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Dear Ambassador,

In the light of the upcoming visit of a delegation of the Conference of INGOs to Romania, I would like to share with you our concern about the impact on NGOs of provisions of the Draft Law currently before your Parliament for the prevention and control of money laundering and financing of terrorism. We hope that the visit of the Conference of INGOs of the Council of Europe will constitute an opportunity to have an open discussion with the authorities about the content of this short analysis that we present below.

The aim of the Draft Law - to transpose the 20 May 2015 EU Directive 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing into Romanian law - is undoubtedly an appropriate measure to fulfil Romania's obligations as a Member State of the European Union. However, there are certain aspects of the Draft Law that run counter to Romania's obligations under Article 11 of the European Convention on Human Rights and its commitment to implement Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organisation in Europe. The conflict with the latter undertakings arises not from any requirement in the terms of the Directive but from the way in which the measure of transposition goes well beyond what is required by this measure of European Law.

The serious difficulties that the Draft Law poses for NGOs is the result, firstly, of the way in which Article 4 includes associations and foundations in the list of the reporting entities that will be subject to its provisions, which list is supposed to be implementing the list of "obliged entities" referred to in the Directive. Secondly, the Draft Law is problematic because of the way in which term "beneficial owner" will be defined in Article 3. Both aspects of the Draft Law are the result of a misunderstanding as to what is required by the Directive, which is only concerned with foundations insofar as the activities of certain professionals - such as auditors and lawyers - are in that capacity involved with the creation and operation of foundations. Thus, the Directive does not mention associations at all - let alone as "obliged entities" - and it is clearly not concerned with the activities of either associations or foundations in pursuing the objectives of those who have established them.

Furthermore, the proposed definition of "beneficial owner" as covering individuals or the class of individuals in whose main interest the association or foundation was established or operates introduces something that is not found in any of the provisions of the Directive. Its effect will create an obligation for associations and foundations to report to the level of final beneficiary, i.e., the physical person that receives training, information, services, assistance,

humanitarian aid etc. from them. Such an obligation is not only unnecessary to comply with the Directive but will result in associations and foundations devoting their energies to reporting and not to fulfilling their objectives, which the Committee of Ministers in CM/Rec(2007)14 considers an essential contribution to the development and realization of democracy and human rights, cultural life and social well-being. Moreover, the introduction of the proposed additional reporting obligations will do nothing to assist efforts to control money laundering and terrorist financing, in respect of which existing reporting requirements are already more than adequate.

The importance of implementing the Directive is fully appreciated, but it is vital that this should not be done in a manner that goes beyond its requirements or causes serious damage to the environment in which NGOs operate.

Considering the foregoing, the members of the Romanian Parliament are called upon to delete these problematic provisions from the Draft Law and to ensure that Romania continues to fulfil its commitments not only to the European Union but also to the Council of Europe.

Yours sincerely,



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President  
Conference of INGOs of the Council of Europe



Jeremy McBride  
President  
Expert Council on NGO Law

Cc: Titus CORLĂȚEAN, Head of the Delegation of Romania to PACE