which must be interpreted in line with Article 4(2) TEU.

d. The meaningful margin of appreciation for the Member States is preserved

Article 4 of the proposed Directive preserves a meaningful margin of appreciation for Member States, while ensuring that security based restrictions do not extend beyond what is genuinely required. So long as Member States are able to adduce sufficient evidence demonstrating risks related to the misuse of ECBAs and are able to show that the measures adopted are proportionate, they will be able to rely on the derogation provision in the proposed ECBA Directive.

For instance, in *Privacy International,* the Court rejected restrictive measures based on national security solely for the reason that the national measures

[14] Joined Cases C-511/18, C-512/18 and C-520/18 *La Quadrature du Net* EU:C:2020:791 [99].

[15] See further e.g. Case C 187/16 *Commission v Austria* EU:C:2018:194 [75]; Case C 623/17 *Privacy International* EU:C:2020:790 [44]; Case C 742/19 *Ministrstvo za obrambo* EU:C:2021:597 [40]; Case C 368/20 NW v *Landespolizeidirektion Steiermark* EU:C:2022:298[84]; Case C 601/21 *Commission v Poland* EU:C:2023:629 [76]; Case C 33/22 *Österreichische Datenschutzbehörde v WK* EU:C:2024:46 [50]

in the case in question applied 'even to persons for whom there is *no evidence* to suggest that their conduct might have a link, even an indirect or remote one, with the objective of safeguarding national security'.[16] The decisive factor was the absence of a sufficiently evidence based link between the measure adopted and the security objective pursued.

To say that the Court does not properly engage with Member State arguments on national security is false. Member States must merely demonstrate that the relevant threat to national security is 'at the very least, foreseeable' (or otherwise genuine and present) in order to invoke Article 4(2) TEU,[17] which should be considered a reasonable threshold by the Member States. In *Commission v Poland, Czech Republic, and Hungary* (discussed above),[18] the Member States' arguments failed not because national security was disregarded by the Court, but because the Member States did not discharge their evidentiary burden of showing that compliance with EU law would genuinely prevent them from safeguarding that interest. The Court here did not deny the importance of national security but instead found that the Member State had not demonstrated why alternative means were unavailable.

e. 'National security' is not a carte blanche

The ECJ has in fact clarified that there is no presumption that the reasons invoked by the national authorities to underpin 'national security' claims exist or are valid.[19] Thus, it emerges from the case law and leading literature that Article 4(2) TEU does not offer the Member States a *carte blanche* not even for the activities of their secret services.[20] While Article 4(2) TEU is as broad as it is new, only entering the Treaties with the Lisbon revision, a somewhat more succinct and narrow definition of 'national security' is offered in international 'soft law', which we find in the 'Johannesburg Principles on National Security, Freedom of Expression and Access to Information', adopted in 1996. The Principles define 'national security' as follows:

'Protect[ing] a country's existence or its territorial integrity against the use or threat of force, or its capacity to respond to the use or threat of force, whether from an external source, such as a military threat, or an internal source, such as incitement to violent overthrow of government.'[21]

Accordingly, Member States could frame their objections to the ECBA as constitutional rather than merely policy based, but such framing could be difficult to justify in practice, given the vagueness of the starting presumptions in relation to the NPOs' vulnerabilities to terrorist financing going back to FATF's Recommendations.

4.2. Proportionality

The counterarguments related to the invocation of the principle of proportionality can be broken down into those related to the 'necessity' criterion, and those related to the 'proportionality *stricto sensu*' criterion. Overall, the less restrictive means that could be proposed would largely undermine the purpose and functioning of the Directive. Moreover, the argument that the Directive does not achieve a fair balance between the interests at stake can be doubted based on the lack of actual evidence on terrorism financing risks as well as the existence of EU counter terrorism measures and the derogation clause in the Directive.

a. Necessity

The less restrictive means that could be proposed by Member States would exacerbate fragmentation and/or erode the benefits brought by the Directive.

Firstly, a model of conditional mutual recognition incorporating *ex ante* host State controls would risk embedding the exact fragmentation and legal uncertainty that the ECBA Directive seeks to eliminate. Allowing host Member States to impose pre authorisation or compliance checks would effectively preserve parallel national gatekeeping mechanisms, undermining the purpose of the uniform legal status that the ECBA Directive creates.

Secondly, a general framework reliant on *ex post control* mechanisms and derogations for host Member States is less onerous overall as compared to a highly differentiated *ex ante* regime. Proposals to limit the ECBA to categories of non profit associations that are defined *ex ante* as being 'low risk' or to impose financial thresholds may themselves be administratively

[16] Case C 623/17 *Privacy International* EU:C:2020:790 [80].

[17] Case C-140/20 GD EU:C:2022:258 [62].

[18] Joined Cases C-715/17, C-718/17 and C-719/17 *Commission v Poland, Czech Republic, and Hungary* EU:C:2020:257.

[19] Case C 300/ 11 ZZ, para. 61. Cf. N. de Boer, 'Secret Evidence and Due Process Rights under EU Law: ZZ' (2014) 51 CMLRev., 1235.

[20] For a rich discussion, see, M. Jaśkowski, 'National Security and Essential Security Interests in CJEU Jurisprudence', in J. Hillebrand Pohl (ed.), *Weaponising Investments* (Springer, 2023), 227.

[21] Article 19, Principle 2(a).

burdensome, insufficiently precise, and potentially discriminatory. Risk classifications related to terrorist financing are inherently dynamic and context specific, such that embedding rigid risk categories into secondary law could lead to either i) under inclusiveness (in the sense that legitimate associations are excluded) or ii) over complexity, deterring uptake of the ECBA.

Lastly, while enhanced administrative cooperation or the creation of EU level databases could serve as valuable complementary tools, they must not amount to a functional re introduction of *ex ante* controls, thereby undermining the effectiveness of the proposed Directive. Such measures would have to be drafted in a way so as to not neutralise the effect of the ECBA, which is to do away with the burdens that accompany Member State divergences in terms of resources and temporal issues.

b. Proportionality *stricto sensu*

With regard to proportionality in the strict sense, the framing of the balancing exercise advanced by the Member States would be irreconcilable with the Court's case law on national security described above. The lack of concrete evidence to demonstrate that risks related to terrorist financing exists tips the scales in favour of the proportionality of the proposed Directive. At present, the notion that the ECBA Directive will meaningfully increase terrorist financing risks is a mere assumption, meaning it could not in itself trigger the disproportionality of the proposed Directive. Accepting the argument that even a low probability of terrorist misuse of the ECBA must outweigh the internal market benefits would risk collapsing the proportionality *stricto sensu* test into a form of absolute precaution, effectively immunising national security claims from meaningful balancing.

When robust anti money laundering and counter terrorist financing frameworks already exist, the risk attributable to the creation of the ECBA may be regarded as limited, implying that the asymmetry between the economic benefits and security risks would be overstated. These frameworks would fully apply to ECBAs, in that banks and other financial institutions are 'obliged entities'[22] in the sense of the AML Regulation that, under the most recent framework, must perform extended customer due diligence checks on (inter alia) non profit association clients to assess and manage potential terrorist financing risks. The AML Regulation requires them to conduct business wide risk assessments[23] and has tighter know your customer requirements, including on beneficial ownership;[24] the higher the risk, the greater the amount of information and monitoring required. Enhanced due diligence is done for transactions and relationships involving third country jurisdictions identified as high risk.[25]

Finally, the conclusion that the proposed Directive strikes a fair balance is supported by the fact that allegations related to unfair externalisation of security risks onto host Member State overlook the availability of the targeted derogation clauses allowing these States to intervene where concrete risks materialise.

For these reasons, arguments asserting the invalidity of the Directive on the basis of the principle of proportionality are unconvincing. Less onerous measures would in reality often be more burdensome and undermine the Directive's purpose and operation. Additionally, the lack of evidence on NPO terrorism financing risks negates the argument that a fair balance is not struck by the proposed Directive, as does the fact that claims related to such risks ignore the existence of both EU counter terrorism measures as well as the Directive's derogation clause.

[22] Article 3 of Regulation (EU) 2024/1624 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing [2024] OJ L1624/1 ('AML Regulation'). Summarising the application of the Regulation to non profits, see e.g. Philanthropy Europe Association, 'Unpacking the EU AML/CFT Package: Impacts on the Non Profit Sector'(1 March 2025) *https://philea.issuelab.org/resource/unpacking-the-eu-aml-cft-package-impacts-on-the-non-profit-sector.html.*

[23] Article 10 AML Regulation.

[24] Articles 20(1), 22 24, and 51 68 AML Regulation.

[25] Articles 29 and 34(4) AML Regulation.

5 Proposed amendments to address the possible concerns of the member states, should these persist

a. Enhanced administrative cooperation framework

In order to meaningfully address Member State concerns without undermining the purpose and functioning of the ECBA Directive, the current framework for administrative cooperation could be reframed in a way that gives host Member States a greater sense that they have more input in the home Member State verifications. This could still be done in a way that does not amount to a *de facto* host State authorisation system and in a way that is strictly procedural, time limited, and non discretionary. Recognition would remain automatic, with cooperation serving the purpose of facilitating the collection of risk related information. This could be done by amending the existing administrative cooperation provisions to clarify that home Member States *must* (rather than 'should'[26]) notify other Member States that an entity has applied for ECBA status, which would then enable the other Member States to send information that may be helpful to the host Member State for their ex ante checks. Under that system, other Member States could be given the opportunity to request information from the home Member State, which would enable the former to verify that they do not need to trigger the activation of the Article 4 derogation. This would have the added benefit of placing a degree of pressure on home Member States to carry out proper and thorough ex ante assessments, knowing that other Member States are scrutinising their assessments.

b. Only a minimal amendment of the text required

Such changes would simply require reframing the language used in recital 49 and Article 28 to clarify that cooperation, where requested from other Member States, is indeed mandatory. To clarify the purpose of administrative cooperation, recital 49 could be amended to add that such mechanisms are intended to reinforce mutual trust between Member States and facilitate the effectiveness of the mutual recognition system laid down in the Directive. The other Articles listed in Article 28 as being relevant for cooperation should also be amended to emphasise cooperation, e.g. by inserting a clause stating that, pursuant to Article 28, through the IMI system home Member States shall notify host Member States of applications for ECBA registration in order to give them the opportunity to exchange information. To safeguard the smooth functioning of the registration process, strict deadlines for sending information from the host Member State should be imposed.

[26] As currently provided for in recital 49 of the proposed ECBA Directive.

6 To conclude

The way in which the proposed ECBA Directive challenges national gatekeeping models is consistent with the requirements of the Treaties and is attentive to security concerns while at the same time not allowing those concerns to become unjustified barriers to integration.

The apprehensions related to terrorism risks are not rooted in concrete, evidence based risks assessments, but are instead based in a long established but insufficiently substantiated narrative that portrays NPOs as inherently vulnerable to abuse, a narrative that itself has been revised at the international level and that is increasingly recognised as having generated unintended, disproportionate, and counterproductive regulatory responses.

Arguments related to Article 4(2) TEU on national security do not establish that the ECBA Directive would encroach on Member State competence in this area, as it neither harmonises national security policy nor deprives them of the ability to respond in a proportionate way to genuine security threats. In fact, it explicitly preserves the possibility for *ex post* action via a derogation clause.

Likewise, objections based on the principle of proportionality would encounter significant difficulties. While alternative regulatory models could be envisioned, analysis of the 'necessity' requirement shows that many of such less onerous measures would reintroduce the fragmentation, legal uncertainty, and administrative burdens that the Directive is designed to eliminate. The proportionality objection also fails at the 'stricto sensu' criterion in light of the fact that terrorist risk claims are not based in concrete and reliable evidence, as required by the Court of Justice, and neglect the existence of the EU counter terrorist financing framework.

Finally, the analysis shows that Member State concerns can be addressed through subtle and carefully drafted amendments to the Directive's administrative cooperation framework that can be done in a way so as not to reintroduce discretionary host Member State authorisation, striking a balance between market integration and respect for Member State prerogatives.

This analysis has therefore demonstrated that concerns expressed by certain Member States regarding the alleged ability of the ECBA Directive to increase risks connected to terrorist financing, while politically salient and capable of being constitutionally framed, are not sufficient to undermine either the promise or validity of the proposed Directive.

THE GREENS/EFA
in the European Parliament