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**EXPERT COUNCIL ON NGO LAW
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The Internal Governance of Non-Governmental Organisations

MEMBERS OF THE EXPERT COUNCIL ON NGO LAW

President (appointed by the Plenary of the Conference of INGOs):

Cyril Ritchie, who was instrumental in the writing of the original Council of Europe Guidelines on the functioning of NGOs in Europe, and represented the Conference of INGOs to the expert committee drafting the Committee of Ministers Recommendation – CM/Rec(2007) 14 – on the legal status of NGOs in Europe. Ritchie was from 2000-2008 President of the NGO Grouping on Civil Society and Democracy in Europe and its predecessors. Mr Ritchie resides in Geneva.

Co-ordinator (appointed by the Bureau of the Conference of INGOs):

Jeremy McBride, an English barrister who is Chair of Interights and who was instrumental in drafting both the Council of Europe "Fundamental Principles on the Status of NGOs in Europe" and CM/Rec(2007) 14. He serves as coordinator to the Expert Council. Mr McBride resides in Strasbourg

Members appointed by the Bureau of the Conference of INGOs:

Dragan Golubović, from Serbia, a Senior Legal Advisor with the European Centre for Not-for-Profit Law (ECNL), advising governments, Parliaments, judges, lawyers and NGOs on legal framework for NGOs. He collaborates with the Council of Europe, UNDP and OSCE on projects relating to freedom of association. Mr Golubović resides in Budapest.

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Eric Svanidze, a lawyer from Georgia heavily engaged in NGO issues. Svanidze also served on the expert committee drafting Recommendation CM/Rec(2007) 14. Svanidze is a former member of the European Committee for the Prevention of Torture. Mr Svanidze resides in Tbilisi.

In addition, a member of the Secretariat General of the Council of Europe attends the meetings of the Expert Council; and the Expert Council may itself appoint ad hoc members who are specialised on specific issues under examination.

For the 2009 thematic study on the internal governance of NGOs, one ad hoc member was appointed:

Katerina Hadži-Miceva Evans, from "the former Yugoslav Republic of Macedonia", is a Senior Legal Advisor with the ECNL, advising governments, parliaments, judges, lawyers and NGOs on the legal framework for NGOs, government partnerships with NGOs and NGO sustainability. Mrs Hadži-Miceva Evans lives in Budapest.

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I INTRODUCTION

1. The Conference of International NGOs of the Council of Europe reflects and promotes the interests of civil society on a Pan-European basis. It is therefore natural and right that the Conference of INGOs is preoccupied with the rights, prerogatives and responsibilities of international and national NGOs throughout Europe. NGOs nationally and internationally need a secure legal environment; a secure and encompassing social environment; and an understanding and encouraging political environment. These are pre-conditions for NGOs to make their indispensable and irreplaceable contributions to public policy and harmonious societies.

2. The EXPERT COUNCIL ON NGO LAW, set up by the Conference in January 2008, is a precedent-setting initiative in the policy and legislative fields. The Expert Council is “to contribute to the creation of an enabling environment for NGOs throughout Europe by examining national NGO law and its implementation, and promoting its compatibility with Council of Europe standards and European good practice”¹.

3. The work of the Expert Council is bolstered by – and inspired by – the text adopted by the Council of Europe Committee of Ministers in October 2007: Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe (“Recommendation CM/Rec(2007)14”). This extremely well-thought-out document is a comprehensive endorsement of, and framework for, the “essential contribution made by NGOs to the development and realisation of democracy and human rights, in particular through the promotion of public awareness and participation in public life”².

4. In its first year, the Expert Council chose to carry out a thematic study on the CONDITIONS FOR THE ESTABLISHMENT OF NGOs. The final version of this text, including its six country case studies (Azerbaijan, Belarus, France, Italy, Russia, Slovakia) and its recommendations, was adopted by the Conference Plenary in January 2009.

5. For its second year, the Expert Council chose the theme INTERNAL GOVERNANCE OF NGOs. It is, as in 2008, based on responses to a questionnaire distributed to NGOs throughout Europe. It refers to the basic principle of self-governance of NGOs, as well as criteria such as requirements for an NGO statute, membership in the highest governing bodies, internal structure, employment, decision-making, auditing, reporting and inspection by relevant authorities. Our Co-ordinator Jeremy Mc Bride has been able to distil from the questionnaire a valuable Thematic Overview that forms the essence of this report to the Conference of INGOs. The distillation also enabled us to identify five countries on which we have done specific analyses to illustrate the problems, challenges, and hopefully forward steps that could be taken. These countries are Armenia, Ireland, Luxembourg, Moldova, and “the former Yugoslav Republic of Macedonia”.

6. It is worthwhile to mention that the five country studies were submitted to the relevant national authorities for comment prior to their incorporation in the final version of our report. Appropriate comments have consequently been included in the present report.

7. The members of the Expert Council are named by the Bureau of the Conference of INGOs, and its President is elected by the Conference Plenary. All members are jointly responsible for the Report that follows, which I commend for the careful scrutiny of both NGOs

¹ Expert Council Mandate, January 2008.

² CM/Rec(2007)14 – Preamble

and governmental authorities. The legal and regulatory frameworks in many European countries, as well as administrative and judicial practices in them, need attentive and enlightened monitoring. In many cases they need review, clarification and strengthening. There is also need for dissemination of European standards and good practices, and in particular much greater awareness of the terms and advice of Recommendation CM/Rec(2007)14.

8. I thank all the Expert Council members for their assiduous work and positive co-operation.

Cyril Ritchie
President
Expert Council on NGO Law

II THEMATIC OVERVIEW

9. The thematic overview concerning the internal governance of NGOs is in two parts. The first reviews the scope of international standards applicable to this issue, notably in the European Convention on Human Rights ("the European Convention") - as elaborated in the rulings of the European Court of Human Rights ("the European Court") - and Recommendation CM/Rec(2007)14. In the second part the responses to a questionnaire concerned with national law and practice regarding internal governance are analysed. The former establishes that NGOs should generally be able to manage their own affairs free from outside interference, while the latter discloses that full compliance with all that this requirement entails is still not achieved throughout Europe.

A Applicable standards

10. The self-governing character of NGOs is an essential aspect of the right to freedom of association guaranteed by Article 11 of the European Convention and many other international legal instruments³.

11. It is also reinforced - both explicitly and implicitly - by numerous other commitments made by States, notably Recommendation CM/Rec(2007)14 and the Declaration of the Committee of Ministers of the Council of Europe on action to improve the protection of human rights defenders and promote their activities⁴.

The general principle

12. The fundamental importance of an NGO being able to run its own affairs has been expressly articulated in Recommendation CM/Rec(2007)14, which stipulates self-governance as its first basic principle⁵. It has also been underlined by the European Court when faced with an

³ In particular Article 22 of the International Covenant on Civil and Political Rights, Article 5(d)(ix) of the International Convention on the Elimination of All Forms of Racial Discrimination, Article 1-3 of the Convention on the Elimination of All Forms of Discrimination against Women, Article 15 of the Convention on the Rights of the Child, Articles 26 and 40 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Article 29 of the Convention on the Rights of Persons with Disabilities Articles 1, 2 (4,5) and 3 of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention), Article 15 of the Convention relating to the Status of Refugees, Article 15 of the Convention relating to the Status of Stateless Persons, Articles 7 and 8 of the Framework Convention for the Protection of National Minorities and the European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations. There are also guarantees concerned specifically with trade unions such as Article 8 of the International Covenant on Economic, Social and Cultural Rights, Article 5 of the European Social Charter, Article 5 of the Revised Charter and the Convention Concerning Freedom of Association and Protection of the Right to Organise of the International Labour Organisation (ILO Convention No 87).

⁴ Adopted by the Committee of Ministers on 6 February 2008 at the 1017th meeting of the Ministers' Deputies. See also Article 20 of the Universal Declaration of Human Rights, the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms (Declaration on Human Rights Defenders) (GA Res 53/144, 9 December 1998), UN Basic Principles on the Independence of the Judiciary, the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, Paras 9.3 and 10.3, and undertakings made at several OSCE meetings, namely, Vienna in 1989 (Questions relating to Security in Europe, paras 13.3, 13.6 and 21), Copenhagen (paras 10, 10.1-10.4, 11, 11.2, 32.2, 32.6 and 33) and Budapest (Chapter VIII, para 18), Council of Europe Recommendation R(94)12 'On the Independence, Efficiency and Role of Judges' and the European Charter on the Statute for Judges. Recommendation CM/Rec(2007)14 was preceded by the Council of Europe's Fundamental Principles on the Status of Non-governmental Organisations in Europe of the Council of Europe ("Fundamental Principles") which were noted by the decision of the Deputies at their 837th meeting on 16 April 2003

⁵ In Paragraph 1.

attempt by the State to use - involuntarily - an NGO to achieve the fulfilment of a public objective by making membership of it compulsory.

13. It is certainly not uncommon to find public objectives being secured with the assistance of NGOs through some kind of partnership or contractual arrangement. There can be no objection to this and indeed this is one of the very reasons for encouraging civil society to develop; the non-governmental sector can often provide greater flexibility in responding to some problems and the fact that it is often much more closely linked to those in need of assistance can make it much better equipped to judge where efforts can most usefully be applied.

14. However, while it would be unwise for the State not to draw upon such a useful resource and for NGOs not to co-operate where they can, the willingness of the latter to do so should not lead to attempts by the State to take over particular NGOs and effectively make them agencies working under its control. In these circumstances the entity concerned will have lost the freedom to organise its own affairs and, insofar as this is not voluntary, there will be a violation of the right to freedom of association where a membership body is affected.

15. An instance of this happening can be seen in the attempt to use a taxi drivers' association as a way of administering the provision of taxi services in Iceland⁶. The regulation of such services was undoubtedly in the public interest and might well be a sufficient basis for requiring membership of a public law body⁷ but the co-option of what was a private association in this case meant that the latter was no longer in a position to run its own affairs, which the European Court clearly saw as a crucial aspect of freedom of association, although it was the compulsion to belong to that association which gave rise to a violation of Article 11 of the European Convention in that particular case⁸.

16. This perspective on self-governance is reinforced in Recommendation CM/Rec(2007)14 in a second basic principle, namely, that NGOS should not be subject to direction by public authorities⁹.

17. The ability of an NGO to govern itself free of outside interference is not - any more than the right to freedom of association - absolute - but any restrictions imposed must have a legal basis, serve a legitimate purpose and not be disproportionate in their effect. Some admissible restrictions are expressly recognised in international standards and others may be inferred from them.

⁶ *Sigurður A Sigurjónsson v Iceland*, no 16130/90, 30 June 1993.

⁷ Such a body - which the European Court found the taxi drivers' association not to be - is outside the protection of Article 11 of the European Convention.

⁸ See the concern of the UN Human Rights Committee that in Tunisia 'the Associations Act may seriously undermine the enjoyment of the freedom of association under article 22, particularly with respect to the independence of human rights non-governmental organisations. In this connection, the Committee notes that the act has already had an adverse impact on the Tunisian League for Human Rights'; CCPR/C/79/Add.43, 23 November 1994, para 12.

⁹ Paragraph 6. In the Explanatory Memorandum it is emphasised that 'This does not mean that public authorities cannot choose to provide particular assistance to NGOs pursuing objectives that they consider to be of particular importance but the latter should be free to decide whether to accept or continue to receive such assistance. Furthermore neither legislation nor other forms of pressure should be used to make NGOs undertake particular activities considered to be of public importance' (Para 29). See also Principles 76 and 77 of the Fundamental Principles, which provide that consultation should not be seen by 'government as a vehicle to co-opt NGOs into accepting their priorities, or by NGOs as an inducement to abandon or compromise their goals and principles' and that government bodies 'can work with NGOs to achieve public policy objectives, but should not attempt to take them over or make them work under their control'.

Requirements for an NGO's Statute

18. The more matters concerning the governance of an NGO that are required to be included in its Statute, the more it is likely that an NGO will be deprived of the flexibility required in order to organise itself so that it can respond effectively to changing circumstances, whether these concern challenges or opportunities. This will be particularly so if subsequent amendments to the Statute require positive approval by a public authority¹⁰. While those who found or establish an NGO may have their own well-grounded reasons for limiting such flexibility in a given case, the exercise of the freedom of such persons to make that choice - itself a manifestation of the rights to freedom of association and to the peaceful enjoyment of possessions¹¹ - is to be distinguished from the imposition of limitations on internal governance as a matter of law.

19. This was clearly recognised in Recommendation CM/Rec(2007)14 as the only matters relevant to the internal governance of an NGO that that instrument states should generally be specified in the Statute are the highest governing body of the NGO, the frequency of meetings of that body, the procedure by which such meetings are to be convened, the way in which the highest governing body is to approve financial and other reports and the procedure for changing the Statute and dissolving the organisation or merging it with another NGO¹².

20. As the Explanatory Memorandum to the Recommendation makes clear, these are "the matters that are most likely to be crucial to establishing the conditions under which NGOs are to operate". The relatively short list is not intended to be exhaustive since the Explanatory Memorandum continues by stipulating that "[t]hose establishing or belonging to NGOs (as well as those responsible for their direction in the case of non-membership-based bodies) are free to specify additional matters in their statutes". However, the conclusion of this document in regard to the provision of such additional matters is most important, namely, that "they should not normally be under any obligation to do so"¹³. This is, of course, entirely consistent with the self-governance principle.

21. The highest governing body is the only matter of those listed in Recommendation CM/Rec(2007)14 for which some specific indication is also given as to content required for the Statute. Thus Paragraph 20 requires that this be composed of the membership in the case of a membership-based NGO. However, this is not an undue interference with the principle that NGOs should be self-governing since, as the Explanatory Memorandum notes, this 'is a manifestation of the exercise of freedom of association by their members'¹⁴.

22. The scope for the content of the other matters listed for the Statute to be prescribed by national law is to some extent addressed in other provisions of the Recommendation but in many respects - following the self-governance principle - this is something that should be left to be determined by those who establish or belong to the NGO concerned.

Membership of the highest governing body and other bodies

23. Decision-making by an NGO can effectively be constrained by restrictions in national law as to who can serve on its various decision-making bodies.

¹⁰ See Paragraph 129 of the *First Annual Report*.

¹¹ The latter being pertinent in the case of persons providing the funds to establish a foundation.

¹² Paragraph 19.

¹³ Paragraph 49.

¹⁴ Paragraph 50. As regards non-membership-based NGOs the Explanatory Memorandum states that the freedom of association consideration is not applicable and 'so the highest governing body should be determined by the statutes, whether as originally drawn up by their founders or as subsequently amended in the prescribed manner' (Paragraph 51).

24. Such restrictions would, in the case of the highest governing body of an NGO that is membership-based, be those that affect who can be members of the NGO itself since - as has just been seen - that body must be composed of all of them. The only admissible restrictions can, therefore, be those which international standards accept regarding membership itself.

25. The ability to join associations is something that Article 11 of the European Convention provides as being open to "everyone" within a State's jurisdiction and the scope for imposing limitations on this capacity is quite limited. "Everyone" certainly means legal as well as natural persons as association is not one of the rights or freedoms that are capable of being exercised only by human beings¹⁵. The only exception in this regard would be public bodies since these are a part of the State which is bound to secure freedom of association and they cannot, therefore, be beneficiaries of this right.

26. The unqualified nature of the formulation in all instruments means that the freedom should be exercisable by children as much as by adults, without needing to rely on the specific guarantee in respect of the former in the Convention on the Rights of the Child. Nevertheless this would not preclude the adoption of protective measures to ensure that they are not exploited or exposed to moral and related dangers, so long as the total exclusion of the ability to associate did not result¹⁶. Such measures, insofar as they are proportionate and meet the requirements of legal certainty, could be justified as a restriction on their freedom pursuant to provisions such as Article 11(2) of the European Convention. However, in judging the appropriateness of any such measures account would also have to be taken of the need stipulated by the Convention on the Rights of the Child to respect 'the evolving capacities of the child'¹⁷, which would mean that the effect of any restrictions that might be adopted would undoubtedly have to be diminished as those affected grow older¹⁸.

27. The inclusive nature of "everyone" would in addition mean that freedom of association can, in principle, be exercised by people who are not actually citizens of the country concerned (whether they are citizens of another country or stateless persons)¹⁹. Although Article 16 of the European Convention does accept the possibility of some restrictions being imposed on the political activity of those who are not citizens and this is defined to cover freedom of association, such restrictions ought to be compatible with the Convention's overall objectives of political democracy, freedom and the rule of law and they ought not to be disproportionate.

28. It might, therefore, be possible to justify the exclusion of persons who are not citizens from membership of national political parties - which are not NGOs for the purpose of Recommendation CM/Rec(2007)14²⁰ - but it would certainly be harder to do so where the body was concerned only with local or non-party issues, particularly if those affected were established residents there.

¹⁵ This is recognised by paragraph 22 of Recommendation CM/Rec(2007)14.

¹⁶ See the recommendation of the Committee on the Rights of the Child that Belarus 'guarantee to all children the full implementation of the rights to ... freedom of association' (CRC/C/15/Add.180, 13 June 2002, para 34), that Georgia 'amend its legislation to ensure that youth are allowed to join political parties and that they fully enjoy their right to freedom of association' (CRC/C/15/Add.124, 28 June 2000, para 31). See also its concern that in Turkey 'persons under 18 cannot form associations' (CRC/C/15/Add.152, 9 July 2001, para 37).

¹⁷ Article 5. This is acknowledged in paragraph 55 of the Explanatory Memorandum to Recommendation CM/Rec(2007)14.

¹⁸ Restrictions on the ability of persons who are mentally ill or incapacitated could undoubtedly be justified on a similar basis but a failure when applying them to take due account of the capacities of those affected would breach the principle of proportionality.

¹⁹ Paragraph 22 of Recommendation CM/Rec(2007)14 lists non-nationals as potential members of an NGO.

²⁰ Paragraph 1.

29. There is also likely to be a reluctance to accept restrictions as being justified under Article 16 where they relate to persons from a country with which the one imposing them has close political and institutional links²¹.

30. Moreover restrictions on non-citizens joining NGOs with no political objectives - such as those concerned with sport and culture - could hardly be defended by invoking Article 16²².

31. A person's imprisonment is likely to be a constraint on his or her ability to take a full part in the activities of an NGO but this should not generally be an obstacle to his or her becoming a member of one. Certainly it would be very difficult to demonstrate that a restriction on freedom of association which went beyond the inevitable impracticality of attending meetings was something really needed for the purposes of confinement and that is the test by which the impact of a deprivation of liberty on other human rights must be judged²³.

32. Nevertheless it is possible that some limits could be imposed on a person's exercise of freedom of association as a penalty for certain conduct, provided that a legitimate aim for them could be demonstrated and that they were sufficiently carefully drawn to avoid being challenged for a lack of proportionality.

33. Thus one of the penalties imposed on a Belgian newspaper editor who had collaborated with the German occupying authorities during the Second World War was a prohibition for life on involvement in the administration, management or direction of a professional or non-profit making association or the leadership of a political association. The principle of such a penalty was not specifically dealt with by the former European Commission

²¹ See *Piermont v France*, nos 15773/89 and 15774/89, 27 April 1995 where Article 16 was not accepted as justifying restrictions on the exercise of freedom of expression by someone from another European Union member State and who was also a Member of the European Parliament. It is at least arguable that a similar approach would be appropriate where the country imposing the restriction and the country of those affected are both members of the Council of Europe. See also Paragraph 56 of the Explanatory Memorandum to Recommendation CM/Rec(2007)14.

²² See *Moscow Branch of the Salvation Army v Russia*, no 72881/01, 5 October 2006, in which, following refusal of re-registration of the applicant because of its "foreign origin", the European Court found there to be no reasonable and objective justification for a difference in treatment of Russian and foreign nationals as regards their ability to exercise their right to freedom of religion through participation in the life of organised religious communities and that this ground for legal refusal had no legal foundation. In the case of refugees and stateless persons there is an obligation with respect to freedom of association that is probably narrower than that under the general guarantees in that it requires that those who are lawfully in the country concerned be given the most favourable treatment accorded to a foreign national in the same circumstances but only as regards 'non-political and non-profit-making associations and trade unions'; Convention relating to the Status of Refugees, Article 15 and Convention relating to the Status of Stateless Persons, Article 15. However, the minimum standards in these two instruments would not prevent refugees and stateless persons, as much as any foreign nationals, from enjoying the less-restricted freedom conferred by the general guarantees. The right accorded by Articles 26 and 40 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families is limited to trade unions and certain forms of associations (ones that protect their economic, social, cultural and other interests and, in the case of those who are documented or in a regular situation, ones that 'promote' these interests) but this last right does not prevail over the potentially wider right in more general instruments (Article 81). There is no comparable restriction to Article 16 in the other general guarantees of freedom of association but Article 1(2) of the International Convention on the Elimination of All Forms of Racial Discrimination does exclude differential treatment between citizens and non-citizens from its definition of discrimination. It is thus unlikely that some restriction on the political aspect of associational activity in respect of non-citizens might not be considered compatible with the freedom accorded by the other, ostensibly unrestricted, general guarantees but it seems improbable that anything going beyond the approach suggested appropriate for Article 16 of the European Convention would be considered acceptable. Certainly the UN Human Rights Committee has in the past expressed its concern 'at limitations to the exercise of freedom of association for long-term permanent residents in Estonia, particularly in the political sphere'; CCPR/C/79/Add.59, 9 November 1995, para 22.

²³ See *Golder v United Kingdom*, no 4451/70, 21 February 1975 and *Hirst v United Kingdom (No 2)*[GC], no 74025/01, 6 October 2005.

of Human Rights ("the European Commission") in *De Becker v Belgium* but it did consider other such indefinite restrictions affecting the applicant's freedom of expression could not be justified in so far as they covered non-political matters; the scope of the restriction was simply too broad²⁴.

34. It is evident that the European Court will require very cogent justification for such restrictions on the exercise of freedom of association and it is unlikely that they would be seen as acceptable where their scope did not correspond to the nature of the offence giving rise to them or they lasted for an undue length of time²⁵.

35. Moreover restrictions on membership on account of conduct where this has not led to a conviction or some other comparable ruling by a court are unlikely ever to be acceptable. This seems evident from the European Court's ruling in *Piroğlu and Karakaya v. Turkey*²⁶ that a requirement to annul the membership of a member of the executive board of the Izmir Branch of the Human Rights Association on account of her alleged involvement in illegal activities was unjustified as the person concerned, although taken into custody during protest action, had been released and no criminal proceedings had been brought against her.

36. However, it is possible that some restrictions can be imposed on persons working in the public sector as regards membership of NGOs. Certainly the last phrase of Article 11 of the

²⁴ The issue never went before the European Court as the applicant applied to have the case struck off after the restrictions on his civil and political rights had been withdrawn and the law permitting such penalties had been modified so that they would apply only for fixed periods determined according to the seriousness of the offence. In these circumstances it was not surprising that the Commission did not object to the case being struck off. Cf the upholding by the European Commission in Appl No 6573/74 *X v The Netherlands*, 1 DR 87 (1974) of a ban, albeit permanent, which affected only participation in public life (including the right to vote) for those who had been convicted of 'uncitizenlike' conduct during the Second World War.

²⁵ The ban on the founders and managers of three political parties from holding similar office in any other political body was an important consideration in the finding in both *United Communist Party of Turkey and Others v Turkey*, no 19392/92, 30 January 1998, *Socialist Party and Others v Turkey*, no 21237/93, 25 May 1998 and *Yazar, Karatas, Aksoy and the Peoples' Labour Party (HEP) v Turkey*, nos 22723/93, 22724/93, 22725/93, 9 April 2002 that their dissolution was disproportionate and thus a violation of Article 11. Equally, where a dissolution was upheld, such a ban on five of the party's leaders but none on its other 152 MPs was the basis for a finding that this measure was not disproportionate in *Refah Partisi (The Welfare Party) and Others v Turkey*, nos 41340/98, 41342/98, 41343/98, 31 July 2001 (Chamber) and 13 February 2003 (Grand Chamber). Furthermore in *Sadak and Others v. Turkey (No 2)*, nos 25144/94, 26149/95 to 26154/95, 27100/95 and 27101/95, 11 June 2002, *Kavakci v Turkey*, no 71907/01, *Silay v Turkey*, no. 8691/02 and *Ilıcak v Turkey*, no 15394/02, 5 April 2007 the forfeiture of parliamentary seats following the dissolution of the applicant's party was found to violate Article 3 of Protocol No 1. See also the European Court's condemnation in *Labita v Italy* [GC], no 26772/95, 6 April 2000 of a comparable ban involving the disenfranchisement for two years of a suspected Mafioso because it had been imposed only after his acquittal of the offences which had initially led to his being placed under a special supervisory regime; it would have accepted a temporary suspension of voting rights where there was evidence of Mafia membership. However, see the previous footnote for the upholding of a permanent ban in very special circumstances. Apart from improper activities of a 'political' nature, the most likely justification for a restriction on this aspect of freedom of association would be some form of financial misconduct by the person concerned; this would probably support limitations on his or her becoming an office-holder in an association where this involved financial responsibility but it is doubtful if this would justify anything more extensive than that. Paragraph 57 of the Explanatory Memorandum to Recommendation CM/Rec(2007)14 reflects this approach in providing that "It is possible that a prohibition on involvement in NGOs might be a legitimate consequence of having committed certain offences but its scope and duration must always respect the principle of proportionality (see Appl. No. 6573/74, *X v. The Netherlands*, 1 DR 87 (1974)) and a ban on membership as an automatic consequence of imprisonment would never be justified". In *Zdanoka v Latvia* [GC], no 58278/00, 16 March 2006, the European Court, while accepting that it would not be contrary to Article 3 of Protocol No. 1 for the applicant's former position in the communist party, coupled with her stance during the attempts in 1991 to reverse Latvia's independence from the Soviet Union, to still warrant her exclusion from standing as a candidate to the national parliament, emphasised that "the Latvian parliament must keep the statutory restriction under constant review, with a view to bringing it to an early end" (para 135).

²⁶ Nos 36370/02 and 37581/02, 18 March 2008.

European Convention speaks directly to the scope of the freedom of association that can be enjoyed by such persons in that the guarantee is expressed not 'to prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State'²⁷.

37. Whereas it will be relatively clear who falls within the first two categories²⁸, the reach of the third may be more problematic because of the varying approaches taken by States with regard to the organisation of the public sector. Nevertheless it is a category which the European Court has indicated should be 'interpreted narrowly'²⁹ and it is unlikely that the fact that someone is paid out of public funds or is formally categorised as a public servant will be decisive.

38. The Court has left open the question of whether it applies to teachers, notwithstanding the domestic designation of them as public servants³⁰ and in a different set of proceedings other public servants were only brought within the limitation because the purpose of the institution in which they worked resembled that of the armed forces and the police³¹. Furthermore in *Grande Oriente D'Italia di Palazzo Giustiniani v Italy*³² the Court was not prepared to regard appointees by a regional authority to membership of various public and private bodies as coming within the scope of the limitation since their link with that authority was seen as even less close than that of the teacher in the *Vogt* case with her employer. It is thus possible that the term 'administration of the State' will ultimately come to be regarded as applying only to higher-ranking officials, with restrictions being held appropriate because of the level and nature of their responsibilities³³ but nonetheless it is still likely to cover a wide range of people.

²⁷ There is a limitation in similar terms in Article 8(2) of the International Covenant on Economic, Social and Cultural Rights but those in the Convention Concerning Freedom of Association and the Right to Organise, Article 9 and in the International Covenant on Civil and Political Rights, Article 22(2) apply only to the armed forces and the police.

²⁸ However, it remains to be determined whether these categories would embrace private security services working under contract to, or otherwise working with the authorisation of, the State.

²⁹ *Vogt v Germany* [GC], no 17851/91, 26 September 1995, para 67 and *Grande Oriente D'Italia di Palazzo Giustiniani v Italy*, no 35972/97, 2 August 2001, para 31.

³⁰ *Ibid*, para 68. However, see the UN Human Rights Committee's concern that in the Republic of Korea 'restrictions on the right to freedom of association of teachers and other public servants do not meet the requirements of article 22, para 2'; CCPR/C/79/Add.114, 1 November 1999, para 19.

³¹ Appl No 11603/85, *Council of Civil Service Unions and Others v United Kingdom*, 50 DR 228 (1987) which concerned persons working at an institution which had the function of ensuring the security of military and official communications and of providing signals intelligence to the government.

³² No 35972/97, August 2001.

³³ This functional approach was fundamental to certain restrictions being found proportionate in *Ahmed and Others v United Kingdom*, no 22954/93, 2 September 1998 (see below), although the ruling did not discuss whether local authority employees were part of the administration of the State. Cf the European Court's use in *Pellegrin v France* [GC], no 28541/95 8 December 1999 of a functional criterion to determine whether disputes about a public servant's employment came within the conception of 'civil rights and obligations' for the purpose of attracting the fair hearing guarantee in Article 6. In its view this provision was inapplicable only to disputes involving those 'public servants whose duties typify the specific activities of the public service in so far as the latter is acting as the depositary of public authority responsible for protecting the general interests of the State or other public authorities' (para 66) and the armed forces and the police were specifically instanced as examples of persons falling within this functional definition. The distinction was subsequently developed in *Vilho Eskelinen and Others v Finland* [GC], no 663235/00, 19 April 2007 so as to require convincing reasons for excluding any category of public servant from the protection of Article 6(1). The acceptance in Paragraph 24 of Recommendation CM/Rec(2007)14 of the possibility of NGO 'membership being found incompatible with a particular position or employment' also reflects a functional approach to this issue.

39. In imposing limitations on the freedom of association on those who do fall within the scope of this clause, it is clear that these must always have a basis in law³⁴, be for one of the purposes identified in the second paragraph of Article 11 and observe the principle of proportionality, even if they may be more extensive than the restrictions that would be considered acceptable in respect of anyone else³⁵. Thus in *Vogt v Germany* the dismissal of a language teacher because of her membership and active involvement in the communist party was found to be a disproportionate measure to protect constitutional democracy when the party had itself not been banned and the applicant had not only asserted her belief in the constitutional order but had also never promoted the party ideology in the classroom³⁶.

40. On the other hand in *Ahmed and Others v United Kingdom*³⁷ – where the limitation clause was not actually invoked - the European Court upheld restrictions which prevented certain local authority employees from being active in an organisational and administrative capacity in political parties or from being office-holders in such parties as justified in order to maintain a longstanding tradition of political neutrality on the part of those advising and guiding elected members of the authority. In so doing the Court attached particular significance to the relatively precise functional definition of those covered by the restrictions³⁸ and the fact that they did not preclude either membership of a political party or involvement in all the activities of such a party³⁹.

41. In *Rekvényi v Hungary*⁴⁰ the European Court accepted that a complete prohibition on members of the police even belonging to a political party, as well as engaging in various forms of political activity, could be justified on account of 'the desires to ensure that 'the crucial role of the police in society is not compromised through the corrosion of the political neutrality of its officers'. In this regard it saw as particularly significant that Hungary was in transition from a totalitarian regime which had greatly relied on the direct commitment of the police to the ruling party – the aim was that 'the public should no longer regard the police as a supporter of the totalitarian regime but rather as a guardian of democratic institutions'⁴¹ - but, as the *Ahmed* case indicated, political neutrality is of importance for all democratic societies and it is unlikely that a similar restriction could be justified merely because the recent political history of the society

³⁴ See *N F v Italy*, no 37119/97, 2 August 2001 and *Maestri v Italy* [GC], no 39748/98, 17 February 2004] in which prohibitions on members of the judiciary belonging to a Masonic lodge were found to be a violation of Article 11 because their terms were not sufficiently clear to allow even persons as well-informed as the applicants to realise that he could face disciplinary action as a result of joining, or remaining a member of, one. Judges Bonello, Stráznická, Jungwiert and Del Tufo dissented in *Maestri* on the issue of foreseeability but did not express any view as to the necessity in a democratic society of judges being barred from belonging to Masonic lodges. Judges Loucaides and Bîrsan dissented not only on the former issue but also, implicitly accepting that the restriction was compatible with Article 11, found that there was no violation of the Convention in this case.

³⁵ The acceptance that the restrictions might be more extensive than the application of the general restrictions in Article 11(2) was implicit in the consideration of whether the 'administration of the State' limitation was applicable after first finding in *Grande Oriente D'Italia di Palazzo Giustiniani v Italy*, no 35972/97, 2 August 2001 that the impugned restriction was not 'necessary in a democratic society'. Although in *Rekvényi v Hungary* [GC], no 25390/94, 20 May 1999 the European Court had previously left open the question of whether 'lawfulness' was the only condition governing restrictions where this clause was applicable, no limitation has yet been upheld where a legitimate aim did not exist and the principle of proportionality was not invoked. However, a restriction is unlikely to be regarded as 'lawful' if it is in some way arbitrary in its character or effect and it is unlikely that one which has no clear link to the performance of the responsibilities of those affected could ever be considered acceptable.

³⁶ [GC], no 17851/91, 26 September 1995.

³⁷ No 22954/93, 2 September 1998.

³⁸ It sought to catch those who were involved in the provision of advice to a local authority or who represented it in dealings with the media but it also made provision for certain categories of employees identified for this purpose to seek exemption where they were not actually involved in these functions.

³⁹ For an unsuccessful attempt to suggest that parliamentarians are in an analogous position to the public employees covered by the restriction in Article 11, see *Zdanoka v Latvia* [GC], no 58278/00, 16 March 2006.

⁴⁰ [GC], no 25390/94, 20 May 1999.

⁴¹ *Ibid.*, para 44.

concerned was not similar to that of Hungary. However, in upholding this restriction, the Court emphasised that considerable scope was still left to police officers to engage in political parties so that it could not be regarded as disproportionate in its effect on either freedom of association or expression⁴². The absence of such a possibility in another context could result in a similar membership prohibition being found excessive and thus a violation of Article 11 of the European Convention.

42. The case law concerning membership restrictions on persons working in the public sector has invariably concerned the possibility of belonging to political parties which, as has already been noted, are not NGOs for the purpose of Recommendation CM/Rec(2007)14. However, this does not mean that the principles in those cases could not be applicable to NGOs and thus justify in some instances restrictions on public officials belonging to them and thus serving on their highest governing bodies. This might be particularly true of NGOs that take on a campaigning role which makes them in this regard analogous to a political party. In addition the activities of an NGO - even though entirely lawful - could also be incompatible with the role being performed either by an individual official or a particular category of officials so that a choice would have to be made between retaining a given post and continuing, to be a member of the NGO concerned.

43. Thus in *Van der Heijden v The Netherlands*⁴³ no objection was taken to the termination of the contract of the regional director of a foundation which promoted the interests of immigrants and provided them with advice because he was a member of the bureau of a party which advocated a policy of repatriating immigrants. In the circumstances of the case the European Commission of Human Rights considered not only that it was reasonable for the employer to have some discretion concerning the composition of its staff but that also, in view of the applicant's professional duties and the specific nature of his work, the employer "could reasonably take account of the adverse effects which his political activities might have on the Foundation's reputation, particularly in the eyes of the immigrants whose interests it sought to preserve"⁴⁴.

44. This was again a case involving membership of a political party but - as the employee was working for a private body rather than in the public sector - the acceptance of his dismissal relied on the fact that there was a very public contradiction between the two aspects of this individual's life. It is possible that such a contradiction could also arise where politics was

⁴² They could still 'sometimes subject to restrictions imposed in the interest of the service, expound election programmes, promote and nominate candidates, organise election campaign meetings, vote in and stand for elections to Parliament, local authorities and the office of mayor, participate in referenda, join trade unions, associations and other organisations, participate in peaceful assemblies, make statements to the press, participate in radio or television programmes or publish works on politics' (para 49). See also Appl No 18598/91, *Sygounis, Kotsis and Union of Police Officers v Greece*, 78 DR 71 (1994), in which no interference with the right to form and join trade unions was found to have been caused by a circular from the justice ministry to police departments asking them to appeal against any court decision establishing an association by members of the police because this had had no practical effect in dissuading police officers from joining; the association had been lawfully entered in the register of associations, its lawfulness had never been disputed and it had some 33,000 members. It was, however, also significant that an earlier circular prohibiting membership of the union and forbidding the latter from representing the interests of police officers had been suspended. In the light of all the case just discussed it seems unlikely that the upholding in Appl No 11603/85, *Council of Civil Service Unions and Others v United Kingdom*, 50 DR 228 (1987) of the complete prohibition of union membership for persons working at an institution which had the function of ensuring the security of military and official communications and of providing signals intelligence to the government would now be seen as proportionate, notwithstanding the national security dimension. This especially so since the prime concern was industrial action which could have been addressed by the less drastic measure of a prohibition on strikes. It should also be noted that the Freedom of Association Committee of the Governing Body of the ILO found this ban to be in breach of the ILO Convention (Case No 1261) and that it has since been revoked.

⁴³ Appl No 11002/84, 41 DR 264 (1985).

⁴⁴ *Ibid*, p 271. It was emphasised that there were no complaints against the applicant personally.

not involved, such as where an official had some responsibility for regulating the activities of the NGO to which he belonged. However, the existence of an unacceptable conflict of interest seems more likely where the official concerned is not merely a member of an NGO but is playing some form of executive role in it⁴⁵.

45. In any event any restrictions on membership of NGOs for persons working in the public sector should not be discriminatory. Thus the European Court in *Grande Oriente D'Italia di Palazzo Giustiniani v. Italy (No. 2)*⁴⁶ found objectionable an obligation to declare one's membership of a Masonic lodge when seeking nomination for public office because this requirement applied to membership of secret and Masonic associations but not to membership of any other associations. While accepting that a prohibition on nominating Freemasons to public office, which had been introduced in order to "reassure" the public at a time when there had been controversy surrounding their role in the life of the country, could pursue the legitimate aims of protecting national security and preventing disorder, the European Court considered that membership of many other non-secret associations might create a problem for national security and the prevention of disorder where members of those associations held public office. In its view this might be the case for political parties or groups advocating racist or xenophobic ideas, or for sects or associations with a military-type internal structure or those that established a rigid and incompressible bond of solidarity between their members or pursued an ideology that ran counter to the rules of democracy, which was a fundamental element of "European public order". The violation of Article 14 taken in conjunction with Article 11 of the European Convention thus arose in the instant case because no objective and reasonable justification for the difference in treatment between secret and Masonic associations and non-secret associations had been advanced by Italy.

46. In the case of appointments to the highest governing body of a non-membership-based NGO or to the governance bodies other than the highest governing body in a membership-based one, the acceptability of restrictions are governed by their compatibility not with the right to freedom of association but with the principle of self-governance. As Paragraph 48 of Recommendation CM/Rec(2007)14 provides that "[t]he appointment, election or replacement of officers ...should be a matter for the NGOs concerned".

47. The Recommendation does accept that some persons "may be disqualified from acting as an officer of an NGO following conviction for an offence that has demonstrated that they are unfit for such responsibilities" However, as the Explanatory Memorandum notes "the scope of such restrictions would need to be clearly connected with the activities constituting the offences"⁴⁷. This would certainly include offences involving fraud but it could also include offences that show someone is not suited to be involved in the activities undertaken by a particular NGO; a person convicted of sexual assaults on children would not, for example, be an appropriate office-holder in an NGO that works with or on behalf of children. Although the Recommendation refers only to "offences" as having a disqualifying effect, it is unlikely that this would preclude some disqualifications being imposed both for relevant regulatory offences as

⁴⁵ In *Grande Oriente D'Italia di Palazzo Giustiniani v Italy*, no 35972/97, 2 August 2001 the European Court found a violation of Article 11 of the European Convention when persons belonging to Masonic lodges were disqualified from appointment by a regional authority to various positions in public and private bodies as candidates for the posts had to declare that they did not belong to any such lodges. This was considered by the Court to be an inappropriate response to a generalised concern about the Masonic influence over public decision-making when there was nothing actually reprehensible in someone belonging to a lodge. However, in *Siveri and Chiellini v Italy* (dec.), no 13148/04, 3 June 2008 no objection was taken by the Court to a requirement for persons appointed to such positions to declare whether they belonged to a lodge where failure to make the declaration - but not membership - could lead to loss of those positions. See also the European Court's refusal in *Kiiiskinen and Kovalainen v Finland* (dec.), no 26323/95, 1 June 1999 to rule on whether the Masonic link between a judge and a party was of itself sufficient to lead to a lack of impartiality for the purposes of Article 6 of the European Convention; no such link was established in that case.

⁴⁶ No 26740/02., 31 May 2007.

⁴⁷ Paragraph 97.

opposed to criminal ones and as a consequence of bankruptcy. However, as the Recommendation emphasises, in all instances any "disqualification should be proportionate in scope and duration".

48. Recommendation CM/Rec(2007)14 also makes it clear that not being a national of the country in which the NGO is established should not of itself be an obstacle to the person concerned being involved in its management⁴⁸. Of course, as the Explanatory Memorandum makes clear persons "involved in their management should be subject to the generally applicable laws of the country in which they are established or operate as regards entry, stay and departure"⁴⁹. However, there should not be any special limitation on non-nationals becoming involved in the management of NGOs.

49. It would also not be incompatible with the principle of self-governance to apply restrictions on persons who work in the public sector serving on the highest governing body of an NGO that is not membership-based or becoming a member of any executive body of an NGO that is membership-based, provided that those restrictions are consistent with the approach required - discussed above - for restrictions on being a member of membership-based NGOs.

50. Apart from circumstances where someone is legitimately precluded from taking part in the management as just outlined, there should not be attempts by public authorities to interfere with an NGO's choice of its management or representatives. Such an interference would not only be contrary to the Recommendation but would also constitute a violation of Article 11 of the European Convention where the NGO is membership-based and of Article 9 of the same instrument where it is a religious organisation.

51. Thus in *Hasan and Chaush v Bulgaria*⁵⁰ a violation of Article 9 of the European Convention - a specific application in this instance of the general freedom of association under Article 11 - was found when there was a re-designation of the leadership of a religious community, without any criteria or procedural safeguards, at the behest of a breakaway group. The effect of this was to favour that group, 'granting it the status of the only official leadership, to the complete exclusion of the hitherto recognised leadership. The acts of the authorities operated, in law and practice, to deprive the excluded leadership of any possibility of continuing to represent at least part of the Muslim community and of managing its affairs according to the will of that part of the community'⁵¹. This interference was found not to be prescribed by law 'in that it was arbitrary and was based on legal provisions which allowed an unfettered discretion to the executive and did not meet the required standards of clarity and foreseeability'⁵².

52. In the *Hasan and Chaush* case the European Court did not have to consider whether an interference with the religious community that had a sounder legal basis could be justified but this seemed improbable in the particular circumstances of the case; as the Court observed in that case and in both *Serif v Greece*⁵³, and *Metropolitan Church of Bessarabia and Others v Moldova*⁵⁴, (in which a prosecution for having usurped the functions of a minister of a 'known religion' and a failure to recognise a church were respectively found not to be necessary in a democratic society), the State did not need to take measures to ensure that religious communities are brought under a unified leadership. This view was sustained in the subsequent

⁴⁸ Paragraph 49.

⁴⁹ Paragraph 99.

⁵⁰ [GC], no 30985/96, 26 October 2000.

⁵¹ Para 82.

⁵² Para 86.

⁵³ No 38178/97, 14 December 1999.

⁵⁴ No 45701/99, 13 December 2001.

case of *Supreme Holy Council of the Muslim Community v Bulgaria*⁵⁵ in which the enforced re-recognition of the original leadership in the *Hasan and Chaush* case was found not to be necessary in a democratic society as it had the effect of compelling the divided community to have a single leadership against the will of one of the two rival leaderships⁵⁶.

53. Although the case law of the European Court has so far only been concerned with the leadership of religious organisations, it is equally improbable that a State would be regarded as justified in interfering in the manner discussed with the selection of the management of NGOs, notwithstanding that it might be more convenient for the authorities if they did not have to deal with a multitude of bodies or if certain persons had leadership positions in them.

54. The principle of self-governance would not, however, preclude the adoption of a requirement that those responsible for decision-making in an NGO should be clearly identified since there may be instances when such decision-making gives rise to legal liabilities and both private bodies and the State will need to know against whom proceedings should be brought⁵⁷. However, there is no need for the fulfilment of this requirement to entail oppressive regulation. Thus, while it could be achieved through notifying the authority responsible for recognition or registration, there are also other possible ways in which the underlying objective could be met; for example, a record at the NGO's bank of those authorised to take decisions on its behalf would probably be just as effective.

Selection of employees

55. There are no specific international standards relating to the selection by an NGO of its employees. However, as already seen with officers, Recommendation CM/Rec(2007)14 also makes it clear that not being a national of the country in which the NGO is established should not of itself be an obstacle to the person concerned becoming an employee of an NGO, which should only be required to observe the generally applicable employment laws⁵⁸.

Frequency of meetings

56. There are no specific international standards governing the frequency that can be required under national law for the holding of meetings of the highest governing body or any other executive body of an NGO, although Recommendation CM/Rec(2007)14 does provide that this is something that can be required to be specified in the Statute⁵⁹. In principle, self-governance would dictate that the selection of the period is something that ought to be left for those establishing and running NGOs as they are likely to be best placed to determine what is most suitable for the particular circumstances of the organisations concerned. However, both

⁵⁵ No 39023/97, 16 December 2004.

⁵⁶ "As a result, one of the groups of leaders was favoured and the other excluded and deprived of the possibility of continuing to manage autonomously the affairs and assets of that part of the community which supported it" (para 95). A further intervention in the leadership dispute in the Bulgarian Orthodox Church was found in *Holy Synod of the Bulgarian Orthodox Church (Metropolitan Inokentiy) and Others v. Bulgaria*, 412/03 and 35677/04, 22 January 2009, despite a response to a legitimate concern for the State authorities, to have been disproportionate, particularly as the legislation concerned did not meet the Convention standard of quality of the law and "their implementation through sweeping measures forcing the community to unite under the leadership favoured by the Government went beyond any legitimate aim and interfered with the organisational autonomy of the Church and the applicants' rights under Article 9 of the Convention in a manner which cannot be accepted as lawful and necessary in a democratic society, despite the wide margin of appreciation left to the national authorities" (para 159).

⁵⁷ Pursuant to Paragraph 75 of Recommendation CM/Rec(2007)14 the officers, directors and staff of an NGO with legal personality should not be personally liable for its debts, liabilities and obligations but they can be made liable to the NGO, third parties or all of them for professional misconduct or neglect of duties.

⁵⁸ Paragraph 49.

⁵⁹ Paragraph 19.

the recognition that some reporting and auditing requirements can be imposed on NGOs⁶⁰ and the fact that the Recommendation accepts that it would be legitimate to terminate the legal personality of an NGO for prolonged inactivity⁶¹ implicitly give some guidance as to the acceptable minimum periodicity for such meetings that could be prescribed by law.

57. Thus, although the "prolonged inactivity" standard is envisaged in the Explanatory Memorandum as entailing at least "several years" elapsing between meetings of the highest governing body⁶², that document also refers to there also having "been at least two failures to file annual reports on their accounts"⁶³ which would point to the need for at least a meeting of the highest governing body each year so that these can be adopted. This view is reinforced by the acceptance of a requirement for an annual report by an NGO receiving public support⁶⁴.

58. In the light of these two requirements, it would at least seem admissible to impose an annual meeting requirement for the highest governing bodies of NGOs that are in receipt of any form of public support but in the case of such bodies for other NGOs the failure to meet with this frequency could result in them being viewed as inactive and thus liable to have their legal personality terminated. Moreover the acceptance of public support - which is not obligatory - could also be the basis for imposing even more exacting requirements regarding the frequency with which the highest governing bodies of NGOs meet. Nevertheless such a requirement ought not to be excessive or purposeless since that would render the self-governance principle entirely meaningless.

59. There is no basis in international standards for concluding that it would, in general, be legitimate to impose a minimum frequency for meetings of NGO management bodies other than their highest governing bodies. Nonetheless a need to observe certain conditions in this regard where public support is received could not be regarded as objectionable so long as those conditions were also not excessive or purposeless.

Internal structure

60. In a membership-based NGO the members should ultimately determine who carries out its management but, while in some cases they might decide this directly, they should also be free - as Paragraph 46 of Recommendation CM/Rec(2007)14 recognises - to delegate the task to an intermediary body.

61. Indeed this may be especially desirable where the membership is particularly large, but whether they choose to do so is entirely a matter for them. This is confirmed by Paragraph 47 which provides that "NGOs should ensure that their management and decision-making bodies are in accordance with their statutes but they are otherwise free to determine the arrangements for pursuing their objectives".

62. This general freedom regarding the internal structure of NGOs is made equally applicable to ones that are not membership-based by the same Paragraph of the Recommendation.

63. Thus there should not normally be attempts - whether at the registration stage or subsequently - to prescribe in detail how an NGO should organise its affairs - whether it ought to have this or that management structure. However, the imposition of some such requirements

⁶⁰ See further below.

⁶¹ Paragraph 44.

⁶² Paragraph 89.

⁶³ *Ibid.* The imposition of an auditing requirement is permitted by Paragraph 65 in respect of NGOs in receipt of any form of public support.

⁶⁴ Paragraph 62.

could be an acceptable condition for obtaining certain benefits, such as exemption from taxation. Nevertheless they would have to be voluntarily accepted by the NGOs concerned and they should also have the freedom to surrender the benefits and to cease being bound by the requirements imposed.

64. Furthermore, as Paragraph 47 makes clear, "NGOs should not need any authorisation from a public authority in order to change their internal structure or rules".

65. Moreover NGOs should not require any authorisation to establish branches⁶⁵.

Decision-making

66. International standards do not prescribe any specific requirements as to how decisions are to be taken by NGOs or their management bodies. In particular there are no requirements as to whether certain decisions - including ones to amend the Statute or to dissolve the organisation - need to be taken by a special majority.

67. However, the need for a special majority would not, in principle, be objectionable if adopted by those establishing the NGO. Furthermore, in the case of a membership-based organisation the prohibition by law of any irrevocable delegation of decision-making power by the highest governing to some other management body would not be impermissible as that safeguards rather than undermines the right to freedom of association of those belonging to the NGO concerned⁶⁶. They cannot, however, be precluded from making such a delegation in the first place.

68. In addition, Paragraph 19 Recommendation CM/Rec(2007)14 provides that the procedure by which meetings of the highest governing body of an NGO is something that can be required to be stipulated in its Statute. Any such requirement should be such as to ensure that members of the highest governing body are able to take part in the meeting being convened - probably entailing notice of at least a week in most instances - but it should not be so onerous that the holding of extraordinary meetings becomes impracticable and thus effectively negates the authority of the highest governing body of the NGOs concerned.

69. Although the decision-making process of an NGO must always comply with the requirements of its Statute, the limited requirements as to what these must contain and the principle of self-governance - as the Explanatory Memorandum of the Recommendation notes - generally rule out "other constraints on how they decide to pursue their objectives and manage the organisation"⁶⁷.

70. Thus the European Court observed in both *Freedom and Democracy Party (ÖZDEP) v Turkey*⁶⁸ and *Refah Partisi (The Welfare Party) and Others v Turkey*⁶⁹, that the decisions of party leaders should be 'made freely ... if they are to be recognised under Article 11". In these cases the Court found that decisions in favour of voluntary dissolution and disciplinary actions against members respectively were taken only to avoid enforced dissolution (which was harsher in its effects than a voluntary one) and thus could not be used to prevent the party in the first case from claiming to be a victim of the enforced dissolution or to negate the support of the second party for the remarks made by the members concerned. This reasoning - which is

⁶⁵ Paragraph 42 of the Recommendation. This is subject to the need for the approval of the host country where a branch is being established abroad; Paragraph 45.

⁶⁶ See Paragraph 91 of the Explanatory Memorandum to Recommendation CM/Rec(2007)14.

⁶⁷ Paragraph 93.

⁶⁸ No 23885/94, 8 December 1999 (para 26).

⁶⁹ Nos 41340/98, 41342/98, 41343/98 and 41344/98, 31 July 2001 (para 78), endorsed by the Grand Chamber in the judgment of 13 February 2003, at para 115.

reflected in the provision in Paragraph 6 of the Recommendation that NGOs should not be subject to direction by public authorities - would be equally applicable to interferences with the decision-making of NGOs generally⁷⁰.

71. There is also a need to protect those managing NGOs against the more aggressive forms of interference with their freedom to decide, namely, harassment, intimidation and the use of violence. This is undoubtedly a positive obligation benefiting NGOs generally which arises from the right to freedom of association under Article 11 of the European Convention⁷¹ but it is also required by specific standards relating to those NGOs that are human rights defenders⁷².

72. It should also be noted that interference in the internal affairs of NGOs could also have implications for observing the respect due to property rights under Article 1 of Protocol 1; this issue has not, however, been so far pursued in the case law of the European Court.

73. However, there are a number of implicit limitations on the substantive decision-making capacity of NGOs.

74. Firstly, the primacy of the Statute - as well as the law governing the formation of NGOs - necessarily means that decisions to act for purposes outside either their objectives or powers would be unlawful.

75. Secondly, as the Explanatory Memorandum of Recommendation CM/Rec(2007)14 stipulates, "the freedom that NGOs ought to have with respect to decision making should not, however, lead their management to ignore the wide range of persons with a legitimate interest in the way in which the organisations concerned conduct themselves. The taking into account of these interests will require the use of a number of different techniques – notably consultation and reporting – and their precise form and scope will vary according to the character of the interest in question"⁷³.

76. Thirdly the fact that assets of some NGOs have come from public bodies and that their acquisition has been assisted by a favourable fiscal framework are reasons to ensure that these assets are carefully managed and that the best value is obtained when buying and selling them. Thus the Recommendation provides that NGOs with legal personality can be required "to act on independent advice when selling or acquiring any land, premises or other major assets where they receive any form of public support"⁷⁴.

77. Fourthly Paragraph 54 of the Recommendation makes it clear that "NGOs with legal personality should not utilise property acquired on a tax-exempt basis for a non-tax-exempt purpose"⁷⁵.

⁷⁰ See also the call by the UN Human Rights Committee that in the Libyan Arab Jamahiriya 'Urgent steps should be taken by the State party to allow the free operation of independent non-governmental human rights organisations'; CCPR/C/79/Add.101, 6 November 1998, para 21.

⁷¹ Cf the similar obligation recognised as arising under the right to freedom of expression in *Özgür Gündem v Turkey*, no 23144/93, 16 March 2000 with respect to a newspaper and those working for it.

⁷² See the Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities (Adopted by the Committee of Ministers on 6 February 2008 at the 1017th meeting of the Ministers' Deputies) and Article 12 of the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms (Declaration on Human Rights Defenders) (GA Res 53/144, 9 December 1998).

⁷³ Paragraph 95.

⁷⁴ Paragraph 53.

⁷⁵ As Paragraph 105 of the Explanatory Memorandum notes, "In the event of an NGO not being in a position to use the property for such purposes, it could thus be required to return the property concerned to the donor, to transfer it to another NGO that can use it for those purposes or to retain it on payment of the applicable taxes".

78. Fifthly, while Paragraph 56 of the Recommendation generally requires that national law permit an NGO to designate another NGO to receive its assets in the event of its termination, this freedom is subject to the prohibition on distributing any profits that it may have made to its members⁷⁶. In addition it may also be constrained by an obligation to transfer assets obtained with the assistance of tax exemptions or other public benefits to other NGOs pursuing objectives for which such exemptions or benefits are granted. Moreover this freedom can be entirely precluded where the NGO's objectives or activities have been found to be inadmissible for reasons set out in Paragraph 11 of the Recommendation. In such a case the assets can instead be applied by the State for public purposes.

79. Sixthly, although Paragraph 48 of the Recommendation stipulates that NGOs should be free to decide on the admission and exclusion of members, Paragraphs 22 and 23 of the Recommendation subject this freedom to a prohibition on unjustified discrimination and a right for members to be protected against arbitrary exclusion. The latter restriction on decision-making is indeed required by the right to freedom of association for membership-based NGOs⁷⁷ whereas the former has so far not been directly addressed by the European Court. However, while compulsion to admit members would effectively amount to requiring someone to belong to an association against his or her will since it would be denying those who already belong to an association the freedom to choose with whom they wish to associate⁷⁸, the imposition of constraints on that freedom of choice where done in order to fulfil obligations to prevent discrimination on any inadmissible ground and thereby protect the rights of others is likely to be regarded as permitted by the second paragraph of Article 11⁷⁹.

80. Finally, the need to protect the interests of members and donors (both public and private) would undoubtedly justify the adoption of a requirement that NGOs keep a proper record of the proceedings of all the meetings of their decision-making bodies.

⁷⁶ In Paragraph 9 of the Recommendation. The freedom only arises after all "liabilities of the NGO have been cleared and any rights of donors to repayment have been honoured".

⁷⁷ In Appl No 10550/83, *Cheall v United Kingdom*, 42 DR 178 (1985) the European Commission expressed the view that 'unions must remain free to decide, in accordance with union rules, questions concerning admission to and expulsion from the union' (p 186) but did see a role for the State in protecting a union against exclusion which was not in accordance with those rules.

⁷⁸ For examples of the European Court's case law on such compulsion, see, *Sigurdur A Sigurjónsson v Sweden*, no 16130/90, 30 June 1993, *Chassagnou and Others v France* [GC], nos 25088/94, 28331/95 and 28443/95, 29 April 1999 and *Sørensen and Rasmussen v Denmark* [GC], nos 52562/99 and 52620/99, 11 January 2006.

⁷⁹ See *Jersild v Denmark* [GC], no 15890/89, 23 September 1994 in which the Court accepted that the duty under Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination to prohibit the dissemination of racist ideas could be taken into account in assessing the acceptability under Article 10 of the European Convention of a restriction on freedom of expression. The issue of the right to join was raised but not resolved in *Rutkowski v Poland* (dec.), no 30867/96, 16 April 2002, which concerned the refusal to accept the applicant as a member of certain local branches of the Polish Hunting Association - because there were already too many members, he was from outside the relevant area, the tone of his application was not liked - in circumstances where such membership was required in order to practice hunting. The merits of the application were not examined because he had in the meantime become a member of a branch and, even assuming that his claims fell within the ambit of Article 11, the fact that he was thus able to practice hunting within the legal framework provided by domestic law meant that he could no longer be considered to be a victim. In finding that no civil rights or obligations were being determined, the European Court emphasised that the association was 'a private entity dealing with a private pastime or hobby, rather than, for example, a professional body exercising certain statutory obligations delegated by the State, to which members of that profession are obliged by law to belong in order to earn their livelihood' (para 2). This was used to justify the conclusion that the fair hearing guarantee in Article 6 was inapplicable - in contrast to the decisions concerning professional regulatory bodies (see, e.g., *Le Compte, Van Leuven and De Meyere v Belgium*, nos 6878/75 and 7238/75, 23 June 1981) - but it also serves to cast doubt on the admissibility in general of the State interfering with the membership decisions of such bodies, even if the regulatory framework for hunting might lead one to doubt that there was no public dimension to such decisions in the present case.

Pay and expenses

81. Most NGOs are unlikely to be able to pursue their objectives without employing some staff and/or having volunteers carrying out some activities on their behalf. It is not surprising, therefore, that it is recognised in Paragraph 55 of Recommendation CM/Rec(2007)14 that it is a legitimate use of NGOs' property to pay their employees and to reimburse the expenses of those who act on their behalf. As the Explanatory Memorandum notes market conditions and/or legislation will influence the level of payments made to staff, the need to ensure that property is properly used for the pursuit of an NGO's objectives would justify the imposition of a criterion of reasonableness for the reimbursement of expenses⁸⁰. Furthermore in the case of NGOs with charitable or comparable status the legislation governing pay could well be driven by consideration of the need to ensure that their funds are predominantly devoted to the activities justifying the grant of this status. This need could affect both the level of individual payments and their total.

Challenging decisions

82. As has already been noted, admission to and expulsion from a membership-based NGO is generally a matter for the organisation itself. However, the rules governing membership in its Statute - which would need to conform either explicitly or implicitly with the prohibition in Paragraphs 22 and 23 of Recommendation CM/Rec(2007)14 on unjustified discrimination and a right for members to be protected against arbitrary exclusion - must always be observed. Thus national law should ensure that someone who has been refused admission, is facing expulsion or has been expelled has available an effective means - ultimately involving a court - of insisting on such observance⁸¹.

83. The need for such a remedy is also an aspect of the right to freedom of association⁸². Moreover members of an NGO should be able to insist on the decision-making process being properly observed and should also be protected from any abuse of the dominant position of a particular group of members, such as by the adoption of rules that could be construed as wholly unreasonable or arbitrary⁸³. This should generally be satisfactorily achieved by some legal basis for the member concerned to challenge the matter in the courts; there would rarely be any need for a State entity actually to intervene on his or her behalf⁸⁴.

84. There is, however, a legitimate interest in a State undertaking some regulation of NGOs to ensure respect for the rights of third parties (whether donors, employees, members or the public) and to ensure the proper use of public resources and respect for the law. Although the Explanatory Memorandum emphasises that self-regulation is the best means of ensuring proper behaviour on the part of NGOs⁸⁵, this interest on the part of the State would justify the existence of a power to take proceedings to challenge the lawfulness of their action and decisions. However, such a power should not be misused and its exercise should itself be

⁸⁰ Paragraph 106.

⁸¹ This made explicit in Paragraph 59 of the Explanatory Memorandum as regards expulsion.

⁸² See Applic No 10550/83, *Cheall v. United Kingdom*, 42 DR 178 (1985).

⁸³ As was alleged in the *Cheall* case. This concerned the expulsion of the applicant from a union pursuant to an arrangement between unions that there should first be an inquiry about a person's status in his or her former union before being granted membership. However, such an arrangement was intended to prevent inter-union disputes and was not considered unreasonable. It was also significant that the effect of the expulsion did not lead to the applicant losing his job as union membership was not obligatory. See also Appl No 13537/88, *Johansson v Sweden*, 65 DR 202 (1990) where the inability to opt out of the collective home insurance arranged for the members of a trade union was not considered unreasonable.

⁸⁴ This is emphasised in Paragraph 120 of the Explanatory Memorandum.

⁸⁵ Paragraph 119.

subject to challenge by the NGO concerned in an independent and impartial court with full jurisdiction⁸⁶.

85. Where decisions of NGOs are reasonably considered to affect the rights of others - whether donors, employees or anyone else - the latter should also be able to protect their interests through proceedings in a court to challenge the lawfulness of those decisions and to have them overturned or otherwise remedied in the event of the challenge being upheld.

Attendance at meetings

86. Although the need to ensure accountability will be a relevant consideration where an NGO is working with public authorities and/or enjoys some public support, this should certainly not permit unimpeded access to the way in which particular choices are being made by the NGO. Rather the principle of self-governance, as well as the right to freedom of association, would entitle an NGO to determine who attends meetings where decisions are to be taken as to its future activities and priorities and in particular to exclude representatives of public authorities - whose presence could be an indirect form of pressure - from them.

87. However, this freedom to determine attendance at such meetings would not enable an NGO either to impede genuine law enforcement action or to disregard observance of the requirement to keep a proper record of the proceedings. Moreover representatives of public authorities should still be able to attend meetings and other activities of NGOs that are intended to be open to the public.

Taking over management

88. Paragraph 70 of Recommendation CM/Rec(2007)14 is categorical that there should be no external intervention in the running of NGOs "unless a serious breach of the legal requirements applicable to NGOs has been established or is reasonably believed to be imminent". Any other approach would be inconsistent with the principle of self-governance and with, in the case of membership-based NGOs, the right to freedom of association.

89. Thus, as the Explanatory Memorandum indicates, such an intervention "should be extremely rare" and "be based on the need to bring an end to a serious breach of legal requirements where either the NGO has failed to take advantage of an opportunity to bring itself into line with those requirements or an imminent breach of them should be prevented because of the serious consequences that would follow"⁸⁷.

Auditing of accounts

90. International standards do not generally provide for a requirement that the accounts of an NGO be audited by someone independent of its management so as to afford a guarantee of objectivity. However it is recognised in the Explanatory Memorandum to Recommendation CM/Rec(2007)14 that there "may also be a general legal obligation for all entities with legal personality (including NGOs) of meeting certain objective criteria, such as net value of assets or average number of employees, to have their accounts audited, which would be applicable even where NGOs do not receive any public support"⁸⁸.

91. Furthermore Paragraph 65 of the Recommendation accepts that those "NGOs which have been granted any form of public support can be required to have their accounts audited by an institution or person independent of their management". Nonetheless it is noted in the

⁸⁶ Paragraph 10.

⁸⁷ Paragraph 125.

⁸⁸ Paragraph 117.

Explanatory Memorandum that the scope of any such requirement should take account of the size of the NGO concerned⁸⁹. Thus in the case of smaller ones it is suggested that the requirement of independence might be satisfied where the audit is carried out by a member who has no connection with the management. On the other hand the Explanatory Memorandum suggests that the use of the services of a professional auditor is likely to be considered more appropriate for those NGOs with substantial income and expenditure.

Reporting obligations

92. There are no international standards establishing a general requirement for NGOs to report to public authorities or indeed to anyone else as regards their accounts or their activities. However, in the case of membership-based NGOs the imposition by law of an obligation for some form of reporting obligation to the membership - linked to the holding of a meeting of the highest governing body - would not be objectionable since this would support rather than interfere with the primacy of that body and thus protect the equal say which all members should enjoy regarding the running of the organisations concerned.

93. Any obligation for an NGO to report on its accounts and activities to a donor that is a private body, a foreign government or an international organisation will invariably arise from the agreement reached between the two parties concerned and thus underpinned by ordinary contract law. There should not, therefore, be any need for the State itself to specify such an obligation - whether as to content or timing - and thereby interfere in the arrangement reached by those parties.

94. However, the State does have some legitimate interests which would justify the imposition on NGOs of some obligations to report to it as regards their income and activities and this is recognised in Recommendation CM/Rec(2007)14.

95. In the first place, as Paragraph 50 makes clear, the fundraising undertaken by NGOs will be subject to the "laws generally applicable to customs, foreign exchange and money laundering and those on the funding of elections and political parties". These will inevitably entail some reporting on income received and the use to which it has been put. The important point, however, is that this is a general obligation and the Explanatory Memorandum emphasises that the donations to NGOs should not give rise to any special reporting obligation⁹⁰.

96. Secondly, Paragraph 62 provides that NGOs "which have been granted any form of public support can be required each year to submit reports on their accounts and an overview of their activities to a designated supervising body". However, while accountability for the use of public funds can rightly be insisted upon, reporting obligations can be applied in a way that seriously impedes NGOs from actually doing anything and the Explanatory Memorandum thus stipulates that "such a reporting obligation should not be unduly burdensome and should not require the submission of excessive detail about either the activities or the accounts"⁹¹. Nonetheless it also makes it clear that this requirement would be "without prejudice to any particular reporting requirement in respect of a grant or donation" - i.e., those discussed in the preceding paragraph - and is also "distinct from any generally applicable requirement regarding the keeping and inspection of financial records and the filing of accounts".

97. Thirdly, Paragraph 63 provides that NGOs "which have been granted any form of public support can be required to make known the proportion of their funds used for fundraising and administration". The purpose of such a requirement is, as the Explanatory Memorandum

⁸⁹ *Ibid.*

⁹⁰ Paragraph 101.

⁹¹ Paragraph 114.

points out, "to allay any concern that NGOs might not be devoting as much of their resources as is practicable to the pursuit of their objectives ... This provision is not meant to set a particular limit for expenditure on fundraising and administrative overheads but to ensure transparency"⁹².

98. However, Recommendation CM/Rec(2007)14 recognises that reporting obligations have the potential to encroach upon the rights of donors, beneficiaries and staff⁹³, as well as the right to legitimate business confidentiality and thus it provides that any such obligation should be subject to a duty to respect these rights⁹⁴. Furthermore, while the Explanatory Memorandum emphasises that the need to respect these rights is not absolute and "should not be an obstacle to the investigation of criminal offences (e.g., in connection with money-laundering)", it also stipulates that "any interference with respect for private life and confidentiality should observe the principles of necessity and proportionality"⁹⁵.

99. Finally, although recognising that there is no reason to differentiate between foreign and other NGOs as regards the applicability of reporting requirements, Paragraph 66 of the Recommendation provides that the former should only be subject to them "in respect of their activities in the host country".

Inspection

100. Recommendation CM/Rec(2007)14 recognises the need for some regulatory controls over the operation of NGOs so as to guarantee respect for the rights of third parties (whether donors, employees, members or the public) and to ensure the proper use of public resources and respect for the law. As part of these controls, inspection of their books, records and activities is specified in Paragraph 68 as something to which they can be required to submit. However, the use of such a power ought to take place in accordance with the overarching consideration for regulation of NGOs, namely, that their "activities should be presumed to be lawful in the absence of contrary evidence"⁹⁶.

101. Paragraph 68 thus requires that inspection only take place "where there has been a failure to comply with reporting requirements or where there are reasonable grounds to suspect that serious breaches of the law have occurred or are imminent" As the Explanatory Memorandum emphasises, such an intervention in the internal operation of an NGO should not be based on "mere suspicion" and in most instances "is only likely to be justified where an NGO has failed to comply with reporting requirements, whether because no report has been made or because what has been produced gives rise to genuine concerns", although it is acknowledged that "it is possible that circumstances will warrant an inquiry even before a report is due"⁹⁷.

102. Furthermore, although regular powers of inspection may sometimes need to be supplemented by more exacting ones of search and seizure, the Recommendation stipulates that the exercise of the latter should not occur "without objective grounds for taking such measures and appropriate judicial authorisation"⁹⁸. The object of this qualification is, as the Explanatory Memorandum makes clear, to ensure that the "the guarantees applicable to the search of persons and premises under Article 8 of the European Convention" are observed⁹⁹. Although this means that judicial authorisation should normally be obtained prior to any search

⁹² Paragraph 115.

⁹³ Notably the right to life and security and the right to respect for private life, which could be prejudiced by disclosure; Paragraph 116 of the Explanatory Memorandum.

⁹⁴ Paragraph 64.

⁹⁵ Paragraph 116.

⁹⁶ Paragraph 67.

⁹⁷ Paragraph 122.

⁹⁸ Paragraph 69.

⁹⁹ Paragraph 123.

taking place, it is recognised that, consistent with the interpretation of that guarantee, the need for such authorisation "can be dispensed with where the power is subject to both very strict limits and subsequent judicial control, providing a sufficient guarantee against arbitrary interference with the right to respect for private life"¹⁰⁰.

103. It should also be noted that monitoring of an NGO's activities through surveillance techniques such as the interception of communications must also be capable of justification in accordance with the requirements of Article 8 of the European Convention. In the absence of such justification there would be legitimate grounds for complaint about non-observance of this or other comparable provisions¹⁰¹.

B Review of national practice

104. In the preparation of its second thematic study a questionnaire on the issue of internal governance was sent to NGOs in all member states of the Council of Europe and Belarus. This questionnaire was directed to a broad range of issues relating to the internal governance of NGOs which have a formal legal status¹⁰². Although the response was not

¹⁰⁰ Paragraph 124, citing *Camenzind v Switzerland*, no 21353/93, 16 December 1997.

¹⁰¹ See, e.g., Appl No 23413/94, *L C B v United Kingdom*, 83 DR 31 (1995), in which it was found that the applicant had not adduced sufficient evidence to demonstrate a reasonable likelihood of the interception of the communications of persons belonging to an association that was campaigning for compensation for servicemen exposed to experimental nuclear explosions. The applicant had alleged that the interception was an interference with his freedom of association and expression but the complaint was dealt with by the European Commission under the right to respect for correspondence under Article 8 as the *lex specialis*. The alleged surveillance of a Jehovah's Witness was raised in *Tsavachidis v Greece*, no 28802/05; the former European Commission of Human Rights found a violation of Article 8 but not of freedom of religion, with no separate issue arising in respect of Article 11. The case was subsequently resolved by a friendly settlement; 21 January 1999.

¹⁰² The questions asked were as follows:

1. What requirements relating to the internal governance of an NGO must be contained in its articles of association, constitution or statute, in order for it to be able to acquire legal personality or to be registered?
2. Are any categories of persons prohibited by law from serving on (a) The highest governing body of an NGO, or (b) A management body of an NGO? If so, please specify the categories and the bodies concerned and whether such prohibition is applicable only to particular categories of NGOs. Is any category of person prohibited by law from being employed by an NGO? If so, please specify the categories, the capacities concerned and whether the prohibition is applicable only to particular categories of NGOs.
3. Is any category of person prohibited by law from being employed by an NGO? If so, please specify the categories, the capacities concerned and whether the prohibition is applicable only to particular categories of NGOs.
4. Is any frequency required by law or practice as to the holding of meetings of the highest governing body of an NGO, or particular categories of them? If so, please give details. Are there such requirements for other governing bodies of an NGO?
5. Does the law prescribe any special majority to be achieved in order for the highest governing body of an NGO, or particular categories of them, to (a) amend their articles of association, constitution or statutes or (b) take any other types of decision? If so, please specify the majority required for either, or both, of these purposes. Are there such requirements for other governing bodies of an NGO?
6. Does the law impose any limits on the power of delegation of decision-making by highest governing body of an NGO, or particular categories of them? If so, please give details?
7. Is there any requirement for an NGO, or particular categories of NGOs, to obtain authorisation from a public authority before any change to its internal structure or rules can be implemented? If so, please give details?
8. Is it possible for an NGO to establish and/or close branches without the prior authorisation of a public authority where these branches do not have a distinct legal personality from that of the NGO concerned? If so, please give details.
9. Does the law impose any limits on the payment by NGOs or particular categories of them, of fees or expenses to (a) Employees, or (b) Members of any of their management bodies? If so, please give details. Where such payments are possible, are there any special tax regimes applicable?
10. To what extent is it possible for the decision of the highest governing body or any other organ of an NGO to be challenged in a court (and, where successful, annulled or suspended) by (a) a member of the NGO, (b) a public

comprehensive, there were replies in respect of 34 of the 48 countries concerned. In many instances there were two or more respondents in respect of each country¹⁰³. However, not all questions were answered by all respondents.

105. In the case of countries for which there were several respondents, the responses generally corroborated each other or provided complementary information. However, in a few instances the responses were contradictory and this is noted throughout the review, with the predominant response being accorded the lead position in it.

106. It does not seem as if all the responses are entirely accurate. Certainly more requirements concerning the contents of articles of association, constitution or statute of an NGO are likely to exist than were acknowledged by respondents and it is also questionable whether the general absence of concern about official interference in the internal governance of NGOs is as warranted as the responses suggest.

107. The review only provides an overview of the position in the countries in respect of which the questionnaire was answered and certainly does not provide a deep enough appreciation of how formal rules work in practice. It is organised into sub-sections that follow the individual questions asked of respondents and the text of each question is set out in a footnote at the beginning of the relevant sub-section.

108. Nevertheless, despite their limitations, a number of broad conclusions emerged from the responses received and these can be seen in the review of them set out in the following sub-sections. Some of these conclusions are echoed in the more in-depth analyses of the situation in certain countries that were subsequently undertaken.

*Requirements relating to the statute*¹⁰⁴

authority, or (c) a member of the public? If so, please give details as to who can challenge such a decision and the requirements for so doing.

11. Are there any circumstances in which public officials can insist on attending a meeting of (a) an NGO's highest governing body, or (b) any of its management bodies? If so, please specify the circumstances and the conditions applicable to such attendance, including whether it is only possible in the case of particular categories of NGOs.

12. Are there any circumstances in which a public authority can take over the management of an NGO? If so, please specify the circumstances and the conditions applicable to such a take-over, including whether it is only possible in the case of particular categories of NGOs.

13. Is an NGO, or particular categories of NGOs, required by law to have their accounts audited on a periodic basis? If so, please specify the period concerned and any requirements as to who may or must audit the accounts.

14. Are NGOs, or particular categories of NGO, required to report to any public authority on (a) the receipt of any donation/grant/sponsorship from a private or foreign entity, and/or (b) the expenditure of such a donation/grant/sponsorship? If so, please specify the nature of the reporting requirement.

15. Are NGOs, or particular categories of NGOs, required by law to produce a report on their activities on a periodic basis? If so, please specify what must be contained in such a report, the period applicable to it and the persons or bodies to whom it must be submitted. Is any such requirement conditional to the receipt of any public funding?

16. Are there any circumstances in which the law authorises or requires an external body to inspect the books, records and activities of an NGO, or particular categories of NGOs, and/or those of their management bodies and staff? If so, please specify the circumstances and the conditions applicable to such an inspection.

17. Are there any matters relating to the involvement of public authorities in the internal governance of an NGO, or particular categories of NGOs, which give rise to concern and which have not been addressed in the foregoing questions? If so, please specify them.

¹⁰³ The countries with the number of respondents in brackets were: Albania (1), Armenia (3), Austria (1), Azerbaijan (2), Belarus (2), Belgium (5), Bulgaria (1), Croatia (1), Cyprus (2), Czech Republic (2), Estonia (2), Finland (2), France (8), Germany (4), Greece (1), Hungary (2), Ireland (2), Italy (1), Luxembourg (3), Moldova (1), Netherlands (4), Norway (1), Poland (1), Portugal (1); Russia (1); Serbia (1), Slovakia (1), Spain (2), Sweden (1), Switzerland (7), "the former Yugoslav Republic of Macedonia" (1), Turkey (1), Ukraine (1) and United Kingdom (3).

¹⁰⁴ Q 1: What requirements relating to the internal governance of an NGO must be contained in its articles of association, constitution or statute, in order for it to be able to acquire legal personality or to be registered?

109. The requirements relating to the internal governance of an NGO which must be included in the articles of association, constitution or statute of an NGO were reported by respondents from most countries as comprising at least some of the following:

- Procedures for becoming and resigning as a member¹⁰⁵;
- Members' rights and obligations¹⁰⁶;
- Procedure and time-frame for convening the supreme body¹⁰⁷;
- Matters reserved for decision by the supreme body¹⁰⁸;
- Procedures for forming bodies elected by the supreme body, changing their composition, their terms of authority and decision-making procedures¹⁰⁹;
- The specification that the internal rules of the organisation shall be based on the principle of democratic representation and democratic expression of the will of its members¹¹⁰;
- The range of authority of officials entitled to represent the organisation without a power of attorney¹¹¹ and the procedure for choosing such persons¹¹²;
- The specification of bodies authorised to make decisions on acquiring, possessing, using, managing and sale of property¹¹³;
- The specification of the body authorised to define the level of membership fees and the procedure for their collection¹¹⁴;
- Procedures for setting up separate branches and institutions¹¹⁵;
- Procedures for supervising the organisation's activities¹¹⁶;
- Procedures for challenges by members to decisions of the organisation's bodies¹¹⁷;
- Procedures for making changes and amendments to the articles of association, charter or statute¹¹⁸;

¹⁰⁵ Armenia, Azerbaijan, Belarus, Cyprus (associations but not clubs), Italy, Luxembourg, Moldova and Ukraine.

¹⁰⁶ Armenia, Azerbaijan, Belarus, Belgium, Cyprus (associations and non-profit companies but not clubs), Estonia, Finland, Germany, Italy; Netherlands, Norway, Ukraine and United Kingdom.

¹⁰⁷ Armenia, Azerbaijan, Belgium, Cyprus (associations but not clubs), Estonia, Finland (only one respondent) France (only two respondents), Germany (only two respondents), Hungary, Luxembourg, Netherlands (only one respondent), Poland, Russia, Sweden, Switzerland (only two respondents), "the former Yugoslav Republic of Macedonia", Turkey and United Kingdom.

¹⁰⁸ Armenia and Belarus.

¹⁰⁹ Armenia (including individual positions in them. This is required only if it is intended to have such bodies), Azerbaijan, Belarus, Belgium (only two respondents), Cyprus (associations and clubs), France, Czech Republic (only one respondent), Germany, Hungary, Ireland, Italy, Luxembourg, Moldova, Netherlands (only one respondent), Norway, Poland, Portugal, Russia, Sweden, Switzerland, "the former Yugoslav Republic of Macedonia", Turkey, Ukraine and United Kingdom.

¹¹⁰ Croatia and Germany (only one respondent).

¹¹¹ Armenia (this is not required if such authority is not granted), Cyprus (associations and clubs) and Czech Republic (only one respondent).

¹¹² Armenia (this is not required if such authority is not granted), Croatia, Cyprus (associations and clubs), Czech Republic (only one respondent), Italy and Switzerland (only one respondent).

¹¹³ Armenia (this is not required if these functions are performed by the supreme body).

¹¹⁴ Armenia (this is not required if membership fees are not envisaged or if the sum and the procedure for collection is stipulated in the charter).

¹¹⁵ Armenia (this is required only if it is intended to have such bodies), Cyprus and Ukraine.

¹¹⁶ Armenia (this is not required if supervision is carried out by the supreme body) and Estonia (as regards trade unions only).

¹¹⁷ Armenia (this is not required if the creation of bodies other than the supreme body is not envisaged), Azerbaijan and Belarus.

¹¹⁸ Armenia, Azerbaijan, Belarus, Cyprus (associations but not clubs), Luxembourg (only one respondent) and Ukraine.

- Procedures for re-organisation and liquidation¹¹⁹;
- Distribution of assets on dissolution¹²⁰;
- Procedure for audit¹²¹;
- The number of auditors and their period of office¹²²;
- The financial year¹²³;

110. Apart from the inclusion of the required provisions the respondent for one country states that there is sometimes an express authorisation to include other provisions as well¹²⁴ and the respondent for another country reports that officials may add other requirements in the exercise of their discretion to grant registration¹²⁵.

111. In respect of one country there were said to be no requirements for any of the three forms of NGO that can be established but if no provisions are made in the case of one of them – non-profit companies – the relevant (but not specified) provisions of the Civil Code are to be followed and in a later answer it was suggested that the regulations concerning the internal structure and governance had to be in the statute and also that it has the capacity to open or close branches¹²⁶.

112. As regards another country the only requirement was reported as being to have a code of ethics defining the behaviour or attitude of employees¹²⁷.

113. In the case of a third country the respondent referred only to the legislation on associations without any elaboration as to what, if anything, this required¹²⁸.

114. No details were provided with respect to a fourth country as to the internal governance requirements for certain types of NGOs¹²⁹.

115. The question was misunderstood in the case of five other countries, with details being provided in the first as to the decisions and authorisations required in order to undertake certain types of activities¹³⁰ and in the second and third as to the process of registration and admissible objectives¹³¹, while for the fourth the respondent specified only “social aspects and no discrimination”¹³² and in respect of the fifth the respondent gave details only as to the forms of associations¹³³.

¹¹⁹ Armenia, Azerbaijan, Belarus, Cyprus (associations but not clubs), Ukraine and United Kingdom.

¹²⁰ Belgium (only one respondent), Cyprus, Estonia, Finland (only one respondent), Luxembourg and Netherlands (only one respondent).

¹²¹ Azerbaijan, Cyprus (associations but not clubs), Estonia (foundations only), Luxembourg, Portugal (assumed this is meant by “collective fiscalization organ”), Sweden (only foundations) and Switzerland (only one respondent and then only as regards foundations).

¹²² Finland (there has to be at least one auditor and a deputy; only one respondent).

¹²³ Finland (only one respondent).

¹²⁴ Armenia (so long as these do not contravene the requirements of other laws).

¹²⁵ Cyprus (associations but not clubs. This approach also seems to be adopted with respect to foundations but the actual legal requirements were not themselves specified)

¹²⁶ Greece.

¹²⁷ Albania.

¹²⁸ Austria.

¹²⁹ Cyprus (charities (although these are apparently defunct), foundations and voluntary organisations).

¹³⁰ Bulgaria (the activities concerned for profit ones, health and social services. Authorisation for social services was required from the Ministry of Labour and Social Policies and, in the case of those for children, the State agency for Child Protection. Also NGOs need to establish a separate entity for health oriented activities).

¹³¹ Czech Republic (although a later answer indicated that the decision-making process for a change in the statute needed to be specified in it) and Serbia.

¹³² Slovakia.

¹³³ Spain.

*Prohibitions on membership of governing or management bodies*¹³⁴

116. For thirteen countries there were respondents reporting that no categories of person were prohibited from serving on either the highest governing body of an NGO or on any of its management bodies¹³⁵.

117. A respondent for another country also reported that there were no restrictions relating to membership of the highest governing body of an NGO¹³⁶. However, the same respondent and also the respondent for another country stated that non-citizens who are not domiciled in it cannot be a member and thus on the supreme body of an organisation whose purpose is to influence (unspecified) state issues¹³⁷.

118. In respect of one country a respondent stated that there were no explicit prohibitions in respect of either of the bodies but that in practice non-citizens did seem to be prevented from acting as founders, directors and members of NGOs¹³⁸.

119. The only restrictions reported as existing in five countries – affecting both the highest governing body and management bodies – were age-related, i.e., excluding children who are variously defined as being under eighteen¹³⁹ or under sixteen¹⁴⁰ or under fourteen¹⁴¹. In another country there is an absolute prohibition on membership of these bodies by persons under fourteen but persons between fourteen and eighteen can become members of an NGO with the written consent of his or her legal representative¹⁴². Although this would enable them to become members of its supreme body there is also authorisation for the charter to include specific stipulations regarding the rights and obligations of “underage members”, which could presumably affect their ability to contribute to decision-making and become members of a management body.

120. Similarly it was reported in the case of one country that persons under eighteen can become members with the approval of their parents or legal representative but they cannot vote¹⁴³, while for another country it was stated that persons with no or limited capacity to act can become members of NGO on the basis of not having any decision-making power in its bodies¹⁴⁴.

¹³⁴ Q 2: Are any categories of persons prohibited by law from serving on (a) The highest governing body of an NGO, or (b) A management body of an NGO? If so, please specify the categories and the bodies concerned and whether such prohibition is applicable only to particular categories of NGOs. Is any category of person prohibited by law from being employed by an NGO? If so, please specify the categories, the capacities concerned and whether the prohibition is applicable only to particular categories of NGOs.

¹³⁵ Austria, Belgium (only two respondents, Czech Republic (but one respondent reported that criminal offenders and employees of potential beneficiaries could not serve on the governing body of a foundation), Moldova, Netherlands, Norway, Poland, Portugal, Slovakia, Spain, Sweden, Switzerland and “the former Yugoslav Republic of Macedonia”.

¹³⁶ Finland.

¹³⁷ Greece.

¹³⁸ Cyprus (essentially affecting non-Cypriot citizens not holding permanent residency in Cyprus).

¹³⁹ Azerbaijan (except for youth public association where the age restriction affects only those under sixteen) and Germany (two respondents but see n 163).

¹⁴⁰ Albania and Belarus (this has possibility of membership below that age if in statute and with written consent of legal representatives but a person must be 18 to be on management body).

¹⁴¹ Ukraine (persons between 6 and 18 can, however, be members of a children’s organisation and persons over 35 cannot be members of a youth organisation).

¹⁴² Armenia.

¹⁴³ Luxembourg (only one respondent; encouragement to take this into account in framing statutes regarding their role)

¹⁴⁴ Croatia.

121. In one country the response in respect of both matters was that the standard rules in the matter of civil rights applied¹⁴⁵, in respect of another it was reported that membership of these bodies was not open to those subject to incapacity¹⁴⁶ and in the case of a third legal capacity was a requirement¹⁴⁷. In all instances full details were not given but presumably the restrictions affect not only children but also those with limited mental capacity¹⁴⁸.

122. In one country participation in NGOs is not open to (a) foreign citizens and stateless persons ordered by a court to be removed, (b) persons on a list concerned with the prevention of money laundering and the financing of terrorism and (c) persons in relation to whom a court has determined that their activities include features of extremist activities¹⁴⁹.

123. In another country judges, members of the armed forces and the police and public prosecutors cannot serve on either the highest governing body or any management body of an NGO¹⁵⁰.

124. The respondent for one country stated that the age restriction on membership applied only to the management board¹⁵¹.

125. In one country the President and one Vice President of the management body have to be domiciled there¹⁵² and in another half the members of the management body must be resident in the country, another member state of the European Economic Area or Switzerland¹⁵³.

126. In another country there are no general restrictions regarding management bodies but specific laws have an impact on the ability of individuals to serve on them¹⁵⁴.

127. In a third country it was not possible for public servants, persons excluded from public affairs and those under a criminal verdict to serve on management bodies¹⁵⁵.

128. In the latter country and in a fourth one¹⁵⁶ there is also a bar on a member becoming a member of an NGO's supervising body if he or she is also involved in another of its bodies.

129. In respect of another country it was reported that the chairman of the executive committee must not be incompetent and none of the members can be bankrupt¹⁵⁷.

¹⁴⁵ Italy.

¹⁴⁶ France (only some respondents; other responses are reported below).

¹⁴⁷ Russia.

¹⁴⁸ One respondent for France cited both children and those under tutelage.

¹⁴⁹ Russia.

¹⁵⁰ Turkey.

¹⁵¹ Bulgaria (members must be over eighteen as the names must be registered in court and this requires maturity).

¹⁵² Finland (only one respondent)

¹⁵³ Estonia.

¹⁵⁴ Greece (the legal representative of an NGO wishing to receive a permit for the establishment and operation of a mental health structure cannot be a public health professional, the director of specially recognised charity associations cannot be non-citizens and cannot be previously convicted for felonies and misdemeanours in order to be funded by the state or to get a permit for the operation of structures offering public health or education services and certain professionals – such as civil servants, members of the armed forces and university professionals – require permission to take on this role).

¹⁵⁵ Hungary.

¹⁵⁶ Armenia.

¹⁵⁷ Finland (only one respondent).

130. The latter restriction was also applied in another country to NGOs generally¹⁵⁸ whereas in the case of a third country there was only a bar on trustees of a charity – but not members of management bodies of other NGOs – who have been adjudicated bankrupt, have made a composition with creditors, have been convicted of an indictable offence, have been subject to an order made under companies or pensions legislation or have been removed by court order from the position of charity trustee¹⁵⁹, while in two other countries the latter restrictions applied either to all the members of a management body¹⁶⁰ or to the directors of NGOs taking the form of a company¹⁶¹.

131. However, in the case of the last country a court may order persons convicted of any indictable offence or of any offence involving fraud or dishonesty to be barred from serving as a director of a company or taking part in the company's management¹⁶².

132. The possibility of a judicial bar on someone serving on a management body was also reported as existing in three other countries¹⁶³.

133. The respondents for three countries stated that persons with a criminal record cannot serve on the management board¹⁶⁴ and such a bar was also stated to be applicable by a respondent for one country to persons who have not paid their taxes¹⁶⁵.

*Prohibitions on employment*¹⁶⁶

134. The respondents for twenty-seven countries stated that no category of person was prohibited by law from being employed by an NGO¹⁶⁷.

135. Moreover the respondent for four other countries reported that the only restriction with regard to being employed by an NGO arises from a more general bar on certain persons undertaking any paid work on account of their particular status¹⁶⁸.

136. In respect of one country the respondent stated that an NGO's statute could impose restrictions on management board members being employees, which might have an indirect effect on the employment of some people¹⁶⁹.

¹⁵⁸ United Kingdom.

¹⁵⁹ Ireland.

¹⁶⁰ Estonia.

¹⁶¹ Germany (two respondents).

¹⁶² Ireland.

¹⁶³ France (only one respondent; for "wrongdoing"), Serbia (for an offence related to managing someone else's money) and United Kingdom (legislation referred to but details not given).

¹⁶⁴ Belarus, Bulgaria and France (only one respondent).

¹⁶⁵ France (only one respondent).

¹⁶⁶ Q 3: Is any category of person prohibited by law from being employed by an NGO? If so, please specify the categories, the capacities concerned and whether the prohibition is applicable only to particular categories of NGOs.

¹⁶⁷ Albania, Austria, Azerbaijan (one respondent but the other stated the military and servants could not be employees), Belgium, Croatia, Cyprus, Czech Republic, Estonia, Finland, France (three respondents but two others listed restrictions noted below and several did not know), Germany, Hungary, Ireland, Italy, Luxembourg, Netherlands, Norway, Poland, Portugal, Russia, Serbia, Slovakia, Spain, Sweden, Switzerland, and "the former Yugoslav Republic of Macedonia";

¹⁶⁸ Armenia (such as members of the government, representatives in the National Assembly, public servants, judges and members of the Constitutional Court; this was referred to by only one respondent); Bulgaria (state officers); Greece (civil servants, members of the armed forces and university professors cannot do so without a special permit); and Turkey (civil servants).

¹⁶⁹ Bulgaria

137. The accuracy of the foregoing position might be doubted given that one of the respondents for a country in respect of whom the majority of respondents said there were no restrictions on employment pointed to the bar on employing illegal immigrants¹⁷⁰ and a similar bar was reported by the respondent for another country as its sole restriction¹⁷¹. This bar is of general application and not directed at NGOs in particular, even if some NGOs dealing with immigration issues might find it a handicap in their work.

138. Another restriction of general application noted by a respondent taking the minority view in respect of its country was the prohibition on employing children under 16 years of age¹⁷².

139. A more targeted restriction reported by another respondent from the same country which also took the minority viewpoint was the bar on persons convicted of certain unspecified offences from directing public health bodies¹⁷³, which would include ones run by NGOs.

140. The question was not answered by the respondents for three countries¹⁷⁴.

*Frequency of meetings*¹⁷⁵

141. The respondents for eight countries stated there was no legal requirement as to the frequency of meetings of an NGO's highest governing body¹⁷⁶ and for six others it was stated that this was a matter to be determined only by the rules of the NGO concerned¹⁷⁷,

142. However, in eighteen countries there was a minimum legal requirement as to when the meetings of an NGO's highest governing body should be held. In fifteen of them such a meeting must be convened at least once every year¹⁷⁸, in two others it must be convened once every two years¹⁷⁹ and in another country there is a requirement for this body to meet twice a year¹⁸⁰, while in yet another there was an annual requirement for foundations but only a five-yearly one for associations¹⁸¹.

¹⁷⁰ France (one respondent).

¹⁷¹ United Kingdom (one respondent)

¹⁷² France (one respondent).

¹⁷³ France (another respondent).

¹⁷⁴ Belarus, Moldova and Ukraine.

¹⁷⁵ Q 4: Is any frequency required by law or practice as to the holding of meetings of the highest governing body of an NGO, or particular categories of them? If so, please give details. Are there such requirements for other governing bodies of an NGO?

¹⁷⁶ Croatia, Cyprus, Czech Republic, Greece (but yearly meetings for the General Assembly seems to be the practice with Boards of Directors meeting every month), Netherlands (one respondent said there was an annual General Assembly but it was not clear whether this was a legal requirement, a provision in the statute or practice), Norway, Russia (but they are held annually in practice) and Sweden.

¹⁷⁷ Albania, Austria, Belarus (there must be provision for this), Serbia (but financial reporting requirements can affect the matter), "the former Yugoslav Republic of Macedonia", Turkey and Ukraine.

¹⁷⁸ Azerbaijan, Belgium (only two respondents; another respondent said it was for the administrative council to fix and a fourth said that there was no legal requirement), Bulgaria; Estonia (only foundations but this was also the practice for associations), Finland (only one respondent, relying on the length of the financial year being 12 months; the other respondent stated there was no such requirement), France (however, one respondent stated that it was a matter for the statute and another stated that there was no requirement), Germany (two respondents said there was no legal requirement but that it was the practice because of the need to produce annual reports), Ireland (for companies but not for unincorporated associations), Italy, Luxembourg, Poland, Slovakia, Spain, Switzerland (one respondent said this was only for foundations and a matter of practice for associations, while another said a meeting was needed every two years and three others said there was no requirement) and United Kingdom.

¹⁷⁹ Armenia (the rules for other bodies must, however, be specified in the charter).

¹⁸⁰ Portugal.

¹⁸¹ Hungary.

143. The respondent for one country stated that there was also provision for one third of the members to convene an extraordinary general meeting of the supreme body and also stated that the notice required for convening a meeting of the highest governing body was specified by law as being 14 days¹⁸².

144. In eight countries requirements regarding the frequency of meetings of other bodies were said not to exist¹⁸³ and they were not specified by the respondents for three other countries¹⁸⁴. In the case of one country the holding of the meetings of such bodies was said to be optional¹⁸⁵.

145. In one country there was a minimum legal requirement as regards the holding of meetings for the board if nothing concerning this was specified in the statute of the NGO concerned¹⁸⁶.

146. In the case of one country the respondent reported that charities were recommended by the regulatory body concerned with them to have a certain frequency for meetings of their boards¹⁸⁷.

147. The question appeared to have been misunderstood in the response for one country regarding the frequency of meetings for bodies other than the highest governing body¹⁸⁸.

*Special majorities*¹⁸⁹

148. In respect of fifteen countries respondents reported that either the law required only a majority of votes of the members participating in the meeting of an NGO's highest governing body¹⁹⁰ or the question of whether a special majority would be required for votes at that meeting on certain issues was a matter left to be determined by the rules of the NGO concerned¹⁹¹.

149. In one country a special majority is required if no rules are prescribed in the statute of the NGO for amending its statute or dissolving the organisation¹⁹².

150. In sixteen countries there was generally no requirement for a special majority except as regards the adoption of proposals to amend an NGO's statute¹⁹³. For six of those countries

¹⁸² Armenia. Information on these matters was not requested.

¹⁸³ Belgium, Bulgaria, Croatia, Cyprus, Czech Republic (but one respondent reported that a yearly meeting was required for foundations, funds and PBOs), Finland, Italy and Poland.

¹⁸⁴ Albania, Armenia and Austria.

¹⁸⁵ Azerbaijan.

¹⁸⁶ Norway (4 times per year; the rules applicable to companies are applied where no other provision is made).

¹⁸⁷ United Kingdom (only one respondent; at least two per year).

¹⁸⁸ Slovakia ("all NGO").

¹⁸⁹ Q 5: Does the law prescribe any special majority to be achieved in order for the highest governing body of an NGO, or particular categories of them, to (a) amend their articles of association, constitution or statutes or (b) take any other types of decision? If so, please specify the majority required for either, or both, of these purposes. Are there such requirements for other governing bodies of an NGO?

¹⁹⁰ Azerbaijan (but one respondent stated that over half the members must be present), Ireland (only one respondent; the other suggested that a percentage approval ranging from 20-60% could be required but this is probably a reflection of different provisions in articles of association) and Moldova.

¹⁹¹ Albania, Armenia, Austria, Belarus, Bulgaria, Croatia, Czech Republic, Hungary (but court practice seems to require a qualified majority for amendment to statutes and mergers), Serbia, Slovakia, Sweden and Ukraine.

¹⁹² Norway (two-thirds of those present)

¹⁹³ Belgium (the majority of two-thirds of the members present or represented, although one respondent said that only a simple majority was required), Cyprus (three-quarters of the members must vote in favour of the change. It is also possible to include a special majority requirement in the statute of a foundation;), Estonia, (two-thirds of the members present), Finland (one respondent said three-quarters of the given votes was needed whereas the other stated that no special requirement existed), France (a two-thirds majority but two respondents stated that it was a

such a requirement also existed for the adoption of proposals to amend the objectives¹⁹⁴, in one of them for setting up executive bodies and terminating their powers prematurely¹⁹⁵ and it also existed for five of them as regards decisions to dissolve the NGO¹⁹⁶. The last matter was also the only instance of a special majority being needed for decisions of the highest governing body of an NGO in one country¹⁹⁷.

151. In addition in one of the countries supposedly not generally requiring a special majority for decisions, one was needed for convening an extraordinary assembly of members¹⁹⁸ and in another there was a requirement for decisions not involving an amendment to the statutes¹⁹⁹.

152. In the case of one country there was said to be a need for unspecified special majorities in the case of governing bodies other than the highest governing body²⁰⁰.

*Limits on power of delegation*²⁰¹

153. The respondents for twenty-six countries reported that there was no limit on the power of delegation of decision-making by an NGO's highest governing body²⁰² or that this was a matter left to be determined by the rules of the NGO concerned²⁰³.

154. However, in one country there could be no delegation on matters within the (unspecified) exclusive competence of the highest governing body²⁰⁴ and in five countries there were reported to be restrictions on delegation by the highest governing body with respect to decision-making that concerned at least some of the following matters:

matter left to statute and another said that only a simple majority was needed), Germany (one respondent stated that it was a matter for the statute), Greece (only for societies: the presence of half the members and a three-quarters of those present), Italy (the attendance of at least three-quarters of the members and the majority of the votes in favour is required), Luxembourg (two-thirds of the members), Netherlands (only one respondent; a two-thirds majority), Poland (50% plus one of the members), Portugal (a two-thirds majority); Russia (a two-thirds majority); Spain (a two-thirds majority); Switzerland (a two-thirds majority but two respondents stated that this only applied to associations and four others said no special majority was needed. In addition one respondent said the founder alone could change the objective of a foundation and then only after 10 years), Turkey (a two-thirds majority) and United Kingdom (75% majority).

¹⁹⁴ Belgium (the majority of four-fifths of the members present or represented; only two of the respondents), Estonia (the support of nine-tenths of the members is needed), Germany (one respondent said the approval of all members was required but another said a three-quarters' majority was needed to change the statute generally), Greece (only for societies: the agreement of all members, to be given in writing where a member is not present), Luxembourg (a three-quarters majority) and Russia (a two-thirds majority).

¹⁹⁵ Russia (a two-thirds majority).

¹⁹⁶ France (only one respondent – two-thirds), Greece (only for societies: the presence of half the members and a three-quarters of those present), Luxembourg (two-thirds of the members), Portugal (two-thirds of the members) and Russia (a two-thirds majority).

¹⁹⁷ “the former Yugoslav Republic of Macedonia” (a two-thirds' majority).

¹⁹⁸ Germany (only one respondent mentioned this; two-thirds majority of members).

¹⁹⁹ Poland (25% of the members + 1; this applied to other bodies as well).

²⁰⁰ Germany (only one respondent and another said there were no such requirements)

²⁰¹ Q 6: Does the law impose any limits on the power of delegation of decision-making by highest governing body of an NGO, or particular categories of them? If so, please give details?

²⁰² Belgium (only two respondents), Croatia, Cyprus, Czech Republic, Estonia, Finland (only one respondent; the question was not answered by the other), France, Germany (only two respondents; another respondent reported that NGOs were required to specify which officers had been authorised with the power of legal representation and could act on behalf of the governing body), Greece, Ireland (although the governing body remained responsible), Italy, Luxembourg, Moldova, Netherlands, Norway, Poland, Serbia, Slovakia, Spain, Sweden, Switzerland (but see the responses by one respondent below), Turkey and “the former Yugoslav Republic of Macedonia”.

²⁰³ Albania, Austria and United Kingdom.

²⁰⁴ Russia.

- Approval of the charter²⁰⁵;
- Amendments to the charter or the adoption of a new one²⁰⁶;
- Admission and expulsion of members²⁰⁷;
- Election of board members²⁰⁸;
- Election of subordinate bodies²⁰⁹;
- Decisions to terminate the authority of subordinate bodies²¹⁰;
- Decisions on restructuring the organisation²¹¹;
- Decisions to participate in other organisations²¹²;
- All main issues of association's activity²¹³;
- Decisions on acquisition and use of property²¹⁴;
- Internal control of compliance of activity with statute²¹⁵;
- Election of audit body and internal inspection of financial and economic activity²¹⁶;
- Approval of financial statement²¹⁷;
- Approval of annual report²¹⁸;
- Decisions on dissolution²¹⁹; and
- Matters otherwise so specified in the charter²²⁰.

155. The respondent for one country indicated that official authorisation was needed for certain decisions by a particular form of NGO regardless of the body taking them²²¹.

156. It appears that the question was misunderstood by the respondents in respect of two countries²²².

*Authorisation for changes to internal structure and rules*²²³

157. In twenty-three countries prior authorisation from a public authority was not required before a change in an NGO's internal structures or rules could be implemented²²⁴ but in two of them such changes only had to be notified to the registration body²²⁵

²⁰⁵ Armenia (if not approved at the founders' assembly) and Azerbaijan.

²⁰⁶ Armenia, Azerbaijan, Belarus and Hungary.

²⁰⁷ Switzerland (only one respondent and then just in respect of associations).

²⁰⁸ Switzerland (only one respondent and then just in respect of foundations).

²⁰⁹ Armenia (if there is provision for them), Azerbaijan, Belarus and Switzerland (only one respondent and then just in respect of associations).

²¹⁰ Armenia (if there is provision for them) and Switzerland (only one respondent and then just in respect of associations).

²¹¹ Armenia (unless ordered by a court) and Belarus.

²¹² Azerbaijan and Belarus.

²¹³ Ukraine (no definition exists and it is determined on a case by case basis referring to the statutes).

²¹⁴ Azerbaijan.

²¹⁵ Belarus.

²¹⁶ Belarus and Switzerland (only one respondent and just in respect of foundations).

²¹⁷ Switzerland (only one respondent and then just in respect of foundations).

²¹⁸ Azerbaijan.

²¹⁹ Armenia (unless ordered by a court), Azerbaijan, Belarus and Hungary.

²²⁰ Armenia.

²²¹ Greece (charities must get approval from the Ministry of Economy to pay debts, sell or rent property, stop or start an activity and invest an inheritance)

²²² Bulgaria (it was stated that for profit activities should be in the same sphere as the NGO's other work) and Portugal (the response dealt with use of proxies in members' meetings).

²²³ Q 7: Is there any requirement for an NGO, or particular categories of NGOs, to obtain authorisation from a public authority before any change to its internal structure or rules can be implemented? If so, please give details?

²²⁴ Albania, Austria, Azerbaijan, Belgium (only two respondents; a third said it must be in accordance with Belgian law and a fourth said publication in *Moniteur Belge* was required), Croatia, Czech Republic (but one respondent

158. In one country a requirement of prior authorisation existed only in respect of one type of NGO²²⁶ and in the case of another it was suggested that prior authorisation could be required for a change that related to certain unspecified public law and tax exemption issues²²⁷.

159. However, in seven countries the internal structure and rules were matters that had to be specified in an NGO's charter and, as with any amendment to the latter, changes to them were thus something that had first to be approved by the registration authority²²⁸.

160. In another country all such changes had to be registered with the Ministry of Justice before taking effect²²⁹.

161. In the case of one country the question appeared to have been misunderstood²³⁰.

*Authorisation to establish or close branches*²³¹

162. In twenty-eight countries it was possible for an NGO to establish and/or close branches without the prior authorisation of a public authority where these branches do not have a distinct legal personality from that of the NGO concerned²³² but in five of them there is a requirement to notify the registration authority of the change²³³.

163. In one other country the need for authorisation will only arise if, in the particular circumstances of the NGO concerned, an amendment to the statute is needed to establish or close a branch²³⁴.

reported a 15-day notification requirement following adoption), Estonia, (but the register of NGOs should be notified of changes in the composition of the management board), Finland (only the one respondent; the other stated that all changes to the statutes had to be approved by the lawyers of the National Board of Patents and Registration of Finland but had not specified this to be a matter to be included in the statutes), France, Hungary (unless it changed the basic data of the NGO), Ireland (insofar as the provisions are not in the articles of association), Netherlands (one respondent said it was required if it involved a change of the statutes which might lead it to acquire different corporate rights), Luxembourg, Norway, Poland, Portugal, Slovakia, Spain, Sweden, Switzerland (so long as no change in statutes was involved according to one respondent), Turkey, Ukraine and United Kingdom.

²²⁵ Austria and Ukraine.

²²⁶ Cyprus (foundations; amendments must be approved by a court).

²²⁷ Germany (two respondents; a third reported no restrictions and the question was not answered by a fourth).

²²⁸ Armenia (although internal rules of the organisation do not require such a change or approval), Azerbaijan, Belarus (only one respondent), Greece, Italy, Russia, Serbia (but not mentioned in answer on statute) and "the former Yugoslav Republic of Macedonia" (but not stipulated in answer on statute).

²²⁹ Moldova.

²³⁰ Bulgaria (it was stated that authorisation was needed in order to provide social services).

²³¹ Q 8: Is it possible for an NGO to establish and/or close branches without the prior authorisation of a public authority where these branches do not have a distinct legal personality from that of the NGO concerned? If so, please give details.

²³² Albania, Armenia, Austria, Belgium (only two respondents; a third answered "No" but given the structure of the question and the absence of elaboration it could have meant that there was no requirement and a fourth did not answer the question), Croatia (the answer was "No" but from the context it seems as if "Yes" was intended), Cyprus, Czech Republic, Estonia (only one respondent; the other stated that a formal branch could not be established except as an independent legal person), Finland, France, Germany, Hungary, Ireland, Luxembourg, Moldova (there must be provisions for this in the Statute), Netherlands (one respondent said prior authorisation was needed from the Minister of Justice if it involved the lay-off of personnel), Norway, Poland (but it was also stated that this requires a 50% + 1 majority which could mean that it is a matter requiring an amendment to the statute), Portugal, Russia, Serbia, Spain, Sweden, Switzerland, "the former Yugoslav Republic of Macedonia" (the matter is not dealt with in the NGO law), Turkey, Ukraine and United Kingdom.

²³³ Armenia and Czech Republic (only as regards changes of seat), Russia, Serbia and Turkey.

²³⁴ Azerbaijan.

164. The respondent for one country stated that the national tax authority must first be notified so that it can perform a tax control that will subsequently permit or prohibit the opening or closing of a branch²³⁵.

165. In the case of one country the establishment of a branch is subject to a registration process entailing prior authorisation but, although notification must be given, permission is not needed to close a branch²³⁶.

166. In one country the establishment of a branch must first be registered with the relevant local court²³⁷.

167. The respondent for one country stated that prior approval was required to establish or close a branch but it was not made clear whether this was because it involved a change to the statutes or for some other reason²³⁸.

168. In the case of one country the question was clearly misunderstood²³⁹.

*Restrictions on payments to employees and management board members*²⁴⁰

169. In twenty-three countries there were reported to be no restrictions as regards paying either an NGO's employees or the members of any of its management bodies²⁴¹, although in four of them there was said to be a minimum wage requirement that had to be observed²⁴² and in respect of another one of them the respondent stated that there were restrictions affecting only one form of NGO and then only as regards fees²⁴³.

170. The respondents for six countries reported that there was no limit as regards employees but that the directors of charities or non-commercial organisations could only be reimbursed for expenditure incurred on their behalf²⁴⁴ or for their expenses²⁴⁵. There are unspecified restrictions in a seventh country on the payments that can be made to the chair and governing body members of public benefit organisations²⁴⁶.

²³⁵ Greece.

²³⁶ Belarus (but an NGO cannot have less branches than is provided for in its statute).

²³⁷ Bulgaria (the branch also needs a separate bank account and legal representative).

²³⁸ Italy.

²³⁹ Slovakia (the response to the question was: "Honorary Member of ADPS only with a consultative voice")

²⁴⁰ Q 9: Does the law impose any limits on the payment by NGOs or particular categories of them, of fees or expenses to (a) Employees, or (b) Members of any of their management bodies? If so, please give details. Where such payments are possible, are there any special tax regimes applicable?

²⁴¹ Albania, Armenia, Austria, Azerbaijan, Belarus, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, Italy, Luxembourg, Moldova, Netherlands (one respondent said there were limits on the payments that can be made to directors where funding came from the government), Norway, Serbia, Slovakia, Sweden, Switzerland (one respondent indicated that directors of charities were expected to work on an honorary basis), "the former Yugoslav Republic of Macedonia", Turkey and Ukraine.

²⁴² Albania, Belarus, Italy and Serbia.

²⁴³ Cyprus (as regards charities) but there is also a restriction on self-dealing in the case of foundations which could possibly affect some payments.

²⁴⁴ Germany (only one respondent; three others said the salaries of persons employed by charities must be reasonable), and Spain (there is also a minimum wage for employees).

²⁴⁵ France (one respondent as regards associations generally but four others stated that there were no restrictions, while two others dealt only with payment against invoices), Ireland (this also applies to other NGOs but the directors can be paid for work unrelated to their role as members of the governing body), Portugal (directors can be paid if the volume or complexity of the work requires the person's prolonged presence; applies to associations generally), Russia and United Kingdom.

²⁴⁶ Hungary.

171. In respect of one country it was reported that there were no restrictions regarding employees except those that might be imposed under a funding arrangement but that not only could the directors of charities not be paid but that the statutes of other NGOs might also have such a restriction on paying them²⁴⁷.

172. The only restriction noted by the respondent for one country concerned the level of the payments that could be made²⁴⁸.

173. In respect of one country there was said to be a limit on the overall level of administrative expenses that could be incurred if the NGO had tax-exempt status and it was reported that payments to members of a non-profit organisation could, if disproportionate, lead to the organisation concerned being re-classified as a commercial body²⁴⁹. In respect of another country the expenditure on administrative and managerial staff of a charitable organisation - as opposed to the staff implementing its programme - must not exceed 20% of the financial funds used by it during any fiscal year²⁵⁰.

174. The respondents for twenty-one countries²⁵¹ stated that no special tax regime was applicable to payments made to employees and members of management bodies but the respondent for another country stated that it had some special (favourable) arrangements regarding such payments.²⁵² This issue was not addressed by the respondents for six countries²⁵³.

*Challenging decisions of governing bodies*²⁵⁴

175. In one country the decision of the NGO's highest governing body or of any other organ could be challenged by anyone on the basis that the decision concerned was in conflict with the law and had been denounced to the police²⁵⁵.

176. In the case of twenty-six countries the respondents reported that members of NGOs can bring a challenge in court to a decision of the NGO's highest governing body or of any other organ²⁵⁶. In respect of one of them it was stated that the effect of this challenge is to suspend

²⁴⁷ Greece

²⁴⁸ Poland (2 mean salaries for employees and 3 mean salaries for management board members)

²⁴⁹ Belgium (only one respondent; two others said that there were no limits and the question was not answered by a fourth).

²⁵⁰ Russia.

²⁵¹ Albania, Armenia, Azerbaijan, Belarus, Bulgaria, Finland (only Umbrella of Women's Organisations), Germany, Ireland, Luxembourg, Moldova, Netherlands, Portugal, Russia, Serbia, Slovakia, Spain, Sweden, Switzerland, Turkey, Ukraine and United Kingdom.

²⁵² Norway (payments of less than 500 euros to a single employee need not be reported to the tax authorities and there is an exemption from the employer's fee (14.1% of the total salaries paid) where no employee receives more than 5625euros and total salary bill is no more than 56250 euros.

²⁵³ Austria; Croatia; Cyprus; Czech Republic; France (three respondents, one did not know, another referred to social security benefits and need for proof and two others stated that there was no special regime) and "the former Yugoslav Republic of Macedonia".

²⁵⁴ Q 10: To what extent is it possible for the decision of the highest governing body or any other organ of an NGO to be challenged in a court (and, where successful, annulled or suspended) by (a) a member of the NGO, (b) a public authority, or (c) a member of the public? If so, please give details as to who can challenge such a decision and the requirements for so doing.

²⁵⁵ Czech Republic (one respondent stated that a legal interest had to be demonstrated).

²⁵⁶ Armenia, Austria, Azerbaijan, Belarus, Belgium, Bulgaria, Croatia (for non-compliance with the statute and after no action being taken by either the authorised body or the NGO's assembly 30 days after it was raised with it), Estonia, Finland, France, Germany, Greece (where the decision is against the law or the provisions in the statutes), Hungary, Ireland, Italy, Luxembourg, Moldova, Norway (for breach of statute or laws), Poland, Russia (but the person's rights and legitimate interests must be infringed upon), Serbia (for non-compliance with the statute), Slovakia, Switzerland, Turkey, Ukraine and United Kingdom.

the implementation of the disputed decision and that it is only members who can challenge such decisions²⁵⁷. For three countries a deadline for bringing a challenge was specified²⁵⁸.

177. In the case of another country it was stated that a challenge by a member could only be brought if he or she had been mandated to do so by the highest governing body or by a higher body than the one taking the decision impugned²⁵⁹.

178. In one country the only power that a public authority had with respect to challenging decisions by NGOs was through the initiation of dissolution proceedings²⁶⁰. However, in twelve countries the respondents stated that such a challenge can be mounted in the case of an alleged non-compliance with the law²⁶¹, in two others it was reported to be possible in principle without further details being given²⁶² and in six countries it seems to be generally possible²⁶³. In the case of two other countries a public authority was said to be able to challenge NGO decisions without elaborating on the grounds for this being possible²⁶⁴.

179. In one country it was not specifically indicated whether a public authority could bring a challenge as it was only specified that the body must have a specific legal interest which suggests otherwise²⁶⁵.

180. In fifteen countries a legal challenge by a member of the public to decisions by NGO bodies could be made²⁶⁶ while with respect to four countries it was reported that such challenges were not possible²⁶⁷.

181. In respect of one country it was stated that a challenge can be brought to the continued use by an NGO in its name of the name of a prominent member of the public by him or her or by his or her heirs if this use is without his or her consent or by the heirs only if the organisation's activities cast a shadow on the prestige of the person concerned²⁶⁸.

182. One respondent did not know whether challenges to NGO decisions were possible²⁶⁹, another reported simply that the matter was not dealt with in the NGO law²⁷⁰ and two others dealt with issue of civil liability of board for causing damage²⁷¹.

²⁵⁷ Austria.

²⁵⁸ Armenia (within 10 days of the decision being taken according to one respondent but 60 days according to a second and not mentioned by a third), Greece (within six months) and Switzerland (within one month; only one respondent mentioned this).

²⁵⁹ Portugal.

²⁶⁰ Armenia (this is possible in respect of activities aimed at forced overthrow of the constitutional order, inciting ethnic, racial and religious hatred and making propaganda of violence or war, the commission of numerous or gross violations of the law, the carrying out of activities contrary to the statutory purposes and the commission of gross violations and breaches of law by the founders or other authorised persons while founding it).

²⁶¹ Belarus, Croatia (following inspection), Hungary, Ireland, Luxembourg, Norway, Portugal, Russia, Serbia, Switzerland, Ukraine and United Kingdom.

²⁶² Finland and Turkey.

²⁶³ Azerbaijan, Belgium, Bulgaria, Germany (only one respondent), Italy and Poland.

²⁶⁴ France and Moldova.

²⁶⁵ Greece

²⁶⁶ Azerbaijan, Belarus (decisions affecting private law rights), Belgium (if his or her rights are affected), Bulgaria, Finland (if his or her rights are affected); France (if interests affected), Ireland, Germany (only two respondents and one said that this was subject to demonstrating an interest), Italy, Luxembourg (decisions affecting private law rights), Norway (decisions affecting private law rights), Serbia (decisions affecting private law rights), Switzerland (decisions affecting private law rights according to two respondents, a third stated that it was possible but the basis was not made clear and the question was not answered by four others), Turkey, Ukraine; (decisions affecting private law rights) and United Kingdom (decisions affecting private law rights).

²⁶⁷ Croatia, Moldova, Poland and Portugal.

²⁶⁸ Armenia.

²⁶⁹ Spain.

183. In three countries the question did not seem to have been understood²⁷².

*Attendance at meetings by public officials*²⁷³

184. In twenty-four countries there is no possibility of public officials being able to insist on attending a meeting of either an NGO's highest governing body or of any of its management bodies²⁷⁴.

185. In three other countries insistence on attending such meetings was not generally possible but it was exceptionally in two of them where the NGOs were charities²⁷⁵ and in a third where a court order for surveillance had been obtained by virtue of evidence that the activities of the NGO concerned were harmful to the public²⁷⁶.

186. In respect of one country it was stated that enforced attendance was possible in the case of certain (unspecified) legal regimes²⁷⁷.

187. In respect of three other countries such attendance was said to be possible²⁷⁸ but that in the case of one of them it did not usually happen²⁷⁹. As regards a fourth country it was said that it was possible as officials were authorised to take part in events conducted by associations but the meaning of 'events' was not really clarified²⁸⁰.

188. The question did not appear to have been understood in respect of two countries²⁸¹.

*Taking over management by public authorities*²⁸²

²⁷⁰ "the former Yugoslav Republic of Macedonia".

²⁷¹ Netherlands (only one respondent) and Sweden.

²⁷² Albania ("Only the judicial person representing the NGO can be challenged in the court"), Cyprus (the response dealt with the issue of personal liability of members or directors) and Slovakia ("only full members of the ADPS and after it representatives – presidents of basic organisations of ADPS").

²⁷³ Q 11: Are there any circumstances in which public officials can insist on attending a meeting of (a) an NGO's highest governing body, or (b) any of its management bodies? If so, please specify the circumstances and the conditions applicable to such attendance, including whether it is only possible in the case of particular categories of NGOs.

²⁷⁴ Albania, Austria, Azerbaijan (but attendance at open meetings was possible), Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France (one respondent suggested that it was possible in the case of NGOs that were manifestations of public entities), Germany, Hungary (but the meetings of public benefit organisations should be open to everyone), Italy, Luxembourg, Moldova, Netherlands, Norway, Russia, (but public events can be attended), Slovakia, Spain, Sweden, Switzerland, "the former Yugoslav Republic of Macedonia" and Turkey (but it was reported that nonetheless this often occurred).

²⁷⁵ Greece (the Minister can appoint a public commissioner to attend board meetings and oversee the legality of decisions taken. In the event of disagreement the matter is determined by the relevant overseeing body. This power is used in practice only for specially recognised charities) and the United Kingdom (only one respondent and only in respect of a charity under investigation).

²⁷⁶ Serbia.

²⁷⁷ Belgium (only one respondent; two others said it was not possible and the question was not answered by a fourth).

²⁷⁸ Armenia (upon a well-grounded demand of the state authorised body in the field of justice), Belarus (there is a duty to give notice to the relevant authorities of the holding of meetings of the highest governing body) and Poland.

²⁷⁹ Poland.

²⁸⁰ Ukraine (it was said that events included the meetings covered by the question but this is not evident from the wording of the provision cited).

²⁸¹ Ireland (one respondent referred to power to nominate officials as members of the boards of NGOs pursuant to provisions in the articles of association and another referred to the investigative powers of a new Charities Regulator) and Portugal (referred to powers to require holding of a meeting).

189. The respondents for twenty-two countries entirely ruled out the possibility of the management of an NGO being taken over by a public authority²⁸³.

190. In the case of four countries this was also said to be generally the case but in one of them there was an exception enabling a court, at the request of a member, to appoint a board of directors with specific tasks when all or most of its members have quit²⁸⁴ and in the case of three others it was possible in the case of wrongdoing to apply to a court for the appointment of a judicial administrator²⁸⁵. In the case of yet two others it was possible for the prosecutor to intervene if the legitimate operation of the NGO cannot be secured in any other way²⁸⁶ and in respect of one of them a court can appoint a supervisor to secure the NGO's functioning and, for a foundation, take over the management where the founder is incapacitated and there is no provision for succession.

191. Furthermore the respondents for two countries stated that it was possible but only in respect of a specified kind of NGO²⁸⁷ and in the case of another country it was said to be possible in the case of fraud²⁸⁸.

192. Contradictory responses were given by the two respondents for one country²⁸⁹

193. In the case of one country the question was not answered²⁹⁰ and in the case of another it was simply stated that the matter was not dealt with in NGO law²⁹¹.

*Auditing of accounts*²⁹²

194. There was no requirement in five countries that the accounts of NGOs be audited²⁹³ but in one of them an annual balance sheet had to be produced²⁹⁴.

²⁸² Q 12: Are there any circumstances in which a public authority can take over the management of an NGO? If so, please specify the circumstances and the conditions applicable to such a take-over, including whether it is only possible in the case of particular categories of NGOs.

²⁸³ Albania, Armenia (only one respondent but another said that it was possible in the case of bankruptcy), Austria, Azerbaijan (only one respondent but another said that it was possible in the case of bankruptcy), Belarus, Bulgaria (except in the case of its dissolution); Croatia, Cyprus, Czech Republic (but one respondent said that a takeover was possible for a foundation that could not complete its highest decision body), Estonia, France (one respondent said it was possible for entities financed by public funds), Germany (only two respondents and in the case of one of them just foundations), Ireland (but the Charities Regulator can seize a charity's assets and dissolve it), Luxembourg, Moldova, Netherlands, Poland, Russia, Serbia, Slovakia, Sweden (but public authorities can be involved in appointing board members to certain (unspecified) forms of public association) and Ukraine.

²⁸⁴ Greece (the task could be to call elections for a new board).

²⁸⁵ Belgium (only one respondent; two others said it was not possible and the question was not answered by a fourth), Portugal (where needed to protect interests of organisation) and Switzerland (UECC and UWE said it was not possible).

²⁸⁶ Hungary and Turkey (a court can then call a general assembly to create a new governing body).

²⁸⁷ Italy (with respect to associations recognised as NGOs by the public authority through a decree of the President of the Republic. The public authority can intervene and take over the management by appointing an external commissioner if the governing body is not acting in conformity with the NGO's statutes. The commissioner can also invalidate decisions already taken that were contrary to the statute and to the civil code) and United Kingdom (only one respondent; in respect of charities).

²⁸⁸ Spain.

²⁸⁹ Finland (one respondent said it was possible according to the normal causes of action but the other said it was not possible).

²⁹⁰ Norway.

²⁹¹ "the former Yugoslav Republic of Macedonia".

²⁹² Q 13: Is an NGO, or particular categories of NGOs, required by law to have their accounts audited on a periodic basis? If so, please specify the period concerned and any requirements as to who may or must audit the accounts.

195. However, in twenty other countries there was a requirement that an NGO's accounts be audited on a periodic basis²⁹⁵. Nevertheless this obligation only arises in some of them if a certain level of income or economic activity was involved²⁹⁶, if one of three conditions was fulfilled²⁹⁷, if at least two conditions were fulfilled²⁹⁸, if the organisation concerned had a particular legal form²⁹⁹ or if it received public funding and was a certain type of NGO³⁰⁰. Moreover in one of them it could be carried out on a simplified basis where certain criteria were satisfied³⁰¹. However, in another one of them the audit is reported to be carried out by the government³⁰².

196. With respect to twelve of them it was specified that such an audit had to be on a yearly basis³⁰³.

197. In one other country³⁰⁴ there was an express requirement for an audit for two kinds of NGO³⁰⁵, it was an implicit requirement for a third³⁰⁶ and it could be required for a fourth which in any event must furnish annual accounts³⁰⁷. There is no requirement for the fifth form³⁰⁸. The auditor for two of them must be a professional one³⁰⁹.

198. Furthermore in the case of four countries where auditing was required it was reported that the audit had to be carried out by an authorised service provider³¹⁰. However, this is only optional in one other country³¹¹ and in another three countries this was required just for

²⁹³ Armenia (but it can be done on a voluntary basis), Croatia, Czech Republic (although this response seems inconsistent with the response to inspection which refers to a declaration of accounts; one respondent stated that an audit was mandatory for foundations, funds and PBOs with an endowment or turnover above a certain level), Hungary and Moldova.

²⁹⁴ Hungary.

²⁹⁵ Albania, Austria, Azerbaijan (one respondent stated that there was no requirement), Belarus (only one respondent; for funds only but both refer to provision for internal audit in statute), Belgium, Estonia, Finland, France, Germany (just foundations in the case of one respondent and only if commercially active to a large extent for another), Ireland, Netherlands (only one respondent), Luxembourg, Norway, Poland, Portugal, Slovakia, Spain, Sweden, Switzerland, Turkey and United Kingdom.

²⁹⁶ Bulgaria (if the amount exceeds 200,000 BGN (102.258 EUR)), Netherlands (a turnover of 4.4 million euros for two successive years), Poland (1.5 million zlotys), Serbia (sums equal to middle or large enterprises but for others a balance once a year is required), Sweden (the level was not specified) and United Kingdom (not specified).

²⁹⁷ Norway (more than 20 paid staff or possessions worth more than 20 million NOK or sales above 2 million NOK annually).

²⁹⁸ Switzerland (only one respondent; assets above CHF 10 million, turnover of CHF 20 million and 50 full-time positions; an exemption was also possible for foundations whose assets were below CHF 200,000 for two consecutive years, which made no public appeal for donations and it was not needed for a reliable assessment of its financial situation).

²⁹⁹ Estonia (foundations) and Ireland (those that are companies but charities with an income over 500,000 euros will soon be required to submit accounts whatever their legal form and those whose income is below this threshold will have to submit examined (i.e., not fully audited) accounts).

³⁰⁰ Estonia (political parties, which are not NGOs for the purpose of Recommendation CM/Rec(2007) 14).

³⁰¹ Belgium (only two respondents).

³⁰² Turkey.

³⁰³ Albania, Azerbaijan, Finland, France (only two respondents), Luxembourg, Netherlands, Norway, Poland, Slovakia, Spain, Switzerland and United Kingdom.

³⁰⁴ Cyprus.

³⁰⁵ Foundations and not-for profit companies.

³⁰⁶ Associations, in view of the stipulation that the members appoint auditors unless stated otherwise in the memorandum of association

³⁰⁷ Charities

³⁰⁸ Voluntary associations.

³⁰⁹ Foundations and non-profit companies.

³¹⁰ Azerbaijan, France, Spain and Switzerland (only two respondents).

³¹¹ Germany (only one respondent).

larger organisations³¹² or where a certain level of economic activity was involved³¹³. Generally no details were given as to whether there were requirements as to who might audit the accounts.

199. In the case of one country it was reported that NGOs must submit regularly – every three months – financial documentation to a public authority but it is not clear that this entails an audit³¹⁴. This is equally the case with the annual reports said to be required of charitable organisations in another country³¹⁵.

200. The question appeared to have been misunderstood in the case of one country³¹⁶ and was not answered in respect of another one³¹⁷.

Reporting obligations

*Donations, grants and sponsorship*³¹⁸

201. In thirteen countries there was a requirement to report to a public authority donations from a private or foreign entity³¹⁹. In respect of one of them this entailed the provision of both financial and narrative reports and also bank statements³²⁰ and in two of them authorisation to receive such donations was required if they were above a certain value³²¹.

202. In one country there is only a reporting requirement in respect of tax-relieved donations³²² and in another the obligation exists only if the NGO is on the list of organisations with income tax deduction³²³.

203. In one country there is an obligation to notify all donations exceeding 126.97 euros that are made for “political purposes and the aggregate value of such donations must not exceed 6,348.69 Euros in any one year. Such donations may not be received from non-citizens or from foreign-based organisations³²⁴”.

³¹² Luxembourg (details not provided) and Portugal

³¹³ Austria (the financial volume was not specified)

³¹⁴ Ukraine

³¹⁵ Russia.

³¹⁶ Italy (it was indicated that the balance of NGOs recognised through a decree of the President of the Republic or by the Ministry of Foreign Affairs could be periodically checked).

³¹⁷ “the former Yugoslav Republic of Macedonia”

³¹⁸ Q 14: Are NGOs, or particular categories of NGO, required to report to any public authority on (a) the receipt of any donation/grant/sponsorship from a private or foreign entity, and/or (b) the expenditure of such a donation/grant/sponsorship? If so, please specify the nature of the reporting requirement.

³¹⁹ Albania, Azerbaijan, Belarus (under the law governing humanitarian help), Belgium (only one respondent stated that it was required for the purpose of authorisation; another said that there was no requirement, a third stated that it occurred only in the report on an NGO’s accounts and a fourth stated that it was not in the law), Bulgaria, Finland (one respondent said an income tax return was needed where a charge was made for services but the other referred to obligations from state funders), Germany (only one respondent), Greece (all donations had to be reported to the National Tax Authority and donations via a last will and testament also had to be reported to the Ministry of Economy or the Prefecture Authorities. There were also special (unspecified) regulations concerning charities and social institutions), Luxembourg, Poland (from the obtained 1% of tax), Russia, Turkey and “the former Yugoslav Republic of Macedonia” (a declaration of the reason for the transfer must be signed).

³²⁰ Albania.

³²¹ Belgium (100,000 euros) and Luxembourg (12,500 euros).

³²² Austria (in order to check if the preconditions for enrolment in the list of NGOs with tax relief is fulfilled, i.e., enjoying the status of non-profit organisation)

³²³ Estonia (only one respondent).

³²⁴ Ireland (only one respondent; political purposes are defined as promoting or opposing the interests of a political party, presenting, directly or indirectly, a party’s policies, promoting or opposing the interests of a third party in

204. In respect of five countries the reporting requirement was said specifically to cover the expenditure of the donation³²⁵.

205. Only in the case of one country did the respondent indicate the form of the report³²⁶.

206. With respect to eight countries there was said to be no obligation to report either the receipt or expenditure of donations from a private or foreign entity³²⁷, while in the case of seven other countries it was reported that, although there is no special reporting obligation, the information would be disclosed to the tax authorities indirectly through accounting reports and balance sheets that the general law requires³²⁸.

207. The question appears to have been misunderstood in respect of two countries³²⁹.

208. In the case of one country it was reported that NGOs must submit regularly – every three months – financial documentation to a public authority to demonstrate operation and money flow (includes expenditure)³³⁰.

*Activities*³³¹

209. In eleven countries the production by NGOs of a report on their activities on a periodic basis is not required³³², is a matter left to be determined by the rules of the NGO concerned³³³ or is only required for certain NGOs³³⁴.

210. In sixteen countries the submission to a public authority of an annual report covering the activities undertaken by NGOs and how their resources were spent was required³³⁵.

connection with the management of an election campaign or promoting directly or indirectly the election of a parliamentary candidate. Notification is to the Standards in Public Office Commission).

³²⁵ Azerbaijan, Bulgaria (but only as part of the annual report of the NGO), Poland, Russia and “the former Yugoslav Republic of Macedonia” (but as part of a general annual report on activities).

³²⁶ Azerbaijan (a written and formal notification).

³²⁷ Croatia (but donors – including government bodies – do require it in respect of expenditure), Cyprus, Hungary, Italy, Moldova, Netherlands, Norway and Sweden.

³²⁸ Armenia, Czech Republic (only foundations, funds and PBOs according to one respondent), France (however, two respondents stated that there was no reporting obligation), Serbia, Switzerland (however, three respondents stated that there was no reporting obligation), Portugal and United Kingdom.

³²⁹ Slovakia (“yes, basic organisations of ADPS”) and Spain (referred to accounts in respect of public grants).

³³⁰ Ukraine

³³¹ Q 15: Are NGOs, or particular categories of NGOs, required by law to produce a report on their activities on a periodic basis? If so, please specify what must be contained in such a report, the period applicable to it and the persons or bodies to whom it must be submitted. Is any such requirement conditional to the receipt of any public funding?

³³² Azerbaijan (one respondent stated that it may be a condition in a grant agreement but another stated that foundations were required to print annual reports on the use made of their property), Croatia, Czech Republic (although this response seems inconsistent with the response to inspection which refers to a declaration of accounts and according to one respondent an annual report was required of foundations, funds and PBOs), Luxembourg, Netherlands (one respondent said it was required for bodies receiving government grants), Norway, Poland, Portugal, Serbia and Sweden.

³³³ Albania.

³³⁴ Cyprus (charities as regards financial matters and more generally as regards non-profit companies and voluntary associations);

³³⁵ Belarus (also covers details about members and those on elected bodies), Belgium (only one respondent; the question was not answered by two others and a fourth stated that there was no requirement), Bulgaria, Estonia, Finland, France (only one respondent; three respondents stated that the obligation applied only to publicly funded bodies, another said that there was only a reporting requirement with respect to the general assembly, yet another said that there was no requirement and one did not know), Germany, Hungary (only public benefit organisations);

211. In one country there was only such a reporting requirement for NGOs that were charities³³⁶ and in two others it existed just for publicly subsidised or funded bodies³³⁷.

212. In one country there is a general requirement to submit to state bodies reports and information in the manner and cases stipulated by law but no such provision has been elaborated³³⁸, although another respondent for that country stated that there was a specific reporting obligation for organisations implementing a charitable programme to report on their activities³³⁹.

213. NGOs in one country were reported as being required to publish regularly statutory documents, members of management board, data on sources of financing and expenditure but the need for a specific annual report was not mentioned³⁴⁰.

214. Similarly a respondent for one country just stated that copies of minutes of board meetings of NGOs must be filed with the supervising authority³⁴¹.

215. The question was not really addressed in the case of one country³⁴².

*Inspection*³⁴³

216. The respondents for three countries reported that inspection by an external body of the books, records and activities of an NGO was not possible³⁴⁴.

217. However, the respondent for another country reported that such an inspection took place once a year as part of the regular inspection process³⁴⁵, while the respondent for yet another country stated that such a regular inspection was only possible with respect to the balance sheets of the organisation concerned³⁴⁶.

218. In the case of one country it was indicated that there was both the possibility of regular inspection and a power to undertake an inspection where there were specific concerns about the compliance of an NGO's activities and financial arrangements with the law³⁴⁷.

others must publish an annual financial statement), Ireland (longstanding for companies but recent for charities), Italy (to be submitted to the Ministry of Foreign Affairs; not clear whether this applies to all NGOs), Moldova (just one page), Russia, Slovakia, "the former Yugoslav Republic of Macedonia", Turkey and United Kingdom (if it is a charity or a company).

³³⁶ Greece (but reports were in practice made by other NGOs).

³³⁷ Germany (only one respondent; the report must be regular and contain the main activities, publications and membership developments) and Spain

³³⁸ Armenia (one respondent suggested that the requirement might be interpreted as empowering state bodies to require reports where there is a suspicion regarding the legality of the activities concerned)

³³⁹ Applying to the programmes qualified as charitable by the State Humanitarian Assistance Committee. A third respondent stated that there was no reporting requirement.

³⁴⁰ Ukraine.

³⁴¹ Switzerland. However another respondent said an annual report was required for foundations and two others said such a report was required generally, while two others said it was not.

³⁴² Austria (reference was made only to the checking whether preconditions for tax relief were met).

³⁴³ Q 16: Are there any circumstances in which the law authorises or requires an external body to inspect the books, records and activities of an NGO, or particular categories of NGOs, and/or those of their management bodies and staff? If so, please specify the circumstances and the conditions applicable to such an inspection.

³⁴⁴ Belgium (one respondent; another said yes to check accounts), Netherlands and Norway.

³⁴⁵ Croatia (i.e., in respect of matters such as labour and tax).

³⁴⁶ Albania.

³⁴⁷ Belarus (according to Vashkevich such an inspection usually results in small breaches being found and the director being fined 300-500 euros (50-100% of his or her monthly salary)).

219. The respondents for twenty-two countries reported the existence of a power of inspection³⁴⁸. In ten of them this power was exercisable to supervise compliance of an organisation's activities with the law³⁴⁹, while it could be used to look for fraud or any other financially suspect activities in the case of six of them³⁵⁰, for non-payment of taxes in the case of another twelve of them³⁵¹ and for the purpose of checking their balance in one of them³⁵². In addition it is possible in one of them in respect of NGOs that are providing services on behalf of public authorities³⁵³ or are publicly subsidised³⁵⁴ or in case of their insolvency and bankruptcy³⁵⁵. Furthermore it is possible in another country pursuant to an inquiry into the affairs of a charity³⁵⁶, in yet another in respect of its economic activities³⁵⁷ and in the case of three others pursuant to a broad discretionary power³⁵⁸.

220. In the case of one country the power of inspection appeared to be only exercisable in respect of just one form of NGO³⁵⁹.

221. In another country an inspection by an external body could be undertaken pursuant to a request by the highest governing body of an NGO or by one of its donors³⁶⁰.

222. In the case of one country an NGO's accounting records may be inspected by the financial office any time within five years of their declaration³⁶¹.

223. The question was not addressed by the respondents for two countries³⁶² and for another it was only stated that external auditing was encouraged³⁶³.

*Other matters of concern*³⁶⁴

³⁴⁸ Armenia, Bulgaria, Estonia, Finland (only one respondent; the other said there was no power), France, Germany, Greece, Ireland, Italy (only in the case of NGOs recognised by a decree of the President of the Republic or by the Ministry of Foreign Affairs), Hungary, Luxembourg (only one respondent), Netherlands (only one respondent), Moldova, Poland, Portugal, Russia, Serbia, Slovakia, Sweden, Switzerland (three respondents but three others stated that it was not possible and the question was not answered by another), Ukraine and United Kingdom

³⁴⁹ Armenia (the body can warn the organisation concerned and suggest the order and terms for fixing the violation), Estonia, Finland (only one respondent), France (only two respondents), Greece, Hungary, Ireland, Russia, Serbia and Ukraine.

³⁵⁰ Bulgaria, France (only two respondents), Ireland, Luxembourg (only Louis Robert), Netherlands (only two respondents) and Switzerland (only two respondents).

³⁵¹ Estonia, Finland (only one respondent), Germany, Greece, Hungary, Moldova, Poland, Russia, Serbia, Spain, Slovakia and Switzerland (only one respondent).

³⁵² Italy.

³⁵³ Germany (only one respondent).

³⁵⁴ Germany (only one respondent).

³⁵⁵ Germany (only one respondent).

³⁵⁶ United Kingdom.

³⁵⁷ Sweden.

³⁵⁸ France (only one respondent), Poland (by the governor of the province but this does not usually happen) and Portugal.

³⁵⁹ Cyprus (as regards clubs whose premises, books and papers may be inspected at any time to investigate any issue relating to it or to obtain the names and addresses of those present.).

³⁶⁰ Azerbaijan (one respondent; the other respondent referred only to the powers of warning and dissolution).

³⁶¹ Czech Republic.

³⁶² Austria (reference was made instead to the need for authorised professional auditors in the event of activities surpassing a certain (unspecified) financial volume) and "the former Yugoslav Republic of Macedonia".

³⁶³ Turkey.

³⁶⁴ Q 17: Are there any matters relating to the involvement of public authorities in the internal governance of an NGO, or particular categories of NGOs, which give rise to concern and which have not been addressed in the foregoing questions? If so, please specify them.

224. For twenty-three countries respondents reported no matters of concern about the involvement of public authorities in the internal governance of NGOs that were not raised under the specific questions in the questionnaire³⁶⁵.

225. In one of these countries it was stated that there was no ground for concern as public authorities were not involved in the internal governance of NGOs³⁶⁶.

226. However, in one country it was suggested that there could be grounds for concern arising from the fact that a public authority was amongst the NGO's founders but no elaboration as to what this might entail was given³⁶⁷.

227. Another respondent from the same country considered that there was a lack of good internal governance rules³⁶⁸.

228. One respondent reported that there was a problem of having a majority of nominated members from public authorities on the boards of NGOs which can affect their independence³⁶⁹.

229. Furthermore, in respect of another country, concern was expressed about the high level of discretion and lack of consistency in regulatory decisions and the absence of implementing regulations for the applicable laws, as well as about the multiplicity of forms of NGO and the regulatory regimes applicable to them³⁷⁰.

230. A respondent from a different country reported that NGOs were heavily dependent on grants from public authorities for funding, with these generally being given only for short-term projects. This was seen as an effective way to control the activities of NGOs. The respondent expressed a wish for alternative sources of funding - such as tax benefits for private and corporate donors – to be established in order to address this problem³⁷¹.

231. Only in respect of one country was it explicitly stated that there was too much involvement on the part of public authorities in matters of NGOs' internal governance³⁷².

232. One respondent took a more critical stance of NGOs themselves, suggesting that they were "favourised" and that their activities are only political³⁷³.

233. One respondent answered this question by citing, without elaboration, the fact that it was only a court that can decide on dissolution and then only for grounds provided for by law³⁷⁴.

³⁶⁵ Albania, Armenia, Austria, Belgium (only two respondents; the question was not answered by the other two), Croatia, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Luxembourg, Netherlands, Portugal, Russia, Slovakia, Sweden, Switzerland, "the former Yugoslav Republic of Macedonia", Ukraine and United Kingdom.

³⁶⁶ Albania.

³⁶⁷ Azerbaijan (only one respondent).

³⁶⁸ This respondent stated that "Azerbaijani legislation does not provide mechanisms for ensuring that NGOs enact internal governance mechanisms which prevent conflicts of interest and otherwise reflect international good practices. It would be legitimate for the government to introduce new provisions in the legislation meant to promote accountability and transparency within the NGO sector, as long as those measures are commensurate with the public benefits granted to the NGOs on which the obligations are imposed

³⁶⁹ Ireland (only one respondent).

³⁷⁰ Cyprus.

³⁷¹ Norway.

³⁷² Belarus (only one respondent).

³⁷³ Serbia

³⁷⁴ Armenia (only one respondent).

234. Another respondent stated "No, unless there is a serious lawlessness determined by a court order"³⁷⁵.

235. One respondent professed to be unfamiliar with the theme³⁷⁶.

236. The question was not answered with respect to one country³⁷⁷.

³⁷⁵ Turkey.

³⁷⁶ Spain (referring to the case "Anesva" without further elaboration).

³⁷⁷ Moldova.

III COUNTRY CASES

Armenia

Introduction

237. Armenia is a civil law country which recognises both membership and non-membership not-for-profit organisations; the former are governed by the Law on Public Organisations of 2001 ("the LPO"), while the latter are governed by the Law on Foundations of 2002 ("the LF").

238. In addition, the legal status of charities is governed by the Law on Charity of 2002. A public organisation (association), a foundation, or other not-for-profit form envisaged by law may apply for a charity status with the competent state body, in order to carry charitable activities as defined by the Law – and enjoy corresponding tax and other benefits. The Law provides *inter alia* specific rules with regard to the charity organisation's expenditures, distribution of property, and reporting requirements; those rules are referenced throughout the report, as appropriate.

Requirements relating to the statute of a public organisation

239. According to LPO, Article 11 the statute (charter) of a public organisation must contain the following information:

- the name and the seat of the organisation;
- the goals of the organisation;
- procedures for becoming and resigning as a member;
- member's rights and obligations;
- the managing structure of the organisation, procedure and the time frame for convening the supreme body, matters reserved for decision by the supreme body; procedures for forming bodies elected by the supreme body, changing their composition, their terms of authority and decision making procedures³⁷⁸;
- the scope of authority of officials entitled to represent the organisation without a power of attorney, and the procedure for choosing such persons³⁷⁹;
- the specification of bodies authorised to make decisions on acquiring, possessing, using, managing and sale of property³⁸⁰;
- the specification of the body authorised to define the level of membership fees and the procedure for their collection³⁸¹;
- procedures for setting up separate branches and institution³⁸²;
- procedure for supervising the organisation's activities³⁸³;
- procedures for members to challenge decisions of the organisation's bodies³⁸⁴;
- procedures for making changes and amendments to the charter;
- procedures for re-organisation and liquidation.

240. The charter of the organisation may also stipulate other provisions so long as they do not contravene the requirements of other laws.

³⁷⁸ This is required only if it is intended to have such bodies.

³⁷⁹ This is not required if such authority is not granted.

³⁸⁰ Unless such functions are performed by the supreme body.

³⁸¹ This is not required if membership fees are not envisaged or if the sum and the procedure for collection is stipulated in other governing documents.

³⁸² This is required only if it is intended to have such bodies.

³⁸³ This is not required if the supervision is carried out by the supreme body of the organisation.

³⁸⁴ This is required only if the statute envisages the creation of bodies other than the supreme body.

Requirements relating to the statute of a foundation

241. According to LF, Article 15(2) the statute of a foundation must contain the following information:

- the name of the foundation;
- the seat of the foundation;
- the goals of the foundation;
- the types of entrepreneurial (economic) activities the foundation may engage in;
- information about the founder(s)³⁸⁵;
- the value of initial property of the foundation, the manner of management and disposal of the foundation's property
- categories of possible beneficiaries of the foundation;
- terms of foundation's activity;
- procedures for the formation of the foundation's bodies, their structure and power, decision-making procedures, including issues for which consensus or qualified majority is required;
- procedure for liquidating the foundation and the distribution of remaining property.

242. The statute of the foundation may also stipulate other provisions so long as they do not contravene the requirements of other laws.

Prohibitions on membership of governing or management bodies

243. LPO, Article 6(2) provides that a person under the age of fourteen may become a member of an organisation with a written consent of his/her legal representative. The same rule applies to persons between fourteen and eighteen – unless the law provides otherwise (i.e., recognises their legal capacity in specific instances). The organisation's statute may envisage specific stipulations regarding the right and obligations of "underage members", which could presumably affect their ability to participate and contribute to decision making and become members of the management body³⁸⁶.

244. A member may not sit on the supervisory body of a public organisation if he/she is also involved in another of its bodies³⁸⁷.

245. More stringent age restrictions apply to foundations: members of the board of trustees, which is the organisation's supreme body, may only be persons of the age of eighteen or above³⁸⁸.

246. A member of the board of trustees may not be involved in another of a foundation's bodies³⁸⁹. Presumably, the manager of a foundation may not be the member of a foundation's board of trustees, because of the perceived conflict of interest³⁹⁰. In addition, the manager of a

³⁸⁵ For natural persons the first and last name, ID/passport information, place of residence and for legal persons: the organisation's name, data of entry into the registry, the seat, the name of the director or other representative of the organisation.

³⁸⁶ LPO, Article 6(3).

³⁸⁷ LPO, Article 9(7).

³⁸⁸ LF, Article 22(2).

³⁸⁹ LF, Article 22(4).

³⁹⁰ LF, Article 27.

foundation may not hold a paid position in another organisation without the consent of the board of trustees³⁹¹.

Prohibition on employment

247. There are no specific restrictions with regard to being employed by an NGO. The only restriction in this respect seems to arise from a more general bar on certain persons undertaking any paid work on account of their particular status (members of the government, MPs, public servants, judge and members of the Constitutional Court).

Frequency of meetings, special majorities, limits on power to delegation

248. The general meeting of a public organisation must be convened at least once in two years³⁹²; the rules for other bodies must be, however, specified in the statute. A meeting of the foundation's board of trustees must be convened at least once a year, or within 30 days following the request of at least one-third of its members³⁹³ ...

249. The Law does not stipulate any special majority with respect to the general meeting and other bodies' decisions; it envisages the statute as the controlling instrument in this respect. The general meeting may not delegate the exclusive competence of the highest governing body to the organisation's other bodies³⁹⁴.

250. Decisions regarding the election and dismissal of the president or vice president of the board of trustees and the manager of a foundation, as well as decisions regarding amendments to the statute, reorganisation and liquidation of a foundation, require a simple majority of all members of the board of trustees, unless the statute stipulates otherwise³⁹⁵. A three-quarters majority is required to remove a member of the board of trustees before the expiration of his/her term, unless the statute stipulates otherwise³⁹⁶. The board of trustees may not delegate its exclusive competence as the highest governing body to the organisation's other bodies³⁹⁷.

Authorisation for changes to internal structure and rules

251. The internal structures and rules of a public organisation are matters that have to be specified in the organisation's statute and, as with any amendment to the latter, changes to it are thus something that have first to be approved by the registration authority³⁹⁸.

252. The foundation's bodies may introduce amendments to its statute, if the latter stipulates so. Absent such provisions, if keeping the original statute could bring about consequences that could not have been predicted at the time of the establishment of the organisation, the court will enforce changes in the statute, following the request of interested parties. Similarly, the court will enforce those changes, if the organisation's body which has the competence to revise the statute fails to do so, following the request of other bodies of the organisation³⁹⁹.

³⁹¹ LF, Article 27(4).

³⁹² LPO, Article 14.

³⁹³ LF, Article 26(4).

³⁹⁴ LPO, Article 14(6).

³⁹⁵ LF, Article 24(2).

³⁹⁶ LF, Article 23(2).

³⁹⁷ LF, Article 25(2).

³⁹⁸ LPO, Article 13.

³⁹⁹ LF, Article 15(4).

Authorisation to establish or close branches

253. A public organisation or a foundation may establish a branch office, if the statute of an organisation stipulates so. A decision to establish a branch office seems to fall within the exclusive competence of the highest governing body of an organisation: the general meeting and the board of trustees, respectively⁴⁰⁰.

Restrictions on payments to employees and management board members

254. There is an expenditure cap on organisations which have acquired the charity status. Those organisations may not distribute more than 20% of their income generated in a fiscal year for remuneration of their staff and other overhead expenses. The only noticeable exception to this rule is a donor agreement, which may stipulate higher percentage of donation to be used for overhead expenditures⁴⁰¹.

255. Members of the foundation's board of trustees must perform their duties *pro bono*, but may be compensated for necessary costs incurred in the course of performing their duties⁴⁰². These payment restrictions do not apply to the manager and other employees of a foundation. No payment restrictions seem to be prescribed for the management and employees of a public organisation which does not have the charity status.

Challenging decisions of the governing bodies

256. A resolution of a public organisation's body (including the supreme body) adopted in violation of law, the statute of the organisation, or in violation of regulations set forth by the governing bodies of the organisation or in violation of the rights and legal interests of the organisation or its member, can be annulled by the court upon a member's filed protest. The protest may be filed within the period of 60 days following the day when a member of an organisation learnt or should have learnt about the adoption of a resolution to this effect⁴⁰³. There do not seem to be specific rules governing the bringing of challenges to decisions of a foundation's bodies, which seems to indicate that the general civil law rules are the controlling instrument in this respect.

257. It also appears that a challenge can be brought to the continued use by an NGO in its name of the name of a prominent member of the public by him/her or his/her heirs if this use is without his/her consent or by the heirs only if the organisation's activities cast a shadow on the prestige of the person concerned.

Attendance at meetings by public officials

258. Upon "well-grounded" request by the state body in charge of justice affairs, which is presented within "reasonable time frame" a public organisation has the duty to allow the representative of the state body to be present at its general meeting⁴⁰⁴. Because the Law does not specify what constitute a well grounded request, and what is deemed reasonable time frame, it seems that the state body has a broad discretionary power to participate in the general meeting of the organisation. The law does not impose such duty on a foundation.

⁴⁰⁰ LPO, Article 14, LF, Article 25.

⁴⁰¹ Law on Charity, Article 12(2).

⁴⁰² LF, Article 23(6).

⁴⁰³ LPO, Article 7(2).

⁴⁰⁴ LPO, Article 16(1).

Taking over management by public authorities

259. The legislation governing the bankruptcy of legal persons envisages taking over the management of a public organisation by the public authority in the case of the bankruptcy of the organisation. Apparently, such situation has not yet occurred in practice, as no public organisation has ever applied or been forced to go through the bankruptcy process.

Auditing of accounts/reporting obligations

260. As a general rule, there is no mandatory audit requirement prescribed for NGOs, including charity organisations. However, an independent audit is required if the value of the foundation's property exceeds 10 million drams⁴⁰⁵. In addition, some donor organisations require an annual audit of the accounts of the recipient organisations.

261. Public organisations and foundations are under the general duty to keep office and accounting records in the manner prescribed by law, and submit to the state authority reports and information in the manner and in instances stipulated by law⁴⁰⁶.

262. Charity organisations must submit their annual reports to the state body in charge of oversight of charities and tax authorities. The annual report must contain the following items: information of the organisation's highest body; the content of its charitable program; the results accomplished in the course of the program's implementation; the use of the organisation's property and income and its compliance with financial regulations – which presumably also includes information on the receipt and expenditure of donations from a private or foreign donor; and, any violations of law committed by the organisation in the intervening period (between two annual reports), which were revealed during check-ups performed by the state authority⁴⁰⁷. A charity organisation must publish its financial statement and annual report in "mass-media" within three months following the conclusion of a fiscal year⁴⁰⁸.

263. A foundation must publish the following information in mass media within six months following the closure of the fiscal year: the annual activity report (which must include information on programs accomplished, sources of funding, total income used in the financial year in question, overhead costs, information on members of the board of trustees, and the manager of the foundation), the financial report, and the conclusion of the independent auditing report, if the value of the foundation's property exceeds 10 million drams⁴⁰⁹. Presumably, the reporting requirements (other than those on independent auditing) apply only if a foundation is not granted the charity status; otherwise, rules governing the reporting requirement for charity shall be the controlling instrument in this respect.

Inspection

264. Charity organisations, their management and staff are subject to the general supervision of the authorised state body, to ensure they perform their activities in compliance with the law. In addition, other state bodies (e.g., tax authorities) may carry out inspection of the charity (or for that matter any public organisation or a foundation) within their respective jurisdictions. If the activities of a charity organisation contravene the law in a manner which can be addressed by the supreme body of the charity, the state body shall notify the organisation to that effect. In case of repeated and particularly gross violations of the law (criminal fraud, dissemination of racial and religious hatred, or propaganda of violence and war, tax fraud, etc.),

⁴⁰⁵ LF, Article 39.

⁴⁰⁶ LPO, Article 16(1), LF, Article 20(1)..

⁴⁰⁷ Law on Charity, Article 18 (1).

⁴⁰⁸ Law on Charity, Art 18(2).

⁴⁰⁹ LF, Article 39.

the state body may terminate the charitable program in question. An organisation may appeal such a decision in court⁴¹⁰.

265. Public organisations and foundations, their management and staff are subject to the general supervision by the Ministry of Justice⁴¹¹. In addition, if the activities of a foundation contravene the law in a manner that can be addressed by the supreme body of a foundation, the Ministry shall notify the organisation to that effect; the same rule applies if a foundation publishes an incomplete annual report. If the foundation fails to observe notice issued by the Ministry of Justice, or fails to publish the annual report within the prescribed deadline, the Ministry of Justice may appeal to the court seeking liquidation of the organisation⁴¹².

Conclusion

266. Rules governing internal governance of NGOs in Armenia seem largely to comply with international standards and best practices. However, it would be appropriate that the language of LPO, Article 16(1)(6) be revised, in order to protect public organisations' privacy from the possibility of undue harassment by the government. Specifically, the Law needs to spell out what precisely constitutes "well-grounded demand" and what is deemed "reasonable time-frame", which would justify the state body being present at the general meeting of an organisation. Those grounds must serve legitimate goals and must be construed in a fashion which would enable the government to demonstrate that this is the minimum level of interference necessary to accomplish the legitimate goals.

Ireland

Introduction

267. The Republic of Ireland is a common law country which recognises both membership and non-membership not-for-profit organisations. These can take the form of companies limited by guarantee (a non-profit form of company), trusts and unincorporated associations (the latter two do not have legal personality)⁴¹³.

268. Companies limited by guarantee are governed by the Companies Acts whereas trusts and unincorporated associations are formed pursuant to the common law.

269. Any of the three forms of NGO which wish to be recognised as charities⁴¹⁴ - and thus have the benefit of tax exemptions and the ability to raise funds from the public - need to be registered with Revenue Commissioners. However, when the Charities Act 2009 is commenced⁴¹⁵, any charitable organisation operating in Ireland will be required to be registered with a new Charities Regulatory Authority. Section 7 of the Charities Act 2009 separates the decision of the Charities Regulatory Authority as regards the charitable status of an organisation from the decision on the eligibility of that body for

⁴¹⁰ Law on Charity, Article 19.

⁴¹¹ LPO, Article 16(1), LF, Article 38(1).

⁴¹² LF, Article 38(3).

⁴¹³ There appear to be over 8,000 companies limited by guarantee but the overall size of the NGO sector is unclear.

⁴¹⁴ The following will be regarded as a charitable purpose: the prevention or relief of poverty or economic hardship; the advancement of education; the advancement of religion; and any other purpose that is of benefit to the community.

⁴¹⁵ . The 2009 Act was enacted on 28 February 2009 but commencement has been given only to one provision which is not relevant to the present study

charitable tax exemptions. The latter will continue to be the sole responsibility of the Revenue Commissioners.

Requirements relating to the statute

270. NGOs which are companies limited by guarantee need to have a governing document - the Memorandum and Articles of Association - which will prescribe:

- membership;
- the summoning and conduct of general meetings;
- the appointment and removal of directors; and
- the amendment of the constitutive instruments.

271. Unincorporated associations will have a constitution which also will generally deal with membership, the holding of general meetings, the appointment and removal of any management body and amendment of the constitution.

272. The governing instrument of a trust will be a trust deed or will and executive power rests with the trustees appointed under the terms of the trust.

Prohibitions on membership of governing or management bodies

273. There are at present no general restrictions on persons being members of an unincorporated association or a company limited by guarantee and thus taking part in its highest governing body, namely, a general meeting of the association or company. Similarly there are no general restrictions on the appointment of persons as trustees except that they cannot be children⁴¹⁶.

274. In the case of companies limited by guarantee all persons serving on its board as directors, i.e., its principal management body, must be over 18 and, although there is no nationality requirement, at least one of them must be a permanent resident of the country. Furthermore the general restrictions under the Company Law as to the appointment of directors would disqualify the following persons from serving as such for the period prescribed⁴¹⁷ by the court has made a disqualification order:

- persons convicted of any indictable offence in relation to a company or involving fraud or dishonesty;
- persons whose conduct has been found to make him or her unfit to be concerned in the management of a company;
- persons who have been persistently in default in relation to Company Law requirements.

275. The Charities Act 2009 will preclude the following persons from serving on the management body of a charitable organisation, namely:

- those who are adjudged bankrupts;
- those who have made a composition or arrangement with creditors;
- those convicted on indictment of any offence;
- those sentenced to a term of imprisonment;
- those subject to a disqualification order under the Companies Act 1990 or prohibited, removed or suspended from being a trustee of a scheme under the Pensions Acts 1990 to 2002; and

⁴¹⁶ I.e., under 18.

⁴¹⁷ Up to five years in the case of the first category but otherwise for the court to determine.

- those who have been removed from the position of charity trustee of a charitable organisation by a court order.

Prohibitions on employment

276. There are no specific restrictions with regard to who can be employed by an NGO.

Frequency of meetings

277. There are no requirements with regard to frequency of meetings of the highest governing bodies of unincorporated associations or trusts but there must be a general meeting of a company limited by guarantee at least once a year in order to approve the accounts. There are no requirements regarding the holding of meetings of other bodies of companies limited by guarantee or unincorporated associations.

Special majorities

278. There are no requirements with regard to special majorities in the decision-making by the highest governing body of NGOs - or indeed of any of their other bodies - but these can be prescribed in their constitutive instruments.

Limits on power of delegation

279. The law does not impose any limits on the power of delegation of decision-making by the highest governing body.

Authorisation for changes to internal structure and rules

280. There is no requirement to obtain authorisation from a public authority before any change to the internal structure and rules of an NGO can be implemented. However, Section 39 (11) of the Charities Act 2009 will require a charitable organisation to inform the Charities Regulatory Authority if any particular entered on the register of charities under section 39(7) - which includes the names of the trustees, the objects of the charity, and the place(s) of business of the charity - ceases to be correct.

Authorisation to establish or close branches

281. NGOs can establish and close branches which do not have a distinct legal personality without the prior authorisation of a public authority⁴¹⁸.

Restrictions on payments to employees and management board members

282. There are no limits regarding the payment of fees and expenses to the employees of an NGO but members of the highest governing body cannot receive payment for their work in that capacity, although their expenses can be reimbursed. It is also possible for members of the highest governing body to receive payment for work that is unrelated to their performance of that role unless the NGO is a charity⁴¹⁹. There is no special tax regime governing any of these payments.

Challenging decisions of the governing bodies

⁴¹⁸ This position will, however, become subject to the notification obligation established by the Charities Act 2009 noted in the preceding paragraph.

⁴¹⁹ Such payments in the case of charities will be possible when the Charities Act 2009 enters into force.

283. The decisions of NGOs can be challenged in court by their members, as well as by public authorities and members of the public. The Charities Regulatory Authority to be established by the Charities Act 2009 would be given particular responsibility for challenging decisions of a charity's governing body that are considered not to comply with the law..

Attendance at meetings by public officials

284. There are no circumstances in which the law specifically authorises public officials to insist on attending meetings of the highest governing body or any of the management bodies of NGOs. However, in specified circumstances where a charity or the property thereof is considered to be at risk, or where the charity is failing or has failed to comply with either the Charities Act 2009 or the Criminal Justice (Theft and Fraud Offences) Act 2001, section 74 of the 2009 Act - Protection of Charitable Organisations - will allow the High Court, on the application of the Charities Regulatory Authority, to make an Order *inter alia* appointing person(s) as it considers appropriate to act as charity trustees of that charity. There is nothing in the Charities Act 2009 that explicitly prevents public officials from being appointed under such an Order, and such trustees would thus be entitled to attend meetings of the governing body.

Taking over management by public authorities

285. There are no circumstances in which a public authority can take over the management of NGOs. However, the Charities Regulatory Authority to be established by the Charities Act 2009 would be able to apply to the High Court for an Order vesting the assets of a charity in their entirety in the Authority where they are not being applied for charitable purposes⁴²⁰.

Auditing of accounts

286. Companies limited by guarantee are, as all companies, required to submit audited accounts to the Companies Office every year but trusts and unincorporated associations are not subject to any obligation to have their accounts audited. However, following the entry into force of the Charities Act 2009, all NGOs registered as charities will be required to submit to the Charities Regulatory Authority an annual activity report with their accounts annexed to it unless their income is less than 10,000 Euros. Furthermore those whose income is below a certain threshold - expected to be set somewhere below 500,000 Euros per year - will only have to submit examined accounts, i.e., not fully audited accounts.

Reporting on donations and sponsorships

287. There is currently no requirement to report on the receipt or expenditure of donations, grants and sponsorship from a private or foreign entity. It remains to be seen whether such reporting will be an element in the annual activity report that the Charities Act 2009 will require charities to submit to the Charities Regulatory Authority.

288. Furthermore, under the Electoral Act 1997 - as amended by the Electoral (Amendment) Act 2001, there is a requirement for all organisations to notify the Standards in Public Office Commission of all donations exceeding 126.97 Euros which have been made for political purposes. Such purposes would comprise promoting or opposing the interests of a political party, the presentation of the policy or policies of a political party or of its comments on the policy or policies of another party, the promotion or opposition of a third party's interests in connection with promoting a particular outcome in relation to a policy or policies and promoting or opposing the election of a parliamentary candidate. As such this could be relevant to the

⁴²⁰ s 74.

funding of campaigning activities of NGOs although it does not seem that this was the intention behind the legislative provisions concerned⁴²¹.

Reporting on activities

289. Companies limited by guarantee are, as all companies, required to submit a report on their activities together with their accounts to the Companies Office every year but this does not have to be particularly detailed. There is no comparable requirement for trusts or unincorporated associations. The Charities Act 2009 will, once it enters into force, require charities to submit a detailed activity report to the Charities Regulatory Authority⁴²².

290. Reporting on activities will be a condition of a grant of public funds, which is the main source of finance for many NGOs.

Inspection

291. Companies limited by guarantee, trusts and unincorporated associations are subject to the general rules of financial and tax inspection applicable to all legal entities. In addition companies limited by guarantee can be inspected for breaches of company law and under the Charities Act 2009 a charity will be obliged to produce on demand any documentation of or relating to it required by the Charities Regulatory Authority. In addition a charity trustee can be required to attend before an inspector and must give an inspector all assistance in connection with an inspection that he or she is reasonably capable of giving when required by an inspector.

Conclusion

292. From the formal perspective there is very little basis for the involvement of public authorities in the internal governance of NGOs. However, many of them are heavily dependent on public funding and some have public officials sitting on their governing bodies, generally as "observers". This may well influence their decision-making, as could concern that their undertaking some activities would upset public authorities and thus adversely affect their prospects for obtaining funding in the future. Furthermore the most flexible form of organisation - the unincorporated association - may not always be an option because funding will be conditioned on the recipient being a company limited by guarantee to ensure certain governance standards are observed. The possibility of such factors having an impact on the internal governance of NGOs is impressionistic rather than documented but is worthy of further examination.

Luxembourg

Introduction

293. The Grand Duchy of Luxembourg operates a civil-law system. More than 8000 not-for-profit associations and over 100 foundations are registered in the country. The freedom of association is proclaimed in Article 26 of the Luxembourg Constitution. The legal framework comprises also the Law on Freedom of Association⁴²³. The specific regulation of the not-for-profit sector is laid down mainly in the Law on Not-for-profit Associations and Foundations ("the LNAF")⁴²⁴ as modified in 1984, 1994, 2001, 2002 and 2008. These organisations fall into the NGO definition of Recommendation CM/Rec(2007)14, Paragraph 1. However, it should be

⁴²¹ No such donations may be received from non-citizens or foreign-based organisations.

⁴²² The precise format and structure remain to be specified.

⁴²³ *Loi du 11 mai 1936 garantissant la liberté d'association.*

⁴²⁴ *Loi du 21 avril 1928 sur les associations et les fondations sans but lucratif.*

noted that the Luxembourg legislation uses the term NGO to designate a specific category of organisations licensed by the Ministry of Foreign Affairs and having in their objectives the Development Cooperation. According to the Law on Development Cooperation ("the LDC")⁴²⁵ these organisations can be associations and foundations established under the LNAF but also other legal entities with a recognised public benefit status.

294. Political parties, trade unions and religious organisations are regulated by separate legislative instruments and are excluded from the scope of this study. Limiting itself to not-for-profit associations and foundations, the study also excludes other types of associations⁴²⁶ under the Luxembourg legislation that are not necessarily non-commercial.

295. The LNAF recognises the existence in Luxembourg of de facto associations⁴²⁷ and of not-for-profit associations and foundations with legal personality⁴²⁸. Foundations can only be established as public benefit organisations whereas not-for-profit associations may be recognised⁴²⁹ as such. The LNAF defines a not-for-profit association as "one that is not engaged in industrial or business activities or that does not seek material gain for its members", while a foundation is an organisation that "essentially through the income from capital allocated at or collected since its creation, engages on a not-for-profit basis, in any activities of philanthropic, social, religious, scientific, artistic, educational, sport or tourism related character"⁴³⁰.

Requirements relating to the statute

296. Associations and foundations register and acquire legal personality through two different procedures. For associations, once the statutes are agreed upon in a private document or recorded by a notary's instrument, there is simply publication in the Official Journal⁴³¹ and enrolment in a public register (the Register)⁴³². For foundations, the establishment is by notarial deed or by bequest, which is communicated to the Ministry of Justice for the purpose of recognition of legal personality by a Grand-Ducal Decree⁴³³. Once approved, their statutes must be submitted to the Register and published in the Official Journal⁴³⁴.

297. The mandatory elements of an association's statutes comprise the following⁴³⁵: name and legal seat in Luxembourg; the objective(s); the minimum number of members which cannot be less than three; the name, profession, domicile, and nationality of the founders; the conditions for access to and cessation of membership; the powers of the general assembly and the procedure by which its meetings are to be convened as well as the way its decisions are communicated to the members and third parties; the nomination procedure and the powers of the members of the governing board; the maximum limit of the membership fee; the method of

⁴²⁵ *Loi du 6 janvier 1996 sur la coopération au développement*, NGO definition in Article 7.

⁴²⁶ *Loi du 28 décembre 1883 concernant les associations syndicales pour l'exécution de travaux de drainage, d'irrigation, etc; Arrêté grand-ducal portant révision de la loi du 27 mars 1900 sur l'organisation des associations agricoles.*

⁴²⁷ Informal groupings without legal personality.

⁴²⁸ LNAF, Articles 1, 27 and 30.

⁴²⁹ LNAF, Article 26(2) provides for not-for-profit associations that are serving a public interest of philanthropic, religious, scientific, artistic, educational, social, sport or tourism related character the possibility to be recognised as public benefit organisation by Grand-Ducal Decree. At present, only a very limited number of associations enjoy such status.

⁴³⁰ LNAF, Articles 1 and 27.

⁴³¹ *Mémorial, Journal Officiel du Grand-Duché de Luxembourg.*

⁴³² LNAF, Articles 2 and 3.. The enrolment is in the Commercial and Enterprises Register/*Registre de commerce et des sociétés*. Such registration does not imply a commercial character for the association.

⁴³³ LNAF, Articles 27-30.

⁴³⁴ LNAF, Article 32.

⁴³⁵ LNAF, Article 2.

administration of accounts; the procedure for modifying the statutes; the destination of assets upon dissolution of the association.

298. The statutes of a foundation must contain⁴³⁶: the objective(s) for which the foundation was created; the name and the legal seat, which must be located within the Grand Duchy; the name, profession, domicile, and nationality of the foundation's governing board members and rules regarding their subsequent appointment; the destination of assets upon dissolution of the foundation.

Prohibitions on membership of governing or management bodies

299. Generally speaking, there are no specific categories of persons prohibited by law from serving on the governing or management bodies of associations or foundations. However, some restrictions derived from general principles governing capacity can apply, as well as requirements to prove good conduct.

300. The legal framework regulating the possibility for children to become founders, members or to have voting rights in not-for-profit organisations is generally compatible with the requirement of Article 15 of the Convention on the Rights of the Child to take account of the evolving capacity of a child in matters related to freedom of association. According to Articles 389-3 and 450 of the Civil Code the underage participate in civil life by means of their legal representatives except where the law or custom authorises them to act on their own. Therefore, narrowly speaking, children have to be represented to become a member of an association. It is however a commonly accepted practice, as supported by the Civil Code, that a child can alone join an association as long as the parents or the legal representative do not formally oppose and the affiliation does not cause him/her damage, is not linked to personal financial contribution, and does not present any other risk for the underage⁴³⁷. Nevertheless, even if the notion of membership comprises certain rights and obligations such as the right to vote and the right to be elected to the governing bodies, non-emancipated underage do not have the legal capacity to carry a mandate on such bodies⁴³⁸.

301. Aiming at safeguarding some vulnerable groups, certain special laws introduce a requirement of good conduct⁴³⁹ for the members of the governing and management bodies of organisations applying to the government for a licence to carry out activities with such groups. For instance, the Law on Youth Voluntary Service ("the LYVS")⁴⁴⁰ specifies in its Article 3 (3) that the organisation applying for authorisation to use youth volunteer services should have its governing/management bodies composed of individuals who have proved their good conduct. Similarly, Article 2, a), of the Law Regulating the Relationship Between the State and the Organisations Acting in the Social, Family and Therapeutic Field ("the LRRSO")⁴⁴¹ provides for the same requirement regarding the members of the governing bodies, the managers, the service providers themselves and the support staff. There are several Grand-Ducal Regulations⁴⁴² in application of this Law creating detailed implementation rules relevant to the different beneficiary groups – elderly people, disabled, families, children, adolescent etc. All of them provide precisions on how good conduct is to be assessed. In most instances good

⁴³⁶ LNAF, Article 30.

⁴³⁷ However, a child cannot act as an association/foundation founder without being duly represented. The founding act equals a contract and/or is related to disposing/contributing of property. The Civil Code, Article 1108 and next, formulate the preconditions for contracting in a valid way. Article 1124 is unambiguous on the fact that non-emancipated underage are incapable to contract/take obligations alone.

⁴³⁸ According to Article 1990 of the Civil Code only the emancipated underage can take a mandate.

⁴³⁹ Its assessment is based on good conduct certificate or other means of establishing judicial record history.

⁴⁴⁰ *Loi du 31 octobre 2007 sur le service volontaire des jeunes.*

⁴⁴¹ *Loi du 8 septembre 1998 réglant les relations entre l'Etat et les organismes œuvrant dans les domaines social, familial et thérapeutique.*

⁴⁴² *Règlements grand-ducal.*

conduct is interpreted as lack of conviction for a crime or offence towards people from the concerned group, for fraudulent bankruptcy, or of court withdrawal of custody rights and this in the last ten years. This approach allows for proportionate limitation in scope and duration of such measures as laid down by paragraph 48 of Recommendation CM/Rec(2007)14.

Prohibitions on employment

302. There is no general prohibition on category of persons to be employed in the non-profit sector. Foreign nationals and non-residents are subject to the generally applicable laws as regards entry, stay and employment. Certain activities, rather than particular categories of organisations, are linked to legal criteria concerning the persons employed to carry out such activities. Normally, these are activities eligible for government funding. For instance, the LDC, Article 17, requires that funded activities be managed by persons sufficiently competent to ensure good implementation and accurate financial administration of the activity. The good conduct requirement as described above could represent an obstacle for employment as it is similarly applicable to managers, service providers and support staff involved in working with some specific social groups⁴⁴³. However, all these legal restrictions apply equally to nationals and non-nationals, residents and non-residents.

Frequency of meetings

303. The LNAF provides implicitly for at least annual frequency of the meetings of the highest governing body for both associations and foundations. For associations, Article 13 prescribes that the board must submit annually to the general assembly the accounts for the previous year and the budget for the next period. Otherwise, Article 5 specifies that the general assembly is to be convened by the board in the circumstances defined by the statutes or upon request of 1/5 at least of its members. Foundations are required by Article 34 to submit the accounts and the budget to the Ministry of Justice and after that for publication every year within two months of the closing of the accounts.

Special majorities

304. The LNAF imposes some special majority requirements for the associations' general assembly decision-making. As a main rule, Article 7 provides for simple majority vote of the members present for a resolution to be taken except where the law or the statutes prescribe otherwise. Then, Article 8 specifies that the modifications of the statutes are valid only if there is a quorum of 2/3 and the decision is taken with a qualified majority of at least 2/3 of the votes. When the required quorum cannot be reached, a second meeting needs to be convened and it can decide with any quorum but in that case the resolution will need to be submitted for approval to the civil court. However, if the modifications are related to the objectives, then a qualified majority of at least 3/4 of the votes is required for both meetings and the second assembly can proceed only where at least half of the membership is present or represented. If in the second meeting a minimum of 2/3 of the membership is not present or represented, the resolution needs the civil court approval. Similarly, Article 12 imposes a qualified majority of at least 2/3 of the votes for the exclusion of a member. Article 20 regulates the resolution on dissolution that requires a 2/3 quorum. Where this quorum is not attained a second meeting may be convened and can proceed with any quorum. In both meetings the decision needs the votes of at least 2/3 of the members present. The resolution taken without a quorum of 2/3 needs a civil court approval. Recently submitted to the Chamber of Representatives Draft Law⁴⁴⁴ ("the Draft Law") aiming at updating the LNAF removes the civil court approval procedure and introduces simply a nullifying effect for any decision taken without respecting the special

⁴⁴³ LRRSO, Article 2(a).

⁴⁴⁴ *Projet de loi sur les associations sans but lucratif et les fondations, Ref.: 6054, Arrêté Grand-Ducal de dépôt du 28 mai 2009, dépôt à la Chambre des Députés le 1 juin 2009.*

quorum and majority rules. The majority required for decision-making on other governing bodies is to be specified by the statutes at the discretion of the association.

305. For foundations, according to LNAF, Article 31, when the founder did not specify the conditions for subsequent modifications of the statutes, they can only be made upon agreement between the Ministry of Justice and the absolute majority of the governing board members. Any modifications are subject to approval by Grand-Ducal Decree, must be submitted to the Register and published in the Official Journal⁴⁴⁵.

Limits on power of delegation by the highest governing body

306. Matters reserved by LNAF, Article 4 for decision-making by an association's general assembly are: modifications of the statutes; nomination and release of board members; approval of budgets and annual accounts; dissolution. In addition, the exclusion of a member also needs the general assembly resolution⁴⁴⁶. The board manages and represents the association and can on its responsibility decide to delegate its powers to one among its members or, if the statutes or the general assembly have authorised this, to a third party⁴⁴⁷.

307. The foundations' board has the powers assigned to it by the statutes⁴⁴⁸. The statutes may determine who can have representation powers or authorise the board to delegate such powers. Where this is not the case, the board as a whole would represent the foundation towards third parties.

Authorisation to change internal structure/rules and to establish/close branches

308. There is no general requirement to obtain authorisation from a public authority before any change to the internal structure or rules can be implemented. However, as far as this is likely to need modifications of the statutes, the rules described above, in the "special majorities" section, apply. Namely, associations would need the civil court approval in some particular circumstances, just like modifications in a foundation's statutes would require the agreement of the Ministry of Justice and a Grand-Ducal Decree approval.

309. There is no obstacle in the legislation to freely establish and/or close branches without prior authorisation. However, it seems that branch structure is not very common in the Luxembourg non-profit making community where large entities opt for corporate membership structure of federation, confederation or umbrella organisation type. In this case, the local structures have an independent legal personality and a member status with the centrally registered organisation.

Restrictions on payments to employees and management board members

310. Not-for-profit organisations can pay their employees and can reimburse staff and volunteers alike for expenses incurred in relation to their duties. The LNAF is however clear that a not-for-profit association is one not aiming at providing its members with a material gain⁴⁴⁹ and the Draft Law introduces an explicit provision that the mandate of an association's board member is unpaid. Similarly, a foundation, which in Luxembourg can only be pursuing public benefit objectives⁴⁵⁰, cannot be established for the benefit of its founder/s, board members or

⁴⁴⁵ LNAF, Article 32..

⁴⁴⁶ LNAF, Article 12..

⁴⁴⁷ LNAF, Article 13..

⁴⁴⁸ LNAF, Article 38.

⁴⁴⁹ LNAF, Article 1.

⁴⁵⁰ LNAF, Article 27.

employees. Special laws⁴⁵¹ contain various incentives with financial impact for some types of organisations and particular categories of their staff and volunteers. These incentives are mainly related to social security arrangements, special paid leave, direct financial intervention of the government in the costs of volunteers and other specific advantages for the individuals themselves or their organisations involved in development cooperation or in voluntary work.

Challenging decisions of the governing bodies

311. According to the LNAF, the respect for the law and the rights of any third parties in the acts and decision-making of not-for-profit organisations may be pursued through the following procedures. The civil court may, at the request of a member, third party with legitimate interest or the prosecutor, pronounce the dissolution of an association which is not able to meet its commitments any longer, which is allocating its property or the revenues of its property to objectives other than the ones for which it has been created or that is breaching seriously its statutes, the law or the public order. Even when rejecting the dissolution, the court may still pronounce annulment of the unlawful act⁴⁵². As regards foundations, the civil court may, at the request of any third party with legitimate interest or of the prosecutor, revoke the board or some of its members if they act imprudently or do not meet their obligations as set forth by the law or the statutes, if they use the assets not in accordance with their statutory destination or for purposes that are contrary to the public order. In this case, new board members shall be appointed according to the statutes or, if the court so decides, by the Ministry of Justice⁴⁵³. A foundation may also be dissolved by the civil court at the request of a board member, any third party with legitimate interest or the prosecutor, if it becomes unable to accomplish the objectives for which it has been created.⁴⁵⁴ All the above judgements are subject to appeal⁴⁵⁵.

Attendance at meetings and taking over management by public authorities

312. The legal framework does not provide directly for circumstances in which public authority can require attending meetings of a not-for-profit organisation's bodies or take over its management. However, in some very particular cases public authority can designate the people or institution to take over the management of such an organisation. For instance, Article 40, LNAF, stipulates that when revoking the members of a foundation's board, the court may decide that it is up to the Ministry of Justice to appoint the new board members. Another case is at stake where organisations being licensed by the government for carrying out activities with specific groups, such as children, disabled, elderly etc., lose their licence⁴⁵⁶. Then the competent Ministry may, in the interest of the beneficiaries, designate a person or an institution duly licensed and carrying out similar activity to take over the management of the concerned organisation or activity for a period of maximum one year, subject to renewal once⁴⁵⁷.

Auditing of accounts

313. The LNAF does not impose on associations and foundations a requirement to have their accounts audited on a periodic basis. However, it provides for some essential accountability features. The associations' board must submit annually to the general assembly

⁴⁵¹ LDC and LYVS for instance.

⁴⁵² LNAF, Article 18.

⁴⁵³ LNAF, Article 40.

⁴⁵⁴ LNAF, Article 41.

⁴⁵⁵ LNAF, Article 21 and 42..

⁴⁵⁶ This can be due to refusal during re-application procedure or revocation. The concerned organisations must re-apply for new licence when the circumstances based on which the initial licence has been granted change (LRRSO, Article 3). The licence can be revoked when the legal conditions are not met any longer (LRRSO, Article 4).

⁴⁵⁷ LRRSO, Article 6.

the annual accounts and the budget for approval⁴⁵⁸. Foundations have to submit annually their accounts and budget to the Ministry of Justice within two months of the closing of the accounts and both must be published in the Official Journal⁴⁵⁹. The Ministry of Justice is responsible for the general control over the proper use of foundations' assets towards the objectives for which they were created.⁴⁶⁰ The Draft Law, thus formalising an already existing practice, incorporates the rule that large associations, associations with recognised public benefit status and foundations are required to perform annual checks of their accounts by a certified accountant or auditor. Additionally, organisations carrying out activities for which a licence and/or public funding have been granted may be required by law⁴⁶¹ or by the grant agreement to have their accounts examined annually by certified auditors⁴⁶².

Reporting on donations, grants and sponsorship and activities

314. Not-for-profit organisations, in some particular circumstances, are required to report on donations from a private or foreign entity for the purpose of receiving authorisation. However, they are not required to report on their expenditure as such. The LNAF, as modified by the Law of 19 December 2008⁴⁶³, provides for the following procedure regarding receipt of donations: any donation by gift or bequest exceeding 30 000 Euros must be authorised by a Ministry of Justice Decree; the organisations may however provisionally accept the donation as a protective measure; when receiving donations by gift, an authorisation is not required if the donation is made by giro issued by a credit institution authorised to operate in a Member State of the European Union or the European Economic Area; the authorisation will only be granted if the recipient has a legal personality, is enrolled in the Register, its statutory act has a legally conform content, it has respected its obligations for publicity and has submitted duly⁴⁶⁴ its annual accounts; no authorisation will be granted if the identity of the donor cannot be established.

315. There is no general legal obligation to produce an activity report on a periodic basis. However, organisations to which a particular licence and/or public funding have been granted may be required to report on activities annually, project/programme based or otherwise⁴⁶⁵.

Inspection

316. General supervision such as tax inspection, social security control and so forth applies. In addition to that, organisations carrying out activities for which a licence and/or public funding have been granted may be subject to special inspection rules. For instance, an organisation licensed for making use of volunteers' services may be at any moment scrutinised by the National Youth Service and has to provide it with all relevant supporting documents⁴⁶⁶. Organisations licensed under the LRRSO which outlines also the inspection modalities, are another example⁴⁶⁷. Special civil servants, who take an oath and act as judiciary police officers,

⁴⁵⁸ LNAF, Articles 4 and 13.

⁴⁵⁹ LNAF, Article 34.

⁴⁶⁰ LNAF, Article 40.

⁴⁶¹ The Grand-Ducal Regulation of 10 November 2006 in application of LRRSO, Article 18, requires a proof of external or internal audit of some particular activities to be submitted to the concerned Ministry every two years.

⁴⁶² LDC, Articles 15, 17 and 19.

⁴⁶³ *Loi du 19 décembre 2008 portant modification de certaines dispositions en matière des impôts directs.*

⁴⁶⁴ For foundations – to the Ministry of Justice, for associations – to the Register and this since the time of their establishment.

⁴⁶⁵ LDC, Article 15 – reporting to the Ministry of Foreign Affairs; LYVS, Article 3 (7) – reporting the National Youth Service; Grand-Ducal Regulation of 16 April 1999 in application of LRRSO, Article 29 (2) – reporting to the Ministry of Family Affairs.

⁴⁶⁶ LYVS, Article 3 (7).

⁴⁶⁷ LRRSO, Article 9.

are designated to look for and establish irregularities. Their reports on irregularities are presumed to be true, unless the contrary is proved. They have the right to access the property (premises, land and vehicles) of the organisations subject to control. In the case of serious indications that there might be irregularities, they are even allowed access during the night. They need to inform of their presence the head of the scrutinised organisation and he/she has the right to join them during the visit. In some cases, the law requires for inspection visits to be carried out at least annually by the authority responsible⁴⁶⁸. Additionally, in the grant agreements for public funding further inspection modalities may be stipulated⁴⁶⁹.

Conclusion

317. The legislative framework in the Grand Duchy of Luxembourg as regards the internal governance of not-for-profit organisations is broadly aligned with the existing international standards.

318. The mandatory content of the statutes is generally compatible with paragraph 19 of Recommendation CM/Rec(2007)14 although some of the items required by the LNAF go beyond the necessary essentials. However, this same paragraph sees the frequency of meetings of the highest governing body as a matter to be freely determined by the statutes rather than by law.

319. The regulation of special quora and majorities and the various approvals that can happen to be required when it comes to changes in the statutes appear to go unduly far into the organisations' autonomy framed by the principle of self-regulation and the assumption of lawfulness of their activities⁴⁷⁰.

320. The highest governing body has to be free to delegate some of its powers⁴⁷¹. The Draft Law that has been mentioned above expands the list of exclusive powers of the general assembly which will further restrain this freedom and is likely to disproportionately burden large membership based organisations.

321. The authorisation procedure for receipt of donations is problematic from the perspective of Paragraph 50 of Recommendation CM/Rec(2007)14 which provides that NGOs should be free to solicit and receive funding, subject only to the laws generally applicable to customs, foreign exchange and money laundering and those on the funding of elections and political parties. The necessity and proportionality of such procedure are doubtful having in mind its impact on legitimate confidentiality and on the right to private life of third parties, donors in particular⁴⁷².

322. The prevention character of some inspection procedures regulated by broadly formulated provisions does not seem to provide sufficient guarantees against arbitrary interference as specified in Paragraphs 67–69 of the Recommendation CM/Rec(2007)14.

Moldova

Introduction

⁴⁶⁸ Grand-Ducal Regulation of 8 December 1999 in application of LRRSO, Article 32; Grand-Ducal Regulation of 28 January 1999 in application of LRRSO, Article 34.

⁴⁶⁹ LRRSO, Article 11; LDC, Articles 15, 17 and 19.

⁴⁷⁰ See Paragraphs 1, 43, 47 and 67 of Recommendation CM/Rec(2007)14.

⁴⁷¹ See Paragraph 46 of Recommendation CM/Rec(2007)14.

⁴⁷² See Paragraph 64 of Recommendation CM/Rec(2007)14.

323. Article 41 of the Constitution of the Republic of Moldova guarantees to its citizens the right to freedom of association in parties and other socio-political organisations that shall contribute to the definition and expression of their political will and take part in the election process under the rule of law.⁴⁷³ Regrettably the Constitution passes over the aspect of freedom of association that concerns essentially non-political objectives. Accordingly there are no immediate constitutional clauses that would secure the right with regard to the NGO sector as it is defined by Recommendation CM/Rec(2007)14.⁴⁷⁴

324. At the same time, the Civil Code recognises various forms of non-commercial (not-for-profit) organisations, including public associations and foundations.⁴⁷⁵

325. The two main forms of non-commercial organisations used for creation of NGOs in Moldova⁴⁷⁶ are regulated by the Law on Public Associations of 1996 ("the LPA") and the Law on Funds of 1999 ("the LF"), the Law on Registers of 2007 and the Decree of the Government of the Republic of Moldova on the State Register of Non-Commercial Organisations of 2009.⁴⁷⁷

326. Since several years the total number of NGOs in Moldova exceeds 7000. According to respective studies, the majority of NGOs (66 %) are based in the central part of the country and around 98 % in urban areas. They are predominantly engaged in social (24,7 %) and educational (22,4 %) activities, as well as dealing with social development (14,1 %) and human rights (9,6 %)⁴⁷⁸. There are certain positive trends in the sphere of NGO work that have been reported with respect to advocacy initiatives, creation of intersectoral partnerships, cooperation with the public sector, financial viability and simplification of the legal framework for holding public meetings and assemblies⁴⁷⁹. In addition, the revised LPA⁴⁸⁰ has reduced the minimum number of founders to just 2 of them⁴⁸¹. It eliminated restrictions in respect of non-nationals⁴⁸².

327. At the same time, there are certain disturbing developments that have negatively affected the environment for establishment and continued operation of NGOs in Moldova. Thus,

⁴⁷³ Article 42 of the Moldovan Constitution also provides for the right for employees to set up and join trade unions. The Constitution is referred to according to the English text available on the web-site of the Constitutional Court of Moldova. < http://www.constcourt.md/index_en.html > consulted on 30.06.2009.

⁴⁷⁴ Since Article 41 of the Constitution is focused on political associations, its applicability to 'citizens' could be justified in light of the limited authorisation to restrict political activity of non-nationals under Article 16 of the European Convention of Human Rights. However, it should not be expanded over the right to found and join an NGO (paragraphs 16 and 22 of Recommendation CM/Rec(2007)14).

⁴⁷⁵ Since 2000 the Law on Patronat has introduced it as a special organisational form for unions of employers.

⁴⁷⁶ Although the de-facto authorities of the Transnistrian region require NGOs to apply its legal framework, some of them register under the Moldovan Law.

⁴⁷⁷ Replaced the Decree on the State Register of Public Associations of 1999.

⁴⁷⁸ See A. Brighidin, M. Godea, S. Ostaf, I. Trombițki, T. Țarelunga, A. Vacaru, Study on NGOs Development in Moldova, (in Romanian) UNDP Moldova, 2007.

<http://www.undp.md/publications/doc/Studiu_DSC.pdf>, consulted on 10.07.2009.

⁴⁷⁹ See 'The 2008 NGO Sustainability Index. For Central and Eastern Europe and Eurasia', USAID, <http://198.76.84.6/locations/europe_eurasia/dem_gov/ngoindex/2008/moldova.pdf>, consulted on 12.07.2009. It should be emphasised that the recent judgment of 7 April 2009 of the European Court of Human Rights in the case of *Hyde Park and Others v. Moldova* that established a number of violations, including a breach of the right to freedom of assembly under Article 11 of the Convention, concerned the events dating back to 2007.

⁴⁸⁰ In its version of 20 July 2007.

⁴⁸¹ Article 1(1).

⁴⁸² Article 11(1); to be compared with Article 11(4) of the earlier version that operated with the term 'citizens'. See also above comments on the constitutional provisions.

the revised LPA has reduced the range of categories of respective organisations.⁴⁸³ It now provides for public associations only and their definition puts emphasis on the principle of 'fixed membership'. In this context and in spite of the fact that the law obliges NGOs to produce a list of founders only, the competent authorities have introduced the practice of requesting full lists of their members too.⁴⁸⁴ Other reported arbitrary impediments for passing registration or re-registration and related procedures,⁴⁸⁵ as well as accounts on the pressure exercised against a considerable number of NGOs in the first half of 2009 (in the aftermath of April elections and related violent events) are serious grounds for concerns regarding the overall state of affairs in the sphere in issue.

Requirements relating to the statute

328. The catalogue of items relating to the internal governance which must be specified in statutes of public associations is delineated by Article 16 of the LPA. It includes:

- procedures for becoming and resigning as a member;
- members' rights and obligations;
- structure of the association, regulations on its establishment, exact title, structure, powers and terms of authority of the governing, executive and supervisory bodies;
- procedures for making changes and amendments to statutes;
- the specification of sources, rules on formation and use of property and other assets, amounts of membership fees, bodies authorised to make decisions on acquiring, possessing, using, managing and selling property;
- procedure and time-frame for convening general meetings, conferences, conventions;
- procedures for setting up, status, structure and methods of activities of basic subdivisions;
- main parameters of financial reports and mode of their publication;
- procedures for re-organisation and liquidation.

329. Thus, the catalogue has incorporated certain points, such as amounts of membership fees, structure of subdivisions etc. in respect of which NGOs should remain flexible due to comparatively frequent need of their adjustment. Moreover, there is no obvious justification for introducing rigid rules of registration in respect of the items in issue. Accordingly the catalogue should be shortened or it should be possible to register these kinds of adjustments by means of notification.⁴⁸⁶

⁴⁸³ Although Articles 183-185 of the Civil Code envisage creation of public or private establishments, as from 2007 the provisions on public establishments have been deleted from the LPA (former Articles 5 'c', 8). It also excluded such forms as public movements and institutes. These forms were used by approximately 7% of NGOs. See A. Brighidin, M. Godea, S. Ostaf, I. Trombițki, T. Țarelunga, A. Vacaru, Study on NGOs Development in Moldova, (in Romanian) UNDP Moldova, 2007. <http://www.undp.md/publications/doc/Studiu_DSC.pdf>, consulted on 10.07.2009.

⁴⁸⁴ Article 17.5 d of the LPA. The practice can be illustrated by the decision N10 of 13.06.2008 by which the Minister of Justice of Moldova refused to register changes in the Statute of the public association "Amnesty International Moldova".

⁴⁸⁵ See 'The 2008 NGO Sustainability Index. For Central and Eastern Europe and Eurasia', USAID, <http://198.76.84.6/locations/europe_eurasia/dem_gov/ngoindex/2008/moldova.pdf>, consulted on 12.07.2009; the cited judgment of the ECtHR *Hyde Park and Others v. Moldova*, at para. 5.

⁴⁸⁶ The debatable character of the regime applicable to the requirements in issue can be illustrated by the mentioned example of refusing registration of changes in the Statute of the public association "Amnesty International Moldova". See above. Among other points the changes concerned such procedural element as a quorum of its general meeting. The change was necessary for facilitating its internal governance procedures that had been hindered by a significant increase of the number of its members. However, the registration has been refused without giving a possibility to remedy the shortcomings due to incorrect payment of the registration fee, non-submission of a full list of members

330. The LF envisages a shorter list of relevant items to be specified in funds' statutes. It includes:

- rules on managing and using assets;
- rules on appointment and dismissal of the members of the board and taking decisions by it;
- organisational structure, titles of branches, if any, and scope of their powers;
- procedures for termination of activities, conditions of liquidation of the fund and ensued determination of its assets.

331. However, LF, Article 11(4) provides for a possibility for the Ministry of Justice to request the judiciary to introduce unspecified changes in the statute in view of 'consequences that could not be anticipated at the moment of its establishment'.

Frequency of meetings, special majorities, power of delegation

332. The Moldovan legislation is rightly refraining from dictating to NGOs and they are formally free to regulate by their statutes or internal decisions the issues of frequency of meetings of their highest governing bodies, majorities needed for taking decisions by its governing or other bodies. There are no formal limits on the power of decision-making or requirements of obtaining an authorisation from a public authority before introducing changes to their internal structures or rules either.⁴⁸⁷

333. While the LPA does not set up any particular requirements regarding procedures, structure and other items indicated, representatives of competent authorities allegedly still insist on the most common or preferable configurations and patterns when examining the statutes and other documents prepared by NGOs.⁴⁸⁸

334. Unlike the LPA, chapter IV of the LF provides for a specific model of the highest governing body. A fund should have a board (board of directors). Its functions include: development of strategy; budgetary and reporting functions; management of assets and mergers; election of its new members and their dismissal; establishes other bodies of the fund and power to decide on all matter related to its activities. Funds can create supervisory boards that are mandatory for public benefit funds exceeding 1 million MDL⁴⁸⁹.

Prohibitions on membership of governing or management bodies and employment

335. The restrictions on membership of governing or management bodies of public associations are narrowed to the requirements of the capacity to act and Moldovan domicile. At the same time, there are no specific provisions that would set up any special regime as to the entitlement of children to participate in the decision-making of their NGOs or justify the residence criterion.

336. As to funds, the LF bans the founders or persons leading any legal entities from becoming a member of their bodies. Besides that, it has also set up a requirement that more than a half of members of the board of a fund should be citizens of Moldova. It is the latter provision in particular that can scarcely be justified by any reference to a legitimate aim pursued.

and original statute. As a result of the decision upheld by the domestic judiciary, the NGO has been prevented from the desired rationalisation of its internal governance procedures because of unrelated technical reasons.

⁴⁸⁷ However, these points have to be reflected in statutes and registered accordingly. See comments above.

⁴⁸⁸ Ministry of justice is responsible for registering republican and international public associations.

Local ones are registered by relevant municipal authorities.

⁴⁸⁹ Approximately 64,000 EUR.

337. There are no legal prohibitions on employment directed at NGOs in particular. They are related to the conflicts of interests linked to statuses and powers of civil servants⁴⁹⁰, distribution or management of assets⁴⁹¹, as well as simultaneous membership in governing and controlling bodies of the organisations⁴⁹².

338. The limits on the payment of fees or expenses are envisaged for NGOs that have been certified as public benefit ones and therefore exempted from the obligation to pay the income tax. Article 52 of the Tax Code contains an ill-defined stipulation that public benefit funds and public associations should direct their 'total income' for pursuing their goals. It is only the LF that specifies a limit of 20% of all expenses that can be spent for administrative purposes, including salaries of the staff and fees for members of its board.⁴⁹³

Challenging decisions of governing bodies and taking over management

339. Although it is not envisaged that a decision of the highest governing body or any other organs of NGOs can be challenged, the LPA refers to the general principle that any breaches of the law can be contested before a competent court by public authorities, economic entities, public associations and physical persons concerned.⁴⁹⁴

340. The legislation does not provide for circumstances in which it would be possible for public authorities or other actors to take over the management of NGOs. The legislation just envisages specific procedures and grounds for enforced dissolution of public associations and liquidation of funds only.⁴⁹⁵

Attendance at meetings, auditing of accounts and reporting obligations

341. Moldovan legislation maintains a wide range of methods of control over NGOs by public authorities. It includes actually unlimited possibilities for representatives of registering authorities to 'attend' any events held by public associations or even 'participate' in those held by funds. It is indicative that this prerogative can be exercised in combination with the same kind of unlimited and, therefore, absolutely discretionary powers of being acquainted with documents and information on all aspects of their activities.⁴⁹⁶

342. As expected, public associations and funds are subjected to scrutiny by fiscal and tax authorities.⁴⁹⁷ Along with other legal entities and economic actors they are required to submit on a regular basis relevant accounting reports and balance sheets. Besides that they can be inspected by tax authorities. There are no specific auditing or reporting procedures envisaged either for public benefit associations⁴⁹⁸ or those receiving private or foreign donations, grants and other financial support from such sources, however.

343. Under the heading of transparency, funds are required to publish annual reports on activities that should spell out the total amount of assets used for pursuing statutory goals,

⁴⁹⁰ LPA, Article 4(4) and LF, Article 24(4).

⁴⁹¹ Articles 190 and 191 of the Civil Code of Moldova and other relevant legal provisions.

⁴⁹² LPA, Article 13(2) and LF, Article 24(5).

⁴⁹³ Article 23(2). It should be mentioned that Article 28 of the same law stipulates that, as a rule, members of its board exercise their duties for free and are entitled to reimbursement of actual expenses incurred in this regard.

⁴⁹⁴ LPA, Article 40(2)..

⁴⁹⁵ LPA, Articles 35(4) and LF, Article 35..

⁴⁹⁶ LPA, Article 38(1) and LF, Article 32(1)..

⁴⁹⁷ LPA, Articles 38(2) and LF, Article 32(2).

⁴⁹⁸ Article 32(4).(e) refers only to an unspecified control carried out by the Commission of certification.

implemented programmes, numbers and categories of beneficiaries, sums spent for administrative expenses⁴⁹⁹.

344. At the same time, both public associations and funds are under the obligation to submit annual reports to the registering authority. For the former kind of organisations it should include a notification on continuation of activities and information on titles and location of the governing bodies, personal data of the leadership. In addition to same kind of information a report required from funds should once more incorporate the points specified in the previous paragraph of this section, as well as indicate financial sources, identify members of the board and employees, their relatives that had benefited from the fund. A failure to submit reports for two consecutive years can lead to striking the public association or fund out of respective registers and suspension or termination of their statuses.⁵⁰⁰

345. In the immediate aftermath of the 2009 April events⁵⁰¹ some of the tools in issue were jointly applied to a group of organisations comprising of those actively involved in the electoral campaign or its monitoring, as well as human rights NGOs. In particular, by the letters N 05/2786 of 16.04.2009 the Ministry of Justice requested these NGOs to present their 'position' in respect of the acts of violence occurred. This move was combined with indicatively simultaneous and targeted inspections of the respective NGOs by tax authorities which was assessed by some of the organisations concerned as elements of a wider campaign of intimidation.⁵⁰²

Conclusion

346. Whereas the Moldovan legal framework is justifiably leaving room for flexibility with regards to particular modes and procedures of internal governance of NGOs, it provides for a too detailed catalogue of relevant points subjected to registration procedures. The indefinite character of restrictions on membership of governing and other bodies for non-nationals (non-residents) casts serious doubts on their proportionality. The same applies to the powers of competent authorities to attend and participate in activities of NGOs and their bodies accordingly and to examine their documents. In addition, there is a number of legal provisions regulating the internal governance of NGOs that lack clarity, are open to discretionary application by public officials and therefore, do not correspond to the requirement of lawfulness. These legislative shortcomings contributed to the described practices that noticeably undermine the general standard according to which NGOs should not be subject to direction by public authorities⁵⁰³.

"The former Yugoslav Republic of Macedonia"

Introduction

347. "The former Yugoslav Republic of Macedonia" is a civil-law country which recognises both membership and non-membership not-for-profit organisations. They are governed by the

⁴⁹⁹ LF, Article 33.

⁵⁰⁰ LPA, Article 25 and LF, Article 22. There are recent accounts about the application of that sanction against a NGO, e.g. public association under the name that can be translated as 'Protection of Consumers'. See information on the press-conference of 07.07.2009 by INFOTAG; < www.azi.md/ru/story/4233 > consulted on 20.07.2009.

⁵⁰¹ See above.

⁵⁰² See <politicom.moldova.org/news/moldovan-ngos-complain-of-official-harassment-200069-eng.html>, consulted on 20.07.2009.

⁵⁰³ Paragraph 6 of Recommendation CM/Rec(2007)14.

Law on Citizens' Associations and Foundations (1998) ("the 1998 Law")⁵⁰⁴ and the Law on the Amendment of the Law on Citizens' Associations and Foundations (2007) ("the 2007 amendments")⁵⁰⁵.

348. The 1998 Law regulates the establishment, registration, termination, internal governance of citizens' associations and foundations. It also regulates the establishment of associations of foreigners and foreign and international non-governmental organisations.

349. According to the data in the Central Register there are 4,429 associations and foundations⁵⁰⁶.

Requirements relating to the statute

350. According to Article 20 of the 1998 Law and Article 2 of the 2007 amendments, amending Article 20 of the 1998 Law, the statute of a citizen association *particularly contains*:

- the name and seat of the citizen association;
- the goals and tasks of the citizen association, the forms and manner of operation;
- the organs, how they are elected and how they are dismissed, and their mutual relationship;
- the term of office of the organs and how the members make decisions;
- attaining and disposing over property;
- providing publicity in its operation;
- determining the conditions for establishing branches⁵⁰⁷;
- conditions and manner of becoming a member of and being expelled from the citizen association;
- presentation and representation in legal transactions and towards third persons;
- termination of the citizen association;
- handling the property of the citizen association in case of termination of the association; and
- other issues determined by law.

351. According to Article 37 of the 1998 Law, the statute of a foundation *particularly contains* the following information:

- name and seat of the foundation;
- goal of the foundation;
- name and address of the founder;
- procedure and manner of using foundation assets;
- possible beneficiaries of the assets;
- duration, if it is established for a limited period of time;
- procedure for election and recall of members of the foundation organs and their field of work;
- organs and manner of control over the operation of the foundation;
- relations between the foundation organs;
- procedure for changing and supplementing the statute;

⁵⁰⁴ Official Gazette of the Republic of Macedonia No 31/1998.

⁵⁰⁵ Official Gazette of the Republic of Macedonia No 29/2007.

⁵⁰⁶ 2008 NGO Sustainability Index for Central and Eastern Europe and the Eurasia, by the U.S. Agency for International Development (USAID).

http://www.usaid.gov/locations/europe_eurasia/dem_gov/ngoindex/2008/.

⁵⁰⁷ Organisational units; if the association plans to establish such a branch.

- conditions under which founders have the right to terminate the foundation;
- procedure for management and disposal over property;
- transfer of foundation property in case the operation is terminated; and
- other conditions foreseen by law.

352. The wording of the articles ("*particularly contains*") gives the possibility for the statute of the association or foundation to contain additional provisions.

Prohibitions on membership of governing or management bodies

353. According to the 1998 Law, foreigners are not allowed to be founders of an association⁵⁰⁸ but they can be members of the association if this is foreseen in the statute. Further, while foreigners can be members of governing bodies, the majority of members of the governing bodies must have citizenship of "the former Yugoslav Republic of Macedonia"⁵⁰⁹.

354. However, foreigners who have permanent residence or who reside temporarily for longer than one year in "the former Yugoslav Republic of Macedonia" may establish associations of foreigners for scientific, sports, cultural, humanitarian and social goals⁵¹⁰.

355. Foreigners can be founders of a foundation. However, in case of the foundation as well, at least one half of members of the board of the foundation must have citizenship of "the former Yugoslav Republic of Macedonia".

356. According to Article 31 of the 1998 Law, associations may establish professional bodies and services, if that is needed for the implementation of the goals of the association. Employees of those professional bodies and services cannot be elected as members of the governing bodies⁵¹¹.

357. Minors cannot be founders of an association⁵¹² but they may be members. There are no specific rules as to whether they can be members of the governing and management bodies. There are no specific rules regarding the age of founders of foundations.

358. Paragraph 2 of Article 20 of the Law on Prevention of Conflict of Interest (2007)⁵¹³ prescribes that state officials⁵¹⁴ who are members of an association cannot be members of the governing bodies of the association nor undertake managing function in the association⁵¹⁵. This provision was challenged before the Constitutional Court which decided that this paragraph is contrary to the spirit of two constitutional provisions - Article 20 of the Constitution (which

⁵⁰⁸ Article 16.

⁵⁰⁹ Article 29 of the 1998 Law.

⁵¹⁰ Section VI of the 1998 Law.

⁵¹¹ Article 3 of the 2007 amendments, amending Article 31 of the 1998 Law.

⁵¹² Article 16 of the 1998 Law.

⁵¹³ Official Gazette of the Republic of Macedonia No 70/2007

⁵¹⁴ Article. 3, para.2 provides: "An Official, in the context of this Law, are the President of the Republic of Macedonia, appointed Ambassadors and envoys of the Republic of Macedonia abroad and nominated persons by the President of the Republic of Macedonia; elected or appointed functionary in the Assembly of the Republic of Macedonia, the Government of the Republic of Macedonia, the authorities of the state administration, courts and other authorities and organisations performing certain expert, administrative and other duties within the framework of rights and obligations of the Republic of Macedonia, the municipalities and the City of Skopje, as well as other persons discharging public authorisations."

⁵¹⁵ Interestingly, the Law did not extend the prohibition to membership of state officials in governing bodies of foundations.

regulates freedom of association) and Article 8 (principle of rule of law) - and struck down this paragraph of the Law⁵¹⁶.

Prohibitions on employment

359. There are no specific restrictions with regard to who can be employed by an NGO.

Frequency of meetings

360. There are no specific requirements with regard to frequency of meetings of the highest governing bodies.

Special majorities

361. In general, the decision-making matters of the bodies of the association should be regulated by the statute of the association⁵¹⁷.

362. The 1998 Law makes only two specific requirements concerning voting procedure. Firstly Article 27 prescribes that, as a rule, the assembly makes decisions with a majority of votes of those present. Secondly it requires a qualified majority only when the assembly decides for termination of the association, which the assembly must make with a two-thirds majority⁵¹⁸. Other matters for which a qualified majority is required are left to be determined in the statute.

363. There are no specific provisions regarding voting procedure in foundations.

Limits on power of delegation

364. The law does not impose any limits on the power of delegation of decision-making by the highest governing body.

Authorisation for changes to internal structure and rules

365. Associations and foundations are not required to obtain authorisation from a public authority before any change to their internal structure can be implemented.

366. However, if associations or foundations amend their founding act or their statute (specifically their name, seat, address, activities, and other statutory changes) they are obliged to submit a request to the Central Register to register those changes within 30 days⁵¹⁹. If they fail to submit the request, they will be fined from 350 to 1,500 Euros in equivalent value in denars⁵²⁰.

Authorisation to establish or close branches

367. Associations and foundations can establish and/or close branches without the prior authorisation of a public authority where these branches do not have a distinct legal personality from that of the NGO concerned. The statute of the association should determine the conditions for establishing branches⁵²¹. The power to decide on the establishment and the termination of

⁵¹⁶ Decision of the Constitutional Court no. 142/2007-0-0, from 19 December 2007

⁵¹⁷ Article 20 of the 1998 Law.

⁵¹⁸ Articles 25 and 52 of the 1998 Law.

⁵¹⁹ Article 10 of the 2007 amendments, amending Article 49 of the 1998 Law.

⁵²⁰ Article 23 of the 2007 amendments, amending Article 74 of the 1998 Law.

⁵²¹ Article 20 of the 1998 Law.

branches is vested in the assembly of the association⁵²². There are no specific rules regarding foundations.

Restrictions on payment to employees and management board members

368. Article 41 of the 1998 Law prescribes that, as a rule, members of the board of a foundation are not reimbursed for their work. However, they may receive reimbursement appropriate to their duties, if the statute foresees this and if the financial situation of the foundation permits this⁵²³.

Challenging decisions of the governing bodies

369. There are no specific rules on bringing challenges to decisions of the bodies of associations and foundations, which seems to indicate that the general civil law rules would apply.

Attendance at meetings by public officials

370. There are no legally prescribed circumstances which would allow public officials to insist on attending meetings of the highest governing body or any of the management bodies.

Taking over management by public authorities

371. There are no legally prescribed circumstances under which a public authority can take over the management of associations or foundations.

372. Indeed the only case where the government can make a decision on behalf of association or foundation is during distribution of assets after termination. The 1998 Law prescribes that after the termination of an association or foundation, the property and assets that remain after liabilities are settled will be used in a manner determined by the statute. However, in cases when the conditions determined by the statute cannot be met, the property and assets are transferred to an association which is determined by the appropriate ministry. An appeal against the decision of the ministry can be lodged with the Government Committee⁵²⁴.

Auditing of accounts

373. There is no mandatory audit requirement prescribed for associations and foundations. They must keep accounting records in the manner prescribed by the Law on Accounting of Non-Profit Organisations⁵²⁵ and submit to the state authority reports and information in the manner and in instances stipulated by this law. Organisations whose annual income is more than 2,500 Euros must prepare financial statements and submit them to the Public Revenue Office and the Register of Annual Accounts of the Central Registry.

Reporting on donations and sponsorships

374. The Law on Donations and Sponsorships in Public Activities (2006)⁵²⁶ provides tax benefits for donors and recipients of donations and sponsorships, and prescribes the circumstances for eligibility for those benefits (i.e., it regulates who can give and receive

⁵²² Article 25 of the 1998 Law.

⁵²³ Paragraph 2.

⁵²⁴ Articles 53 and 55 of the 1998 Law.

⁵²⁵ Official Gazette of the Republic of Macedonia No 24/2003.

⁵²⁶ Official Gazette of the Republic of Macedonia No 47/2006.

donations and sponsorships, activities and purposes for which donations and sponsorships can be given, the procedure for giving and receipt) as well as reporting, record keeping and control.

375. If the donor/sponsor and the recipient want to utilise the tax benefits they must comply with this Law. Otherwise they do not need to report the donation and sponsorship.

376. If they want to utilise the tax benefits, then they must conclude a contract⁵²⁷ and also develop a report on the provided or received donation or sponsorship⁵²⁸. The contract and the report must be submitted to the Public Revenue Office within 30 days following the implementation of the contract. The report should contain the following information:

- the name and title of the provider and recipient;
- the name and title of the end beneficiary;
- a description of the donation and sponsorship that would enable its identification, by indicating quantities, values and other features;
- final purpose of the donation and sponsorship, and
- other data.

377. The donation and sponsorship must be of public interest in order to be eligible for tax benefits. Therefore, Article 21 provides an optional procedure upon which a donor/sponsor can request the opinion of the Ministry of Justice, confirming that a particular activity is in the public interest and therefore eligible for tax benefits.

Reporting on activities

378. There are no legal requirements for associations and foundations to submit annual reports on their activities.

Inspection

379. There are no specific rules concerning inspection of the books, records and activities of associations and foundations by public authorities; they fall under the general rules of financial and tax inspection applicable to all legal entities.

Conclusion

380. Rules governing internal governance of associations and foundations seem largely to comply with international standards and best practices. Currently the Ministry of Justice is developing a new law concerning associations and foundations. The draft text includes provisions which aim to regulate in more depth the internal governance, competencies of the governing and management bodies, audit, narrative and financial reporting and supervision and oversight. The draft also aims to introduce the public benefit (charity) status. The working group of the Ministry of Justice is currently finalizing the text and it plans to open it up for discussions in October. According to the agenda of the Government, the new law should be adopted by the end of the year

⁵²⁷ Article 4.

⁵²⁸ Article 19.

IV CONCLUSIONS AND RECOMMENDATIONS

381. This analysis only provides an overview of the position in the countries in respect of which the questionnaire was answered and certainly does not provide a deep enough appreciation of how formal rules work in practice. Moreover it is not in a position to confirm the accuracy of the information provided by the respondents.

382. Nonetheless a number of problems do seem to emerge.

383. Firstly it may justifiably be queried whether all the detailed requirements relating to internal governance are appropriate for all forms of NGOs in individual countries and the existence of a discretion to impose additional ones at the registration stage seems unwarranted.

384. Secondly there is a lack of clarity as to the entitlement of all persons and in particular children and non-citizens to participate fully in the decision-making of NGOs.

385. Thirdly there appear to be some undue controls over the freedom of NGOs to adapt their internal rules and structures and to establish and close branches which do not have a discrete legal personality.

386. Fourthly the basis for challenges to the decision-making of NGOs by public authorities appears in some countries to be unduly wide and unconnected with legitimate public interests related to their regulation.

387. Fifthly the scope in a few instances for enforced attendance of public officials at internal meetings of NGO decision-making bodies seems unjustified.

388. Sixthly the scope of obligations with respect to the auditing of accounts and reporting on activities is not always entirely clear and may not always be appropriate.

389. Seventhly there appears to be some significant influence exercised over NGO decision-making through the power of authorities to grant or withdraw public funding and through the participation of officials as board members, which does not always seem to be connected with legitimate public interests related to the regulation of NGOs.

390. Finally, as was also evident from the conclusions in the Expert Council's First Annual Report, the several organs of the Council of Europe need to make stronger efforts to raise awareness throughout Europe of the exemplary terms of Recommendation CM/Rec(2007) 14.

391. These are all matters which merit continued scrutiny but the following measures seem necessary to improve the present situation.

392. Firstly the appropriateness of specific legal requirements relating to internal governance need to be reviewed with a view to lightening the burden placed on NGOs and removing any scope for imposing requirements at registration or grant of legal personality which are not prescribed in the law.

393. Secondly inappropriate obstacles to the full participation of children and non-citizens in the decision-making of NGOs ought to be removed.

394. Thirdly restrictions on the freedom of NGOs to adapt their internal rules and structures and to establish and close branches without discrete legal personality should be removed.

395. Fourthly the basis for public authorities to challenge the decision-making of NGOs should be limited to circumstances in which there is a legitimate public interest to be protected.

396. Fifthly public officials should have no general authority to attend the meetings of NGO decision-making bodies without an invitation.

397. Sixthly there is a need to ensure that the scope of obligations relating to the auditing of accounts and reporting on activities is clarified and does not place an undue burden on NGOs.

398. Seventhly public authorities should not use their powers to grant or withdraw funding or the participation of officials in meetings of NGO decision-making bodies to exercise undue influence on the decisions being taken by NGOs.

399. Finally, the organs of the Council of Europe need to make stronger efforts to raise awareness throughout Europe of Recommendation CM/Rec(2007) 14, particularly through promoting its widespread dissemination and supporting training activities for NGOs and public authorities.

ANNEX 1



OING Conf/Exp (2008) 1

Terms of reference

EXPERT COUNCIL ON NGO LAW

Adopted at the meeting of the Conference of INGOs on 22 January 2008

Background

The initiative for the creation of the Expert Council on NGO Law goes back to the first Regional NGO Congress organised by the Conference of INGOs on 24-26 March 2006 in Warsaw which proposed “the creation of an expert council to evaluate the conformity of national NGO and other relevant legislation and its application with Council of Europe standards and European practice. NGOs could pool their resources and co-operate with the Conference of INGOs and the Council of Europe to this effect.”

The Expert Council is an initiative by NGOs for NGOs in all Council of Europe member States and Belarus.

The Conference of INGOs decided on 6 October 2006 to take the lead in the creation of the Expert Council.

The Expert Council operates under the authority of the Conference of INGOs of the Council of Europe.

The creation of the Expert Council on NGO Law gives follow-up to both the Warsaw Declaration, adopted at the Third Summit of Heads of State and Government of the Council of Europe member States on 16-17 May 2005, which stated that “democracy and good governance can only be achieved through the active involvement of citizens and civil society”, and Recommendation CM/Rec(2007)14 on the legal status of NGOs.

The Expert Council on NGO Law relates to the implementation of project 2006/DGAP/943 “Relations with INGOs” of the Programme of Activities of the Council of Europe.

Mandate

The Expert Council aims to contribute to the creation of an enabling environment for NGOs throughout Europe by examining national NGO law and its implementation and promoting its compatibility with Council of Europe standards and European good practice.

Activities

To achieve its aim, the Expert Council:

- Monitors the legal and regulatory framework in European countries, as well as the administrative and judicial practices in them, which affect the status and operation of NGOs,
- Identifies both matters of concern and examples of good practice,
- Provides advice on how to bring national law and practice into line with Council of Europe standards and European good practice,
- Proposes ways in which Council of Europe standards could be developed,
- Encourages and supports NGOs to work together on issues concerning the NGO legislation and its implementation and
- Reports on its activities, its findings and its proposals with regard to Council of Europe standards and European good practice.

The Expert Council pursues a thematic approach with regard to all European countries. It deals in particular with issues addressed in Recommendation CM/Rec(2007)14 on the legal status of NGOs. When considered appropriate, the Expert Council may prepare reports on problems occurring in a particular country for the attention of the Conference of INGOs.

The Conference of INGOs or groups of NGOs can refer issues to the Expert Council, which can also take up issues on its own initiative. It receives information from NGOs, States, the Council of Europe and other intergovernmental institutions. It can carry out its own research.

The Expert Council complements the Council of Europe's assistance to governments on matters pertaining to NGO legislation such as the provision of legislative expertise and assistance activities on drafting or reforming NGO legislation. It therefore works in liaison with relevant Council of Europe bodies and services.

The Expert Council holds annual meetings and its members co-operate throughout the year by electronic means of communication.

Reporting

The Expert Council presents an annual report to the Conference of INGOs on its work. If need be, it may submit ad hoc reports on matters of particular urgency to the Conference of INGOs. The reports will contain recommendations for action by the Conference of INGOs.

Follow-up

The Conference of INGOs decides on the follow-up to be given to the reports of the Expert Council. It publishes the reports, ensures their dissemination to NGOs and relevant Council of Europe, national and intergovernmental bodies. It monitors the implementation of the Expert Council's recommendations.

Membership

The Expert Council is composed as follows:

- President
- Co-ordinator

- Three members
- Ad hoc members

All members act in their personal capacity.

A representative of the Secretariat General of the Council of Europe attends the meetings of the Expert Council.

Members of the Expert Council have all or most of the following qualifications:

- Legal expertise in NGO law (including the regulatory framework), other relevant laws (such as tax legislation), administrative and judicial practices affecting the status and operation of NGOs and human rights,
- NGO experience at national and international level, including experience in managing a NGO and NGO networks,
- Knowledge of European standards and good practice,
- Experience with the issues at stake in more than one European country,
- Availability and
- Proficiency in English.

The Conference of INGOs appoints the President of the Expert Council for a three-year term. The co-ordinator and the other members are appointed by the Bureau of the Conference of INGOs for a three-year term. The Expert Council appoints ad hoc members who are specialised on issues under examination for a one-year term, renewable.

Financial aspects

The budget of the Conference of INGOs (which is essentially funded by the Council of Europe) bears the travel and subsistence expenses for all members attending the meetings of the Expert Council and the cost of small expert fees for the written contributions of the members.

The co-ordinator has a consultant contract.

Evaluation

The Expert Council's operation will be reviewed by the Conference of INGOs in its third year of functioning with a view to determining whether the creation of a permanent structure is necessary.

ANNEX 2

Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organisations in Europe

*(Adopted by the Committee of Ministers on 10 October 2007
at the 1006th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve greater unity between its members and that this aim may be pursued through the adoption of common rules;

Aware of the essential contribution made by non-governmental organisations (NGOs) to the development and realisation of democracy and human rights, in particular through the promotion of public awareness, participation in public life and securing the transparency and accountability of public authorities, and of the equally important contribution of NGOs to the cultural life and social well-being of democratic societies;

Taking into consideration the invaluable contribution also made by NGOs to the achievement of the aims and principles of the United Nations Charter and of the Statute of the Council of Europe;

Having regard to the Declaration and Action Plan adopted at the Third Summit of Heads of State and Government of the Council of Europe (Warsaw, 16-17 May 2005);

Noting that the contributions of NGOs are made through an extremely diverse body of activities which can range from acting as a vehicle for communication between different segments of society and public authorities, through the advocacy of changes in law and public policy, the provision of assistance to those in need, the elaboration of technical and professional standards, the monitoring of compliance with existing obligations under national and international law, and on to the provision of a means of personal fulfilment and of pursuing, promoting and defending interests shared with others;

Bearing in mind that the existence of many NGOs is a manifestation of the right of their members to freedom of association under Article 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms and of their host country's adherence to principles of democratic pluralism;

Having regard to Article 5 of the European Social Charter (revised) (ETS No. 163), Articles 3, 7 and 8 of the Framework Convention for the Protection of National Minorities (ETS No. 157) and Article 3 of the Convention on the Participation of Foreigners in Public Life at Local Level (ETS No. 144);

Recognising that the operation of NGOs entails responsibilities as well as rights;

Considering that the best means of ensuring ethical, responsible conduct by NGOs is to promote self-regulation;

Taking into consideration the case law of the European Court of Human Rights and the views of United Nations human rights treaty bodies;

Taking into account the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms, United Nations General Assembly Resolution A/RES/53/144;

Drawing upon the Fundamental Principles on the Status of Non-Governmental Organisations in Europe;

Having regard to the European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations (ETS No. 124) (hereinafter Convention No. 124) and to the desirability of enlarging the number of its contracting parties;

Recommends that the governments of member states:

– be guided in their legislation, policies and practice by the minimum standards set out in this recommendation;

– take account of these standards in monitoring the commitments they have made;

– ensure that this recommendation and the accompanying Explanatory Memorandum are translated and disseminated as widely as possible to NGOs and the public in general, as well as to parliamentarians, relevant public authorities and educational institutions, and used for the training of officials.

I. Basic principles

1. For the purpose of this recommendation, NGOs are voluntary self-governing bodies or organisations established to pursue the essentially non-profit-making objectives of their founders or members. They do not include political parties.

2. NGOs encompass bodies or organisations established both by individual persons (natural or legal) and by groups of such persons. They can be either membership or non-membership based.

3. NGOs can be either informal bodies or organisations or ones which have legal personality.

4. NGOs can be national or international in their composition and sphere of operation.

5. NGOs should enjoy the right to freedom of expression and all other universally and regionally guaranteed rights and freedoms applicable to them.

6. NGOs should not be subject to direction by public authorities.

7. NGOs with legal personality should have the same capacities as are generally enjoyed by other legal persons and should be subject to the administrative, civil and criminal law obligations and sanctions generally applicable to those legal persons.

8. The legal and fiscal framework applicable to NGOs should encourage their establishment and continued operation.

9. NGOs should not distribute any profits which might arise from their activities to their members or founders but can use them for the pursuit of their objectives.

10. Acts or omissions by public authorities affecting an NGO should be subject to administrative review and be open to challenge by the NGO in an independent and impartial court with full jurisdiction.

II. Objectives

11. 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.

12. 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.

13. 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. Any such support should also be subject to legislation on the funding of elections and political parties.

14. NGOs should be free to engage in any lawful economic, business or commercial activities in order to support their not-for-profit activities without any special authorisation being required, but subject to any licensing or regulatory requirements generally applicable to the activities concerned.

15. NGOs should be free to pursue their objectives through membership of associations, federations and confederations of NGOs, whether national or international.

III. Formation and membership

A. Establishment

16. Any person, be it legal or natural, national or non-national, or group of such persons, should be free to establish an NGO and, in the case of non-membership-based NGOs, should be able to do so by way of gift or bequest.

17. Two or more persons should be able to establish a membership-based NGO but a higher number can be required where legal personality is to be acquired, so long as this number is not set at a level that discourages establishment.

B. Statutes

18. NGOs with legal personality should normally have statutes, comprising the constitutive instrument or instrument of incorporation and, where applicable, any other document setting out the conditions under which they operate.

19. The statutes of an NGO with legal personality should generally specify:

- a. its name;
- b. its objectives;
- c. its powers;
- d. the highest governing body;
- e. the frequency of meetings of this body;
- f. the procedure by which such meetings are to be convened;
- g. the way in which this body is to approve financial and other reports;

h. the procedure for changing the statutes and dissolving the organisation or merging it with another NGO.

20. The highest governing body of a membership-based NGO should be the membership and its agreement should be required for any change in the statutes. For other NGOs the highest governing body should be the one specified in the statutes.

C. Membership

21. No person should be required by law or otherwise compelled to join an NGO, other than a body or organisation established by law to regulate a profession in those states which treat such an entity as an NGO.

22. The ability of any person, be it natural or legal, national or non-national, to join membership-based NGOs should not be unduly restricted by law and, subject to the prohibition on unjustified discrimination, should be determined primarily by the statutes of the NGOs concerned.

23. Members of NGOs should be protected from expulsion contrary to their statutes.

24. Persons belonging to an NGO should not be subject to any sanction because of their membership. This should not preclude such membership being found incompatible with a particular position or employment.

25. Membership-based NGOs should be free to allow non-members to participate in their activities.

IV. Legal personality

A. General

26. The legal personality of NGOs should be clearly distinct from that of their members or founders.

27. An NGO created through the merger of two or more NGOs should succeed to their rights and liabilities.

B. Acquisition of legal personality

28. The rules governing the acquisition of legal personality should, where this is not an automatic consequence of the establishment of an NGO, be objectively framed and should not be subject to the exercise of a free discretion by the relevant authority.

29. The rules for acquiring legal personality should be widely published and the process involved should be easy to understand and satisfy.

30. Persons can be disqualified from forming NGOs with legal personality following a conviction for an offence that has demonstrated that they are unfit to form one. Such a disqualification should be proportionate in scope and duration.

31. Applications in respect of membership-based NGOs should only entail the filing of their statutes, their addresses and the names of their founders, directors, officers and legal representatives. In the case of non-membership-based NGOs there can also be a requirement of proof that the financial means to accomplish their objectives are available.

32. Legal personality for membership-based NGOs should only be sought after a resolution approving this step has been passed by a meeting to which all the members had been invited.

33. Fees can be charged for an application for legal personality but they should not be set at a level that discourages applications.

34. Legal personality should only be refused where there has been a failure to submit all the clearly prescribed documents required, a name has been used that is patently misleading or is not adequately distinguishable from that of an existing natural or legal person in the state concerned or there is an objective in the statutes which is clearly inconsistent with the requirements of a democratic society.

35. Any evaluation of the acceptability of the objectives of NGOs seeking legal personality should be well informed and respectful of the notion of political pluralism. It should not be driven by prejudices.

36. The body responsible for granting legal personality should act independently and impartially in its decision making. Such a body should have sufficient, appropriately qualified staff for the performance of its functions.

37. A reasonable time limit should be prescribed for taking a decision to grant or refuse legal personality.

38. All decisions should be communicated to the applicant and any refusal should include written reasons and be subject to appeal to an independent and impartial court.

39. Decisions on qualification for financial or other benefits to be accorded to an NGO should be taken independently from those concerned with its acquisition of legal personality and preferably by a different body.

40. A record of the grant of legal personality to NGOs, where this is not an automatic consequence of the establishment of an NGO, should be readily accessible to the public.

41. NGOs should not be required to renew their legal personality on a periodic basis.

C. Branches; changes to statutes

42. NGOs should not require any authorisation to establish branches, whether within the country or (subject to paragraph 45 below) abroad.

43. NGOs should not require approval by a public authority for a subsequent change in their statutes, unless this affects their name or objectives. The grant of such approval should be governed by the same process as that for the acquisition of legal personality but such a change should not entail the NGO concerned being required to establish itself as a new entity. There can be a requirement to notify the relevant authority of other amendments to their statutes before these can come into effect.

D. Termination of legal personality

44. The legal personality of NGOs can only be terminated pursuant to the voluntary act of their members – or in the case of non-membership-based NGOs, its governing body – or in the event of bankruptcy, prolonged inactivity or serious misconduct.

E. Foreign NGOs

45. Without prejudice to applicability of the articles laid down in Convention No. 124 for those states that have ratified that convention, foreign NGOs can be required to obtain approval, in a manner consistent with the provisions of paragraphs 28 to 31 and 33 to 39 above, to operate in the host country. They should not have to establish a new and separate entity for this purpose. Approval to operate can only be withdrawn in the event of bankruptcy, prolonged inactivity or serious misconduct.

V. Management

46. The persons responsible for the management of membership-based NGOs should be elected or designated by the highest governing body or by an organ to which it has delegated this task. The management of non-membership-based NGOs should be appointed in accordance with their statutes.

47. NGOs should ensure that their management and decision-making bodies are in accordance with their statutes but they are otherwise free to determine the arrangements for pursuing their objectives. In particular, NGOs should not need any authorisation from a public authority in order to change their internal structure or rules.

48. The appointment, election or replacement of officers, and, subject to paragraphs 22 and 23 above, the admission or exclusion of members should be a matter for the NGOs concerned. Persons may, however, be disqualified from acting as an officer of an NGO following conviction for an offence that has demonstrated that they are unfit for such responsibilities. Such a disqualification should be proportionate in scope and duration.

49. NGOs should not be subject to any specific limitation on non-nationals being on their management or staff.

VI. Fundraising, property and public support

A. Fundraising

50. NGOs should be free to solicit and receive funding – cash or in-kind donations – not only from public bodies in their own state but also from institutional or individual donors, another state or multilateral agencies, subject only to the laws generally applicable to customs, foreign exchange and money laundering and those on the funding of elections and political parties.

B. Property

51. NGOs with legal personality should have access to banking facilities.

52. NGOs with legal personality should be able to sue for the redress of any harm caused to their property.

53. NGOs with legal personality can be required to act on independent advice when selling or acquiring any land, premises or other major assets where they receive any form of public support.

54. NGOs with legal personality should not utilise property acquired on a tax-exempt basis for a non-tax-exempt purpose.

55. NGOs with legal personality can use their property to pay their staff and can also reimburse all staff and volunteers acting on their behalf for reasonable expenses thereby incurred.

56. NGOs with legal personality can designate a successor to receive their property in the event of their termination, but only after their liabilities have been cleared and any rights of donors to repayment have been honoured. However, in the event of no successor being designated or the NGO concerned having recently benefited from public funding or other form of support, it can be required that the property either be transferred to another NGO or legal person that most nearly conforms to its objectives or be applied towards them by the state. Moreover the state can be the successor where either the objectives or the means used by the NGO to achieve those objectives have been found to be inadmissible.

C. Public support

57. NGOs should be assisted in the pursuit of their objectives through public funding and other forms of support, such as exemption from income and other taxes or duties on membership fees, funds and goods received from donors or governmental and international agencies, income from investments, rent, royalties, economic activities and property transactions, as well as incentives for donations through income tax deductions or credits.

58. Any form of public support for NGOs should be governed by clear and objective criteria.

59. The nature and beneficiaries of the activities undertaken by an NGO can be relevant considerations in deciding whether or not to grant it any form of public support.

60. The grant of public support can also be contingent on an NGO falling into a particular category or regime defined by law or having a particular legal form.

61. A material change in the statutes or activities of an NGO can lead to the alteration or termination of any grant of public support.

VII. Accountability

A. Transparency

62. NGOs which have been granted any form of public support can be required each year to submit reports on their accounts and an overview of their activities to a designated supervising body.

63. NGOs which have been granted any form of public support can be required to make known the proportion of their funds used for fundraising and administration.

64. All reporting should be subject to a duty to respect the rights of donors, beneficiaries and staff, as well as the right to protect legitimate business confidentiality.

65. NGOs which have been granted any form of public support can be required to have their accounts audited by an institution or person independent of their management.

66. Foreign NGOs should be subject to the requirements in paragraphs 62 to 65 above only in respect of their activities in the host country.

B. Supervision

67. The activities of NGOs should be presumed to be lawful in the absence of contrary evidence.

68. NGOs can be required to submit their books, records and activities to inspection by a supervising agency where there has been a failure to comply with reporting requirements or where there are reasonable grounds to suspect that serious breaches of the law have occurred or are imminent.

69. NGOs should not be subject to search and seizure without objective grounds for taking such measures and appropriate judicial authorisation.

70. No external intervention in the running of NGOs should take place unless a serious breach of the legal requirements applicable to NGOs has been established or is reasonably believed to be imminent.

71. NGOs should generally be able to request suspension of any administrative measure taken in respect of them. Refusal of a request for suspension should be subject to prompt judicial challenge.

72. In most instances, the appropriate sanction against NGOs for breach of the legal requirements applicable to them (including those concerning the acquisition of legal personality) should merely be the requirement to rectify their affairs and/or the imposition of an administrative, civil or criminal penalty on them and/or any individuals directly responsible. Penalties should be based on the law in force and observe the principle of proportionality.

73. Foreign NGOs should be subject to the provisions in paragraphs 68 to 72 above only in respect of their activities in the host country.

74. The termination of an NGO or, in the case of a foreign NGO, the withdrawal of its approval to operate should only be ordered by a court where there is compelling evidence that the grounds specified in paragraphs 44 and 45 above have been met. Such an order should be subject to prompt appeal.

C. Liability

75. The officers, directors and staff of an NGO with legal personality should not be personally liable for its debts, liabilities and obligations. However, they can be made liable to the NGO, third parties or all of them for professional misconduct or neglect of duties.

VIII. Participation in decision making

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.