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## **EXPERT COUNCIL ON NGO LAW**

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

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## **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".

The Conference of INGOs, inspired by the European Convention on Human Rights and Fundamental Freedoms, has consistently reaffirmed the right of citizens to act as free citizens, notably in association with others, i.e. through NGOs or Civil Society Organisations (CSOs). NGOs and CSOs are nothing more - and nothing less - than groupings of concerned individuals exercising their intrinsic right to have - and to express - an opinion on public policy. As the United Nations High Commissioner for Human Rights recently stated when addressing governments: "Ultimately it is you who exercise sovereignty and bear that responsibility toward your own people. It is you who should be answerable to them. Sovereignty cannot be damaged by carefully evaluated commentary. The search for truth can do many things, but it does not weaken, violate or assault. Upholding human rights is intrinsic to the obligations of sovereignty and constitutes the fundamental basis for a healthy State. Instability is expensive. Conflict is expensive. Offering a space for the voices of civil society to air grievances and work towards solutions is free. Civil society - enabled by the freedoms of expression, association and peaceful assembly - is a valuable partner, not a threat."

The case law of the European Court of Human Rights entrenches these considerations, for example: a. "core to the rights of freedom of opinion and freedom to demonstrate is the possibility for everyone to express his or her opinion and opposition, and to challenge any decision emanating from any authority whatever. Any interference, however indirect, that affects the very substance of these rights would be incompatible with the Convention (no. 31276, 3 February 2009); b. "An organisation may campaign for a change in the legal and constitutional structures of the State if the means used to that end are in every respect legal and democratic and if the change proposed is itself compatible with fundamental democratic principles. The mere fact that an organisation demands such changes cannot automatically justify interference with its members' freedoms of association and assembly" (no. 57045, 21 June 2007).

In the context of all the above considerations, and fully motivated by the Council of Europe's core values - democracy, human rights and the rule of law - the Expert Council on NGO Law in the attached study illustrates the importance of - and the variety of - "political activities" that by definition contribute to promoting and strengthening those core values. Some governments have ill-advisedly chosen to deem political activities as unwelcome, even reprehensible or contrary to the interests of the authorities. Nothing could be further from the truth. In a democracy, citizens - who are voters - have not only the right but the duty to shape public opinion and influence governmental decision making. State authorities should wholeheartedly welcome having alert and informed citizens - and citizens' associations, i.e.

NGOs and CSOs - ready and willing to provide competent and relevant input to public decision-making processes.

The present study reports many good national legislative and structural practices that enhance and take advantage of the political know-how and activism of NGOs. I accordingly commend it to the early attention of intergovernmental and governmental authorities throughout the Council of Europe area, as well as to parliamentarian and civil society constituencies. Political activities of NGOs already are, and can be further, significant contributory factors to upholding and fostering democracy, human rights and the rule of law.

# REGULATING POLITICAL ACTIVITIES OF NON-GOVERNMENTAL ORGANISATIONS

## A. Introduction

1. Legislation 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 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 notable 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-ФЗ.
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”<sup>2</sup>.
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>3</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*

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<sup>1</sup> For further information on standards regarding freedom of association please see: <http://www.coe.int/en/web/ingo/expert-council> and <http://associationline.org/guidebook>, whilst on trends in regulating NGOs, including restrictive measures 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 December 2015.

<sup>2</sup> Opinion of the Expert Council on NGO Law 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)

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680306f71>

<sup>3</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

*democracy, governance, and human rights activities.*<sup>4</sup> Unfortunately, the implementation of the Law justified these concerns. Furthermore, there are examples of other countries attempting to follow the trend.<sup>5</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.
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>6</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 and Wales, Estonia, Hungary, Moldova, Netherlands, Portugal, the Russian Federation, Slovakia and Spain. 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.

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<sup>4</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/en/web/ingo/expert-council-on-ngo-law-country-study-on-ngo-legislation-in-the-russian-federation>.

<sup>5</sup> Drafting of laws similar to the Russian foreign agent law were initiated in two Council of Europe member states. 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.

(<http://www.parlament.hu/irom39/12588/12588.pdf>). The draft was not debated in the Parliament.

(<http://www.reuters.com/article/2015/05/19/us-bosnia-law-ngo-idUSKBN0O4II20150519>) In May 2015, lawmakers in Bosnia's Serb Republic withdrew a draft law dubbed 'Putin's Bill' that sought to put foreign-funded non-profit groups under government control. The three ruling parties in the Bosnian Serb Republic gave up on the law after a parliamentary committee said it was anti-European. The aborted legislation referred to members of NGOs as "foreign servants", echoing the Russian law. In addition, the National Council of Austria enacted the "Federal law on the external legal relationships of Islamic Religious Societies" in 2015. As part of several changes, the law introduced the "regulation on the interdiction of foreign financing". Accordingly, the "ongoing operation" of a religious society must be financed inland, and there are limitations to "continuous" foreign funding. ([http://www.parlament.gv.at/PAKT/VHG/XXV/I/I\\_00446/index.shtml](http://www.parlament.gv.at/PAKT/VHG/XXV/I/I_00446/index.shtml))

<sup>6</sup> Available at: [http://www.icnl.org/research/journal/vol12iss1/special\\_1.htm](http://www.icnl.org/research/journal/vol12iss1/special_1.htm)

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

## 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 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. The General Comment on Article 25 of ICCPR further defines the scope of the conduct of public affairs within which participation occurs and reinforces the obligation of states to recognize the right to participation in the normative framework:

*“... 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)*

14. The Comment further stipulates the modalities in which individuals can participate and emphasizes the importance of ensuring freedom of association, assembly and expression for meaningful participation:

*“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). “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*

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<sup>8</sup> See Expert Council on NGO Law, 'Conditions of Establishment of Non-Governmental Organisations', OING Conf/Exp (2009) 1 (<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680306eb1>) 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

*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, 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. The Human Rights Council adopted three resolutions promoting the right to participation.<sup>12</sup> The more recent *Resolution on Equal Participation in Political and Public Affairs from 2015*<sup>13</sup> underscores the importance of participation and the ability of people to engage in political and public affairs without legal and practical barriers.

Specifically, the Resolution:

*“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.”*

The Resolution also recognizes: “*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 also recognises current trends in participation through modern technologies and “*notes the emergence of new forms of participation and grass-roots engagement, in particular through new information and communications technologies and social media, and the challenges to established forms of political participation in some States.”*

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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> The first two are: Resolution on Equal Participation 2013 (A/HRC/24/L.18/Rev.1) and Resolution on Equal Participation in Political and Public Affairs 2014 (A/HRC/27/L.29/Rev.1)

<sup>13</sup> A/HRC/30/L.27/Rev.1

18. 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 improve and widen the participation, both online and offline, through new forms of participation and opportunities brought by new technologies and social media; providing full and effective access to justice and redress mechanisms to those whose right to participate in public affairs has been violated.
19. Furthermore, the Office of the UN High Commissioner for Human Rights (OHCHR) prepared studies tackling the right to participation.<sup>14</sup> Its latest study on *Promotion, protection and implementation of the right to participate in public affairs in the context of the existing human rights law: best practices, experiences, challenges and ways to overcome them*, in which it specifically recognised that:

*“71. Full and effective participation in political and public affairs is best ensured when the right itself, combined with the right to equality and non-discrimination, is recognised in national legislation and when limitations to this right are exceptional and justified by reasonable and objective criteria. The right to participate in political and public affairs should be enforceable by law and its denial should be open to judicial challenge. Appropriate remedies should be available if a violation is established.*

*72. Legal frameworks that include the explicit right of individuals and groups to participate in the design, implementation and evaluation of any policy, programme or strategy that affects their rights, at the local, national and international levels are most conducive to the full realization of the right to participate in political and public affairs”<sup>15</sup>*

20. International guarantees are found in other UN-level documents. For example, the *Declaration on Human Rights Defenders of the UN General Assembly*<sup>16</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*

*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.*

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<sup>14</sup> Another study was on “Factors that impede equal political participation and on steps to overcome those challenges - Report of the Office of the United Nations High Commissioner for Human Rights”, A/HRC/27/29

<sup>15</sup> A/HRC/30/26, para. 71, July 2015

<sup>16</sup> UN General Assembly resolution A/RES/53/144, 8 March 1999, Annex.

*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."*

21. 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>17</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>18</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>19</sup>

22. 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.
23. 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>20</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.
24. 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 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.

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<sup>17</sup> See Expert Council on NGO Law 'Conditions of Establishment of Non-Governmental Organisations', paras. 33-45

<sup>18</sup> ECHR, Article 11(2)

<sup>19</sup> Expert Council on NGO Law, 'Conditions of Establishment of Non-Governmental Organisations', para 35.

<sup>20</sup> *United Communist Part of Turkey and Others v. Turkey*, no 19392/92, 30 January 1998, paras 57-58.

*"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>21</sup>*

25. 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>22</sup>
26. 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).
27. 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.

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

<sup>22</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.

*“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.”*

28. The *Explanatory Memorandum* to the Recommendation notes 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.
29. 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.”*
30. The Council of Europe’s *Code of Good Practice for Civil Participation*<sup>23</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.
31. 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 adopted a resolution on the perspectives of *Developing Civil Dialogue under the Treaty of Lisbon*.<sup>24</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

<sup>23</sup> CONF/PLE(2009)CODE1, adopted by the Conference of INGOs at its meeting on 1st October 2009; <http://www.coe.int/en/web/ingo/civil-participation>

<sup>24</sup> P6\_TA(2009)0007, 13 January 2009

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>25</sup>

32. The joint OSCE ODIHR and Venice Commission *Guidelines on Freedom of Association* also state that:

*“31. (...) Associations shall have the right to participate in matters of political and public debate, regardless of whether the position taken is in accord with government policy or advocates a change in the law.*

...

*183. In a participatory democracy with an open and transparent lawmaking process, associations should be able to participate in the development of law and policy at all levels, whether local, national, regional or international.*

*184. This participation should be facilitated by the establishment of mechanisms that enable associations to engage in dialogue with, and to be consulted by, public authorities at various levels of government.”<sup>26</sup>*

## C. Political activities and public policy activities: definitions and the approaches in European countries<sup>27</sup>

33. 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.
34. “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>28</sup> For example, in Hungary a “direct political activity” is defined as:

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<sup>25</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>26</sup> <http://www.osce.org/odihr/132371>

<sup>27</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>28</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

*“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”;*

35. 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.
36. 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.
37. 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 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 and is also allowed to communicate with legislators about proposed legislation without losing tax-exempt status.<sup>29</sup> In the Czech Republic, NGOs may participate in lobbying and public advocacy activities.<sup>30</sup>
38. 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, with last amendments from 2014, 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 provide guarantees for public participation in policy and law-making processes.
39. To ensure participation in policy and law-making some countries have also introduced principles in strategic documents and through creation of institutional mechanisms.

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<sup>29</sup> Germany Country Note, as of August 2015: <http://www.cof.org/content/germany>

<sup>30</sup> Czech Republic Country Note, as of July 2015: <http://www.cof.org/content/czech-republic>

- In “the former Yugoslav Republic of Macedonia”, Croatia and Moldova, the respective governments adopted strategies for collaboration with civil society with 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>31</sup> includes a specific chapter dedicated to participation. The chapter details more than 20 measures for enhancing consultation processes with civil society, access to information, education on policy and law-making process, etc.
- In Estonia, the ministries have established consultative bodies in their respective fields that include civil society members. Similarly, in Portugal, several government agencies have created advisory bodies in their field of intervention, which include NGO representatives.

In Azerbaijan, Croatia, Moldova, Montenegro, Slovakia and Spain, 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

40. 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).
41. 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.
42. 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>32</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>33</sup> In Poland, there are no limitations

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<sup>31</sup> Adopted by the Government in July 2012, available at:

<https://udrige.gov.hr/UserDocsImages/UserFiles/File/National%20Strategy-Civil%20Society-Croatia-2012-2016-eng.pdf>.

<sup>32</sup> France Country Note, as of July 2015 <http://www.cof.org/content/france>

<sup>33</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 2015 <http://www.cof.org/content/romania>

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>34</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 which entered into politics and established a political party and voluntarily dissolved the NGO.<sup>35</sup> Similarly, in Portugal, there are no restrictions on the political activities of associations and foundations, including on participating in the election campaign or supporting any party or candidate at elections. However, if an NGO decides to run for elections, it shall transform into a political party.

43. 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 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 "the former Yugoslav Republic of 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>36</sup>
  - Participation in election campaigning is prohibited in "the former Yugoslav Republic of Macedonia" and Bulgaria.

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<sup>34</sup> Poland Country Note, as of June 2015 <http://www.cof.org/content/poland>

<sup>35</sup> Montenegro Country Note, as of July 2015 <http://www.cof.org/content/montenegro>

<sup>36</sup> Serbia Country Note, as of September 2015 <http://www.cof.org/content-serbia>

44. 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.
  - 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 non-profit organisations providing public benefit services are expressly forbidden from using their assets to support political parties or political movements.
45. 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, 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. In addition, NGOs that would like to become recipients of percentage tax designations may not pursue direct political activity. 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.
46. 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**

47. 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.
48. 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>37</sup>

#### *General overview*

49. 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.
50. 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 "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.
51. The NGO Law does not apply to political parties, religious unions and trade unions, as well as organisations that aim to fulfil the functions of such bodies and other non-commercial organisations not falling within its definition of an NGO.
52. 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.
53. Public associations may be registered and thereby acquire legal personality or just be 'legalised' 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>38</sup>. A foreign NGO is permitted to have only one branch or representation<sup>39</sup> and before it can be registered an agreement must be reached between the foreign NGO

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<sup>37</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,- 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> and the Revised Expert Council opinion on amendments in 2009 and 2013 to the NGO Law in Azerbaijan and their application, (OING Conf/Exp (2014) 1

<http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680306ff6>.

<sup>38</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>39</sup> Following amendments to the NGO Law in December 2013.

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***

54. 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***

55. 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. 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>40</sup> may create uncertainty as to whether they can engage in political activities that are not prohibited or restricted while retaining their present status.
56. NGOs can pursue purposes not prohibited by the Constitution and laws of the Republic of Azerbaijan<sup>41</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>42</sup>.
57. 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>43</sup>.
58. 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>44</sup>.

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<sup>40</sup> Following an amendment to Article 1.4 of the NGO Law in 2009.

<sup>41</sup> Article 2.3 of the NGO Law.

<sup>42</sup> Article 2.4 of the NGO Law.

<sup>43</sup> *Ibid.*

59. 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>45</sup>.

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

60. 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.
61. NGOs may make proposals for improving normative-legal acts, according to the procedure prescribed by legislation and their own charter<sup>46</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.
62. NGOs can contribute to issues of public interest whether through their own activities or in direct discussion with state agencies.
63. However, since 2009 the charters of NGOs must not 'provide for appropriation of powers of state and local self-governed bodies'<sup>47</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>48</sup>. Depending upon their construction and application, these restrictions could have implications for undertaking public policy activities.
64. Moreover, 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.
65. 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

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<sup>44</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>45</sup> Code of Administrative Offences, Article 340-2

<sup>46</sup> Article 2.4 of the NGO Law.

<sup>47</sup> Article 13.3 of the NGO Law.

<sup>48</sup> Article 2.3 of the NGO Law.

involvement in its activities tends to exclude NGOs seen as opposed to the government's policies.

66. 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>49</sup>.
67. 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.
68. Changes to the legislation governing the operation of NGOs since 2009 and the institution of various criminal proceedings against those involved with NGOs have made it much more difficult for NGOs to pursue their objectives in general and so have inhibited the undertaking of political activities in particular.<sup>50</sup>

## CROATIA<sup>51</sup>

### *General overview*

69. In Croatia, the most common legal form of NGOs are associations, regulated by the Law on Associations<sup>52</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>53</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 objectives, without the intention of generating profit.

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<sup>49</sup> Order "On Approval of Regulations on Public Participation in Correction of Prisoners and Public Supervision over the Penitentiary", 25 April 2006.

<sup>50</sup> See further the Revised Expert Council opinion on amendments in 2009 and 2013 to the NGO Law in Azerbaijan and their application, the Opinion of the Venice Commission on the Law on Non-governmental organisations (Public Associations and Funds) as amended of the Republic of Azerbaijan (CDL-AD(2014)043) and numerous statements by the Commissioner for Human Rights at <http://www.coe.int/en/web/commissioner/country-monitoring-azerbaijan>

<sup>51</sup> This section was developed by Vanja Škorić, Senior Legal Advisor at the European Center for Not-for-Profit Law (ECNL).

<sup>52</sup> The Law on Associations, Official Gazette No. 74/14, adopted in June 2014, entered into force on October 1 2014. The new Law recognises 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>53</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>

70. According to the Law, the main principles of the associations' 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 that can freely participate in developing, monitoring, implementing and evaluating public policies, shaping public opinion, expressing opinions and taking initiative on matters of interest.
71. 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.
72. 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***

73. 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 Article 32 (4) of the Law.
74. 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 stipulate that state institutions and local government units should allocate funds for projects and programmes of public benefit based on public tender and strict criteria, prescribed by the Government within its bylaws<sup>54</sup>.
75. 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***

76. Croatian legislation does not clearly define the term political activity. The Constitution and the Law on Political Parties<sup>55</sup> lack its definition. The terminology is used solely in the name of the Law on Financing Political Activities and Election Campaigns<sup>56</sup>, however, there is no clear

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<sup>54</sup> Directive on Criteria, Benchmarks and Process of Financing and Contracting Public Benefit Projects and Programs Implemented by Associations, Official Gazette No. 26/15, available at: [http://narodne-novine.nn.hr/clanci/sluzbeni/2015\\_03\\_26\\_546.html](http://narodne-novine.nn.hr/clanci/sluzbeni/2015_03_26_546.html).

The Government's Office for NGOs developed a detailed manual for implementation of this Directive aimed at public bodies available at:

<https://udruge.gov.hr/UserDocsImages/dokumenti/Prirucnik%20za%20postupanje%20u%20primjeni%20Uredbe%20o%20financiranju.pdf>.

<sup>55</sup> The Law on Political Parties, Official Gazette No. 76/93, 111/96, 164/98, 36/01, 28/06.

<sup>56</sup> The Law on Financing Political Activities and Election Campaigns, Official Gazette No. 24/11, 61/11, 27/13, 02/14

definition within the provisions - it refers only to the subjects of the Law, namely, political parties and *election* candidates.

77. 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 Article 22 (1) of the Law on Financing Political Activities and Election Campaigns.

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

78. The legal and institutional framework encourages NGOs to take part in the 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>57</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 the interested public into the policy and law-making process, support to civil society for participation in decision-making, etc.
79. The 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>58</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, the 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. Moreover, in 2015 the Government launched an online consultations portal (E-Consultations) to provide a one-stop-shop for all national level consultation processes.<sup>59</sup> The Government's Office for NGOs also publishes annual reports on monitoring the implementation of the Code, available on their website (in Croatian).
80. Complementary to the Code, the Government's Rules of Procedures<sup>60</sup> in 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 10 and 11 of the Law on Access to Information<sup>61</sup> prescribe proactive transparency and publishing consultation documents (mainly draft laws) online, as a standard procedure for each government body.

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<sup>57</sup> Adopted by the Government in July 2012, available at:

<https://udruge.gov.hr/UserDocsImages/UserFiles/File/National%20Strategy-Civil%20Society-Croatia-2012-2016-eng.pdf>.

<sup>58</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)

<sup>59</sup> Available at: <https://savjetovanja.gov.hr>.

<sup>60</sup> Government's Rules of Procedures, Official Gazette No. 154/11, 121/12, 7/13

<sup>61</sup> The Law on Access to Information, Official Gazette No. 25/13, as amended in 80/15.

81. Opportunities to influence policies on the state level exist through the Council for Civil Society Development<sup>62</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.
82. 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, analyse 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>63</sup> (including a Council for Civil Society Development) involving more than 800 representatives of civil society.
83. Parliamentary cooperation with NGOs relies on its Rules of Procedure<sup>64</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 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 of 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 through organisation of advocacy campaigns.
84. The Parliament can also create special committees, according to Article 53 of its Rules of Procedure, which include civil society members, such as the 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.
85. 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 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***

86. 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.
87. Foreign NGOs, according to the Article 22 (1) of the Law on Financing Political Activities and Election Campaigns, are prohibited from funding political parties and/or election candidates.

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<sup>62</sup> More information available at: <https://udruge.gov.hr/the-council-for-the-development-of-civil-society/163>.

<sup>63</sup> More information available at: <http://int.uzuvrh.hr/drzavnatijela-savjeti-clanovi-en.aspx>.

<sup>64</sup> Rules of Procedure of the Croatian Parliament, Official Gazette No. 81/13

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>65</sup>**

88. England and Wales is the only example of a common law system covered in this study on regulating political activities of NGOs.<sup>66</sup>

### ***General overview***

89. 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.
90. 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.
91. 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.
92. There are five main types of legal entity available for NGOs:
93. 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.
94. 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.
95. 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

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<sup>65</sup> This section was developed by Lindsay Driscoll, consultant with Bates Wells & Braithwaite LLP, former legal commissioner at the Charity Commission.

<sup>66</sup> See paragraph 37 and 38.

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.

96. 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.
97. 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.
98. 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***

99. Public benefit organisations in England and Wales are known as charities. The Charity Commission registers and regulates charities.
100. 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.
101. 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.
102. The last general provision enables new purposes to be recognised by the Charity Commission or the High Court.

103. 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.
104. 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>67</sup>***

105. 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.*
106. 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.
  107. 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 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.
  108. 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

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<sup>67</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.

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.

109. A number of specific restrictions apply to political activities of NGOs:
110. 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.
111. 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.
112. 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.
113. 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.
114. 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”.
115. 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.

116. 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***

117. 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.
118. There are no restrictions on Public Policy activities undertaken by non-charitable NGOs other than those imposed on all individuals and organisations.
119. 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***

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

## **ESTONIA<sup>68</sup>**

### ***General overview***

121. 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 be the earning of income from economic activity<sup>69</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>70</sup>.
122. The Constitution<sup>71</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

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<sup>68</sup> This section was developed by Urmo Kübar

<sup>69</sup> Non-profit Associations Act: <https://www.riigiteataja.ee/en/eli/510042014003/consolide>

<sup>70</sup> Foundations Act: <https://www.riigiteataja.ee/en/eli/510042014001/consolide>

<sup>71</sup> The Constitution of the Republic of Estonia: <https://www.riigiteataja.ee/en/eli/530102013003/consolide>

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.

123. 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>72</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.).
124. 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***

125. The Income Tax Act<sup>73</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 a resolution of the Tax and Customs Board<sup>74</sup> twice a year after obtaining a recommendation from an expert committee, consisting of public sector and NGO representatives. Approximately 11% of all NGOs in Estonia are on the list.<sup>75</sup>
126. 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.

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

127. 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.

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<sup>72</sup> Political Parties Act: <https://www.riigiteataja.ee/en/eli/508072014003/consolidate>

<sup>73</sup> Income Tax Act: <https://www.riigiteataja.ee/en/eli/528082014008/consolidate>

<sup>74</sup> Until 2014 the Government was passing the resolution, amended in 2015.

<sup>75</sup> There are 7% of all registered Estonian NGOs on the list, but about 1/3 of registered NGOs cannot even apply for the list (housing associations).

128. The Local Government Council Election Act<sup>76</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.
129. 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*

130. 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.
131. Additionally, a number of specific laws regulate the right of the public and NGOs to participate in policy-making. The Public Information Act<sup>77</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>78</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 (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>79</sup>.
132. The Code of Good Conduct for Public Engagement is adopted as a part of the rules for the Government of the Republic.<sup>80</sup> According to the Code, government authorities are responsible for engaging interest groups and the public in the decision-making process in order to ensure

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<sup>76</sup> Local Government Council Election Act: <https://www.riigiteataja.ee/en/eli/501092014006/consolidate>

<sup>77</sup> Public Information Act: <https://www.riigiteataja.ee/en/eli/510072014004/consolidate>

<sup>78</sup> Response to Memoranda and Requests for Explanations and Submission of Collective Addresses Act: <https://www.riigiteataja.ee/en/eli/507042014003/consolidate>

<sup>79</sup> Local Government Organisation Act: <https://www.riigiteataja.ee/en/eli/518062014010/consolidate>

<sup>80</sup> Rules for Good Legislative Practice and Legislative Drafting: <https://www.riigiteataja.ee/en/eli/508012015003/consolidate>

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 legislative intent and when the draft has already been developed.<sup>81</sup>

133. All the ministries have established consultative bodies in their respective fields that include civil society members.
134. 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***

135. 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>82</sup>**

### ***General overview***

136. In Hungary the two traditional legal forms of NGOs are association and foundation. In addition to these, Hungarian legislation recognises an unincorporated legal form known as civil group for organisations that aim to operate without legal personality. These three legal forms are considered ‘civil society organisation’ as per the definition of the law. In addition, non-profit organisations may be established in other legal forms, including non-profit corporations.
137. An association is the main form of membership-based organisations, regulated under Law V of 2013 on the Civil Code (Civil Code)<sup>83</sup> and Act CLXXV/2011 on freedom of association, public benefit status and the operation and support of Civil Society Organisations (CSOs) (CSO Act)<sup>84</sup>. It is established for the continuous realisation of the common, permanent aim of the members determined in the articles of association and has a registered membership.<sup>85</sup> At least ten natural persons, legal persons, and/or organisations without legal personality are required to form an association.<sup>86</sup> The special forms of associations are: alliance, political party and trade union. According to the CSO Act, an association may be created for any purpose that is consistent with the Fundamental Act of Hungary and is not unlawful. An association cannot be

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<sup>81</sup> However, this does not fully work in practice as only around 19% of drafts had this “legislative intent” beforehand in 2014, other drafts were developed without it.

<sup>82</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).

<sup>83</sup> Available at: [http://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=A1300005.TV](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1300005.TV)

<sup>84</sup> Available at: [http://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=A1100175.TV](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1100175.TV)

<sup>85</sup> Article 3:63 of the Civil Code

<sup>86</sup> Article 3:64 of the Civil Code

formed for criminal, military, unlawful purposes or to undertake a public task which is reserved for state bodies.<sup>87</sup>

138. The establishment and operation of foundations is also regulated in the Civil Code and the CSO Act. A foundation is a legal person established by the founder for the continuous realisation of the permanent purpose determined in the articles of association.<sup>88</sup>
139. Both associations and foundations are registered by the county court competent as per the seat of the organisation. The registration process is regulated by the Act CLXXXI/2011 on the court registration of CSOs and the relative procedural rules.<sup>89</sup> The county courts keep separate registries and there is a centralised electronic system operated by the National Office for the Judiciary, including a publicly available national register of foundations, associations and other non-commercial organisations.<sup>90</sup>
140. The non-profit corporations are regulated in the Act V/2006 on corporate transparency, registration and dissolution procedure.<sup>91</sup> A corporation is non-profit if the founding document includes that the profit arising from its activity shall not be distributed among the members but enrich the assets of the company. All corporation forms (e.g., limited liability company, shareholder company) can be established and operate in a non-profit manner.<sup>92</sup>
141. NGOs are generally free to engage in all forms of political activities. Restrictions to engage in political activities apply 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>93</sup> An NGO may not pursue direct political activity also in case it would like to become the beneficiary of the percentage designation mechanism.<sup>94</sup>
142. The operation and management of political parties is regulated in Act XXXIII/1989.

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

143. If an NGO acquires PBO status then the organisation is subject to limitations in terms of its engagement in political activities.
144. 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

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<sup>87</sup> Article 3(3)-(5) of the CSO Act

<sup>88</sup> Article 3:378 of the Civil Code

<sup>89</sup> Available at: [http://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=A1100181.TV](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1100181.TV)

<sup>90</sup> Public bodies, private pension funds etc.

<sup>91</sup> Available at: [http://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=A0600005.TV](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A0600005.TV)

<sup>92</sup> Art. 9/F Act V/2006

<sup>93</sup> Act CLXXV/2011, Article 34 (1) (d).

<sup>94</sup> The percentage designation mechanism is an indirect form of state support that allows taxpayers to dedicate 1% of their personal income tax to a qualifying CSO or a range of state, cultural and educational institutions and an additional 1% to a church or a specific budget priority.

public (governmental or local governmental) tasks and thereby contributes to the satisfaction of the common needs of society and individuals.

145. In order to obtain PBO status the organisations must fulfil a set of criteria. Qualifying organisations must prove that they had sufficient resources and sufficient social support in the past two closed financial years. 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 political parties, and shall not provide financial support to them.
146. Although PBOs cannot support political parties, political parties may support PBOs.
147. Except for “direct political activities,” other forms of “political” engagement 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***

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

*"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."*

149. 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***

150. The legal framework enables NGOs to take part in the policy and decision-making process. According to the Act CXXX/2010 on Legislation<sup>95</sup>, if the law provides explicitly the 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 CXXXI/2010 on the social participation in the preparation of legal regulations.<sup>96</sup> The rules of procedure of the Government may determine further regulations as well.

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<sup>95</sup> Available at: [http://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=A1000130.TV](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1000130.TV)

<sup>96</sup> Available at: [http://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=A1000131.TV](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1000131.TV)

151. According to the Act on the social participation in the preparation of legal regulations, the drafts and motivation of 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.
152. 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 and others.
153. In addition, under the Act CCXXXVIII/2013 on Referendum Proposal, European Citizens' Initiative and Referendum Procedure, associations may organise a citizens' initiative with the aim of setting a local referendum if the given issue is related to the purpose of the association as determined in its articles.<sup>97</sup>
154. The notion of complaint and whistleblowing is regulated by a separate Act CLXV of 2013 on complaints and public interest disclosure.<sup>98</sup> A complaint is a request that aims to eliminate the violation of individual rights or interests and is not subject to court, administrative or other procedures. Public interest disclosure draws the attention to a circumstance the remedy or elimination of which serves the interest of a community or the whole society. Anyone, including NGOs, can turn to the competent authorities with a complaint and public interest disclosure. Both may contain recommendations for legislation.<sup>99</sup>
155. Some ministries established cross-sectoral advisory councils in their respective fields, including representatives of NGOs. Such councils exist in several fields, including public education, disability, minorities, environment protection and others.<sup>100</sup> Through these councils NGOs can follow and analyse the development of the specific field; share their opinion related to the proposed measures and the draft legal regulations; and propose specific decisions, programmes and legal regulations.
156. 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

<sup>97</sup> Act CCXXXVIII/2013 on Referendum Proposal, European Citizens' Initiative and Referendum Procedure, available at: [http://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=A1300238.TV](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1300238.TV)

<sup>98</sup> Available at: [http://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=A1300165.TV](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1300165.TV)

<sup>99</sup> Article 1 of Act CLXV of 2013 on complaints and public interest disclosure

<sup>100</sup> e.g., National Disability Council, National Public Education Council, Council on Senior Citizen, Roma Coordination Council

campaign activity relating to a certain piece of legislation. Also, 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.

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

157. According to the Law XXXIII/1989 on Operation and Financing of Political Parties, political parties may not accept monetary support from a foreign government, organisation or citizen. Anonymous donations cannot be accepted; those would have to be paid to the Foundation of the Party. Such a restriction does not apply to NGOs in any form. Hungarian legislation does not differentiate between domestic and foreign donations to NGOs.

## **MOLDOVA<sup>101</sup>**

### ***General overview***

158. 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.
159. The Civil Code<sup>102</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 the implementation of the statutory mission.
160. 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 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).
161. A foundation is a non-membership non-commercial organisation, founded by one or several physical and legal entities, which possesses assets and pursues non-commercial purposes as provided by the founding charter (Art. 182 of Civil Code).
162. An institution is a non-commercial organisation created by one or more founders (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)

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<sup>101</sup> This section is developed by Hanna Asipovich, Policy Officer at the European Center for Not-for-Profit Law (ECNL)

<sup>102</sup> Civil Code of Republic of Moldova, Articles 180:

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

163. The Law on Public Associations<sup>103</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.
164. The Law on Foundations<sup>104</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 from those prescribed by law.
165. According to the Registry<sup>105</sup> of Non-commercial Organisations of the Ministry of Justice, 10,153 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, areas of activity and other information.

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

166. Public benefit status is regulated by the Law on Public Associations articles 30-33. Associations 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 is no conflict of interest in applying for the status (family members in the Certification Commission or other).
167. 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. The Certification Commission can identify other areas of activities which can be regarded as public benefit activities.
168. 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.

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<sup>103</sup> Law on Public Associations, 1996: <http://lex.justice.md/viewdoc.php?action=view&view=doc&id=325424&lang=1>

<sup>104</sup> Law on Foundations, 1999: <http://lex.justice.md/viewdoc.php?action=view&view=doc&id=311692&lang=1>

<sup>105</sup> The registry is available online at the Ministry of Justice page: <http://rson.justice.md/organisations>.

169. There are no specific benefits available for public benefit organisations.<sup>106</sup> 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 have few tangible incentives to obtain public benefit status.

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

170. 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.
171. 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.
172. 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 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.
173. 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***

174. 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; [...]*

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<sup>106</sup> According to the changes to the Fiscal Code (2014), public associations with the status of public benefit can be beneficiaries of the 2% income tax designation mechanism by physical persons and legal entities. However, as of end of 2015 there is no implementing mechanism adopted for associations to apply this benefit in practice.

175. 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.
176. 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.
177. The Law on Transparency in Decision-Making<sup>107</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. The law was improved through amendments adopted in 2014, which clarified the procedure and deadlines on consultation, responsibilities of public authorities and their responsibility for violation of the procedures.
178. There are several policy documents that establish the framework for co-operation in Moldova. The Parliament's Concept on Cooperation (2005) regulates relationships between Parliament and NGOs, sets rules on consultations and participation of NGOs in law-making. However, according to some NGOs, it is not applied in practice.<sup>108</sup> The National Strategy for Civil Society Development 2012-2015<sup>109</sup> is a framework policy document for development of the NGO sector, also adopted by the Parliament and implemented by the Government. 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. However, the Strategy expires and the objective has not been achieved.
179. NGOs are included as essential participants in 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 the 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.
180. In addition, there are two national level mechanisms which facilitate participation in policy and law making.

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<sup>107</sup> Law on transparency in decision-making, 2008:

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

<sup>108</sup> See for example a recent mapping study: Civil Society Organisations from the Republic of Moldova: Development, Sustainability and Participation in Policy Dialogue, 2014, p. 26:

[http://www.csdialogue.eu/sites/default/files/civil\\_society\\_mapping\\_csdp\\_spring\\_2015\\_0.pdf](http://www.csdialogue.eu/sites/default/files/civil_society_mapping_csdp_spring_2015_0.pdf)

<sup>109</sup> The National Strategy for Developing Civil Society for 2012-2015: [http://www.fhi360.md/docs/MD\\_Strategy\\_2012-2015\\_unofficial\\_translation\\_ENG.pdf](http://www.fhi360.md/docs/MD_Strategy_2012-2015_unofficial_translation_ENG.pdf)

181. The National Council for Participation (NCP)<sup>110</sup> was established in 2010 to serve as an advisory body and a liaison between the government, civil society and the private sector. The NCP aims to include experts in various fields, including NGOs, who provide expert opinion to the government's legal and policy drafts. The mandate of the first Council has expired.<sup>111</sup>
182. 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***

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

## **NETHERLANDS<sup>112</sup>**

### ***General Overview***

184. The Netherlands is a relatively "high trust society"<sup>113</sup> where membership in all kinds of organisations is a widespread, deeply rooted tradition: the vast majority of citizens participate in at least one "group or association."<sup>114</sup> Dutch society tries to give ample space to newcomers in their non-violent struggle for democratic power.<sup>115</sup> Unless indicated otherwise, hereinafter we refer to all types of "gatherings of likeminded persons", registered or unregistered, as NGOs.

### ***Basic legal framework for NGOs***

185. NGOs may take many forms. They are not characterized by the "not for profit" (NPO) criteria only and are allowed also to lobby and promote business interests. All NGOs, be it with a political aim or public interest enjoy the same rights and duties. NGOs are free to choose any type of organization that suits their goals. The term "association" in Article 8 of the

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<sup>110</sup> The National Council for Participation: <http://www.cnp.md/>

<sup>111</sup> When the government launched a selection process for the new Council in summer 2015, there were only a few applications submitted from NGOs to become the expert members. A new call was not issued, and as the result, the future of the National Participation Council is undefined. In its resolution, adopted in November 2015, the 8<sup>th</sup> Moldovan Forum of NGOs called upon the government to create a new National Participation Council: <http://www.consiliulong.md/rezolutie-forumului-ong-editia-a-viii-a/>

<sup>112</sup> This section was developed by Simon Matthijssen, Rotterdam, member of the Expert Council on NGO Law, former local ombudsman in The Netherlands.

<sup>113</sup> Fukuyama, F. Trust: Social Virtues and the Creation of Prosperity. (Simon and Schuster, 1996): p26.

<sup>114</sup> Prof. Kennedy estimated a participation of 70-80%, which is a world record. 'Civil society' weleer en nu, De Nederlandse stijl van burgerschap. Nutslezing 2012), p13 <http://www.nutslezing.nl/uploads/pdf/NUT-2012.pdf>

<sup>115</sup> In the words of North et.al. The Netherlands is an "Open Access Order", see: North, D.C. et al: Limited Access Order: rethinking the Problems of Development and Violence. Cambridge University press 2011.

Constitution of the Kingdom of the Netherlands<sup>116</sup> implies both registered organisations under the Dutch Civil Code (see below) and other temporary or permanent „gatherings of likeminded citizens” without legal status, such as, for example, circles, support groups, think tanks, benefactors, platforms.<sup>117</sup>

186. Legal personality can only be obtained by organizations mentioned in Book 2 of the Dutch Civil Code<sup>118</sup>. The burden of acquiring (full) legal capacity (a notarial deed and registration in the Chamber of Commerce) is only needed when an NGO chooses to:
  - a. join the elections;
  - b. take part in public policy making<sup>119</sup> and/or lawsuits;
  - c. pursue tax benefits, own assets, receive gifts or inheritances;
  - d. apply for subsidies.
187. Book 2 of the Dutch Civil Code defines private and public legal entities. NGOs typically choose between:
  - a. Legally undefined status: These NGOs play an important role in society, but tend to have rather temporary character.
  - b. Associations:<sup>120</sup> gatherings of more than one member, aiming to pursue a common goal, which is not the distribution of profits. In case a profit is generated, it shall be used for the association's purpose, or for research or charity.
  - c. Foundations have separated assets and are established by notarial deed, by one or more natural or legal persons. The aim of foundations is to achieve a particular goal under the supervision of a board. As long as a foundation is not registered in the Trade Register, each board member bears personal liability. A foundation may make profit, but profit distribution must have a philanthropic or social nature.

### ***Case law***

188. Organisations can be dissolved by court order following Art. 2:20 of the Civil Code.<sup>121</sup> There is an active screening to prevent the continuation, or new membership in, or reinstallation of, a (pursuant to a court order) forbidden organisation or political party.<sup>122</sup> Case law shows<sup>123</sup> that

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<sup>116</sup> Constitution, Art. 8: The right of association shall be recognised. This right may be restricted by Act of Parliament in the interest of public order. <https://www.government.nl/documents/regulations/2012/10/18/the-constitution-of-the-kingdom-of-the-netherlands-2008>

<sup>117</sup> In which the financial and legal responsibilities are borne by the natural persons involved.

<sup>118</sup> <http://www.dutchcivillaw.com/civilcodebook022.htm>

<sup>119</sup> General Administrative Law Act (further: GALA) Art. 1:2 1. “Interested party” = a person whose interest is directly affected by an order. NGOs can be an interested party and are therefore allowed to participate in the public policy making process (and start procedures against decisions of public authorities). <http://www.scribd.com/doc/274976675/1-Engelse-Tekst-Awb#scribd>

<sup>120</sup> There are associations with or without full legal capacity, while only those with the full legal capacity can acquire registered goods or inheritance. Board members bear a more limited personal liability. Requirements: notarial deed, statutes, registration in Trade Register.

<sup>121</sup> HR 18 April 2014, ECLI:NL:HR:2014:948. This case led to some disapproving commentaries: it is not the government who should decide what kind of goals organisation should pursue.

<sup>122</sup> Kieswet Artikel G1-4 (Elections Act: the Act of 28 September 1989 containing new provisions governing the franchise and elections). [http://www1.umn.edu/humanrts/research/Netherlands/Netherlands\\_Elections%20Act\\_1989am2009.pdf](http://www1.umn.edu/humanrts/research/Netherlands/Netherlands_Elections%20Act_1989am2009.pdf)

<sup>123</sup> See footnote 122.

rather than the statutory goals, the way an NGO actually works is relevant when deciding on the request for dissolution. NGOs may seek justice at the ECtHR: in two relevant cases the position of the Dutch Government was upheld by the ECtHR.<sup>124</sup> Following the four times political parties have been dissolved,<sup>125</sup> none of them appealed to the ECtHR, therefore the Dutch use of repressive measures against political parties is considered to be in line with the ECtHR.

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

189. In the Netherlands, public benefit organisations aim to support ecclesiastical, charitable, cultural, scientific and/or public utility purposes.<sup>126</sup> If acknowledged, these public welfare institutions (Algemeen Nut Beogende Instelling, or ANBIs) benefit from tax advantages in gift and inheritance tax. Donations to ANBIs may be deductible from income or corporate taxes. Recognised ANBI status is not easy to obtain.<sup>127</sup> Recently the High Court has upheld the refusal of tax authorities to grant ANBI status to the Scientology Church, mainly because of the latter's commercial activities.<sup>128</sup>

### ***Scope and definition of political activities***

190. Under the Dutch law there is no distinction between NGOs pursuing policy change, political activities or classical stage play. Regulations apply when the NGO wants to run for elections.
191. The indication (not definition) of *political activities* is only relevant when an NGO wants to be registered, or receives subsidies as a political party. Under the Elections Act, only associations with full legal capacity can register a name for the purpose of participating in elections.<sup>129</sup> When registering, the Central Electoral Committee (Kiesraad) reviews the statutes of the applicant and decides whether its goals can be achieved through representative democracy/politics.<sup>130</sup>

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

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<sup>124</sup> E.g.: 1<sup>st</sup> [http://hudoc.echr.coe.int/eng?i=001-112340#{"itemid":\["001-112340"\]}](http://hudoc.echr.coe.int/eng?i=001-112340#{) Staatkundig Gereformeerde Partij vs. The Netherlands: violation of ECHR Art. 14 (equal treatment to men and women for political functions). 2<sup>nd</sup> the Vereniging Martijn went to the ECtHR: <http://www.nltimes.nl/2015/02/03/pro-pedophile-association-loses-eu-court-bid/>.

<sup>125</sup> 1893 Sociaal-Democratische Bond, 1945 Nationaal-Socialistische Beweging (NSB), 1956 Nationaal Europese Sociale Beweging, 1998 Centrumpartij '86 (CP'86).

<sup>126</sup> The author is indebted to the article of David Moore, Katerina Hadzi-Miceva, and Nilda Bullain: A Comparative Overview of Public Benefit Status in Europe. In: The International Journal of Not-for-Profit Law. Volume 11, Issue 1, November 2008: [http://www.icnl.org/research/journal/vol11iss1/special\\_1.htm](http://www.icnl.org/research/journal/vol11iss1/special_1.htm)

<sup>127</sup> Summary of requirements: 90% for the public interest, not for profit, integrity, directors or the board may not use or possess the assets if it is their own, not retain more assets than is reasonably necessary for the work, modest remuneration, a policy plan, a reasonable relationship between costs and spending's, after the ending of the institution, the surplus money is devoted to an ANBI with a similar purpose, administrative requirements, publish certain information on a website.

<sup>128</sup> [http://www.icnl.org/research/journal/vol11iss1/special\\_1.htm](http://www.icnl.org/research/journal/vol11iss1/special_1.htm)

<sup>129</sup> Elections Act, Art. G1.

<sup>130</sup> Elections Act, Article G1.4.

192. There is no special legislative framework for public policy activities of NGOs as such, nor limitations on activities that NGOs and lobbyists<sup>131</sup> can undertake, nor general rules about funding or specific restrictions for foreign funding.
193. NGOs can voice their political views at any time. Financial bonds with, or support for political parties are allowed and become (only) visible when:
- a. the NGO is transparent in this respect,
  - b. the NGO makes use of subsidies and needs to meet the rules and regulations of the WFPP,
  - c. the NGO is an association (which constitutes the duty of giving financial statements and annual accounts<sup>132</sup>).
194. NGOs with an interested person status<sup>133</sup> can influence the policy making process under the rules of the General Administrative Law Act (GALA). Public authorities are obliged to gather all relevant information before they take decisions,<sup>134</sup> which implies considering the views of all interested parties (like the NGOs involved). GALA also provides a standard minimum procedure (public preparatory procedure)<sup>135</sup> when developing policies. NGOs can participate in this procedure as interested parties.
195. Any shortcomings in these procedures are under scrutiny of the administrative court. This is a fairly simple administrative procedure: no lawyer required, small registry or court fees (NGOs, often being repeat players, are feared opponents).
196. The National ombudsman has developed guidelines for correct use of the participation procedures.<sup>136</sup> Under special laws, these preparatory procedures can become much more complicated.<sup>137</sup> This is a field where NGO and business lobbyists often meet.
197. True participation depends on being well-informed. The Constitution prescribes a general active information obligation for all authorities, especially for all known interested parties. Everyone (also NGOs, even if they are not an *interested party*) can obtain necessary information via the Wet Openbaarheid van Bestuur<sup>138</sup> in case it is not provided unsolicited.

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<sup>131</sup> In October 2015, Dutch parliament learned that a significant part of the new banking law (so called *coco-law*, about contingent convertibles) was designed and written by banks instead of the ministry.

<sup>132</sup> Dutch Civil Code Book 2, Art. 48, [2:48]

<sup>133</sup> Art. 1:2 1. “Interested party” = a person whose interest is directly affected by an order. NGOs can be an interested party and are therefore allowed to participate in the public policy making process (and start procedures against decisions of public authorities).

<sup>134</sup> GALA, Art. 3:2 j°3:1.2.

<sup>135</sup> GALA, Division 3.4.

<sup>136</sup> National ombudsman [https://www.nationaleombudsman.nl/uploads/rapport2009-180\\_2.pdf](https://www.nationaleombudsman.nl/uploads/rapport2009-180_2.pdf)

<sup>137</sup> The Dutch Environmental Act: simple or comprehensive Environmental Impact Assessment.

<https://www.government.nl/topics/environment/contents/roles-and-responsibilities-of-central-government/environmental-management-act>

<sup>138</sup> The Dutch Freedom of Information Act <http://www.legislationline.org/documents/action/popup/id/6395>

## **PORTUGAL<sup>139</sup>**

### ***General overview***

198. The Portuguese Constitution (article 46) states that “*citizens shall possess the right to freely associate with one another without requiring any authorisation, on condition that such associations are not intended to promote violence and their purposes are not contrary to the criminal law*”, that “*associations shall pursue their purposes freely and without interference from the public authorities and shall not be dissolved by the state or have their activities suspended, except in such cases as the law may provide for and then only by judicial order*” and that “*armed associations, military, militarised or paramilitary-type associations and organisations that are racist or display a fascist ideology shall not be permitted*”.
199. The Portuguese Constitution also states (article 63) that “*with a view to the pursuit of the social solidarity objectives (...), the State shall, as laid down by law, support and inspect the activities and operation of private charitable institutions and other non-profit institutions that are recognised to be in the public interest*”.
200. In Portugal, there is neither a legal definition nor a general framework of Non-Governmental Organisations (NGOs). There are specific pieces of legislation concerning environmental NGOs, NGOs in development cooperation and NGOs working for people with disabilities.
201. The most common legal forms of NGOs are association and foundation.
202. An association is the most common form of membership-based organisations, established under the Civil Code (Decree-Law no. 47344/66) and the Decree-Law no. 594/74, that states that associations whose purpose is the overthrow of democratic institutions or the advocacy of hatred or violence are not allowed, and that associations should cease to exist when their real purpose is illegal or contrary to public morals.
203. The establishment and operation of foundations is regulated in the Civil Code and in the Organisational Law no. 24/2012, which defines foundation as a non-profit entity endowed with assets for the pursuit of a social purpose.

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

204. Public benefit status is regulated, in general, by the Decree-Law no. 460/77, amended by the Decree-Law no. 391/2007 and, concerning foundations, in the Law no. 24/2012. It can be granted by the Portuguese Government to associations and foundations (and, in some cases, cooperatives) that pursue purposes of general interest in cooperation with the central or local administration. Added to the above-mentioned laws, there are several special public benefit status pieces of legislation that apply to specific types of organisations.

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<sup>139</sup> This section was developed by Frederico Moyano Marques, legal advisor at the Portuguese Association for Victim Support.

205. As a precondition for the status, the entity shall undertake non-profit activities in favour of the public in areas of social relevance, like the promotion of citizenship and human rights, education, health, culture, science, sports, protection of children, elderly people, disabled people or people with special needs, promotion of healthy lifestyle, consumer protection, environmental protection, combat against discrimination based on gender, race, ethnicity, religion or any other prohibited form of discrimination, eradication of poverty, entrepreneurship, innovation and economic development.
206. Other main prerequisites are having legal status; not undertaking, as the main activity, economical activities in competition with other entities that cannot be covered by the public status benefit; having adequate human and material resources in order to pursue the statutory aims; and not operating exclusively for the private benefit of the members or founders.
207. As a general rule, public benefit status can be granted to associations and foundations just three years after the entry into operation.
208. Entities with this status may benefit from some tax exemptions and other benefits. Donors may also benefit from tax exemption regarding the donations provided to those entities.

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

209. Portuguese legislation does not clearly define the term political activity. However, the law governing political parties (Organisational Law no. 2/2003, as amended by Organisational Law no. 2/2008) helps shaping this concept as it states the purposes of political parties: to contribute to the pluralist enlightenment of citizens and to the exercise of their freedoms and political rights; to study and debate the problems of political, economic, social and cultural life at national and international level; to present political programmes and prepare election manifestoes on their plans for government and administration; to submit nominations for democratically elected representative entities; to criticise, particularly from an opposition standpoint, the activities of the entities of the state, of the autonomous regions, of local authorities and of the international organisations to which Portugal is a party; to participate in the clarification of questions that are submitted to national, regional or local referendum; to promote the training and political preparation of citizens for a direct and active participation in democratic public life; in general, to contribute to the promotion of the fundamental rights and freedoms and the development of the democratic institutions.
210. Article 51 of the Portuguese Constitution, under the title “*Political associations and parties*”, states that “*freedom of association shall include the right to form or take part in political associations and parties and through them to work jointly and democratically towards the formation of the popular will and the organisation of political power.*”
211. Reflecting an approach of authorising what is not specifically prohibited, there are no restrictions on the political activities of associations and foundations, namely in participating in the election campaign or supporting any party or candidate at elections. According to article 12 of the Decree-Law no. 594/74, it is legal that an association of a political nature engages with a

political party. However, if an association decides to elaborate a political programme for government and to run for elections, it shall transform into a political party.

212. Article 13 (2), stating that the establishment of international associations in Portugal depends upon an authorisation of the Portuguese Government, was declared unconstitutional by the Constitutional Court. In this decision, it was considered that that norm violates the right to freedom of association (article 46 of the Portuguese Constitution) when requiring a previous authorisation from the Government for the establishment of an international association, even more when the reason or aim of that authorisation is not specified.

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

213. Public policy activities are not defined, but NGOs may play a relevant role in the legislative procedure: the Rules of Procedure of the Assembly of the Republic set out the conditions under which groups of registered electors can submit legislative initiatives; it also sets out the terms under which persons and bodies with an interest in the matters concerned may give their contributions regarding a bill, be it by engaging in public discussions promoted by the parliament, by issuing formal opinions or by participating in parliamentary hearings.
214. Several government agencies have established advisory bodies in their areas of intervention, which include NGOs. The Advisory Council of the Portuguese Institute for the Youth, the Education Advisory Council and the Advisory Council of the Commission for the Citizenship and Gender Equality of the Presidency of the Council of Ministers are some examples of these bodies: by participating in these cross-sectoral advisory councils, NGOs can influence decisions on public policies, monitor their execution, give opinions and present specific proposals. Across the country, several structures aiming to promote the cooperation between NGOs and municipalities are in place, allowing the former to strengthen their policy influence and advocacy efforts on a local and regional level.
215. NGOs are free to implement proactive advocacy initiatives, like public awareness campaigns, devoted to the general public or to specific populations, or educational activities, namely at schools.
216. Donations and loans to political parties and/or election campaigns are prohibited to all national and foreign legal persons, according to article 8 (1) of the Law no. 19/2003 on Financing Political Parties and Election Campaigns.

## **RUSSIAN FEDERATION<sup>140</sup>**

### ***General overview***

217. The Civil Code amended in 2014<sup>141</sup> and the Federal Law on Non-Commercial Organisations (NGO Law) set out the general legal framework for "non-commercial organisations" (NGOs)

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<sup>140</sup> By Dragan Golubovic, Member of the Expert Council on NGO Law, independent consultant

<sup>141</sup> Federal Law #99 5 May 2014

and define approximately 14 institutional forms in which NGOs operate.<sup>142</sup> The Federal Law on Public Associations<sup>143</sup> builds on this framework and envisages a sub-category of NGOs which is called "public associations" and which consists of public organisations, mass movements, public foundations and public institutions. Some 223 218<sup>144</sup> NGOs are registered in Russia; approximately 50% of them are public associations (103 325)<sup>145</sup>. An NGO, whatever its form, may only be established to pursue public or mutual benefit goals, rather than to generate and distribute profits (Article 50(1), Civil Code).<sup>146</sup>

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

218. A public association, foundation, or institution may acquire a "charity" (public benefit) status pursuant to the Charity Law (Article 7).<sup>147</sup> Other forms of NGOs 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>148</sup>
219. Charities are subject to stricter regulation in terms of activities, expenditure<sup>149</sup>, and internal governance, in return for limited tax benefits.<sup>150</sup> Certain tax benefits are provided for charitable activities irrespective of the charity status of the organisation.<sup>151</sup>

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<sup>142</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>143</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](http://www.icnl.org/research/monitor/russia.html).

<sup>144</sup> <http://minjust.ru/ru/%D0%B4%D0%B5%D1%8F%D1%82%D0%B5%D0%BB%D1%8C%D0%BD%D0%BE%D1%81%D1%82%D1%8C%20%D0%9C%D0%B8%D0%BD%D1%8E%D1%81%D1%82%D0%B0%20%D0%A0%D0%BE%D1%81%D1%81%D0%B8%D0%B8>.

<sup>145</sup> <http://minjust.ru/ru/%D0%B4%D0%B5%D1%8F%D1%82%D0%B5%D0%BB%D1%8C%D0%BD%D0%BE%D1%81%D1%82%D1%8C%20%D0%9C%D0%B8%D0%BD%D1%8E%D1%81%D1%82%D0%B0%20%D0%A0%D0%BE%D1%81%D1%81%D0%B8%D0%B8>

<sup>146</sup> Article 2 of the NGO 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>147</sup> Federal Law №. 135-FZ On Charitable Activities and Charitable Organisations, 11 August 1995 as amended (Charity Law).

<sup>148</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>149</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>150</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>151</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.

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

220. A definition of NGOs political activity<sup>152</sup> is provided in the Federal Law on Non-Commercial organisations, the amendments to this law were unofficially called "Foreign Agents Law".<sup>153</sup> The Law applies to NGOs 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 on the territory of the Russian Federation as defined by this law.<sup>154</sup>
221. An NGO, 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 an NGO is conducting them in the interest of a foreign donor or without such purpose.<sup>155</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. An NGO 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>156</sup>
222. NGOs—"foreign agents" are subject to various reporting and other requirements and scrutiny. In addition to having to enter in the Registry of NGOs-Foreign Agents<sup>157</sup> and carry a label: "NGO performing the function of a foreign agent" on all materials they publish or disseminate,<sup>158</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

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<sup>152</sup> As of December 2015 the new determination of political activity is under discussion in a special working group, created by the Russian President in 2015

<sup>153</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-ФЗ, 20 July, 2012.

<sup>154</sup> Article 2(6), LNCO as amended; Article 29(6), item 9, Public Associations Law as amended.

<sup>155</sup> Article 2(6), LNCO as amended.

<sup>156</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 Non-commercial Organisations Performing the Functions of Foreign Agents", dated 20 July, 2012 №121-ФЗ" (hereinafter: "Overview of the Federal Law"), p. 5.

<sup>157</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 NGO Law permits the Ministry of Justice to unilaterally enter an NGO in the foreign agents registry. Article 32, NGO Law as amended on 4 June, 2014.

<sup>158</sup> Article 24(1), NGO Law as amended.

NGOs). 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 an NGO.<sup>159</sup> Administrative and criminal sanctions are levied on an NGO, its founders and management for violation of the Law.<sup>160</sup>

223. Thus far the application of the notion of NGOs political activity by public authorities and courts has been plagued by inconsistency.<sup>161</sup> This can largely be attributed, as stated by the Prosecutor General, to the "lack of generally accepted concept of political activities".<sup>162</sup>
224. 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 NGOs 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>163</sup>
225. On April 8, 2014 the Court rendered the decision by a majority of votes.<sup>164</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 NGOs.<sup>165</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>166</sup> The Court concluded that the "foreign agent" designation and mandatory registration requirement was in the public interest

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<sup>159</sup> Article 32(4, 6), NGO Law as amended.

<sup>160</sup> Article 32 of the NGO 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>161</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 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://www.russialist.org/russian-ngos-working-to-fight-aids-not-foreign-agents/)

<sup>162</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>163</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>164</sup> Justice Vladimir Yaroslavtsev wrote a dissenting opinion, see judgment of the Constitutional Court No. 10-P 8 April 2014, pp. 55-74.

<sup>165</sup> Par. 3.1. of the judgment, p. 23.

<sup>166</sup> Par. 3.1. of the judgment, pp. 24-27.

and the interest of state sovereignty and did not unduly discriminate against or impede the ability of NGOs—"foreign agents" to exercise a critical voice towards the government.<sup>167</sup>

226. The Court *inter alia* attempted to clarify the notion of political activities. According to the Court, an NGO 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-making by state bodies intended for the change of state policy".<sup>168</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>169</sup>*

227. The full implications of the Constitutional Court's broad interpretation of NGO 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>170</sup>.
228. Political activities of NGOs 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>171</sup>

<sup>167</sup> Resolution of the judgment, par. 1. pp. 51-52. See also par. 3.2. pp. 28-32 of the judgment.

<sup>168</sup> Par. 3.2. p. 33 of the judgment.

<sup>169</sup> Par. 3.3. p. 38 of the judgment.

<sup>170</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>171</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.

## **Public policy activities**

229. There are no specific limits to NGOs public policy activities. The Russian Constitution guarantees freedom of expression (Article 29) as well as "freedom of activity of public associations" (Article 30).<sup>172</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).
230. The Foreign Agents Law exempts a broad range of activity from the definition of political activities. These include: activities (comprising 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, protection of plants and animal life,<sup>173</sup> charitable activities, as well as activities promoting charity and volunteerism. However, *human rights* and *watch-dog* activities,<sup>174</sup> among others, are notably missing from the list.<sup>175</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**

231. 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>176</sup>
232. NGOs which receive foreign funds must report all foreign funds received, detail how those funds shall be used, and post online reports on their activities.<sup>177</sup> Additional reporting and monitoring requirements are prescribed for foreign NGOs having a branch office in Russia.<sup>178</sup>

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<sup>172</sup> The Constitution of the Russian Federation, 12 December 1993 as amended.

<sup>173</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>174</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>175</sup> Article 2(6), NGO Law as amended.

<sup>176</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>177</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>178</sup> Article 32(4), NCO Law.

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>179</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>180</sup>

233. As already noted, the Foreign Agents Law applies to NGOs which engage in political activities and have received or *intend* to receive foreign funds. The reading of those provisions was narrowed somewhat by the 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>181</sup>
234. The Law applies to all kinds of foreign funding for NGOs, the only notable exception being foreign funds received from public joint stock companies with state participation and their subsidiaries.<sup>182</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>183</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>184</sup> However, the General Prosecutor's report on the implementation of the Law suggests otherwise. The report states that NGOs, 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 an NGO the source of a gift.<sup>185</sup>
235. In March 2015 the law on Non-Commercial Organisations was amended<sup>186</sup> and set up the grounds and procedure for exclusion from the register of NCOs performing functions of a foreign agent (FA Registry). The law entered into force on 20 March 2015. From March till 1 December 2015, 18 NGOs were excluded from the register: 12 as liquidated legal entities and 6 as NGOs which stopped to perform functions of a foreign agent.

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<sup>179</sup> Article 32(12), NCO Law.

<sup>180</sup> Article 32(4), NCO Law.

<sup>181</sup> Judgment No. 10-P, 8 April 2014, par. 3.2. p. 31.

<sup>182</sup> Article 1(4-6, 7), LNCO as amended.

<sup>183</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>184</sup> See ICNL, "Overview of the Federal Law", p. 5, *supra*, note 12.

<sup>185</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>186</sup> Federal Law No. 43-FZ of March 8, 2015, on Amendments to Articles 27 and 38 of the Federal Law on Public Associations and Article 32 of the Federal Law on Non-Commercial Organisations (NCO Law).

## SLOVAKIA<sup>187</sup>

### *General overview*

236. 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 Acts providing basic information on the establishment of an NGO, its activities, decision-making body and conditions under which the organisation can be dissolved.
237. The most common legal form of NGOs in Slovakia is the *civic association*.<sup>188</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>189</sup> and their field of interest and activities differ from the civic associations.
238. 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>190</sup> which guarantees freedom of association. Another important law for the purposes of this paper is the Act on Political Parties and Political Movements<sup>191</sup>, which is lacking the definition of political activities.
239. 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*

240. 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>192</sup> The Act provides a list of services considered as public benefit.

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<sup>187</sup> This section was developed by Ivana Rosenzweigová, Legal Associate at the European Center for Not-for-Profit Law (ECNL).

<sup>188</sup> Act No. 83/1990 on Association of Citizens, available at: <http://www.zakonypreldi.sk/zz/1990-83>

<sup>189</sup> No. 85/2005 on Political Parties and Political Movements

<sup>190</sup> Constitution of the Slovak Republic, No. 460/1992, available at: <http://www.zakonypreldi.sk/zz/1992-460>

<sup>191</sup> Article 24 d.) of the Act No. 85/2005 on Political Parties and Political Movements, available at: <http://www.zakonypreldi.sk/zz/2005-85>

<sup>192</sup> Act No. 213/1997 on non-profit organisations providing public benefit services, available at: <http://www.zakonypreldi.sk/zz/1997-213>

241. The legislation regarding foundations<sup>193</sup> and non-investment funds<sup>194</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>195</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***

242. Slovak legislation does not clearly define the term *political activities*. Act No. 85/2005 on Political Parties and Political Movements<sup>196</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.
243. 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>197</sup>
244. 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 or type, is allowed to donate a gift or provide free benefits to political parties.

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

245. 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 at influencing the general policy and direction of the state.
246. 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>198</sup> In addition, CSOs can pursue

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<sup>193</sup> Act No. 34/2002 on Foundations, available at: <http://www.zakonypreldi.sk/zz/2002-34>

<sup>194</sup> Act No. 147/1997 on Non Investment funds, available at: <http://www.zakonypreldi.sk/zz/1997-147>

<sup>195</sup> Article 2 of the Act No. 34/2002 on Foundations

<sup>196</sup> Article 2 of the Act No. 85/2005 on Political Parties and Political Movements

<sup>197</sup> Act No. 83/1990 on Association of Citizens

<sup>198</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)

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>199</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 society.<sup>200</sup>

247. The other important form of influencing the direction of the state policy is through commenting on draft laws.<sup>201</sup> 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>202</sup>

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

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

## **SPAIN<sup>203</sup>**

### ***General Overview***

249. 1. The Spanish State is an “Autonomous State” and this is the result of the recognition of the variety of the Peoples of Spain and of the willingness to protect “its cultures and traditions, languages and institutions” proclaimed in the preamble of the Spanish Constitution of 1978. The Autonomous Communities are historical and cultural entities with own identity; which exercise a set of powers and competences for the protection of their own interests.
250. The right to association is guaranteed in Article 22 of the Spanish Constitution<sup>204</sup> and further regulated in the Spanish Organic Law 1/2002 of 22 March that regulates the Right of Association (LO 1/2002)<sup>205</sup>. NGOs can be associations, foundations or federations of associations.

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<sup>199</sup> USAID 2012 CSO Sustainability Index

<sup>200</sup> Solidarity and Development Council, source of information: <http://www.vlada.gov.sk/rada-solidarity-a-rozvoja-sr/>

<sup>201</sup> In November 2015, association VIA IURIS published online guidelines on how to engage in law-making process, available at: <http://www.viaiuris.sk/aktivity/postupy-manualy/ako-sa-zapojit-do-tvorby-pravnych-predpisov/tvorba-vseobecne-zavaznych-pravnych-noriem/ako-pripomienkovat-navrh-zakona.html>.

<sup>202</sup> Article 13 of the Legislative Rules of the Government of the Slovak Republic

<sup>203</sup> This section was developed by Beatriz Collantes, Senior Lecturer of Spanish Law at the University of Paris Ouest - Nanterre la Défense.

<sup>204</sup> Article 22 of the Spanish Constitution of 1978: “The right of association is recognized as: 1. The associations that pursue purposes or use resources typified as a crime are illegal. 2. The associations constituted under this article will have to be registered in a register for publicity. 3. The associations will only be able to be dissolved or have its activity suspended according to a motivated judicial decision. 3. The secret association or the association with paramilitary nature are forbidden.” «BOE» num. 311. 29th December 1978. [http://www.boe.es/diario\\_boe/txt.php?id=BOE-A-1978-31229](http://www.boe.es/diario_boe/txt.php?id=BOE-A-1978-31229) (Integral text in Spanish)

<sup>205</sup> In addition two other regulations are of importance: the Royal Decree 1497/2003, of the 28th of November, that approves the Association National Registration Regulation and to the Royal Decree 1740/2003, of the 19th of December, about the

- 251. Other sets of laws may regulate different types of non-profit associations (e.g., professional associations). In case some forms of associations are not regulated by specific laws, the provisions of the Organic Law will apply<sup>206</sup>.
- 252. In addition to the specific laws, generic ones apply to the entities with essential field of action circumscribed to only one or two Autonomous Communities.<sup>207</sup>
- 253. While different types of associations exist and some of them have specific standards, all those standards conform to the Organic Law 1/2002<sup>208</sup>.
- 254. Associations are groupings of persons independently established to complete a collective activity in a stable way, democratically organised and without any profit motivation.
- 255. Natural persons and private or public legal entities can set-up a foundation. The essential element to set-up a foundation is the funding or patrimony necessary for the fulfilment of the foundation's purpose.
- 256. Associations may join federations or coordinating organisations which are considered as entities set-up by the grouping of several associations. The legal, tax, economical, administrative and other aspects of the association's functioning are nearly the same for these groupings. The only difference is that in the federations or coordinating organisations, the partners are legal entities; and so if associations belong to a federation or a coordinating organisation, this has to be specified in the articles of association.
- 257. Further, there are confederations which are entities set-up by the gathering of several associations or federations. Therefore, its partners are also legal entities (associations that belong to federations or coordinating organisations or federations that belong to confederations) and this has to be mentioned in the articles of association.

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

- 258. The requirements that associations have to fulfil in order to be declared of public interest are listed in the article 32 of the above mentioned Organic Law 1/2002.<sup>209</sup>

proceedings regarding the associations of public interest. <http://www.boe.es/buscar/doc.php?id=BOE-A-2004-615> (Integral text in Spanish)

<sup>206</sup> Thus, especially in the cases where very succinct laws refer to determined types of associations, as for example the law that refers to the professional and business associations, it is required to take into account that the specific law and the Organic Law have to be enforced.

<sup>207</sup> Law 43/2015, of the 9th of October, about the Tertiary Sector of the Social Action. Spanish Official State Gazette (official listing of all new laws and decrees) (BOE) Number 243, Saturday 10th of October 2015.

[http://www.boe.es/diario\\_boe/txt.php?id=BOE-A-2015-10922](http://www.boe.es/diario_boe/txt.php?id=BOE-A-2015-10922) (Integral text in Spanish)

<sup>208</sup> Organic Law 1/2002, of the 22nd of March, regulating the Association Right. <http://www.boe.es/buscar/doc.php?id=BOE-A-2002-5852> (Integral text in Spanish)

<sup>209</sup> Article 32 of the mentioned Organic Law 1/2002 : "Upon the initiative of the correspondent associations, the associations that will fulfil the following requirements will be able to be declared of public interest: a) when its purposes stated in the articles of association tend to promote the public interest and have a civic, educative, scientific, sportive, sanitary, promoting constitutional values, promoting human rights, social welfare, cooperation for the development, promoting women, children's

259. The declaration of public interest is granted by an Order of the Interior Ministry and is published in the Spanish official State Gazette (*Boletín Oficial del Estado*). The associations declared of public interest will have the right to mention this in all its documents and enjoy the exemptions, bonuses, subsidies and other economic, tax, and administrative benefits that are granted to them in each case.

#### ***Scope and definition of political activities***

260. The Spanish Constitution of 1978 recognises the right of association in the positive and negative aspect, meaning that it also recognises the right not to participate in any association. There are no limitations for NGOs to engage in political activities, the only limit relates to the goals of the association that cannot be “the goals typified as a crime.” The Criminal code includes in the article 515<sup>210</sup> a list of the associations considered as unlawful, listed as examples.
261. Despite the fact that social movements are different phenomena from voluntary organisations, the individuals linked to a voluntary organisation have a high potential to integrate and participate in social movements through different channels, such as for example platforms, meetings with politicians and institutions and movement coordination activities.
262. The Spanish Law Regulating the Rules of Local Government of 1985 regulates the participation of citizens on a municipal level. Similarly, the Constitution of 1978 guarantees the direct participation of citizens. However, the law at the same time gives priority to the centrality criteria regarding the decision-making; hence the principle of participation and the mechanism of collective management of public affairs do not apply or are subject to some conditions that make them nearly impossible to be implemented.
263. Another established participation form is the popular legislative initiative (PLI) that provides for the right to put forward a legislative proposal to the Congress, after reaching a minimum number of signatures.

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

264. The development of the citizen participation in Spain is linked to the modernisation of the legal system and of the public administration. Throughout this development in the 1980s, the

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protection, promoting equality, protecting childhood, promoting equal opportunities and tolerance, defense of the environment, promoting social economy or investigation, promoting social volunteering, defense of customers and users, promotion and attention to persons under risk of exclusion for physical, social, economic, o cultural reasons nature and any other similar situation. b) When its activity is not exclusively restricted to benefitiate to its partners, but opened to any other possible beneficiary that meets with the required conditions and characteristics for the type of its own purposes. c) That the members of the representative bodies that receive a remuneration are not paid with public funds or subventions. d) That they rely on appropriate personal resources and material and with the suitable organization to guarantee the meeting with the purposes stated in the articles of associations. e) That they are constituted, registered in the corresponding Register, functioning and meeting with the purposes provided in the articles of associations, with no interruption and meeting all the previous requirements during at least the two years previous the introduction of the request.

Regulation on the Citizens Participation and the Consultative Councils on the Association Basis were approved.<sup>211</sup>

265. The Constitution of 1978 guarantees citizen participation in public affairs. The obligation for the public authorities to promote the conditions and to make easier the participation of all citizens in the political, economic, cultural and social life is regulated by article 9.2 of the Magna Carta. Subsequently, the Autonomous Communities regulate the citizen participation in their autonomous rules.
266. In general, associations can be invited to participate in the work of public administration commissions in the participation councils. Thus, they have access to the decision-making process but often their participation is limited to provision of opinions, without a right to vote.
267. Public participation at the local level is regulated through the Law 7/1985 of the 2 April Regulating the Basis of the Local Government; Title V, Chapter IV provides a set of rights and details regarding information and participation of the citizens. However, the law does not go into sufficient detail; merely reaffirming the provisions of the regulation at the national level.
268. Another mechanism that attempts to regulate participation at the local level is provided by the Municipal Regulations for the Participation of Citizens promoted after the adoption of the Royal Decree 2568/1986, of the 28<sup>th</sup> of November that approves the Rule about Organisation, Functioning and Legal System of the Local Entities. However, the adoption of these Rules has not been followed by the majority of the municipalities (according to the data of the FEMP, in 2001 only 42% of the municipalities of more than 5 000 inhabitants had this regulation).

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

269. A new Royal decree from 2014 on prevention of the money laundering and of the financing of terrorism<sup>212</sup> establishes an obligation for the foundations and associations to identify the persons that donate funds or resources equal or superior to 100 euros, regardless whether they are domestic or foreign entities.

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<sup>211</sup> Later in the 1990's started the creation of experiences in associative co-management in the social policies and cultural field, such as the associative services and civic management. Finally in the beginning of the 21st Century, the participative processes progressed with a mixed character, it means through associations and the non-organized citizens. One of these examples was the Agenda 21 and the new Strategical Plans added to the deliberative mechanism, such as the citizen's juries.

<sup>212</sup> The Royal decree 304/2014, of 5th May, by which the Regulation of the Law 10/2010, of 28th April, of prevention of the money laundering and of the financing of the terrorism. [http://www.boe.es/diario\\_boe/txt.php?id=BOE-A-2014-4742](http://www.boe.es/diario_boe/txt.php?id=BOE-A-2014-4742) (Integral text in Spanish)