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**REGULATING POLITICAL ACTIVITIES**  
**OF NON-GOVERNMENTAL ORGANISATIONS**

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## INDEX

### Foreword

A. Introduction .....	Paras.1-9
B. The concept of and standards for engagement.....	Paras.10-29
C. Political activities and public policy activities.....	Paras.30-36
D. Overview of regulatory approaches to political activities .....	Paras.37-43
E. Conclusion .....	Paras.44-45

### *Country case studies*

Azerbaijan .....	Paras.46-64
Croatia .....	Paras.65-83
England and Wales .....	Paras.84-116
Estonia .....	Paras.117-131
Hungary .....	Paras.132-153
Moldova .....	Paras.154-180
Russian Federation .....	Paras.181-198
Slovakia .....	Paras.199-211

## **Foreword**

*By Cyril Ritchie, President of the Expert Council on NGO*

The Conference of INGOs of the Council of Europe, which formally launched the Expert Council on NGO Law in January 2008 as one of the Conference's principal organs, subsequently stated in a Plenary Recommendation that "the ongoing work of the Expert Council constitutes a contribution by the Conference of INGOs to the strengthening and deepening of the core values of the Council of Europe: Democracy, Human Rights and the Rule of Law." (CONF/PLE(2010)REC1).

The same Conference Plenary Recommendation also "reiterated its great satisfaction at the correlative decision in October 2007 by the Council of Europe Committee of Ministers to adopt CM/Rec(2007)14 on 'The legal status of NGOs in Europe' which continues to provide a bedrock and guidance for the Expert Council's work".

In the above contexts, the Expert Council has over the years produced several thematic studies and issued several country reports or opinions. The present study on "Regulating political activities of NGOs" is a striking and important innovation, in that it is based on detailed research and analysis of this subject across all regions of Europe. The study was generated by concerns that too many governments - even though committed to the European Convention on Human Rights and Fundamental Freedoms, and subsidiarily to CM/Rec(2007)14 - were restricting civil society space and seeking pretexts to hobble the exercise of civic responsibility.

CM/Rec(2007)14 states specifically that the contributions of NGOs to society "are made through an extremely diverse body of activities which can range from acting as a vehicle of communication between different segments of society and public authorities, through the advocacy of changes in law and public policy, the monitoring of compliance with existing obligations under national and international law, and on the provision of a means of pursuing, promoting and defending interests shared with others."

CM/Rec(2007)14 is categorical in stating (Article 6) that "NGOs should not be subject to direction by public authorities", and further (Article 12) that "NGOs should be free to undertake research, education and advocacy on issues of public debate, regardless of whether the position taken is in accord with government policy or requires a change in the law." It also underlines (Article 76) that "Governments and quasi-governmental mechanisms at all levels should ensure the effective participation of NGOs without discrimination in dialogue and consultation on public policy objectives and decisions. Such participation should ensure the free expression of the diversity of people's opinions as to the functioning of society. This participation and cooperation should be facilitated by ensuring appropriate disclosure or access to official information." This inspirational and rational statement represents the collective opinion, freely agreed, of the member states of the Council of Europe. Let it be implemented.

The present Study indeed shows that there are many varieties of the concept or interpretation as to what might constitute "political activities" in theory or in practice. What is clear is that political action = democracy = freedom of opinion = freedom of association = informed citizenship. Political activities cannot be deemed honourable and worthy when conducted by government leaders and parliamentarians,

yet dishonourable and unworthy when conducted by ordinary citizens and their associations. "Regulating political activities" is not to be equated with banning them, frustrating them, demeaning them, or subjecting them to such artificial constraints that democracy and good governance become the losers. Again, CM/Rec(2007)14 states what should be obvious (Article 67): "The activities of NGOs should be presumed to be lawful in the absence of contrary evidence."

In the context of all that precedes, and in conformity with the mandate of the Expert Council on NGO Law, I commend the present Study to the attention of all relevant organs of the Council of Europe; to authorities, parliamentarians and civil society throughout Europe and beyond; and to all other bodies working to uphold and advance the Council of Europe's core values: democracy, human rights, and the rule of law.

## REGULATING POLITICAL ACTIVITIES OF NON-GOVERNMENTAL ORGANISATIONS

### A. Introduction

1. Legislation currently drafted or adopted around the world and in particular in some member states of the Council of Europe (e.g. Russia, Azerbaijan and Turkey) reduces the possibility for active engagement of non-governmental organisations (NGOs) in the society. The threats particularly concern the inability of organisations to voice their opinions and shape policies.<sup>1</sup>
2. The ability of NGOs to engage in activities that influence politics and policy-making is particularly important for those that engage in advocacy activities. Such organisations aim to actively take part in policy-making in order to contribute to shaping the future of the country around elections and to defend human rights of fellow citizens.
3. The most recent example in restricting areas of NGO engagement is the *Law Introducing Amendments to Certain Legislative Acts of the Russian Federation Regarding the Regulation of Activities of Non-Commercial Organisations Performing the Function of Foreign Agents ('the Law')*, dated July 20, 2012, №. 121-Ф3.
4. One of the key concerns with the so-called “foreign agents’ law” is the definition of political activities. Under the Law a “political activity” is defined as “*taking part (including by financing) in the organisation and conduct of political actions aimed at influence over the decision-making by state bodies intended for the change of state policy pursued by them, as well as in the shaping of public opinion for the aforementioned purposes.*” The Law excludes several areas of NGO work from this definition. However, experts agree that the definition as provided in the law goes beyond what is considered as political engagement. Indeed, the definition is too broad to include activities dedicated to changing state policy as well as to influencing public opinion related to changing public policy. In other words, under the Law, any advocacy activity undertaken by NGOs could be considered a “political activity”.
5. The Council of Europe Commissioner for Human Rights specifically noted that “*from the outset the Law did not clearly and unequivocally exclude human rights advocacy from the notion of political activity*”.<sup>2</sup> As concluded by the Commissioner, the Expert Council on NGO Law and other international organisations including the International Center for Not-for-Profit Law (ICNL), “*one can reasonably assume that the law will have a disproportionate effect on democracy, governance, and human rights activities.*”<sup>3</sup> Unfortunately, the implementation of

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<sup>1</sup> For further information on standards please see: [http://www.coe.int/t/ngo/expert\\_council\\_en.asp](http://www.coe.int/t/ngo/expert_council_en.asp) and <http://associationline.org/guidebook>, whilst on trends in restrictive laws regarding NGOs please see: <http://www.icnl.org/research/monitor/index.html>. All links to internet pages referenced in the footnotes of this study were last accessed in October 2014.

<sup>2</sup> Opinion of the Commissioner for Human Rights on the Legislation of the Russian Federation on Non-Commercial Organisations in Light of Council of Europe Standards, CommDH(2013)15

<sup>3</sup> <http://www.icnl.org/news/2012/2-Jul.html>; see also: Expert Council on NGO Law: Country study on NGO legislation in the Russian Federation [http://www.coe.int/t/ngo/Articles/Expert\\_Council\\_Russia\\_country\\_study\\_en.asp](http://www.coe.int/t/ngo/Articles/Expert_Council_Russia_country_study_en.asp)

the Law justified these concerns. Furthermore, there are examples of other countries attempting to follow the trend.<sup>4</sup>

6. The current study was commissioned in order to provide a deeper understanding of the approaches in defining and regulating political activities vis-a-vis public policy and advocacy related activities.
7. The study provides a general overview of the international and European guarantees regarding the ability of NGOs to engage in political activities. The study also summarises approaches in regulating political activities and public participation in a selected number of member states of the Council of Europe which have undergone a similar transition as Russia.
8. The study was prepared at the request of the Conference of International Non-Governmental Organisations of the Council of Europe. It was developed based on desk research and legal advice obtained from country experts regarding the case studies. The study further develops information presented in the paper “*Political Activities of NGOs: International Law and Best Practices*” published in 2009 by ICNL.<sup>5</sup> To this end, the study updates the regulatory approach in England and Wales and Hungary, discussed in ICNL’s paper and introduces case studies on Azerbaijan, Croatia, England, Estonia, Hungary, Moldova, the Russian Federation and Slovakia.<sup>6</sup> Parts of the study were presented at the roundtable on “*Developments in Legislation on Non-commercial Organisations. International Experience*”, co-organised by the Conference of International Non-Governmental Organisations of the Council of Europe and the Civic Chamber of the Russian Federation on 31 October 2013 in Moscow.<sup>7</sup>
9. This study is a step towards understanding the framework within which these activities can take place including the international guarantees that exist. It aims to support governments and NGOs in creating a conducive legal framework for NGO engagement and to give further arguments to citizens and NGOs to defend their rights to be active contributors in shaping policies and developing their societies.

## **B. The concept of and standards for engagement**

10. The right to engage in any activities, including political activities as well as public policy is closely linked to the freedoms of expression, association and assembly. This right is an expression and manifestation of these freedoms.
11. As previously stated by the Expert Council on NGO Law, NGOs should be allowed to engage in any kind of activities otherwise allowed to individuals, without additional restrictions

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<sup>4</sup> Drafting of laws similar to the Russian foreign agent law were initiated in Hungary and Kyrgyzstan for example. In Hungary, the drafting was initiated before the Parliament in October 2013 calling on the government to propose a regulation on registration and disclosure of the foreign income of CSOs. The Parliament decided not to discuss it and at present no such law is under preparation.

<sup>5</sup> Available at: [http://www.icnl.org/research/journal/vol12iss1/special\\_1.htm](http://www.icnl.org/research/journal/vol12iss1/special_1.htm)

<sup>6</sup> At the time of writing this study the situation in the other countries discussed in ICNL paper remains unchanged.

<sup>7</sup> The presentation was delivered by Maria Pomazkova, member of the Expert Council.

imposed on them.<sup>8</sup> Several international and European instruments have integrated concrete guarantees for NGO engagement in political and public policy activities.

12. The *International Covenant on Civil and Political Rights (ICCPR)* recognises and protects the right of every citizen to take part in the conduct of public affairs, the right to vote and to be elected and the right to have access to public service.<sup>9</sup>
13. As the General Comment on Article 25 of ICCPR provides in the conduct of public affairs:

*“... is a broad concept which relates to the exercise of political power, in particular the exercise of legislative, executive and administrative powers. It covers all aspects of public administration, and the formulation and implementation of policy at international, national, regional and local levels. The allocation of powers and the means by which individual citizens exercise the right to participate in the conduct of public affairs protected by article 25 should be established by the constitution and other laws.”<sup>10</sup> (§5) Citizens may participate directly by taking part in popular assemblies which have the power to make decisions about local issues or about the affairs of a particular community and in bodies established to represent citizens in consultation with government” (§6).*

14. The Comment further stipulates that:

*“Citizens also take part in the conduct of public affairs by exerting influence through public debate and dialogue with their representatives or through their capacity to organise themselves. This participation is supported by ensuring freedom of expression, assembly and association”. (§8) “The right to freedom of association, including the right to form and join organisations and associations concerned with political and public affairs, is an essential adjunct to the rights protected by article 25” (§26).*

15. In line with this the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association in response to the United Kingdom’s *“Transparency in Lobbying, Non-Party Campaigning, and Trade Union Administration Bill”* stated:

*“...the work of some of these [civil society] organisations is political by definition, which is protected by the international covenant on civil and political rights. This is, in fact, part of the reason they constitute such a crucial component of a free and democratic society, for engaging in political activity should not and must never be left to politicians and political parties alone. Civil society’s engagement in political activities promotes and influences focus on issues, principles and ideology, rather than seeking political power. Independent civil society is one of the best vehicles we have for dialogue, pluralism, tolerance and broadmindedness. It is a prerequisite for a legitimate democracy. In the UK, civil society groups perform a vital function by promoting political participation,*

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<sup>8</sup> See Expert Council on NGO Law, 'Conditions of Establishment of Non-Governmental Organisations', par. 33 and further.

<sup>9</sup> Article 25 of ICCPR.

<sup>10</sup> General Comment No. 25: The Rights to participate in public affairs, voting rights and the right of equal access to public service (Art. 25):.12-07-1996. CCPR/C/21/Rev.1/Add.7, General comment No. 25. (General Comments). Office of the High Commissioner for Human Rights

*undertaking voter education, campaigning for good governance reforms and providing vehicles for the expression of different interests. They also act as platforms that cut across ethnic, linguistic and other barriers, and catalyse public debate on issues that affect them. Shutting down this debate wholesale does nothing to advance democracy. It only threatens to indelibly mar future elections with the stain of silenced voices.”<sup>11</sup>*

16. In 2013 the UN Human Rights Council adopted a *Resolution on Equal Participation*<sup>12</sup>, which was revised and supplemented in September 2014. The 2014 *Resolution on Equal Participation in Political and Public Affairs*<sup>13</sup> reinstates the importance of participation and the ability of people to engage without legal and practical barriers:

*“emphasises the critical importance of equal and effective participation in political and public affairs for democracy, the rule of law, social inclusion, economic development and advancing gender equality, as well as for the realization of all human rights and fundamental freedoms.”*

and

*“recognizing further the need to intensify efforts to eliminate barriers in law and in practice and to actively facilitate full and effective participation in political and public affairs.”*

17. The Resolution further urges states to ensure the full, effective and equal participation of all citizens in political and public affairs, through various ways and measures including but not limited to: complying with and reflecting human rights obligations in national legislation; taking all necessary measures to eliminate laws, regulations and practices that discriminate, directly or indirectly, against citizens in their right to participate in public affairs or that create barriers for participation; to publicly promote participation; to providing full and effective access to justice and redress mechanisms to those whose right to participate in public affairs has been violated.
18. Similar guarantees are found in other international documents. For example, the *Declaration on Human Rights Defenders of the UN General Assembly*<sup>14</sup> which sets a series of principles and rights that are based on standards enshrined in other international legally binding instruments provides the following guarantees:

*“Article 7*

*Everyone has the right, individually and in association with others, to develop and discuss new human rights ideas and principles and to advocate their acceptance.*

*Article 8*

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<sup>11</sup> “Coalition's lobbying bill threatens to leave a stain on British democracy”, Maina Kiai, in theguardian.com, 12 January 2014

<sup>12</sup> A/HRC/24/L.18/Rev.1

<sup>13</sup> A/HRC/27/L.29/Rev.1

<sup>14</sup> UN General Assembly resolution A/RES/53/144, 8 March 1999, Annex.



1. *Everyone has the right, individually and in association with others, to have effective access, on a non-discriminatory basis, to participation in the government of his or her country and in the conduct of public affairs.*
2. *This includes, inter alia, the right, individually and in association with others, to submit to governmental bodies and agencies and organisations concerned with public affairs criticism and proposals for improving their functioning and to draw attention to any aspect of their work that may hinder or impede the promotion, protection and realization of human rights and fundamental freedoms.”*

19. The *European Convention on Human Rights and Fundamental Freedoms (ECHR)* guarantees the right of NGOs to engage in any kind of activities otherwise allowed to individuals, and it provides a limited list of legitimate interests that may justify restrictions on fundamental freedoms of individuals or activities of organisations.<sup>15</sup> Any interference in the rights and freedoms, including the ability of organisations to undertake activities to pursue their objectives must be ‘necessary in a democratic society’ to achieve legitimate state interests, which include the interests of national security or public safety, the prevention of disorder or crime, the protection of public health or morals, or the protection of the rights and freedoms of others.<sup>16</sup>

*“...the permitted restrictions on internationally guaranteed rights and freedoms must also not be exceeded and thus make it impossible for an NGO to be established to pursue objects that are entirely legitimate. No blank cheque is thus given to States that would allow them to make unlawful anything to which they object.”<sup>17</sup>*

20. Furthermore, Article 14 of ECHR provides that enjoyment of the rights and freedoms set forth in the Convention shall be secured without discrimination on any ground including political.

21. The *European Court of Human Rights* addressed the capacity of citizens and NGOs to engage in public policy and political activities in several cases. The Court stated that allowing participation in public life and policy is in keeping with one of the principal features of democracy — that is, to create the possibility for members of a society to resolve social and political problems through dialogue, without recourse to violence, *“even when they are irksome”*.<sup>18</sup> A State has some margin of appreciation in setting out conditions for the establishment and oversight of political parties and other associations participating in elections, however, other than that the ECHR provides broad protection to NGOs "political" activities.

22. More importantly, the Court also stated that the fact that an NGO's objectives might be seen as "political" should not necessitate it seeking the status of a political party where this is separately provided for under a country's law. In the case of *Zhechev v. Bulgaria*, where an association with objectives deemed “political” was precluded from acquiring legal personality other than as a political party, the Court noted that the mere fact that an organisation demands political changes or that its activities are otherwise deemed "political" does not *per se* justify

<sup>15</sup> See Expert Council on NGO Law 'Conditions of Establishment of Non-Governmental Organisations', pars. 33-45

<sup>16</sup> ECHR, Article 11(2)

<sup>17</sup> Expert Council on NGO Law, 'Conditions of Establishment of Non-Governmental Organisations', pars 35.

<sup>18</sup> *United Communist Part of Turkey and Others v. Turkey*, no 19392/92, 30 January 1998, paras 57-58.

interference with its freedom of association, including a request that the organisation be registered as a political party, in order to participate in political life.

*"The first thing which needs to be noted in this connection is the uncertainty surrounding the term "political", as used in Article 12 § 2 of the Constitution of 1991 and as interpreted by the domestic courts. ... Against this background [of different interpretations by national courts] and bearing in mind that this term is inherently vague and could be subject to largely diverse interpretations, it is quite conceivable that the Bulgarian courts could label any goals which are in some way related to the normal functioning of a democratic society as "political" and accordingly direct the founders of legal entities wishing to pursue such goals to register them as political parties instead of "ordinary" associations. A classification based on this criterion is therefore liable to produce incoherent results and engender considerable uncertainty among those wishing to apply for registration of such entities. It would also mean subjecting it to a number of additional requirements and restrictions..., which may in some cases prove an insurmountable obstacle for its founders. Moreover, such an approach runs counter to freedom of association, because, in case it is adopted, the liberty of action which will remain available to the founders of an association may become either non-existent or so reduced as to be of no practical value ...".<sup>19</sup>*

23. The protection also extends to NGOs rights to publish and distribute propaganda materials, advocate with authorities by promoting their ideas and aims, and involve volunteers in their activities. Otherwise, the right to engage in political activities would be deprived of any content.<sup>20</sup>
24. The freedom of NGOs to pursue any objectives, including political activities and public policy is noted also in the 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*. The Recommendation emphasises four important guiding principles:
  - NGOs should be free to pursue their objectives, provided that both the objectives and the means employed are consistent with the requirements of a democratic society (§11).
  - NGOs should enjoy the right to freedom of expression (§5).
  - NGOs should be free to undertake research, education and advocacy on issues of public debate, regardless of whether the position taken is in accord with government policy or requires a change in the law (§12).
  - NGOs should be free to support a particular candidate or party in an election or a referendum provided that they are transparent in declaring their motivation, subject to legislation on the funding of elections and political parties (§13).

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<sup>19</sup> *Zhechev v Bulgaria*, no 57045/00, 21 June 2007, Pars. 55-56 of the judgment. See also Expert Council on NGO Law, 'Conditions of Establishment of Non-Governmental Organisations', pars. 18-24.

<sup>20</sup> See e.g. *Koretsky and Others v. Ukraine*, 40269/02, 3 April 2008, discussed in Expert Council on NGO Law 'Conditions of Establishment of Non-Governmental Organisations', pars. 33-45.

25. The Recommendation also provides specific guidance that governments should allow effective participation of NGOs, without discrimination, in dialogue and consultation on public policy objectives and decisions.

*“76. Governmental and quasi-governmental mechanisms at all levels should ensure the effective participation of NGOs without discrimination in dialogue and consultation on public policy objectives and decisions. Such participation should ensure the free expression of the diversity of people’s opinions as to the functioning of society. This participation and co-operation should be facilitated by ensuring appropriate disclosure or access to official information.*

*77. NGOs should be consulted during the drafting of primary and secondary legislation which affects their status, financing or spheres of operation.*

26. The *Explanatory Memorandum* to the Recommendation explains that NGO support to political parties or their agenda can be an important means of realising a particular objective, whether in whole or in part, as the outcome of an election or referendum may lead to a change in law or policy favourable to that objective. NGOs should, therefore, be free to provide such support. A condition however may be imposed that they be transparent when declaring their motivation, particularly to ensure that their members and funders are aware of such support being given and that the law on the funding of elections and political parties is observed.

27. The Council of Europe *Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity* also reinforces the importance of the inclusion of different types of NGOs in public policy:

*“Member states should ensure that non-governmental organisations defending the human rights of lesbian, gay, bisexual and transgender persons are appropriately consulted on the adoption and implementation of measures that may have an impact on the human rights of these persons.”*

28. The Council of Europe’s *Code of Good Practice for Civil Participation*<sup>21</sup> underpins the general principles, guidelines, tools and mechanisms for active participation of NGOs in public affairs with focus on the decision-making process. The Code is a reference document which aims to set the basis for further development of the framework for citizens’ involvement in conducting public affairs in European countries. The Code describes four gradual levels of participation, from least to most participative: information; consultation; dialogue; and partnership. Furthermore, the Code defines the forms through which NGOs can contribute at each stage of participation. Typical forms include: advocating for issues, concerns and needs, information and awareness building; expertise and advice sharing; providing innovation in addressing needs, engaging in service provision, watchdog functions.

29. In an effort to promote dialogue with civil society as undertaken by the Lisbon Treaty and following up on the EC Principles and Minimum standards, in 2009 the European Parliament

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<sup>21</sup> CONF/PLE(2009)CODE1, adopted by the Conference of INGOs at its meeting on 1st October 2009; [http://www.coe.int/t/ngo/Source/Code\\_English\\_final.pdf](http://www.coe.int/t/ngo/Source/Code_English_final.pdf)

adopted a resolution on the perspectives of *Developing Civil Dialogue under the Treaty of Lisbon*.<sup>22</sup> The resolution is important in that it reinforces the significance of consultation and calls on EU institutions to adopt binding guidelines concerning the appointment of civil society representatives, methods for organising consultations and their funding. In addition, the resolution calls on EU institutions and Member States to make full use of legal provisions and best practices to “*step up dialogue with citizens and CSOs*”, and especially in those regions and sectors where it is not fully developed.<sup>23</sup>

### **C. Political activities and public policy activities: definitions and the approaches in European countries<sup>24</sup>**

30. There is no universally accepted definition of political activities for the purposes of NGO engagement; the term “political activity” is subject to multiple interpretations and meanings. When countries regulate political activities they explicitly list what is considered as ‘engagement in political activities’. When limiting such engagement, those restrictions are clearly prescribed and narrowly defined.
31. “Depending on the context, “political activity” could be defined narrowly or broadly to include supporting or opposing candidates for public office, supporting particular political parties, lobbying for or against specific laws, engaging in public advocacy, pursuing interest-oriented litigation, or engaging in policy debate on virtually any issue.”<sup>25</sup> For example, in Hungary a “direct political activity” is defined as:

*“political activity undertaken for the benefit of a political party, nomination of candidates during the Parliamentary election, nomination to county or metropolitan local government council (including the capital Budapest), nomination of a member of the European Parliament, nomination to the council of a city with county rights, and nomination of a mayor”;*

32. In general, the definition of political activities is not tied to areas of work or influence of NGOs (such as human rights, children, women, disabilities, science, culture, arts) but follows the nature of what constitutes engagement in the political arena. In almost all countries, NGOs generally have the right to criticise or endorse state officials and candidates for political office.

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<sup>22</sup> P6\_TA(2009)0007, 13 January 2009

<sup>23</sup> As described in Hadzi-Miceva Evans Katerina, Comparative Overview of European Standards and Practices in Regulating Public Participation, commissioned by OSCE and the Macedonian Center for International Cooperation (MCIC), 2010

<sup>24</sup> The following two sections (C) and (D) of the Study are developed based on three primary sources supplemented with information collected through desk research: (1) Political Activities of NGOs: International Law and Best Practices, by ICNL, the International Journal of Not-for-Profit Law, Volume 12, Issue 1, November 2009; (2) Country Notes that describe the legal framework of NGOs in select countries available at: <http://www.cof.org/global-grantmaking/country-notes> (the study relied on country updates from October 2013, unless specified otherwise in the text. and (3) the case studies included under section F of this study.

<sup>25</sup> As described in International Law and Best Practices, by ICNL, the International Journal of Not-for-Profit Law, Volume 12, Issue 1, November 2009

33. When the laws impose limitations to political activities those limitations are closely linked to activities that political parties engage in versus broad policy and advocacy activities of NGOs. Regardless of the scope or limitations to engagement in political activities, NGOs are allowed to advocate and engage in activities with state actors which help them further their cause.
34. In the broadest sense, most NGO activities have implications for public policy. Hence, in many European countries, the laws and practice distinguish between political activities and other kinds of activities, which are grouped as “public policy activities”. Public policy activities include attempting to influence legislation, engaging in decision-making processes, lobbying, campaigning on issues of relevance, raising awareness of issues of concern, monitoring elections, participating in public affairs and criticism of actions by public authorities. The state may decide to or decide not to engage with or support organisations with such activities. But these activities would not be prohibited, and in civil law countries they would not typically fall under the definition of political activities. In France, NGOs can advocate for changing a law or a regulation/decision, criticise government, and organise meetings on topics of concern. In Germany, regulations governing the application of the German Tax Code and related commentaries say that an organisation is allowed to comment on politics related to its public-benefit purpose. NGOs may participate in public hearings, which are routinely held in advance of parliamentary reviews of proposed legislation.<sup>26</sup> In the Czech Republic, NGOs may participate in lobbying and public advocacy activities.<sup>27</sup>
35. In many European countries, inclusion of NGOs in legislative processes is regulated in rules of procedures for government or parliament. However, there is an emerging trend to introduce a specific legislation or codes that detail the NGOs engagement in legislative processes and provide for guarantees to exercise this possibility. In Hungary, the Act on the Social Participation provides explicit right to any state, local government or other organisation to comment on a draft legal regulation affecting their legal status or responsibilities. The Moldovan Law on Transparency in Decision-Making No. 239/2008 prescribes the responsibilities of public authorities in carrying out consultations on public policies, establishing co-operation mechanisms with society and providing access to information. In Estonia and Croatia there are specific codes which regulate provide guarantees for public participation in policy and law making processes.
36. To ensure participation in policy and law making some countries have also introduced principles in strategic documents and in through creation of institutional mechanisms.
- In Macedonia, Croatia, Moldova the respective governments adopted specific strategies for collaboration with civil society which specific undertakings for the governmental bodies to ensure participation of NGOs in policy making processes. For example, in *Croatia the National Strategy for Creating an Enabling Environment for Civil Society Development (2012-2016)*<sup>28</sup> includes specific chapter dedicated to participation. The

<sup>26</sup> Germany Country Note, as of January 2014: <http://www.cof.org/content/germany>

<sup>27</sup> Czech Republic Country Note, as of January 2014: <http://www.cof.org/content/czech-republic>

<sup>28</sup> Adopted by the Government in July 2012, available at: [http://www.uzuvrh.hr/userfiles/file/National%20Strategy-Civil%20Society-Croatia-2012-2016-eng\\_final%281%29.pdf](http://www.uzuvrh.hr/userfiles/file/National%20Strategy-Civil%20Society-Croatia-2012-2016-eng_final%281%29.pdf)

chapter details more than 20 measures for enhancing consultation processes with civil society, access to information, education on policy and lawmaking process, etc.

- In Estonia, the ministries have established consultative bodies in their respective fields that include civil society members.
- In Azerbaijan, Croatia, Moldova, Montenegro, Slovakia specific councils were set up which, among others, promote NGO engagement in public policy. For example, in Moldova the National Council for Participation (NCP) serves as an advisory body and a liaison between the government, civil society and the private sector. The Moldovan NGO Council is a representative body of the Moldovan NGO sector active in the promotion of NGO related legislation and other public policies.

#### **D. Overview of regulatory approaches to political activities in European countries**

37. Differences in regulatory approaches can be found based on whether the countries in general allow or prohibit engagement in political activities, the legal system (common law vs. civil law), types of legal entities (e.g., associations, funds, foundations or non-profit corporations) and acquisition of status or benefits (e.g., tax exempt, public benefit or charity status).
38. There is a difference of approach in countries with a common law system (such as England and Ireland) and those with a civil law system (the majority of Western and Eastern European countries). In countries with a common law system there are more direct limitations to political activities than in countries with civil law systems. This is because in the common law system, the majority of the sector is established for pursuing public benefit purposes.
39. Some European countries allow or, do not explicitly prevent, NGOs from engaging in political activities. In France, declared associations and general interest associations may engage in political activities. Public utility associations and public utility foundations may not engage *primarily* in political activities<sup>29</sup> In Romania, NGOs may engage in political activities so long as those activities are not specifically covered by the Political Parties Law. They can contribute funds to political parties or for election-related activities.<sup>30</sup> In Poland, there are no limitations on the political activities of associations and foundations. The preamble of the Law on Associations lists the opportunity to participate actively in public life as one of the inherent purposes of associations and the law explicitly grants associations "*the right to voice their opinion on public issues*" regardless of their stated goals or activities. Hence, Polish law explicitly gives associations the right to engage in almost any political activity, even participation in electoral campaigns (through special elective committees). Foundations can participate in such activities but they should list such activities in their governing documents.<sup>31</sup> The Montenegro Law of Non-Governmental Organisations does not address the extent to which NGOs may engage in political activities. There is an example of one NGO in Montenegro

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<sup>29</sup> France Country Note, as of July 2014 <http://www.cof.org/content/france>

<sup>30</sup> The law uses the term 'electioneering', which means political campaigning and trying to persuade people to vote for a candidate. Romania Country Note, as of October 2014 <http://www.cof.org/content/romania>

<sup>31</sup> Poland Country Note, as of October 2014 <http://www.cof.org/content/poland>

which entered into politics and established a political party and voluntarily dissolved the NGO.<sup>32</sup>

40. When states regulate the issue, the practice varies in terms of the scope of engagement. As discussed above, while there is no agreed definition of “political activities”, some European countries proscribe specific activities which are considered as political activities and impose limitations on NGOs to engage in these activities. These limitations provide the framework and scope of what is considered a “political activity” for the purposes of NGO engagement. Examples include:

- Registering a candidate for election. In the Czech Republic it is reserved for political parties only. In Estonia, only political parties may present lists of candidates for national and European Parliament elections. However, the candidates registered with the party’s list do not necessarily have to be members of the specific party. Hence representatives of NGOs may run for office in a party list or as independent candidates.
- Supporting candidates or an election campaign. For example, in England, charities cannot support a political party or candidate although they may engage with a political party in support of their own charitable purposes;
- Direct or indirect financing of political party or elections is prohibited in Bulgaria, Croatia, England and Macedonia. In France, the involvement of NGOs in the funding of political parties and election funds is prohibited, except for associations created specifically for political campaign funding purposes;
- The Law on Foundations in Serbia prohibits foundations and endowments from being established in order to directly engage in election campaigning, support political parties or candidates in elections, or raise funds for political parties or candidates.<sup>33</sup>
- Participation in election campaigning is prohibited in Macedonia and Bulgaria.

41. Some countries have limitations based on the legal status of the organisation; for example, they may allow associations to engage in political activities but prohibit foundations.

- In the Czech Republic associations cannot be established for political purposes; however they can lobby, endorse candidates, provide information and advocate.
- In Estonia, NGOs are neither allowed to donate money to political parties nor to pay the expenses for or make concessions to a political party, unless the latter is also available to other legal persons. The ban on donations does not extend to voluntary work. Hence, as long as money is not involved, NGOs are allowed to publicly demonstrate their support or opposition to candidates and/or ideas.

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<sup>32</sup> Montenegro Country Note, as of May 2014 <http://www.cof.org/content/montenegro>

<sup>33</sup> Serbia Country Note, as of July 2014 <http://www.cof.org/content/serbia>

- In France, political parties may be registered as associations, and the distinction between the two is that the political parties are engaged in political campaigning, at both national and local levels. A special category of associations may provide direct financial support to a political party or an election campaign. Such political associations are established for a limited period of time and are restricted to engaging in these stipulated activities only.
  - In Hungary, foundations and associations may nominate and support candidates freely.
  - In Germany, organisations pursuing tax-privileged purposes must not spend any of their assets for the direct or indirect benefit of political parties, e.g., through campaigning.
  - In Slovakia, associations are similarly free to engage in a range of political activities, including endorsing candidates, lobbying and contributing to political campaigns; foundations, however, are restricted from financing political parties. Foundations, non-investment funds and NGOs are expressly forbidden from using their assets to support political parties or political movements.
42. Most commonly, when limitations to political activities occur those are linked to public benefit/charity status or other state benefits (state funds or tax benefits) given to NGOs.
- In England and Wales, a non-charitable not-for-profit organisations are not subject to any additional restrictions on political or public policy activities beyond those imposed on other organisations. Charities are subject to specific restrictions on their political activities, the rules of which have been established by the courts.
  - In France, associations and foundations which are of public utility, may not engage *primarily* in political activities.
  - In Germany, tax-exempt organisations must not spend any of their assets for the direct or indirect support of political parties. Thus, the support of an election campaign is not allowed. However, those organisations are allowed to comment on politics and organise campaigns related to its public-benefit purpose. In this respect, they can communicate with legislators about proposed legislation without losing tax-exempt status.
  - In Hungary, when the organisation is registered as a public benefit organisation, its statute must state that it does not pursue direct political activity, it is independent of political parties, and it does not provide financial support to political parties. But public benefit organisations can nominate candidates for the councils set up on local government level (but not mayors). And, although public benefit organisations cannot support political parties, political parties may support such organisations.
  - In Latvia, a public benefit organisation may not transfer donated property or financial means for the performance of such activities, which are associated with the activities of political organisations (parties) or the support of the election campaign thereof.



- In Moldova, associations may be deprived of the possibility for direct state support, fiscal benefits, state financing and loans in case they are involved in campaigning in favour or against political parties and candidates during elections.
43. Following the example of Russia some countries have included limitations on engagement in political activities and public policy if NGOs receive funding from foreign sources. For example, in Azerbaijan, NGOs may monitor presidential, parliamentary and municipal elections. However, this is not permitted for NGOs that receive grants or other types of financing from foreign individuals and legal entities or from Azeri legal entities in which the foreign share of their charter capital is more than 30%. NGOs can also hold exit polls at voting stations but this can only be done by the branches and representations of foreign NGOs when doing so together with domestic ones.

## E. Conclusion

44. The examples of European countries show that the regulatory practice of NGO engagement in political activities differs. While in some countries there are no limitations, others may limit the engagement.
45. However, when limitations to political activities apply then: (1) the limitations are clearly prescribed in the law and specify the exact type of activities that are affected; (2) those are clearly linked to activities related to political parties and elections, versus the broad spectrum of public policy activities that NGOs are engaged in; (3) the limitations typically relate to a specific legal form of an NGO or its public benefit/charity status; (4) there is an increased tendency to separate political activities in the sense of party politics and elections from public policy activities and to allow NGOs to freely express their opinions and engage in policy processes.

## F. Country cases

### AZERBAIJAN<sup>34</sup>

#### *General overview*

46. NGOs comprise both those that have legal personality and those that simply exist, either with or without official recognition. The latter can operate solely, if at all by reference to the rights of those 'establishing' and 'belonging' to them.
47. The principal laws governing the establishment and operation of NGOs are the Law "On Non-Governmental Organisations (Public Associations and Foundations)" (NGO Law) and the Law

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<sup>34</sup> This section was prepared by Jeremy McBride, member of the Expert Council on NGO Law, Barrister and Chair of the Scientific Committee of the European Union's Fundamental Rights Agency. It draws upon the 'Azerbaijan', a Country Case in the Expert Council on NGO Law's First Annual Report, *Conditions of Establishment of Non-Governmental Organisations*, (OING Conf/Exp (2009) 1), pp. 42-48 and G. Bayramov, 'Registration and Operation of NGOs, Public Funding for NGOs and NGO Participation in Decision-making, Azerbaijan, (Bulgarian Center for Not-for-Profit Law, 2009), <http://blacksea.bcnl.org/en/articles/17-registration-and-operation-of-ngos-taxation-of-ngos-public-funding-for-ngos-and-ngo-participation-in-decisionmaking-azerbaijan.html>

"On State Registration and State Register of Legal Entities" (the Registration Law). Also important, however, are the Law "On Grants" and the Code on Administrative Offences. All have been significantly amended in recent years, making the operation of NGOs more difficult.

48. The NGO Law does not apply to political parties, religious unions and trade unions, as well as organisations that aim to fulfil the functions such bodies and other non-commercial organisations not falling within its definition of an NGO.
49. The NGO Law provides for three types of non-profit entity; public associations (or unions), foundations (or funds) and the branches or representations of NGOs established in other states (foreign NGOs). The first are membership bodies established on the basis of the common interests of those founding and belonging to them, the second have no members and are supposed to aim at social, charitable, cultural, educational or other public interest work and the third exist to pursue the aims of foreign NGOs.
50. Public associations may be registered and thereby acquire legal personality or just be 'legalized' *through* a process of notification of their establishment to the authorities, although there are many that do not undertake that process (including some whose applications for registration are rejected or not determined). Foundations and the branches or representations of foreign NGOs must be registered<sup>35</sup>. A foreign NGO is permitted to have only one branch or representation<sup>36</sup> and before it can be registered an agreement must be reached between the foreign NGOs concerned and the Ministry of Justice covering the activities to be undertaken. The branches and representations of domestic NGOs do not have legal personality but their establishment is subject to a notification requirement.

### ***Public benefit status***

51. There is no provision for public benefit status but non-commercial organisations (in which NGOs are included) conducting charitable activities - which include assistance to persons in need, scientific, educational and other activities in the public interest - enjoy certain tax privileges under the Tax Code. Thus charitable money transfers, membership fees and donations are exempt from taxation, as in practice are grants. Whether organisations conducting both charitable and non-charitable activities can rely on these privileges is unclear. However, the entrepreneurial activity of organisations conducting charitable activities is subject to taxation. Property tax is not applicable to organisations of the handicapped and those that are budget-financed and it is levied at a reduced rate where the primary use concerns culture, education, health care and sports. There is a zero VAT rating for foreign grants and for purchases out of such grants.

### ***Scope and definition of political activity***

52. Political activities are not specifically defined but this reflects an approach of authorising what is not specifically prohibited and excluding or restricting NGOs from only particular activities.

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<sup>35</sup> In 2013 operating one without this - and providing assistance to do so - was made subject to a penalty under the Code of Administrative Offences.

<sup>36</sup> Following amendments to the NGO Law in December 2013.

Thus, standing for election is necessarily excluded as political parties are not NGOs and restrictions also exist on certain other activities connected to elections. Nonetheless, the provision that NGOs cannot now aim to fulfil the functions of a political party<sup>37</sup> may create uncertainty as to whether they can engage in political activities that are not prohibited or restricted while retaining their present status.

53. NGOs can pursue purposes not prohibited by the Constitution and laws of the Republic of Azerbaijan<sup>38</sup>. Furthermore, in accordance with election legislation, NGOs may monitor presidential, parliamentary and municipal elections. However, this is not permitted for NGOs that receive grants or other types of financing from foreign individuals and legal entities or from Azeri legal entities in which the foreign share of their charter capital is more than 30%. NGOs can also hold exit polls at voting stations but this can only be done by the branches and representations of foreign NGOs when doing so together with domestic ones<sup>39</sup>.
54. Subject to the preceding possibilities, NGOs cannot participate in elections of the President, Parliament and municipalities and cannot provide financial and other material support to political parties<sup>40</sup>.
55. Furthermore, one of the conditions for an agreement prior to the registration of the branches and representations of foreign NGOs is that they are not involved in political propaganda<sup>41</sup>.
56. Operating in contradiction to an NGO's charter will incur a penalty for officials of AZN 1,000-2000 (967-1,933 EUR) and 2,500-3000 AZN (2,417-2,900) for the NGO<sup>42</sup>.

### ***Public policy activities***

57. Public policy activities are not defined but there is specific authorisation to contribute to the development of legislation and no particular ban on contributing to debates on issues affecting society. Nonetheless the offences of abuse of public office and treason have been invoked against NGO leaders promoting human rights and peace.
58. NGOs may make proposals for improving normative-legal acts, according to the procedure prescribed by legislation and their own charter<sup>43</sup>. They can thus submit draft laws and resolutions to the Milli Majlis (the National Assembly) which may or may not be included in its legislative action plan for a regular session.
59. NGOs can contribute to issues of public interest whether through their own activities or in direct discussion with state agencies.

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<sup>37</sup> Following an amendment to Article 1.4 of the NGO Law in 2009.

<sup>38</sup> Article 2.3 of the NGO Law.

<sup>39</sup> Article 2.4 of the NGO Law.

<sup>40</sup> *Ibid.*

<sup>41</sup> Decree "On approval of rules for state registration and rules related to the preparation for negotiations with foreign non-governmental organisations and representations in Azerbaijan Republic", Decree No. 43, 16 March 2011.

<sup>42</sup> Code of Administrative Offences, Article 340-2

<sup>43</sup> Article 2.4 of the NGO Law.

60. However, since 2009 the charters of NGOs must not 'provide for appropriation of powers of state and local self-governed bodies'<sup>44</sup> and since 2013 NGOs must not have aims or activities which are aimed at the 'change violently of the constitutional structure and secular character of the Republic of Azerbaijan, violation of its territorial integrity, propaganda of war, violence and cruelty, instigation of racial, national and religious hatred'<sup>45</sup>. Depending upon their construction and application, these restrictions could have implications for undertaking public policy activities.
61. However, under the Law "On the Internal Regulations of the Milli Majlis of the Republic of Azerbaijan", NGOs can only take part in any working group established to work on draft laws and resolutions and in the subsequent discussion in the standing commissions where they receive an official or individual invitation.
62. Regulations on the Council of State Support to Non-Governmental Organisations under the President of the Republic of Azerbaijan specify the objectives of this body as including the participation and implementation of state policy and attracting NGOs into the settlement of problems which are of public and social importance. In pursuit of these objectives, the Council can stimulate large debates on cooperation of state agencies and civil society institutions in settlement of problems of state and social importance and submit informational and proposals for development of mutual cooperation between the state agencies and NGOs to the public, relevant state agencies and other organisations. However, membership of the Council and involvement in its activities tends to exclude NGOs seen as opposed to the government's policies.
63. There is no general legal requirement for state agencies to consult with NGOs or other interested parties when preparing legislation or policy. However, there are some individual requirements such as with respect to prisons, for which there is a requirement to establish a Public Committee comprised of representatives of NGOs dealing with human rights, legal awareness, education, health care, as well as of religious organisations, prominent scholars, cultural and other public figures<sup>46</sup>.
64. There are no specific restrictions on foreign funding of public policy activities but the agreement for a grant or donation must first be registered and recently there have been delays in this occurring where these come from abroad. Furthermore, there is frequent criticism by politicians of the motives of NGOs that receive foreign funding.

## **CROATIA**<sup>47</sup>

### *General overview*

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<sup>44</sup> Article 13.3 of the NGO Law.

<sup>45</sup> Article 2.3 of the NGO Law.

<sup>46</sup> Order "On Approval of Regulations on Public Participation in Correction of Prisoners and Public Supervision over the Penitentiary", 25 April 2006.

<sup>47</sup> This section was developed by Vanja Škorić, Senior Legal Advisor at GONG

65. In Croatia, the most common legal form of NGOs are associations, regulated by the Law on Associations<sup>48</sup>. Other legal forms include foundations, humanitarian organisations, religious communities, political parties, trade unions and employer associations, all regulated by specific acts. The Law on Associations regulates the establishment and activities of associations and elaborates the right guaranteed by the Constitution<sup>49</sup> to associate in any form of free and voluntary union, for the purpose of protection of one's interests or the promotion of human rights and freedoms, environmental protection and sustainable development, humanitarian, social, cultural, educational, expert, sports, technical, medical, scientific or other convictions and objectives, without the intention of generating profit.
66. This study cannot yet refer to experience with the implementation and interpretation of the Law on Associations due to its recent adoption. However, according to the Law, the main principles of the association's work include independence, transparency, democratic structure, non-profit activities and freedom to participate in public life. The last principle of participation in public life further elaborates several Constitutional rights by defining associations can freely participate in developing, monitoring, implementing and evaluating public policies, shaping public opinion, expressing opinions and taking initiative on matters of interest.
67. In general, NGOs are free to participate in different forms of political activities. NGOs are guaranteed the right to take part in policy-making processes through a wide range of legal and institutional mechanisms.
68. There is no public benefit status for NGOs, however, the Law on Associations regulates allocation of public funds to associations performing public benefit activities.

### ***Public benefit status***

69. Public benefit, as defined in the Article 32 (3) of the Law on Associations, comprises of well-rounded and clearly thematically defined activities in accordance with highest Constitutional values, the implementation of which generates added value for the society and raises the quality of life of an individual or enhances the development of a wider community. Public benefit activities include a wide range of thematic areas, as defined in the Article 32 (4) of the Law.
70. There is no public benefit status in Croatian legislation. However, there is a definition of public benefit activities for the purpose of allocating public funds to associations. Article 33 (1) and (2) of the Law on Associations state that state institutions and local government units should

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<sup>48</sup> The Law on Associations, Official Gazette No. 74/14, adopted in June 2014, will enter into force on October 1 2014. The new Law recognizes the right of children age 14 and up, as well as persons without full legal capacity, to be founders of associations. It expands the content of association's statutes to ensure greater transparency of work, clarifies provisions on managing the association and its termination, provides for public online register of associations and regulates public financing of associations.

<sup>49</sup> The Constitution of the Republic of Croatia (consolidated text), Official Gazette No. 56/90, 135/97, 8/98, 113/00, 124/00, 28/01, 41/01, 55/01, 76/10, 85/10, 05/14, available at: <http://www.sabor.hr/fgs.axd?id=17074>

allocate funds for projects and program of public benefit based on the public tender and strict criteria, prescribed by the Government within its bylaws<sup>50</sup>.

71. The Law's Explanatory Notes state that these criteria and the scope of public benefit activities could be used to set up tax and other benefits for associations within specific laws. None of these have been adopted yet.

### ***Scope and definition of political activity***

72. Croatian legislation does not clearly define the term political activity. The Constitution and the Law on Political Parties<sup>51</sup> lack its definition. The terminology is used solely in the name of the Law on Financing Political Activities and Election Campaigns<sup>52</sup>, however, there is no clear definition within the provisions - it refers only to the subjects of the Law, namely, political parties and *election* candidates.
73. There are no restrictions on associations to participate in the election campaign or support any party or candidate at elections. Financing political parties and/or election candidates is prohibited to all domestic NGOs, regardless of their legal status, according to the Article 22 (1) of the Law on Financing Political Activities and Election Campaigns.

### ***Public policy activities***

74. The legal and institutional framework encourages NGOs to take part in policy and decision-making process of the Government (national and local) as well as the Parliament. The National Strategy for Creating an Enabling Environment for Civil Society Development (2012-2016)<sup>53</sup> includes chapter II. Civil Society and Participatory Democracy, with more than 20 detailed measures for enhancing consultation processes with civil society, access to information, education of civil servants and general public on including interested public into policy and lawmaking process, support to civil society for participation in decision-making, etc.
75. Consultation process is regulated by the Code of Practice on Consultation with the Interested Public in Procedures of Adopting Laws, Other Regulations and Acts<sup>54</sup>, which establishes general principles, standards and measures for conducting consultations with the interested public. Each national level institution participating in the implementation has appointed a consultation coordinator. In addition, Government's Office for NGOs has developed detailed Guidelines for implementing the Code, as well as training programmes and peer-to-peer support for consultation coordinators. The Government's Office for NGOs also publishes

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<sup>50</sup> Bylaws are yet to be adopted by the Government, they will be based on the existing Code of Good Practice, Standards and Benchmarks for the Allocation of Funding for Programmes and Projects of NGOs, Official Gazette No. 16/07, available at: [http://www.uzuvrh.hr/UserFiles/Code%20of%20good%20practice\\_SG-MDx3.pdf](http://www.uzuvrh.hr/UserFiles/Code%20of%20good%20practice_SG-MDx3.pdf)

<sup>51</sup> The Law on Political Parties, Official Gazette No. 76/93, 111/96, 164/98, 36/01, 28/06.

<sup>52</sup> The Law on Financing Political Activities and Election Campaigns, Official Gazette No. 24/11, 61/11, 27/13, 02/14

<sup>53</sup> Adopted by the Government in July 2012, available at: [http://www.uzuvrh.hr/userfiles/file/National%20Strategy-Civil%20Society-Croatia-2012-2016-eng\\_final%281%29.pdf](http://www.uzuvrh.hr/userfiles/file/National%20Strategy-Civil%20Society-Croatia-2012-2016-eng_final%281%29.pdf)

<sup>54</sup> The Code of Practice on Consultation with the Interested Public in Procedures of Adopting Laws, Other Regulations and Acts, Official Gazette 140/09, available at: [http://www.uzuvrh.hr/userfiles/file/code%20of%20practice%20on%20consultation-croatia\\_final.pdf](http://www.uzuvrh.hr/userfiles/file/code%20of%20practice%20on%20consultation-croatia_final.pdf)

annual reports on monitoring the implementation of the Code, available on their website (in Croatian).

76. Complementary to the Code, Government's Rules of Procedures<sup>55</sup> in its Article 30 (4) institutionalize the practice of feedback on consultation results in accordance with the Code as a mandatory part of each law proposal. This, in effect, makes the Code obligatory for all institutions drafting legislation. In addition, Article 11 of the Law on Access to Information<sup>56</sup> prescribes proactive transparency and publishing consultation documents (mainly draft laws) online, as a standard procedure for each government body.
77. Opportunities to influence policies on the state level exist through the Council for Civil Society Development<sup>57</sup>, an advisory body to the Government acting towards developing cooperation between the Government and NGOs, comprising of members from the Government and civil society. The Council is specifically tasked to follow up the implementation of the National Strategy for Creating an Enabling Environment for Civil Society Development, the development of philanthropy, social capital, partnership relations and cross sector cooperation.
78. In addition, several government bodies have established consultative bodies in their respective fields, including civil society members. Through these cross-sectoral advisory bodies NGOs can monitor, analyze and influence the development of different policies, offer expertise and opinions as well as specific proposals. There are currently more than 100 Government advisory bodies<sup>58</sup> (including Council for Civil Society Development) involving more than 800 representatives of civil society.
79. Parliamentary cooperation with NGOs relies on its Rules of Procedure<sup>59</sup>, which include provisions in Article 57 on permanent experts, non-MP members of the parliamentary committees. A maximum of six public officials, scholars and professionals may be appointed per the committee, with all membership rights except voting. This allows more than 100 representatives from civil society to be directly included into the work and discussions at 29 different parliamentary committees. Additionally, NGOs may submit different opinions, policy papers, analyses, and recommendations to the Parliament and its working bodies or members at any time, including organisation of advocacy campaigns.
80. The Parliament can also create special committees, according to the Article 53 of its Rules of Procedure, which include civil society members, for example: National Council for Monitoring Anti-Corruption Strategy Implementation. The main purpose of the National Council is to act in order to strengthen the supervision over the bodies in charge of the implementation of the Anti-Corruption Strategy.
81. NGOs are free to implement educational activities at any level, with examples of performing educational workshops at schools and other institutions (pursuant to the approval of the

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<sup>55</sup> Government's Rules of Procedures, Official Gazette No. 154/11, 121/12, 7/13

<sup>56</sup> The Law on Access to Information, Official Gazette No. 25/13

<sup>57</sup> More information available at: <http://www.uzuvrh.hr/page.aspx?pageID=75>

<sup>58</sup> More information available at: <http://www.uzuvrh.hr/drzavnatiijela-savjeti-clanovi-en.aspx>

<sup>59</sup> Rules of Procedure of the Croatian Parliament, Official Gazette No. 81/13

institution). Across the country, there is also increasing number of local charters of cooperation between NGOs and local governments, strengthening their policy influence and advocacy efforts.

### *Foreign funding restrictions*

82. There are no limitations to NGOs to receive foreign funding. According to the Article 34 (1) of the Law on Associations, there is an obligation for associations to be transparent about their work and funding.
83. Foreign NGOs, according to the Article 22 (1) of the Law on Financing Political Activities and Election Campaigns, are prohibited to fund political parties and/or election candidates. The Law includes one exception – when a foreign NGO, whose primary scope of work is education and promotion of democratic principles, is funding educational programs for parties and/or candidates (such as study visits or workshops organised by different foundations).

## **ENGLAND AND WALES<sup>60</sup>**

84. England and Wales is the only example of a common law system covered in this study on regulating political activities of NGOs.<sup>61</sup>

### *General overview*

85. In England and Wales there is a fundamental difference between the legal treatment of non-charitable non-profits and charities (public benefit organisations). The legal treatment is the same for membership and non-membership bodies.
86. Non-charitable not-for-profits are not subject to any regulation in respect of their status. They may be established and operate without any requirement for registration and many do. Charities are regulated by the Charity Commission for England and Wales. The Charity Commission is a quasi-judicial body and is independent from government in the exercise of its powers.
87. The fundamental difference in legal treatment also applies to the rules on political activities. Non-charitable not for profit organisations are not subject to any additional restrictions on political or public policy activities beyond those imposed on other organisations. However the rules on lobbying in the election period and the ban on broadcast political advertising will apply most often to non-profits. Charities are subject to specific restrictions on their political activities, the rules of which have been established by the courts.
88. There are five main types of legal entity available for NGOs:

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<sup>60</sup> This section was developed by Lindsay Driscoll, consultant with Bates Wells & Braithwaite LLP, former legal commissioner at the Charity Commission.

<sup>61</sup> See paragraph 37 and 38.



89. A company limited by guarantee is a membership organisation in which the members' liability is limited to some nominal amount such as £1. The membership can be quite large, or it can be limited to the board members. A company is a legal person. Companies are governed by the Companies Act 2006.
90. An unincorporated association is a membership organisation and is not a legal person. Members of the management committee are jointly and severally liable for the organisation's debts; officers or members may also be liable. Unincorporated associations are governed by a body of case law and not by statute.
91. A trust is an entity created to hold and manage assets for the benefit of others. A trust which is not a private trust must pursue a charitable purpose and is governed by trustees. A trust ordinarily is not a legal person. A trust is regulated by the Trustees Acts 1925 and 2000, in addition to a substantial body of case law.
92. A community benefit society (formerly known as an industrial and provident society) is a not-for-profit corporate entity. Its principal advantage is that the governing law, the Cooperative and Community Benefit Societies Act 2014, is simpler than the law governing companies.
93. A charitable incorporated organisation (CIO) is a membership organisation. The membership may be limited to the trustees (a foundation CIO) or it may be wider (an association CIO). Registration is with the Charity Commission only and confers both corporate and charitable status. A CIO is governed by the Charities Act 2011.
94. In addition, NGOs may also be established in several other different ways including being incorporated by Royal Charter or by Act of Parliament.

### ***Public Benefit Status***

95. Public benefit organisations in England and Wales are known as charities. The Charity Commission registers and regulates charities.
96. Under the Charities Act 2011, a charity is defined as a body or trust which is for a charitable purpose that provides benefit to the public.
97. The list of charitable purposes includes the following categories:
  - the prevention or relief of poverty;
  - the advancement of education;
  - the advancement of religion;
  - the advancement of health or the saving of lives;
  - the advancement of citizenship or community development;
  - the advancement of the arts, culture, heritage or science;
  - the advancement of amateur sport;
  - the advancement of human rights, conflict resolution or reconciliation, or the promotion of religious or racial harmony or equality or diversity;
  - the advancement of environmental protection or improvement;

- the relief of those in need by reason of youth, age, ill-health, disability, financial hardship or other disadvantage;
  - the advancement of animal welfare;
  - the promotion of the efficiency of the armed forces of the Crown or of the efficiency of the police, fire and rescue services or ambulance services; and
  - other purposes that are currently recognised as charitable or are in the spirit of any purposes currently recognised as charitable.
98. The last general provision enables new purposes to be recognised by the Charity Commission or the High Court.
99. Charities are generally subject to compulsory registration if they are above the income threshold of £5000. Some charities are exempt from registration, including many government funded schools and universities.
100. Charities receive generous tax advantages. They are required to register with Her Majesty's Revenues and Customs (Tax Authority) if they wish to use gift aid (the UK tax effective giving scheme).

### ***Scope and definition of political activity<sup>62</sup>***

101. Political activity has been defined by the courts in a number of charity law cases. The definition used by the Charity Commission is:
- An activity by a charity which is aimed at securing or opposing any change in the law or in the policy or decisions of central government, local authorities or other public bodies, whether in this country or abroad. It includes activity to preserve an existing piece of legislation where a charity opposes it being repealed or amended. This differs from activity aimed at ensuring that an existing law is observed.*
102. A charity cannot have a purpose which is party political or aimed at a change in the law or policy of a public body. However, an organisation that wanted to do this could always be set up as a non-charitable not for profit organisation and be free from restrictions.
103. Although a charity cannot have a political purpose, it can engage in some political activities to support charitable purposes (e.g. a charity set up to relieve poverty could campaign for change in the welfare benefit laws.). There are no absolute restrictions on the types of activities a

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<sup>62</sup> References used for developing this section include:

- The restrictions on political activities by charities are all based in case law and no statutory law applies. The Charity Commission guidance is at CC9 Speaking Out Guidance on Campaigning and Political Activities [www.charitycommission.gov.uk/publications/cc9.asp](http://www.charitycommission.gov.uk/publications/cc9.asp)
- The restrictions on campaigning in the run up to an election are included in the Political Parties, Elections and Referendum Act 2000 as amended by the Transparency of Lobbying, Non Party Campaigning and Trade Union Administration Act 2014.
- Guidance on the Act for charities and for non-party campaigners can be found at the Electoral Commission website [www.electoralcommission.org.uk](http://www.electoralcommission.org.uk)
- The law relating to the ban on political advertising in the broadcast media is contained in ss 310 and 321(2) to (3) of the Communications Act 2003.

charity can undertake other than those applying to any other person or body trying to change the law. A charity could advocate for changing a law or regulation. It could organise a petition or letter writing campaign of its supporters to Members of Parliament, Ministers or Government officials. It could organise a demonstration but here the general law on public order etc. would apply.

104. There is also no absolute limit in percentage or other terms on the level of resources that can be spent on political activities. The test is that the political activities must not become the reason for the charity's existence. It would however be possible for the Board members to decide to spend all the resources of the charity on political activities for a limited period, if they thought that this would be the most effective way of carrying out the purposes.
105. A number of specific restrictions apply to political activities of NGOs:
106. With regard to party political activities, a charity cannot provide financial support or support in kind to a political party. It cannot organise a campaign against or support any candidate to a public office or political party before an election. It can however engage with a political party in ways that support its charitable purposes. It could invite politicians to address its conferences although in doing so, it should maintain balance and neutrality.
107. In the context of an election, restrictions are imposed by electoral law which apply to charities and all non-profits in the same way as to any other body. Restrictions on certain campaign activity in the run up to an election were first imposed on "non-party campaigners" in 2000. The definition would include all NGOs. The rules were tightened up by new legislation passed in 2013.
108. The legislation is complex but broadly there are spending limits on "regulated campaign activity" carried out in the election period. If more than £20,000 is spent by a NGO on regulated campaign activity during a regulated period then the NGO must register with the Electoral Commission as a non-party campaigner. There is then a total limit of £319,800 that can be spent on regulated campaign activity and a maximum of £9750 in a particular constituency.
109. The key question is what constitutes regulated campaign activity and whether this includes the regular campaigning activities of NGOs. The Electoral Commission has published guidance on this. There are two tests for regulated campaign activity: firstly the purpose test which is whether the activity can reasonably be regarded as intended to influence voters to vote for or against political parties or candidates. Secondly, the activities must meet the public test that is, if the activity is aimed at the public or a section of the public.
110. Another piece of legislation which restricts the political activities of NGOs is the Communications Act 2003. Under this Act there is a prohibition on political parties and third parties seeking electoral influence, from placing any broadcast advertisement which seeks to influence law reform, the legislative process or a government policy. It also prohibits any advertisement, however non-political, by a body wholly or mainly having those objects. It goes

on to ban any advertisement directed towards “influencing public opinion on a matter which in the UK is a matter of public controversy“.

111. A test case was taken by Animal Defenders International for a declaration that the Act was incompatible with Article 10 of the European Convention on Human Rights as given effect in the UK by the Human Rights Act 1998. This was rejected by the House of Lords on the grounds that the ban was necessary and proportionate to protect the democratic rights of others. On appeal to the European Court of Human Rights in 2013 a majority of nine to eight held that the 2003 Communications Act was not in violation of Article 10.
112. A breach of the charity law rules on political activities will be investigated by the Charity Commission. In most cases they will just give robust advice on how to avoid it in future. . If charity resources had been given to a political party or candidate then the trustees responsible could be required to repay those sums to the charity. The Charity Commission is a civil regulator so no criminal offence would be committed.

### ***Public Policy activities***

113. There is no definition or concept of Public Policy activities as such. In so far as the activity is aimed at a change in Government policy, then it would fall within the definition of political activities and the rules set out above would apply. General public awareness raising activities would be treated as campaigning.
114. There are no restrictions on Public Policy activities undertaken by non-charitable NGOs other than those imposed on all individuals and organisations.
115. Charity Commission Guidance confirms that charities are permitted to engage in campaigning in order to further their charitable purpose provided there is a reasonable likelihood of it being effective. There are no limits on the type or extent of campaigning activities. Examples of campaigning in the Guidance include a charity concerned with poverty and the environment campaigning against investment by some banks in fossil fuel extraction projects and a human rights charity calling on a government to observe certain fundamental human rights.

### ***Foreign funding restrictions***

116. There are no restrictions on the foreign funding of NGOs, including charities.

## **ESTONIA<sup>63</sup>**

### ***General overview***

117. There are two legal forms of NGOs in Estonia: non-profit associations (ca 97% of all registered NGOs) and foundations. Both are regulated by respective laws. A non-profit association is a voluntary association of two or more persons the objective or main activity of which shall not

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<sup>63</sup> By Urmo Kübar

be the earning of income from economic activity<sup>64</sup>. A foundation has no members and is established to administer and use assets to achieve the objectives specified in its articles of association<sup>65</sup>.

118. The Constitution<sup>66</sup> guarantees everyone the right to assemble; whilst prohibiting organisations whose aims or activities are directed at changing the constitutional order by force or are otherwise in conflict with a law providing criminal liability. Only a court may terminate or suspend the activities of an organisation for violation of the law, or order it to pay a fine.
119. A few types of organisations are registered as non-profit associations, but also have their own respective laws providing specifications. The one relevant for this study is the Political Parties Act<sup>67</sup>. Specifications in comparison to the Non-profit Associations Act include, most importantly, restrictions to the foundation of a political party (e.g. at least 500 members are required, only Estonian citizens or EU citizens who have permanent residence in Estonia can become members, a person may be a member of only one political party at a time, etc), and the funding and reporting requirements (e.g. anonymous donations and donations from legal persons are prohibited, etc).
120. An emerging trend is the rise of informal networks of individuals and organisations. Such voluntary and in most cases temporary, *ad hoc* networks are not registered and do not get involved in economic activities, however, they can be influential in raising public awareness and mobilising people for action, such as signing petitions, campaigning against or for certain public policy issues, etc.

### ***Public benefit status***

121. The Income Tax Act<sup>68</sup> lists the requirements for an NGO for benefiting from income tax incentives, first of these being “the association operates in the public interest”. NGOs can apply for this status, giving them the right to waive taxes on certain goods and services; also, individuals are allowed to deduct donations to these NGOs from their taxable income up to a certain amount. The list is approved by the government twice a year after obtaining a recommendation from an expert committee, consisting of public sector and NGO representatives. Approximately 7% of all NGOs in Estonia are on the list.
122. The Income Tax Act prohibits political associations, among some other types of NGOs, to be added to the list. An organisation is deemed to be a political association if it is a political party or an election coalition or if the main objective or the principal activity of the association is organising campaigns or collecting donations for or against a political party or election coalition or a person running for an elected or appointed office for the performance of public duties.

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<sup>64</sup> Non-profit Associations Act: <https://www.riigiteataja.ee/en/eli/510042014003/consolide>

<sup>65</sup> Foundations Act: <https://www.riigiteataja.ee/en/eli/510042014001/consolide>

<sup>66</sup> The Constitution of the Republic of Estonia: <https://www.riigiteataja.ee/en/eli/530102013003/consolide>

<sup>67</sup> Political Parties Act: <https://www.riigiteataja.ee/en/eli/508072014003/consolide>

<sup>68</sup> Income Tax Act: <https://www.riigiteataja.ee/en/eli/528082014008/consolide>

### *Scope and definition of political activity*

123. Only political parties may present lists of candidates for national and European Parliament elections. However, the candidates registered with the party's list do not necessarily have to be members of the specific party. Hence representatives of NGOs may run for office in a party list or as independent candidates.
124. The Local Government Council Election Act<sup>69</sup> allows also election coalitions to participate in the local elections, in addition to the political parties and independent candidates. An election coalition is a civil law partnership formed by Estonian citizens and citizens of the EU who have the right to vote. It is formed on the basis of a written contract whose objective is to express the political interests of its members and supporters at the local government level.
125. Similarly to others legal persons, NGOs in Estonia are neither allowed to donate money to political parties nor to pay the expenses for or make concessions to a political party, unless the latter is also available to other persons in ordinary economic activities (e.g. it is not allowed to run a paid advertisement campaign in support of a particular party). The ban on donations does not extend to voluntary work. Hence, as long as money is not involved, NGOs are allowed to publicly demonstrate their support or opposition to candidates and/or ideas. However, this is not common practice amongst Estonian NGOs. Rather than picking sides, and mobilising its members and the wider public to vote for a certain candidate or party, NGOs organise open debates and present their ideas to the candidates prior to the elections.

### *Public policy activities*

126. The Constitution guarantees several rights to citizens with regard to public policy activities: everyone has the right to freely disseminate ideas, opinions, beliefs and other information by word, print, picture or other means; to form non-profit associations and federations; to abide by his or her opinions and beliefs; to address informational letters and petitions to government agencies, local authorities and their officials; everyone is entitled to free access to information disseminated for public use; and anyone whose rights and freedoms have been violated has the right of recourse to the courts.
127. Additionally, a number of specific laws regulate the right of the public and NGOs to participate in policy-making. The Public Information Act<sup>70</sup> sets the rules which the public sector has to follow for guaranteeing access to information. The Response to Memoranda and Requests for Explanations and Submission of Collective Addresses Act<sup>71</sup> obliges the parliament to debate and form a position on collective addresses submitted to them, proposing on how to amend the existing regulations or how to improve the community life, provided that the address has at least 1000 signatories. At local level, at least 1% of the residents with the right to vote

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<sup>69</sup> Local Government Council Election Act: <https://www.riigiteataja.ee/en/eli/501092014006/consolide>

<sup>70</sup> Public Information Act: <https://www.riigiteataja.ee/en/eli/510072014004/consolide>

<sup>71</sup> Response to Memoranda and Requests for Explanations and Submission of Collective Addresses Act: <https://www.riigiteataja.ee/en/eli/507042014003/consolide>

(however, not less than five persons) has the right to initiate the passage, amendment or repeal of legislation of the rural municipality or city council or government concerning local issues<sup>72</sup>.

128. The Code of Good Conduct for Public Engagement<sup>73</sup> is adopted as a part of the rules for the Government of the Republic. According to the Code, government authorities are responsible for engaging interest groups and the public in the decision-making process in order to ensure the best possible quality and legitimacy of the decisions. A public consultation must in any event be carried out in two stages of proceedings: when applying for a mandate for developing a draft and when the draft has already been developed.
129. All the ministries have established consultative bodies in their respective fields that include civil society members.
130. On their behalf, NGOs are also involved in proactive advocacy initiatives, such as public awareness campaigns, petitions, presenting their views in media, and also protesting, if needed. NGOs are free to implement that kind of activities, no undemocratic restrictions are in place.

### ***Foreign funding restrictions***

131. Political parties are prohibited from accepting donations by aliens, except for donations by persons holding a permanent right of residence or long-term resident status in Estonia. There are no restrictions to other NGOs to receive foreign funding. NGOs have to submit annual financial reports to the public registry and these are available to the public for a small fee. Major NGOs also publish their annual reports on their websites to ensure transparency.

## **HUNGARY<sup>74</sup>**

### ***General overview***

132. In Hungary the two traditional legal forms of NGOs are association and foundation. In addition, there are other legal forms, including non-profit corporations.
133. An association is the main form of membership-based organisations, established under Act V/2013 (Civil Code) and Act CLXXV/2011 (CSO Act). The special forms of associations are: alliance, political party and trade union. According to Article 3 (4) of the CSO Act an association may be created for any purpose that is consistent with the Basic Act of Hungary and is not unlawful. An association cannot be formed for criminal or military purposes, to violate the rights and freedom of others, or to undertake a public task which is reserved for state bodies.
134. The establishment and operation of foundations is also regulated in the Civil Code and the CSO Act, while the establishment and operation of non-profit corporations is regulated in the Act on corporate transparency, court procedure, and dissolution (Act V/2006). None of these three

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<sup>72</sup> Local Government Organisation Act: <https://www.riigiteataja.ee/en/eli/518062014010/consolide>

<sup>73</sup> Code of Good Conduct for Public Engagement: <https://riigikantselei.ee/en/supporting-government/engagement-practices>

<sup>74</sup> This section is developed based on the case study in ICNL's Political Activities paper and updated by Eszter Hartay, Legal Advisor at the European Center for Not-for-Profit Law (ECNL).

main Acts governing non-profit organisations in Hungary place any restrictions on legislative or political activities of NGOs. Foundations, associations, and non-profit corporations may nominate and support candidates and legislation freely.

135. NGOs are generally free to engage in all forms of political activities. In addition, the legal and institutional framework guarantees NGO ability to take part in policy-making processes.
136. Restrictions to engage in political activities apply, only if the organisation acquires the status of a public benefit organisation (PBO). In this case, the NGO must not pursue direct political activity, must be independent of political parties, and must not provide financial support to them.<sup>75</sup>
137. The operation and management of political parties is regulated in Act XXXIII/1989.

### ***Public benefit status***

138. If an NGO acquires PBO status then the organisation is subject to limitations in terms of its engagement in political activities.
139. Chapter VII of the CSO Act regulates the eligibility criteria, operation, management and supervision of PBOs. As a precondition for the status, the NGO shall undertake public benefit activity, which is defined as an activity that directly or indirectly serves the completion of public (governmental or local governmental) tasks and thereby contributes to the satisfaction of the common needs of society and the individuals.
140. In order to obtain PBO status the organisations must fulfil a set of criteria. For the purposes of the present study the most important criteria are that the organisation shall not undertake direct political activity, shall be independent from any parties, and shall not provide financial support to them.
141. Although PBOs cannot support political parties, political parties may support PBOs.
142. Except for “direct political activities,” other forms of “political” engagements are allowed for PBOs in Hungary. At the same time, they must be “independent from political parties” in order to receive the status. Theoretically, if they lose their independence, the PBO status may be revoked by the court. However, there is no clear legal guidance as to when a PBO, which is legitimately involved in campaigning and advocacy, violates the independence requirement. Also, there has been very little case law which would help to determine “good practice” or the limits of political involvement of PBOs in Hungary.

### ***Scope and definition of political activity***

143. Under Article 2 point 22 of the CSO Act, "direct political activity" includes

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<sup>75</sup> Act CLXXV/2011, Article 34 (1) (d).



*"political activity undertaken for the benefit of a political party, nomination of candidates during the Parliamentary election or to the county or metropolitan local government council, nomination of a member of the European Parliament, nomination to the council of a city with county rights, and nomination of a mayor; the nomination of mayor or nomination at the local and minority local government election by certain minority organisations determined by law are not considered as direct political activity."*

144. Based on this definition, there are no limitations to nominate candidates for local government councils at the municipal level (including districts of the capital); in fact, even PBOs may nominate and/or support candidates for *local* elections.

### ***Public policy activities***

145. The legal framework enables NGOs to take part in policy and decision-making process of Government and Parliament.
146. Article 19 of the Act on Legislation (Act CXXX/2010) stipulates that in case the law provides explicit right to any state, local government or other organisation to comment on a draft legal regulation affecting their legal status or responsibilities, the drafter of the legal regulation shall ensure that the affected entity can exercise its right. The detailed rules are laid down in the Act on the social participation in the preparation of legal regulations (Act CXXXI/2010). The rules of procedure of the Government may determine further regulations as well.
147. According to the Act on the social participation in the preparation of legal regulations, the drafts and motivation of all laws, government decrees and ministerial decrees shall be subject of consultation. However, according to the scope of the Act it applies only to those legal regulations which were drafted by one of the ministries. Consequently, if a Member of Parliament submits a draft law directly to the Parliament, it can circumvent the requirement of consultation.
148. The two main forms of consultation are general consultation and direct consultation. General consultation means the disclosure of the draft legal regulation on the website of the ministry and the possibility to send comments via e-mail. Direct consultation refers to a closer co-operation with organisations based on a partnership agreement. A partnership agreement may be concluded with organisations which are ready for mutual co-operation and represent broader social interest or undertake scientific activity in the given field of law. Strategic partners can be especially civil society organisations, churches, professional and scientific organisations, public bodies, national minority self-government trade unions, higher education institutions.
149. In addition, several ministries have introduced specific procedures for working with NGOs and have established consultative bodies in their respective fields. Through these cross-sectoral advisory bodies (i.e., councils) NGOs can follow and analyse the development of the specific field (environment, disability etc.); inform the Government of the situation; share their opinion related to the proposed measures and the draft legal regulations; and propose specific decisions,

programmes and legal regulations. The efficiency of such councils, however, depends on political will and interest to take these opinions into consideration.

150. In addition, NGOs, including PBOs, may submit position papers, opinions, policy papers, analyses, and recommendations to members of the Parliament at any time. NGOs, including PBOs, may also organise campaigns and protests for or against a legislative initiative, including freely mobilising their members to write letters, send emails, join a protest event, or any other campaign activity relating to a certain piece of legislation.
151. NGOs in Hungary are free to conduct a workshop or a conference to educate the public on an issue of importance with or without taking a position on the issue. For example, during the government's campaign for EU accession, there were NGOs which campaigned in support of the accession; there were others that held workshops, conferences, and public events about why people should vote against accession; and there were NGOs which aimed to present a fair assessment of the arguments of both sides and organised educational events to discuss advantages and disadvantages of joining the EU.
152. NGOs can also criticise government policy or officials at any time and at any place, based on the right to freedom of speech enshrined in the Basic Act as well as in domestic and international law.

### *Foreign funding restrictions*

153. According to the Law on Operation and Financing of Political Parties (Act XXXIII/1989), political parties may not accept monetary support from a foreign government. However, such a restriction does not apply to NGOs.

## **MOLDOVA<sup>76</sup>**

### *General overview*

154. The two main forms of NGOs in Moldova are public associations and foundations. They are regulated by the Civil Code, the Law on Public Associations and the Law on Foundations.
155. The Civil Code<sup>77</sup> of the Republic of Moldova Nr. 1107 of 06.06.2002 distinguishes three forms of non-commercial organisations: associations, foundations and institutions. According to Article 187 of the Civil Code, non-commercial organisations can undertake any activity as allowed by law and related to implementation of the statutory mission.
156. Associations are membership-based non-commercial organisations which are voluntarily established by physical and legal entities in order to satisfy non-material needs. Associations are created according to the law and are based on common interest, which does not contradict

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<sup>76</sup> This section is developed by Hanna Asipovich, Policy Officer at the European Center for Not-for-Profit Law (ECNL)

<sup>77</sup> Civil Code of Republic of Moldova, Articles 180:

<http://lex.justice.md/viewdoc.php?action=view&view=doc&id=325085&lang=1>

public order and morality. Associations may acquire the following organisational forms: public associations, religious associations, party or other civic and political organisation, trade union, association of legal entities, patronage or other forms according to the law (Article 181 of the Civil Code).

157. A foundation is non-membership non-commercial organisation, founded by one or several physical and legal entities, which possess assets and pursue non-commercial purposes as provided by the founding charter (Art. 182 of Civil Code).
158. An institution is a non-commercial organisation created by a founder/s (either physical persons or legal entities, including public legal entities), for the purpose of carrying out management, social, cultural or other functions of a non-commercial nature and is fully or partially funded. (Art.183 of Civil Code)
159. The Law on Public Associations<sup>78</sup> Nr. 837 of 17.05.1996 provides an extended definition of a public association with examples of possible organisational types, for example, human rights, women's rights, pacifists' associations and others. The law specifically prescribes that parties and other civic and political organisations are regulated by a separate law.
160. The Law on Foundations<sup>79</sup> Nr.581 of 30.07.1999 provides a definition of foundations as non-commercial non-membership organisations. It does not set any limits on activities apart those prescribed by law. New amendments to the Law on Foundations are currently pending with the Parliament; the draft defines foundations as “non-commercial organisations, apolitical, that do not provide political assistance and do not support any political party.”
161. According to the Registry<sup>80</sup> of Non-commercial Organisations of the Ministry of Justice, 9,150 non-commercial organisations are registered at the national level. The Registry was launched in 2012 by the Department of Non-commercial Organisations at the Ministry of Justice. The Department is responsible for accepting, registering and processing applications for registration by all types of non-commercial associations, including public associations, foundations and political parties. The State Registry of Non-commercial Organisations is available in a searchable excel format online and provides information on the date of registration, title and form of non-commercial organisation, its governance structure, statutory purposes and areas of activity.

### ***Public benefit status***

162. Public benefit status is regulated by the Law on Public Associations articles 30- 33<sup>3</sup>. Currently, public benefit status is granted to public associations only. An association can apply for public benefit status if they have legal status and have operated for more than 1 year; their statute includes exclusively public benefit activities (the list of activities is provided by the law); there

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<sup>78</sup> Law on Public Associations, 1996: <http://lex.justice.md/viewdoc.php?action=view&view=doc&id=325424&lang=1>

<sup>79</sup> Law on Foundations, 1999: <http://lex.justice.md/viewdoc.php?action=view&view=doc&id=311692&lang=1>

<sup>80</sup>The registry is available online at the Ministry of Justice page:  
<http://www.justice.gov.md/slidepageview.php?l=ro&idc=163&id=709>

is no conflict of interest in applying for the status (family members in the Certification Commission or other).

163. The law defines as public benefit activities those activities which are provided at no or low cost in order to develop and support areas such as education, science, culture and art, health, social protection of vulnerable groups, protection of the environment and other activities which are in the interest of the general public or a local community.
164. Public benefit organisations can carry out activities in accordance with their statutory documents. The statute must include a non-profit clause and non-distribution of assets among the members and founders in case of termination; use of assets for only statutory purposes; prohibition of campaigning in favour of and/or providing financial resources to support political candidates during elections or assignment of a public official.
165. There are no specific benefits available for public benefit organisations. After the Fiscal Code and the Law on Public Associations were amended in 2013, all NGOs, regardless of their public benefit status, can request tax exemption from the fiscal authorities. As a result, NGOs are less interested in obtaining public benefit status.

#### *Scope and definition of political activity*

166. Moldovan legislation does not provide a clear definition of a political activity. According to Article 17 (1) of the Law on Political Parties Nr. 294 of 21.12.2007, political parties carry out activities with the purpose of implementing their political will, as prescribed by their charters and programmes registered in accordance with the law.
167. Both associations and foundations are not restricted by law in the right to undertake political activities. However, public associations may be deprived of the possibility for direct state support, fiscal benefits, state financing and loans in case they are involved in campaigning in favour or against political parties and candidates during elections.
168. In summer 2014, the Ministry of Justice developed draft amendments to the Law on Foundations<sup>81</sup>, which provides a new definition of foundations as “apolitical” organisations. While there was no clarification as to what this means, several NGOs expressed their concerns on possible broad interpretation of this provisions in terms of prohibition to participate in advocacy or other activities, which could be interpreted as political. As the result, the draft was revised and currently includes the definition of a foundation as “non-commercial organisations, apolitical, that do not provide political assistance and do not support any political party.”<sup>82</sup>
169. Specific restrictions apply to associations with regard to political campaigning and financial support to a political party, or a candidate during the elections.. According to Article 8 (4) of the Law on Public Associations, in case of public campaigning by a member of the association, the association does not have the right to access direct and indirect state financing. It must

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<sup>81</sup> Simultaneously, amendments were introduced for the Law on Public Associations. However, they do not deal with the topic of this note.

<sup>82</sup> At the time of writing the amendments are pending for adoption with the Parliament.

return the received financial support and the management must announce through the mass media its neutrality. The persons responsible for the political campaigning statements are liable by law.

170. If a public association uses funds received from foreign or state sources and donations by physical persons and legal entities to support a political party or a candidate during electoral campaigns, these funds are subject to confiscation based on a court decision. Public associations are liable according to the law (Law on Public Associations, Article 8 (5)).

### ***Public policy activities***

171. Article 33 of the Law on Public Associations expressly states the right of public benefit associations to affect public policies: Government policy to support public benefit associations is based on the following principles:

- a) Provide public benefit associations with the right to participate in the development and implementation of public policies;*
- b) Ensure the effective implementation of public programmes and projects through the active involvement of public benefit associations; [...]*

172. Apart from the restrictions on political campaigning and financing of political parties and candidates, Moldovan NGOs do not have any restrictions on the types of public policy activities they can carry out.

173. The Moldovan government is one of the regional champions in developing and adopting legislation related to public participation in decision-making. For example, Moldova is a successful participant of the Open Government Partnership initiative with flagship commitments by the government to ensure access to and participation in the creation of public policies.

174. The Law on Transparency in Decision-Making<sup>83</sup> Nr. 239 was adopted in 2008. It regulates the responsibilities of public authorities in carrying out consultations on public policies, establishing co-operation mechanisms with society and providing access to information.

175. At the moment, the Moldovan NGO sector enjoys a good level of co-operation with the Parliament, government and local authorities. There are several policy documents which establish the framework for co-operation. The Parliament's Concept on Cooperation (2005) regulates relationships between Parliament and NGOs, sets rules on consultations and participation of NGOs in law-making. The National Strategy for Civil Society Development 2012-2015 is a framework policy document for development of the NGO sector. The co-operation document includes a specific objective 1.2 on strengthening the capacity of state officials and civil society organisations for co-operation in developing and monitoring of the implementation of public policies. The section provides for organising training and awareness activities as well as stimulating participation of NGOs in the decision-making process.

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<sup>83</sup> Law on transparency in decision-making, 2008:

<http://lex.justice.md/viewdoc.php?action=view&view=doc&id=329849&lang=1>

176. NGOs are also viewed as essential participants to the EU association processes. In 2013, Moldova hosted the Civil Society Forum of the Eastern Partnership, organised under the auspices of the Moldovan government. Article 442 of the EU-Moldova Association Agreement which was signed on 27 June 2014 and ratified by Moldovan government on 2 July 2014, provides for establishing a new civil society platform. The platform will bring together the European Economic and Social Committee and Moldovan civil society with the purpose of keeping the sector informed of and to gather their input for implementation of the Association Agreement.
177. In addition, there are two national level mechanisms which facilitate participation in policy and law making.
178. The National Council for Participation (NCP) was established in 2010 to serve as an advisory body and a liaison between the government, civil society and the private sector. The NCP consists of experts in various fields, including NGOs, who provide expert opinion to the government's legal and policy drafts.
179. The NGO Council is a representative body of the Moldovan NGO sector. Every two years, the NGO Council members are elected at the national conference of NGOs. The NGO Council is active in the promotion of NGO related legislation and other public policies, such as the banning of smoking in public places. The NGO Council holds regular press conferences, publishes press releases and maintains its own webpage with at least weekly activity.

### ***Foreign funding restrictions***

180. There are no restrictions on foreign funding in Moldova.

## **RUSSIAN FEDERATION<sup>84</sup>**

### ***General overview***

181. The Civil Code and the Federal Law on Non-Commercial Organisations (NCO Law) set out the general legal framework for "non-commercial organisations" (NCOs) and define approximately 27 institutional forms in which NCOs operate.<sup>85</sup> The Federal Law on Public Associations builds on this framework and envisages a sub-category of NCOs which is called "public associations" and which consist of public organisations, mass movements, public foundations and public institutions. Some 220,000 NCOs are registered in Russia; approximately 50% of them are public associations.<sup>86</sup> A NCO, whatever form, may only be established to pursue

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<sup>84</sup> By Dragan Golubovic, Member of the Expert Council on NGO Law, independent consultant

<sup>85</sup> Civil Code of the Russian Federation, Part I, Federal Law №. 51-FZ, 30 November 1994 as amended. Civil Code of the Russian Federation, Part II, Federal Law №. 14-FZ, 26 January 1996 as amended. Federal Law of the Russian Federation #7-FZ on Non-Commercial Organisations, 12 January 1996 as amended.

<sup>86</sup> Federal Law of the Russian Federation # 82- FZ on Public Associations as amended. See "NGO Monitor: Russia", last updated on 23 July 2014. <http://www.icnl.org/research/monitor/russia.html>.

public or mutual benefit goals, rather than to generate and distribute profits (Article 50(1), Civil Code).<sup>87</sup>

### ***Public benefit status***

182. A public association, foundation, or institution may acquire a "charity" (public benefit) status pursuant to the Charity Law (Article 7).<sup>88</sup> Other forms of NCOs may register as charities if stipulated by the federal law for charitable organisations. The Law defines charitable activities as voluntary activities of individuals and legal entities involved in the altruistic (gratuitous or on privileged terms) provision to individuals or legal entities of property, including money and the altruistic provision of services, or other support directed towards achieving any of the stated objectives that generally correspond to activities deemed for public benefit (Articles 1, 2(1), Charity Law).<sup>89</sup>
183. Charities are subject to stricter regulation in terms of activities, expenditure<sup>90</sup>, and internal governance, in return for limited tax benefits.<sup>91</sup> Certain tax benefits are provided for charitable activities irrespective of the charity status of the organisation.<sup>92</sup>

### ***Scope and definition of political activity***

184. A definition of NCOs political activity is provided in the "Foreign Agents Law".<sup>93</sup> The Law applies to NCOs which: 1) have received or intend to receive funds and other property from foreign states, their government bodies, international and foreign organisations, foreign persons, including those legally residing in Russia, stateless persons or persons authorised by them, and/or from Russian legal entities receiving or intending to receive funds and other property from the aforementioned sources; and 2) engage—including, but not limited to, in the interests of foreign donors—in political activities which are carried out in the territory of the Russian Federation as defined by this law.<sup>94</sup>

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<sup>87</sup> Article 2 of the NCO Law stipulates that NCOs may be established to pursue the following goals: achieving social, charitable, cultural, educational, scientific or managerial goals; protecting the health of citizens; developing physical education and sports; satisfying spiritual and other non-material needs of citizens; protecting the rights and lawful interests of citizens and organisations; resolving disputes and conflicts; providing legal aid; and other purposes directed toward the achievement of public good.

<sup>88</sup> Federal Law №. 135-FZ On Charitable Activities and Charitable Organisations, 11 August 1995 as amended (Charity Law).

<sup>89</sup> On complexities of the public benefit and charity concept in Russian law, including the so called "socially oriented organisations" which largely overlap with the notion of charities, Russia, Country Note, as of May 2014 <http://www.cof.org/content/russia>

<sup>90</sup> For example, charities must spend at least 80% of a monetary donation within a year after a donation is received: Article 16(4), Charity Law.

<sup>91</sup> For example, contributions from domestic and foreign charities are not taxable income for individuals: Article 217(8.2), Tax Code of the Russian Federation, Part II, Federal Law №. 118-FZ, 5 August 2000 as amended.

<sup>92</sup> For example, transfer of charitable goods and services is not subject to VAT irrespective of the organisation's charitable status: Article 149.3(1), Tax Code.

<sup>93</sup> The Law Introducing Amendments to Certain Legislative Acts of the Russian Federation Regarding the Regulation of Activities of Non-Commercial Organisations Performing the Function of Foreign Agents (Foreign Agents Law), Federal Law № 121-Φ3, 20 July, 2012.

<sup>94</sup> Article 2(6), LNCO as amended; Article 29(6), item 9, Public Associations Law as amended.

185. A NCO, with the exception of a political party, is deemed to engage in political activities if—irrespective of the goals and purposes stated in its founding documents—it participates (including through financing) in organising and conducting activities in the Russian Federation aimed at influencing public authorities with a view to having state policy pursued by those authorities changed. Activities aimed at influencing public opinion for the aforementioned purposes are also deemed political activities, regardless of whether a NCO is conducting them in the interest of a foreign donor or without such purpose.<sup>95</sup> Indeed, it seems that they do not necessarily have to be financed by foreign sources, in order to trigger the application of the Law. A NCO is considered to have engaged in political activities even if it only participates in the activities of another organisation which is funded by foreign sources. The Law does not elaborate on what kind of political activities precisely will trigger its application, but rather uses vague terms such as "political actions", "state policy", "the shaping of public opinion", and "influence".<sup>96</sup>
186. NCOs-"foreign agents" are subject to various reporting and other requirements and scrutiny. In addition to having to enter in the Registry of NCOs-Foreign Agents<sup>97</sup> and carry a label: "NCO performing the function of a foreign agent" on all materials they publish or disseminate,<sup>98</sup> they must maintain separate accounting of funds and other property generated through local and foreign sources, submit activity reports on a biannual basis, and submit reports on expenditures of funds and other property on a quarterly basis (rather than annually as prescribed for other NCOs). Furthermore, they are subject to an unscheduled audit by the Federal Ministry of Justice on a number of grounds, including receiving information by citizens, legal entities or media indicating potential extremist activities of a NCO.<sup>99</sup> Administrative and criminal sanctions are levied on a NCO, its founders and management for violation of the Law.<sup>100</sup>
187. Thus far the application of the notion of NCOs political activity by public authorities and courts has been plagued by inconsistency.<sup>101</sup> This can largely be attributed, as stated by the Prosecutor General, to the "lack of generally accepted concept of political activities".<sup>102</sup>

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<sup>95</sup> Article 2(6), LNCO as amended.

<sup>96</sup> See International Center for Not-for-Profit Law (ICNL), "Overview of the Federal Law on Introducing Amendments to Legislative Acts of the Russian Federation Regarding the Regulation of Activities of Noncommercial Organisations Performing the Functions of Foreign Agents", dated 20 July, 2012 №121-Ф3" (hereinafter: "Overview of the Federal Law"), p. 5.

<sup>97</sup> Article 13.1(5), items 9-10, NCO Law as amended. Article 21(6), item 9, Article 29(8), item 6, Public Associations Law as amended. Article 2 of the Order of the Ministry of Justice of the Russian Federation on the Procedure for Entering into the Registry of NCOs Performing the Function of Foreign Agents. The recent amendments to the NCO Law permits the Ministry of Justice to unilaterally enter a NCO in the foreign agents registry. Article 32, NCO Law as amended on 4 June, 2014.

<sup>98</sup> Article 24(1), NCO Law as amended.

<sup>99</sup> Article 32(4, 6), NCO Law as amended.

<sup>100</sup> Article 32 of the NCO Law as amended, Article 239(2), 330(1), Criminal Code of the Russia Federation № 63-FZ, 13 July 1996 as amended. For a detailed account on the shortcomings of the Law and its departure from international norms and practices see Expert Council on NGO Law, "Opinion on the Law Introducing Amendments to Certain Legislative Acts of the Russian Federation Regarding the Regulation of Activities of Non-Commercial Organisations Performing the Function of Foreign Agents", OING Conf/Exp (2013) 1, August 2013.

[http://www.coe.int/t/ngo/Source/OING\\_CONF\\_EXP\\_2013\\_1\\_opinion\\_NGO\\_law\\_Russia\\_en.pdf](http://www.coe.int/t/ngo/Source/OING_CONF_EXP_2013_1_opinion_NGO_law_Russia_en.pdf)

<sup>101</sup> See "Opinion of the Commissioner for Human Rights on the legislation of the Russian Federation on non-commercial organisations in light of Council of Europe standards", Strasbourg, 15 July 2013, CommDH (2013)15.

<https://wcd.coe.int/ViewDoc.jsp?id=2086667> On problems with case law dealing with the subject see International



188. In August 2013 the ombudsman of the Russian Federation, Vladimir Lukin, filed an appeal with the Constitutional Court on behalf of the leaders of four NCOs challenging warnings from the prosecutor's offices to register as foreign agents as well as the administrative fines that had been levied on them for failing to register. Six other applicants filed a separate petition with the Court challenging the compliance of the Law with the Russian Constitution.<sup>103</sup>
189. On April 8, 2014 the Court rendered the decision by a majority of votes.<sup>104</sup> It held that there were no legal or constitutional grounds for arguing that the term "foreign agent" had negative connotations based on stereotypes from the Soviet era and that, therefore, its use was not intended to persecute or form a negative attitude towards NCOs.<sup>105</sup> The Court also held that the Law, along with the Constitution and international instruments binding for Russia, provides sufficient guarantees against its abuse by Russian authorities.<sup>106</sup> The Court concluded that the "foreign agent" designation and mandatory registration requirement was in the public interest and the interest of state sovereignty and did not unduly discriminate against or impede the ability of NCOs-"foreign agents" to exercise a critical voice towards the government.<sup>107</sup>
190. The Court *inter alia* attempted to clarify the notion of political activities. According to the Court, a NCO does not conduct political activities if the activities were associated with objectively criticising the government's authority or decisions, or led to negative public opinion of State policy. However, in the Court's view:

*"Proof of the intent to engage in political activity in the territory of the Russian Federation may include the constituent, policy and other official documents of the non-commercial organisation, public statements of its leaders (officers) containing appeals for the adoption, change or abrogation of particular government decisions, or notifications about the holding of assemblies, rallies, demonstrations, marches or picketing addressed by that non-commercial organisation to a body of executive power of the subject of the Russian Federation or of local government; the preparation and nomination of legislative initiatives; and other manifestations of social activity that objectively indicate its intention to participate in the organisation and carrying out of political actions in order to influence the decision-*

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Partnership for Human Rights, "The Judicial Dimension of the NGO Crackdown: Application of the Foreign Agents Act by Russian Courts", June 2014, pp. 14-18.

[http://www.civicsolidarity.org/sites/default/files/the\\_judicial\\_dimension\\_of\\_the\\_ngo\\_crackdown\\_june\\_2014.pdf](http://www.civicsolidarity.org/sites/default/files/the_judicial_dimension_of_the_ngo_crackdown_june_2014.pdf) See also Human Rights Watch: "Russia 'Foreign Agent' Law Hits Hundreds of NGOs: Updated 21 July, 2014". [www.hrw.org/news/2014/07/21/russia-foreign-agents-law-hits-hundreds-ngos-updated-july-21-2014](http://www.hrw.org/news/2014/07/21/russia-foreign-agents-law-hits-hundreds-ngos-updated-july-21-2014). Johnson's Russia List: "Russia NGOs' Working to Fight AIDS not Foreign Agent", 18 August, 2014, [Russialist.org/russian-ngos-working-to-fight-aids-not-foreign-agents/](http://Russialist.org/russian-ngos-working-to-fight-aids-not-foreign-agents/)

<sup>102</sup> Minutes of the Council of Federation meeting held on 10 July 2013, p. 23. Available at: [council.gov.ru/media/files/41d47a3ddf1ee42efa03.pdf](http://council.gov.ru/media/files/41d47a3ddf1ee42efa03.pdf)

<sup>103</sup> Overall, the applicants challenged the constitutionality of Articles 2(6) and 32(7) of the Law on Non-Commercial Organisations, Article 29(6) of the Law on Public Associations, and part 1 of Article 19.34 of the Code on Administrative Offenses.

<sup>104</sup> Justice Vladimir Yaroslavtsev wrote a dissenting opinion, see judgment of the Constitutional Court No. 10-P 8 April 2014, pp. 55-74.

<sup>105</sup> Par. 3.1. of the judgment, p. 23.

<sup>106</sup> Par. 3.1. of the judgment, pp. 24-27.

<sup>107</sup> Resolution of the judgment, par. 1. pp. 51-52. See also par. 3.2. pp. 28-32 of the judgment.

*making by state bodies intended for the change of state policy".<sup>108</sup> ....The forms of political actions may be diverse. In addition to meetings, rallies, demonstrations, marches and pickets, political actions include canvassing in connection with elections and referendums; public appeals to government bodies; dissemination, including with the use of modern information technologies, of their assessments of the decisions made and policy pursued by state bodies; as well as other activities, which it would be impossible for legislation to list comprehensively. In listing these or other activities organised and carried out with the participation of non-commercial organisations with political actions subject to aforementioned statutes, their goal of influencing – directly or through the shaping of public opinion – decision-making by state bodies and the policy pursued by them and attracting the attention of the government and/or civil society should be of fundamental importance".<sup>109</sup>*

191. The full implications of the Constitutional Court's broad interpretation of NCO political activities remain yet to be seen. However, it is noteworthy that in the recent case of the *Women of the Don Union* the lower court opted for an even wider definition of 'political actions'. It held that "any form of intellectual influence on the public with respective aims [i.e. the formation, support and change of political institutions] may be regarded as 'political actions'".<sup>110</sup>
192. Political activities of NCOs that receive money and other assets from US citizens and organisations on a gratuitous basis, or implement projects, programmes, or other activities on the territory of the Russian Federation that constitute threats to the interests of the country, are prohibited.<sup>111</sup>

### ***Public policy activities***

193. There are not specific limits to NCOs public policy activities. Russian Constitution specifically guarantees freedom of expression (Article 29) as well as "freedom of activity of public associations" (Article 30).<sup>112</sup> These provisions mirror Article 13(1)(3) of the Constitution, which proclaim that ideological and political differences shall be recognised. The Law on Public Associations allows all kinds of public associations to participate in "advocacy" and "lobbying activities" as well as in election campaigns, subject to federal election law (Article 27).
194. The Foreign Agents Law exempts a broad range of activity from the definition of political activities. These include: activities (including presumably lobbying and advocacy activities) in the field of science, culture, arts, public health care, citizens' preventive treatment and health protection, citizens' social support and protection, protection of motherhood and childhood, social support to disabled people, promotion of healthy lifestyle, physical exercises and sports,

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<sup>108</sup> Par. 3.2. p. 33 of the judgment.

<sup>109</sup> Par. 3.3. p. 38 of the judgment.

<sup>110</sup> Judgment of the Novocherkassk City Court of the Rostov Region dated 14 May 2014, p. 13, in International Partnership for Human Rights, "The Judicial Dimension of the NGO Crackdown: Application of the Foreign Agents Act by Russian Courts", pp. 17-18, *supra*, note 17.

<sup>111</sup> Article 3 of the Federal Law of the Russian Federation № 272-FZ On Measures Affecting Persons Related to Violations of Basic Human Rights and Freedoms of Citizens of the Russian Federation, 28 December 2012.

<sup>112</sup> The Constitution of the Russian Federation, 12 December 1993 as amended.

protection of plants and animal life,<sup>113</sup> charitable activities, as well as activities promoting charity and volunteerism. However, *human rights* and *watch-dog* activities,<sup>114</sup> among others, are notably missing from the list.<sup>115</sup> In addition, it is not clear whether, for example, a charity that receives foreign funds is allowed to freely engage in advocacy and lobbying on issues unrelated to its statutory purposes, or if such activities would trigger the application of the Foreign Agents Law.

### ***Foreign funding restrictions***

195. Foreign funding is not prohibited as such, but is subject to various reporting, monitoring and other requirements. Charities are prohibited from using their assets, including foreign funds, to support political parties, movements and campaigns (Article 2(2-3), Charity Law). Religious organisations, governmental and municipal institutions, international public associations, international movements, and foreign citizens are prohibited from making donations to political candidates.<sup>116</sup>
196. NCOs which receive foreign funds must report all foreign funds received, detail how those funds shall be used, and post online report on their activities.<sup>117</sup> Additional reporting and monitoring requirements are prescribed for foreign NGOs having a branch office in Russia.<sup>118</sup> The Foreign Agents Law also enables the Ministry of Justice to terminate a programme or dissolve a branch office of a foreign NGO without specifying the grounds for such an action.<sup>119</sup> Furthermore, the Ministry of Justice may prevent a foreign NGO branch office from transferring funds to local beneficiaries in order to protect the Constitution, morality and the State security.<sup>120</sup>
197. As already noted, the Foreign Agents Law applies to NCOs which engage in political activities and have received or *intend* to receive foreign funds (*supra*, paras 4. 6.). The reading of those provisions was narrowed somewhat by the recent ruling of the Constitutional Court which held that the "mere receipt of foreign funds by a non-commercial organisation and the fact that it has the possibility of engaging in political activity in the territory of the Russian Federation does not constitute sufficient grounds to declare it an organisation performing the functions of a foreign agent".<sup>121</sup>

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<sup>113</sup> However, the Opinion of the Council of Europe Commissioner for Human Rights states that at least 14 environmental groups have received official warnings from the prosecutor's office that they might be required to register as "foreign agents", par. 46, Opinion, *supra*, note 17.

<sup>114</sup> See e.g. *Vides Aizsardzības Klubs v. Latvia*, Application no. 57829/00, judgment of 27 May 2004, par. 42, in which the Court specifically recognised the watch dog role of non-governmental organisations.

<sup>115</sup> Article 2(6), NCO Law as amended.

<sup>116</sup> Federal Law №. 19-FZ On RF President Elections, of 10 January, 2003, Article 58(6); Federal Law №. 51-FZ On RF State Duma Deputies Elections, of 18 May, 2005, as amended, Article 64(7)).

<sup>117</sup> Article 32(3), NCO Law. The reporting requirements do not pertain to foreign grant-makers which do not have a branch office in Russia, Article 32(4) NCO Law.

<sup>118</sup> Article 32(4), NCO Law.

<sup>119</sup> Article 32(12), NCO Law.

<sup>120</sup> Article 32(4), NCO Law.

<sup>121</sup> Judgment No. 10-P, 8 April 2014, par. 3.2. p. 31.

198. The Law applies to all kinds of foreign funding for NCOs, the only notable exception being foreign funds received from public joint stock companies with state participation and their subsidiaries.<sup>122</sup> It does not set any minimum amount threshold in this respect and therefore even a symbolic one-off foreign donation triggers the application of the Law.<sup>123</sup> It would seem on face value that donations from a Russian legal entity which itself received funds from the foreign sources are also deemed foreign funds/property.<sup>124</sup> However, the General Prosecutor's report on the implementation of the Law suggests otherwise. The report states that NCOs, in order to avoid the application of this law, have used Russian intermediaries to receive foreign funds, in particular given that a Russian donor does not have a legal obligation to disclose to a NCO the source of a gift.<sup>125</sup>

## SLOVAKIA<sup>126</sup>

### *General overview*

199. NGOs in Slovakia can be civic associations, non-profit organisations providing public benefit services, foundations and non-investment funds. Each legal form is regulated under separate Act providing basic information on establishment of the NGO, its activities, decision-making body and conditions under which the organisation can be dismissed.

200. The most common legal form of NGOs in Slovakia is the *civic association*.<sup>127</sup> The purpose of associations is to provide a legal opportunity for citizens to exercise their fundamental right to freely associate. However, not all forms of associations of citizens are considered to be *civic associations* under the Act No. 83/1990 on Association of Citizens. There is an exhaustive list of exceptions and the one relevant for this study is an association of citizens in political parties and political movements. They have to be established under a different Act<sup>128</sup> and their field of interest and activities differ from the civic associations.

201. There are also several legislations that, by the content of their provisions, affect all forms of NGOs. The most important one is the Constitution<sup>129</sup> which guarantees freedom of association.

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<sup>122</sup> Article 1(4-6, 7), LNCO as amended.

<sup>123</sup> This reading is confirmed by the Constitutional Court, judgment No. 10-P, 8 April 2014. The Court argued that the sweeping application of the Law on any amount of foreign funds received serves the "prescribed by law" requirement of the European Court of Human Rights with respect to Articles 10 and 11 of the Convention respectively, as it prevents the arbitrary interpretation of those provisions by Russian authorities. However, references to the "proportionality" requirement seem to be missing from the Court's analyses. See par. 3.3. pp. 34-38 of the judgment.

<sup>124</sup> See ICNL, "Overview of the Federal Law", p. 5, *supra*, note 12.

<sup>125</sup> See Minutes of the Council of Federation meeting, dated 10 July, 2013. p. 24.

[council.gov.ru/media/files/41d47a3ddf1ee42efa03.pdf](http://council.gov.ru/media/files/41d47a3ddf1ee42efa03.pdf)

<sup>126</sup> This section was developed by Ivana Rosenzweigova, Legal Associate at the European Center for Not-for-Profit Law (ECNL)

<sup>127</sup> Act No. 83/1990 on Association of Citizens, available at: <http://www.vyvlastnenie.sk/predpisy/zakon-o-zdruzovani-obcanov/>

<sup>128</sup> No. 85/2005 on Political Parties and Political Movements

<sup>129</sup> Constitution of the Slovak Republic, No. 460/1992, available at: <http://www.vyvlastnenie.sk/predpisy/ustava-slovenskej-republiky/>

Another important law for the purposes of this paper is the Act on Political Parties and Political Movements<sup>130</sup>, which is lacking the definition of political activities.

202. Generally, CSOs in Slovakia can freely address matters of public debate and express criticism. The most common way of communication with the government is through the Council of the Government for Non-Governmental Organisations and Solidarity and Development Council. Consequently, the Legislative Rules of the Government of the Slovak Republic gives them an opportunity to comment on draft laws and thus pursue their objectives.

### ***Public benefit status***

203. There is no legal definition of “public benefit status” in Slovak legislation. However, there is a legal form of NGO called non-profit organisation providing public benefit services, which is operating under this term. This type of NGO is regulated under Act No. 213/1997 on non-profit organisations providing public benefit services.<sup>131</sup> The Act provides a list of services considered as public benefit.
204. The legislation regarding foundations<sup>132</sup> and non-investment funds<sup>133</sup> is using the term “public benefit objective”, which is the compulsory condition for their establishment. Act No. 147/1997 on Non-investment funds is providing a list of public benefit purposes, which is less specific than the one provided by Act No. 213/1997. Act No. 34/2002 on Foundations<sup>134</sup> gives a definition of a public benefit objective which relies on the same list of activities as in Act No. 213/1997.

### ***Scope and definition of political activity***

205. Slovak legislation does not clearly define the term *political activities*. Act No. 85/2005 on Political Parties and Political Movements<sup>135</sup> is not very detailed and provides only a restrictive definition. Activities of the parties that are not in compliance with the Constitution of the Slovak Republic, constitutional laws, other laws and international treaties are, with respect to this Act, prohibited.
206. The Act on Civic Associations uses the term political activities in the case of involuntary termination of the association. If the responsible state body determines that a civic association established under this Act is exercising an activity *that is reserved for the political parties and movements*, it immediately notifies the association and asks it to stop engaging in the given activity. If the association continues to exercise the activity, the association will be dissolved.<sup>136</sup>

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<sup>130</sup> Article 24 d.) of the Act No. 85/2005 on Political Parties and Political Movements, available at: <http://www.infovolby.sk/index.php?base=data/legislativa/volebne/1273704239.txt>

<sup>131</sup> Act No. 213/1997 on non-profit organisations providing public benefit services, available at: [http://www.tretisektor.gov.sk/data/att/3174\\_subor.pdf](http://www.tretisektor.gov.sk/data/att/3174_subor.pdf)

<sup>132</sup> Act No. 34/2002 on Foundations, available at: [http://www.tretisektor.gov.sk/data/att/3172\\_subor.pdf](http://www.tretisektor.gov.sk/data/att/3172_subor.pdf)

<sup>133</sup> Act No. 147/1997 on Non Investment funds, available at: [http://www.tretisektor.gov.sk/data/att/3173\\_subor.pdf](http://www.tretisektor.gov.sk/data/att/3173_subor.pdf)

<sup>134</sup> Article 2 of the Act No. 34/2002 on Foundations, available at: [http://www.tretisektor.gov.sk/data/att/3172\\_subor.pdf](http://www.tretisektor.gov.sk/data/att/3172_subor.pdf)

<sup>135</sup> Article 2 of the Act No. 85/2005 on Political Parties and Political Movements

<sup>136</sup> Act No. 83/1990 on Association of Citizens

207. Both foundations and non-investment funds are prohibited from using their property for financing political parties and political movements. Additionally, the Act on Non-investment Funds prohibits the financing of a candidate for elective office. No NGO, regardless of the category/type, is allowed to donate a gift or provide free benefits to political parties.

### ***Public policy activities***

208. The functioning of NGOs is regulated by laws mostly in development and protection of human values, protection of human rights and environment, development of social services etc. NGOs use several tools to engage in the decision-making process and to influence legislation in order to achieve their goals. They actively participate in discussion platforms and other mechanisms aimed influencing the general policy and direction of the state.

209. The most efficient way to communicate with the government and to participate in the administration of public affairs is through the Council of the Government for Non-Governmental Organisations. The Council operates as a permanent expert, advisory, co-ordination and consultancy body to the Slovak government in the field of civil society organisations and development of civil society in Slovakia. The scope of activities and competences are regulated under the Statute of the Council.<sup>137</sup> In addition, CSOs can pursue their own interests more effectively by inviting their representatives to participate in meetings of a Solidarity and Development Council, which serves as a platform to discuss issues that concern society as a whole.<sup>138</sup> This Council is also a form of partnership between Government and NGOs in the policy making process and the preparation of important decisions regarding the development of the society.<sup>139</sup>

210. The other important form of influencing the direction of the state policy is through commenting on draft laws. According to the Legislative Rules of the Government of the Slovak Republic, a draft act shall be deliberated with the respective bodies and institutions in an inter-institutional review. Among others, the inter-institutional review of the draft act shall be carried out also with the general public, prior to submitting the draft act to the Government for deliberations.<sup>140</sup>

### ***Foreign funding restrictions***

211. There are no limitations to NGOs to receive foreign funding.

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<sup>137</sup> Statute of the Council of the Government for Non-Governmental Organisations from 1 August 2012, available at: [http://www.tretisektor.gov.sk/data/files/3781\\_statut-final.pdf](http://www.tretisektor.gov.sk/data/files/3781_statut-final.pdf)

<sup>138</sup> USAID 2012 CSO Sustainability Index

<sup>139</sup> Solidarity and Development Council, source of information: <http://www.vlada.gov.sk/rada-solidarity-a-rozvoja-sr/>

<sup>140</sup> Article 13 of the Legislative Rules of the Government of the Slovak Republic