

INFORMATIVE NOTE

On the Draft Law on Noncommercial Organizations

Purpose and objectives pursued

The Ministry of Justice is proposing for passing the Draft Law on Noncommercial Organizations. The draft law has been developed to execute pt. 2 (Chapter XVIII – Civil Society) of the Activity Program of the Moldovan Government for 2016-2018. The draft law aims at improving the legal framework on noncommercial organizations to bring it in line with the international and European standards on freedom of association (joint instructions of OSCE/ODIHR and of the Venice Commission on freedom of association).

The objectives of the draft law mainly relate to:

- a) an uniform legal framework that regulates the activities of the noncommercial sector;
- b) eliminating the restrictions for certain categories of persons to set up and participate as founders, members or managers within noncommercial organizations;
- c) a clear regulation of the structure of the self-administration bodies of noncommercial organizations and their competences;
- d) reforming the mechanism of registration of noncommercial organizations and simplifying the procedure of their registration;
- e) eliminating the territorial restrictions on the activities of noncommercial organizations;
- f) ensuring additional safeguards aimed at protecting the freedom of association;

The developing of the draft law involved specialists of the Ministry of Justice, independent experts as well as representatives of the civil society: the Legal Resource Center of Moldova, Dialog-Pro Center, Chişinău Contact Center, the European Center for Non-for-Profit Law, the East European Foundation.

Issues tackled in the draft law from the angle of the normative framework in force

The draft law aims to regulate unitarily and equally the establishment, registration, reorganization and termination of the activities of civic associations, foundations and private institutions (hereinafter noncommercial organizations). At present, these forms of association are regulated by separate laws and, for the form of organization “private institution”, the legal framework is missing.

The amendments made through the new normative framework refer to three main dimensions: establishment and registration of noncommercial organizations; organization of activities and the self-administration bodies; transparency requirements and the procedure for assigning the public benefit status.

Establishment and registration of non-commercial organizations. The draft law establishes the principles of establishment and registration of noncommercial organizations in accordance with the international and European standards on freedom of association. The draft law removes the current territorial restrictions on the work of civic associations (local, regional,

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republican, international) as well as the restrictions on certain categories of persons (civil servants, protected persons, nonresidents, legal entities) that at present cannot be founders, members or managers in noncommercial organizations. The new law assures the possibility for all individuals and private legal entities to set up noncommercial organizations on a voluntary basis (Arts. 2 and 11 of the draft law).

The draft law establishes in an exhaustive manner the necessary acts for registering noncommercial organizations to ensure a predictable procedure of registration (art. 13). The timeframe for the registration of noncommercial organizations has been reduced from 30 to 10 working days (and the timeframe for filing the establishment acts with the state registration bodies has been increased from 30 days to three months (art. 13, para 7).

The draft law provides for the obligation of the state registration body to notify the applicants about the gaps that determine the impossibility of registration and to give him enough time to remove the gaps. Within this interval, the registration body will not issue a refusal of registration, which will reduce the bureaucratic barriers in the process of registration.

The draft law expressly lists the conditions in which a registration can be refused, by providing safeguards in accordance with the standards of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). Thus, the registration of a noncommercial organization can be refused only if the purpose of its establishment contravenes national security, public safety, protection of order or prevention of crimes and this measure is necessary in a democratic society (art. 13 para. 9). The same safeguards are provided in case of the procedures of forced liquidation of noncommercial organizations (art. 16 para. 3).

Organizing the activity and internal structure of the managing bodies of noncommercial organizations

In view of avoiding problematic situations, encountered in practice by noncommercial organizations, the draft law expressly establishes the possibility for the noncommercial organization to carry out any type of activities that are not forbidden by the law in view of achieving its statutory goals, including economic activities (art. 6). The draft law for the first time sets out the right of noncommercial organizations to practice social entrepreneurship (art. 6) as well as the right to benefit from the percentage designation mechanism (art. 9). At the same time, the law provides for the interdiction to have the profit of the organizations distributed among the founding members and other persons (art. 8 para. 3), which is a *sine qua non* condition for the activity of the noncommercial sector.

The law establishes a flexible model for the internal organization of noncommercial organizations depending on the preferences of their members (art. 17). It sets out additional safeguards for situations where a decision must be made about reorganizing or liquidating a civic association or foundation (art. 18 para.7). For the organizations based on membership (civic associations), they are not required to accept new members unless as provided by their statute. This provision shall not apply to national sport federations.

The draft law provides for the right and possibility of the noncommercial organization to designate an external control body (external auditor), without retaining the obligation of appointing a censor (art. 20 para. 1).

Transparency requirements and the procedure of assigning the public benefit status. The registration body must be informed about the continuation of the activity when changes are made to the statute, premises, composition of the managing and control bodies, within 3 months from the passing of such changes. The organization is required to provide information about the results of its work upon the request of the Ministry of Justice (art. 7 para. 3).

The draft law provides for a new type of public activity in addition to the already existing ones – supporting and promoting the noncommercial sector and noncommercial organizations (art. 21 para. 1 letter i).

The draft law exhaustively lists the conditions for assigning the public benefit status as well as the benefits granted by this status (art. 23). The noncommercial organization that has the public benefit status shall prove this capacity by an extract from the register of noncommercial organizations, available online on the official website of the Ministry of Justice. Thus, the condition to have a certificate issued in this sense by the state registration body that currently confirms the public benefit status has been removed.

The draft law describes the duties of the certification commission under the Ministry of Justice (art. 24) and the conditions and manner in which it will conduct the control of the compliance of the beneficiaries with the public benefit status throughout the period of holding this status (art. 25).

The draft law provides for a timeframe of up to 24 months to be granted to the noncommercial organizations falling in the jurisdiction of this law to adjust their establishment acts that do not comply with the requirements of this law (final and transitory provisions). This condition is reasonable and does not put an excessive burden on the respective organizations.

Economic-financial justification

The implementation of this draft law does not entail additional financial expenditures.

Manner of incorporation of this draft law in the system of normative acts in force

It is necessary to amend other normative acts in order to implement the provisions of this draft law. To this end, amendments to the Civil Code have already been prepared.

Observing transparency in decision-making

In view of observing the provisions of the Law no.239 of 13 November 2008 on Transparency in Decision-Making, the draft law has been posted on the website of the Ministry of Justice (directory “Transparency in Decision-Making”, section “*draft legislative acts sent out for coordination*”).

Vice Minister

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