

## **Communiqué by the President of the Conference of INGOs and of the President of the Expert Council on NGO Law**

### **On the draft Law of Poland on the National Freedom Institute - Centre for the Development of Civil Society**

As specified in the report on the visit of the Conference of INGOs in Poland in June 2016, the idea to establish the National Freedom Institute - Centre for the Development of Civil Society - raised already some great concern.

However, despite the criticism expressed, we welcome the fact that the Polish Government organised a wide public consultation on this project, not only online but also through the conferences organised at local level, at the early stage of the law-making process. We take note of the report on the consultation which presents all the contributions received (234 from civil society organisations and 41 from the local authorities). The report presents the law-makers' decisions regarding the modifications of the draft on the basis of these contributions. However, we recall that the public hearing in Sejm, requested by the civil society organisations, is indispensable.

Governments should ensure effective consultation and participation of NGOs at all stages of drafting legislation which affects their status, financing or spheres of operation. Such consultation should not just be on the draft text but also on the need for the legislation and its objectives and with consideration of already existing laws that may be satisfying that objective. The Parliamentary Assembly of the Council of Europe called on member States to ensure an enabling environment for NGOs<sup>1</sup>. The implementation of the Recommendation of the Committee of Ministers of the Council of Europe (CM/Rec (2007)14) on the Legal status of non-governmental organisation in Europe commits all member states of the Council of Europe.

In the draft law on the National Freedom Institute – Centre for the Development of Civil Society (Act nr 1713) (version dated 04/07/2017) some critical points remain highly questionable and we reiterate our apprehension at this stage of the law-making process. If the Institute is an executive body, and if, as mentioned in the explanatory memorandum, its mandate will not take over the competences of other ministers or other public administration bodies, and per contra, its aim is to enable all ministries to take part in the Civil society development, why do the programmes, which the National Freedom Institute is supposed to manage have to be previously adopted by the Council of Ministers? The centralisation of the regulations which may have an impact on the functioning of the civil society sector, including access to funding, is an attack on the democratic pluralism and freedom of association. The role of the specialised body in the field of civic dialogue should not be the implementation of

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<sup>1</sup> Resolution 2096 (2016)1 of the Parliamentary Assembly of the Council of Europe “How can inappropriate restrictions on NGO activities in Europe be prevented?”

governmental programmes, but of the international standards relating to civil participation in the decision-making process in public policies. These standards include the transparency of decisions taken by the authorities.

The draft law does not provide any information on how the Institute will guarantee the freedom and independence of NGOs from the executive power. NGOs should be free to undertake advocacy, watchdog or monitoring actions on issues of public debate, regardless of whether the position taken is in accord with government policy or requires a change in the law<sup>2</sup> (How are these rights safeguarded in the management procedures of this Institute?)

In addition, the Committee for Public Benefit Activity, a new body established by this law, will be responsible for collaboration in matters related to the development of civil society with other states, organisations and international and foreign institutions. "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"<sup>3</sup>. The control-and-command approach adopted by the Polish Government may cause obstacles to accessing financial resources by NGOs, particularly foreign funding.

The final question is: Whose freedom will be protected by this institution?

Strasbourg, 20 July 2017

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<sup>2</sup> Paragraph 12 Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organizations in Europe (hereinafter: Recommendation CM/Rec(2007)14

<sup>3</sup> Paragraphe 50 Recommendation CM/Rec(2007)14