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TOWARDS A REFORM OF THE LAW ON ASSOCIATIONS AND FOUNDATIONS IN THE REPUBLIC OF NORTH MACEDONIA

Comparative overview of legislative practices from EU member states

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Introduction

Scope, purpose and objectives

This document provides an overview of the diverse comparative practices and approaches used by legislators in the countries of the European Union in setting the foundational legal framework for the operation of CSOs in four particulate areas. Its purpose is to support the working group within the Ministry of Justice, tasked with the duty to draft the amendments to the Law on Associations and Foundations (LAF)¹. The document gives input on the manners and approaches of regulating different areas in other EU countries to identify potential practices that might be applicable in the specific societal, political and legal context of North Macedonia.

The document focuses solely on the core laws regulating the foundation, registration, forms, operation, financing and the status of associations and foundations as the most common form of CSOs. It acknowledges that the legal framework on CSOs is much broader and goes beyond the laws subject to this assessment. Still, since the purpose of this study is to support the working group on the LAF, it will emphasize the laws that have the same or a similar object of regulation as the LAF.

The **objective** of the document is to identify and describe relevant legislative provisions from other EU countries that are related to the specific legislative areas set in the Terms of Reference of the EU funded project *Technical Assistance for improving the enabling environment for Civil Society Organisations in the Republic of North Macedonia*. Those areas include the status of public interest for CSOs, legal recognition of informal groups, monitoring of the spending of funds and guaranteeing the independence of civil society organisations, and the rules and conditions for implementing economic activities by non-profit actors. Additionally, the document also focuses on several areas that are defined in the [Strategy of the Government for Cooperation with and Development of Civil Society 2022 – 2024](#) (Legal recognition of other forms of association and protection of the non-profit character).

Methodological approach

The document was developed by a desk review of legislative acts from different countries, including secondary literature necessary for contextualising the specific legislative provisions. Aside from reviewing the legislative acts, secondary literature was consulted, especially reports and resources provided by the ICLN² and resource web pages (ex. www.cof.org).

In the selection of the countries that are subject to study, the following criteria were used:

- The country's legal system should be based upon the continental civil law system³;

¹ Law on Association and Foundations (*Закон за здруженија и фондации*), Official Gazette No. 52/10, 135/11 & 55/16.

² [International Center for Non-Profit Law](#).

³ The common law countries (England & Wales, Scotland, Malta) have a different systemic & structural approach in regulating the work of non-profits (the charity approach) compared with the dominant continental model which prevents adequate comparability and applicability.



- The status & registration of non-profits should be governed by separate and specific laws/acts;
- Availability and accessibility of legislative documents in English;
- Ensuring an adequate balance of countries with similar legal and societal contexts (the EU members of ex-Yugoslavia) with EU members from other regions of Europe (Eastern & Western Europe).

Countries selected:

1. Countries with common legal history (Slovenia, Croatia)
2. EU countries (Estonia, Poland, Slovakia, Germany, France, Netherlands, Romania, Ireland, Czech Republic & Bulgaria)

Limitations

The study focuses on specific topics/areas and not on a general description of the laws on CSOs. It acknowledges the different political, economic and societal differences that resulted in specific approaches in legislating CSOs. Even though certain practices might look like logical solutions to a practical problem, their copy-paste application in a national context might not be advisable because of the specifics of our local context. While great care has been taken to ensure that the most recent versions of the relevant laws have been identified and consulted, it cannot be excluded that there might be newer versions/amendments of the laws that were not publicly available in the working language of the documents.



1. Legal recognition of other forms of association

The issue of legal recognition of other forms of association includes two key questions. The first one is related to the different legal forms in which organisations exist and operate, while the second question concerns the status of informal groups.

1.1 Legal recognition of different forms of association

International law leaves the forms in which organisations operate to the regulation of the national legislatures. They have a broad disposition to determine the form and status through which the freedom of association can be realised.⁴ However, concerning member-based organisations, there is a *requirement that the minimal number of founders should be neither excessive nor incompatible with the nature of the association*.⁵ Special provisions may recognise the differing needs of specific types of organisations and, thus, should be aimed at facilitating their operations and not at hampering them.⁶

Overview of the legally recognised types of CSOs⁷

Country	Types of organisations
Slovenia	Association (Societies), Foundations & Institutes (Private)
Croatia	Associations & Foundations
Estonia	Non-profit Associations & Foundations
Poland	Associations & Foundations
France	Associations & Foundations
Germany	Associations, Foundations & Not-for-Profit Limited Liability Companies
Slovakia	Associations; Foundations; Non-Investment Funds (NI Funds); Not-for-Profit Organisations Providing Publicly Beneficial Services (NPOs); and Organisations with an International Element (OIEs)
Netherlands	Associations & Foundations
Romania	Association & Foundations
Bulgaria	Associations & Foundations

⁴ Council of Europe, “Fundamental Principles on the Status of Non-Governmental Organisations in Europe”, Strasbourg, 13 November 2002, “[t]here is no general definition of an NGO in international law and the term covers an extremely varied range of bodies within the member states. Reference should be to the different practices followed in each state, notably concerning the form that an NGO should adopt in order to be granted legal personality or receive various kinds of advantageous treatments. Some types of NGOs, trusts, for example, exist only in certain states. NGOs’ sphere of action also varies considerably, since they include both small local bodies with only a few members, for example a village chess club, and international associations known worldwide, for example certain organisations engaged in the defense and promotion of human rights”.

⁵ Venice Commission & OSCE/ODIHR. [Joint Guidelines on Freedom of Association](#). Par. 149.

⁶ Ibid. Par. 64.

⁷ This figure presents solely the basic legal forms by whom the CSOs might obtain legal status as legal entity. It does not cover the forms of association between the different CSOs (ex. Unions or Federation of CSOs) nor the potential status that they might obtain after meeting specific criteria (ex. NGO in a public interest in Slovenia or Public Benefit Organisations in Poland).



Ireland	Unincorporated Association, Trust & company limited by guarantee
Czech Republic	Associations, Foundations, Funds, Registered institutes, Social cooperatives & Public benefit corporations

The dual model of associations and foundations is present in all systems reviewed, though in almost half of them, there are additional forms of association. In **Slovenia** the institutes (*zavodi*), if founded by private persons, are considered as a form of CSO. They are non-membership organisations that can conduct activities in education, science, culture, sports, health, social welfare, children's care, care of the disabled, social security, or other not-for-profit activities.⁸ Moreover, an additional specific characteristic of Slovenia is that the associations and foundations are not by default considered as NGOs. A special law defines what subject can be named as an NGO.⁹

In **France**, the two primary legal forms of CSOs (associations and foundations) are further subdivided depending on their objective. Associations may serve either a private or public benefit purpose. Public benefit associations fall into one of two categories: (1) general interest and (2) public utility. There are also three forms of foundations¹⁰: (1) public utility foundations, (2) sheltered foundations, and (3) corporate foundations.¹¹

In **Germany** there is the non-profit company with limited liability (*gemeinnützige Gesellschaft mit beschränkter Haftung*, or *gGmbH*). The purpose of the company is to benefit the common good. The legal form of the gGmbH aims to combine the benefits of a non-profit with those of a GmbH. The increased economic demands on charitable organisations has made gGmbHs more attractive and relevant for healthcare, cultural, and educational institutions.¹²

A different concept of non-profit company is used in **Ireland** where a company limited by guarantee (CLG) is an alternative type of corporation, primarily for non-profit organisations that require legal personality. It does not have share capital; its members are guarantors instead of shareholders. The guarantors commit to contribute a nominal amount (typically €1) toward winding up the company in case of a shortfall upon cessation of business. A CLG cannot distribute profits to its members, and it is eligible to apply for charitable tax exemption.¹³

In **Slovakia**, there are so-called Not-for-Profit Organisations Providing Publicly Beneficial Services (NPO).¹⁴ They are a special form of NGO that may be established by legal or natural persons or by a government

⁸ Slovenia, Zakon o zavodih (Institutes act), Uradni list RS, št. 12/91, 8/96, 36/00 – ZPDZC in 127/06 – ZJZP.

⁹ Slovenia, [Act on Non-Governmental Organisations](#) (Zakon o nevladnih organizacijah), Uradni list RS, št. 21/18.

¹⁰ Five other forms of foundations also exist but are not frequently created: research foundations, partnership foundations, university foundations, hospital foundations, and scientific cooperation foundations.

¹¹ Source: [Council of Foundations, Country note – France](#).

¹² Source: <https://www.firma.de/en/company-formation/the-ggmbh-what-is-the-german-non-profit-limited-liability-company/>.

¹³ Source, [Council of Foundations, Country note – Ireland](#).

¹⁴ Slovakia, Act No. 213/1997 on Non-Profit Organisations Providing Generally Beneficial Services.



agency to provide public benefit services, as defined in the law. NPOs may not use any profit generated to benefit their founders, members of their governing bodies, or employees. NPOs do not have members.

In the **Czech Republic**, associations of natural or juridical persons can be established for non-commercial purposes and serve the interests of their members or any public interest. Also, there are foundations with a protected endowment (both grant-giving and operational) and funds (without an endowment). The third category, registered institutes do not have any members. They may be established on a not-for-profit basis to render activities of certain socially or economically beneficial purposes according to the will of their founder(s).¹⁵

1.2 Legal recognition of informal groups

The Council of Europe considers informal groups to be a part of civil society.¹⁶ The state's positive obligation is to facilitate the exercise of the right to freedom of association, which includes creating an enabling environment in which formal and informal associations can be established and operated.¹⁷ The acquisition of legal personality should generally be viewed as a right, not as an obligation or as mandatory. States may require that associations that are seeking to enjoy various forms of public support or that wish to be accorded a particular status (such as being recognised as a charity or public benefit organisation) first obtain legal personality.¹⁸ However, in any case, the legislation should not compel associations to gain a formal legal personality. In the case of informal organisations and the legal aspects of their action, they depend upon the legal personality of their members for any such actions required to pursue their objectives.¹⁹

Comparatively, the majority of jurisdictions, either implicitly or explicitly, refer to the general civil law provisions on partnership for the legal status of informal associations and groups. In **Croatia**, for the associations that do not have the status of legal entity, the rules on partnership (*Ortaštvo*) shall be applied.²⁰ In **Estonia**, the regulation goes into greater detail. Aside from the fact that civil law partnerships apply, it also requires that those who enter into transactions in the name of non-registered associations are unlimitedly and solitarily liable for such transactions.²¹

A more unique approach exists in **Germany**, where informal associations and informal foundations exist. The informal associations were traditionally considered to lack legal personality but are now recognised to have aspects of legal personality. If its “economic” activities are not “subordinate,” then it is regarded

¹⁵ [Council of Foundations, Country Note – Czech Republic](#).

¹⁶ Committee of Ministers of Council of Europe. Guidelines for civil participation in political decision making. Art. 2 & Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organisations in Europe. Art 3.

¹⁷ Venice Commission & OSCE/ODIHR. [Joint Guidelines on Freedom of Association](#). Par. 74.

¹⁸ Ibid. Par. 152.

¹⁹ Ibid. Par. 50.

²⁰ Zakon o Udrugama, NN 74/14, 70/17, 98/19. Cl. 1 st. 3.

²¹ Non-profit Associations Act, RT I 1996, 42, 811. Art 2. par. 2.



as a partnership (*Gesellschaft bürgerlichen Rechts*), with the effect that its “members” are personally liable for the debts of the informal association. On the other hand, informal foundations do not have legal personality, but are established as a “gift contract” or as a “trust contract.” Informal foundations do not acquire legal personality. Their establishment is subject to the Civil Code’s general rules on contract law, which governs the contract between the founder and the trustee. Such a contract may qualify as a “gift contract” or a “trust contract.” This relationship is comparable to a common law trust. Informal foundations may nonetheless enjoy the same tax benefits as formal, legally recognised foundations. Given this, the informal foundation may be an adequate tool for smaller initiatives because there are fewer mandatory requirements and no specific state supervision.



2. Public benefit organisations

2.1 Rationale & approaches in legislating public benefit organisations

The legal framework for CSOs in the EU member states permits organisations to pursue freely any legitimate activities for both private and public benefit aims. However, as a principle, the governments are not eager to provide support and extend different types of benefits and incentives benefits to all CSOs indiscriminately, especially for CSOs pursuing aims of narrow and group interests. The benefits are most commonly provided to a subset of these organisations, which, based on their purposes and activities, are pursuing a broader public interest. In return, the state requires a higher level of governance and accountability.²² Two key legislative approaches are used in the legislation in the EU countries regulating benefits and incentives for CSOs. The first one is designating a “public benefit status”, while the second approach is regulating incentives and relief for specific activities of greater public interest without the requirement for obtaining specific status.

2.2 Public benefit status

The public benefit designation, in most jurisdictions where it is used, refers to a specific status, not a particular legal form of association.²³ The public benefit status does not inhibit the right of individuals to establish an organisation for private purposes. It does not prevent an organisation from operating without having such status, even if it is established for public benefit purposes. The underlying rationale for introducing public benefit status is to promote public benefit activities. Public benefit status can be conferred on CSOs explicitly by including provisions in framework legislation (e.g., basic law that governs associations and foundations), in separate laws concerning public benefit status, or in tax laws.

- Regulating public benefit status in framework laws on associations and foundations is used when one law governs both the associations and the foundations, and the public benefit status extends to these legal forms (ex. **Bulgaria**²⁴ & **Romania**²⁵). In this approach, it is important that the reform of tax laws introducing benefits for PBOs is adopted in parallel to introducing this status.
- Special “public benefit” legislation is used in countries where the different legal forms of CSOs are regulated but with separate legislation (ex. **Poland**²⁶, **Slovenia**²⁷).
- The tax legislation regulates the public benefit status and defines tax privileges for CSOs pursuing those activities in **Estonia, Germany, Netherlands & Slovakia**.

²² Moore, D Hadzi-Miteva, K. Bullan, N. (2008) [A Comparative Overview of Public Benefit Status in Europe](#). The International Journal of Not-for-Profit Law VOL.11, ISS. 1.

²³ There are several exemptions from this principle such as in Slovakia and the existence of a separate legal form of organisations called **Not-for-Profit Organisations Providing Publicly Beneficial Services (NPO)**.

²⁴ Bulgaria, Law on Non-Profit Legal Entities ([Закон за юридическите лица с нестопанска цел](#)), Heading III, Public Benefit Organisations.

²⁵ Romania, [Governmental Ordinance 26/2000 and subsequent amendments](#).

²⁶ Poland, [Law on Public Benefit Activity and Volunteerism](#).

²⁷ Slovenia, [Act on Non-Governmental Organisations](#).



There are also differences in the decision-making body granting the public benefit status. In some countries, this authority is vested in the tax authorities (e.g., **Ireland & Netherlands**); in other countries, the courts (e.g., **France**) or a governmental entity, such as the Ministry of Justice (e.g., **Bulgaria**), or an independent commission (**Moldova**). In some countries, a state body grants the status based on a recommendation of an independent commission (e.g., **Poland, Latvia**). In **Estonia**, the Government of the Republic approves the status after obtaining a recommendation from a Committee of Experts. On the other hand, in **Romania** and **Slovenia** the decision-making is decentralised with the competent ministries in charge of the specific areas of public benefit (ex. for social protection the Ministry competent for policy making in this area will grant the status etc.).

The diversity in regulatory approaches is also present in the specific benefits that PBOs are entitled to. The most common benefits include:

- Tax exemptions (partial or total) for the following categories of income: income from grants, donations, and membership dues; income from economic activities; investment income; real property and gifts & inheritance.
- Preferential rates on value-added tax (VAT) to PBOs or to organisations engaged in transactions of certain goods and services related to the public benefit; and
- Tax incentives to individuals and corporations donating to PBOs or for public benefit activities (Tax credit or tax deductions).

Additional country-specific benefits include:

- Preference in call for proposals for obtaining funds from the state budget (**Slovenia**);
- The right of permanent use of estates that are owned by the State Treasury or local self-government units (**Poland**);
- A taxpayer might allocate 1% of his/her tax payment for PBOs (**Poland**).

In **France** the law recognises three different forms of public benefit status: (1) general interest, in which the organization's donors are eligible for tax benefits; (2) public utility, which entitles the organisation to the benefits of general interest status as well as additional tax and fiscal preferences, but subjects it to additional requirements, such as stricter controls over the use of the organisation's funds and over the distribution of assets upon dissolution; and (3) "solidarity enterprise of social utility" status, which can be granted to commercial companies whose economic activity has a social utility purpose.²⁸

2.3 Public benefit activities

In other countries (e.g., **Croatia**), where there is no public benefit status, the activities that are of public benefit and therefore deserve specific benefits are regulated through provisions in various laws (e.g., tax laws, government grants laws, humanitarian assistance laws, donations laws). The Law on Associations defines what can be considered a public benefit activity.²⁹ The tax laws regulate the deductions and

²⁸ [Council of Foundations, Country notes – France.](#)

²⁹ Croatia, Law on Associations (Zakon o udruženjima), NN 74/14, 70/17, 98/19. Art. 32 par. 4.



incentives.³⁰ In the **Czech Republic**, the amendments of the Civil Code abolished the provisions for granting public benefit status in 2017³¹, while the efforts to introduce a special public benefit law were not successful.³² In this inter-period, the provisions of the tax laws³³ relating to public benefit activities are applied for tax exemptions of CSOs.

In **Germany**, there is no special legal status for NPOs with a public benefit purpose. Organisations serving the general interest may enjoy special tax benefits if they meet the requirements of the tax law. The definition of “public benefit” is found in the Fiscal Code (*Abgabenordnung, or AO*). Tax benefits are defined in the various tax codes regarding the Income Tax, Corporate Income Tax, Commercial Tax, VAT, and Inheritance and Gift Tax. The Fiscal Code sets forth the definition of a tax-privileged purpose. In addition, the Fiscal Code determines special requirements for organisations carrying out tax-privileged purposes. The Fiscal Code defines three types of purposes as being tax-privileged: Public benefit (*Gemeinnützige Zwecke §52*), Benevolent (*Mildtätige Zwecke §53*), Church-related (*Kirchliche Zwecke §54*).³⁴

2.4 Case studies of specific regulatory approaches for PBOs

Slovenia took quite a unique approach to defining PBOs with the Act on NGOs from 2017. In **Slovenia**, a PBO status can be granted to an NGO in a certain field if its operations in this field exceed the interests of its founders or members and if it is of overall benefit. The law defines the sectors.³⁵ The conditions for

³⁰ For example, businesses and other legal entities may deduct donations to NPOs for a broad range of public benefit activities, including cultural, scientific, educational, health, humanitarian, sport, religious, ecological, and other activities up to 2 percent of the entity’s gross income realized in the previous year.

³¹ Czech Republic, Law amending the Civil Code (Zákon, kterým se mění zákon č. 89/2012 Sb., občanský zákoník, a další související zákony).

³² Pajas, P.J [Czech Republic Senate Declines the Act on Public Benefit Status](#), The International Journal of Not-for-Profit Law, VOLUME 15, ISSUE 2, DECEMBER 2013.

³³ The Income Tax Law provides donors with deductions for donations to qualifying NGOs, through a special procedure set forth in Section 50 of the Law. The recipient NGO must be registered in the Register of Donation Beneficiaries maintained by the Notarial Chamber. The special procedure allows every natural or legal person resident in Slovakia to allocate part of their paid income tax directly to one (in the case of a natural person) or more (in the case of a legal person) NGOs of their choice. The beneficiaries of these allocated funds and donations are required to spend the money for the following purposes: a) the support and protection of health care (specifically to provide medical prevention and to rehabilitate drug-addicted persons); b) the support and development of physical culture; c) the provision of social services; d) the preservation of cultural values; e) the support of education; f) the protection of human rights; g) the protection of the environment; h) the support of science and research; and i) the organization or mediation of voluntary activities (Income Tax Law Section 50(5)). [5] Both the beneficiary of the donation and the donor must have no outstanding debts relating to tax and dues payments. The NGOs that can benefit from the allocations must appear on a public list available on the Internet and submit to the financial office documents proving that they have fulfilled all of their obligations, which includes obtaining certification from a notary public (Income Tax Law Section 50(6)).

³⁴ [Council of Foundations, Country Note – Germany](#).

³⁵ Culture, education, health care, social security, family policy, the development of democracy, protection against discrimination, human rights protection, disabled persons protection and conduct of humanitarian activities, protection of equal opportunities for women and men, care for the elderly, integrity in the state and civil society, consumer protection, food safety and security, promotion and organisation of voluntarism, the youth sector, promotion of tourism, cultural heritage protection, environmental protection, nature conservation, spatial planning,



granting the status are explicitly regulated. It requires that it has operated for at least two years before applying for the status to be granted and that it can demonstrate the achievements of its activities in the field. Moreover, the applicant's assets should be primarily used to perform activities in the public interest. Long-term planning is also one of the criteria. The decision-making is decentralised to the ministries competent for the different fields respectively. Some public benefit activities are regulated by special legislation, such as the Humanitarian Agencies Act and the Disabled People Organization's Act, which set forth special procedures for attaining public benefit status and define some of the rights and obligations accompanying such status.

In **Poland**, the Law on Public Benefit Activity and Volunteerism allows Polish NGOs to obtain the status of Public Benefit Organisations (PBOs). This status is also available for joint-stock companies, limited liability companies, sports clubs that have the legal form of companies, church-based corporate entities, social cooperatives, and local government associations; however, they are not considered non-profit entities. Public Benefit Organisations are exempt from paying corporate tax on income devoted to their statutory goals. Foundations are subject to a public benefit requirement. A foundation must be formed to realise economically and socially beneficial objectives subject to the essential interest of the Republic of Poland. A PBO must devote its entire income to public benefit activities. Regardless of whether the organisation charges a fee for an activity, it cannot qualify as a public benefit activity if the employees who perform it are paid more than thrice of the average monthly remuneration in the corporate sector.

animal health and welfare protection, agriculture, forestry, rural development, sport, defense, protection against natural and other disasters, road safety, international relations, external affairs, international development cooperation, international humanitarian aid, the development of non-governmental organisations, the development of the information society, science or other areas.



3. Protection of non-profit character

3.1 Scope of protection

The non-profit and non-commercial principles are embedded in all key international standards concerning the legal status of CSOs. The Council of Europe's recommendations on the legal status of NGOs require that *NGOs should not distribute any profits which might arise from their activities to their members or founders but can use them to pursue their objectives*.³⁶ However, the operationalisation of these two principles in the national legislation of the member states of the EU has led to various regulatory practices, some of which are more permissive while others are more strict in the interpretation of the principles. The different societal, legal and political circumstances impact such differences. The legal form of the CSOs also plays a role in regulating the non-profit character. For the purpose of this document, the focus will be given to two key elements: the inurement prohibition and the permissibility of conducting economic activities.

3.2 Regulation of the prohibition of inurement

The manner in which the prohibition of inurement is regulated varies considerably. In **Slovenia**, the association may expend surplus funds from its statutory activities or income derived from economic activities only to advance its statutory activities.³⁷ Similarly, in **Slovakia**, though there are no legal restrictions on the ability of associations to distribute assets or income to members, employees, or others associated with an organisation, the associations may not be established for the purpose of profit generation³⁸. The **Romanian** law is silent on and does not specifically prohibit inurement. However, there is a requirement that the association & foundation may not distribute the assets remaining after liquidation to its members or to any natural persons.³⁹

In **Poland**, neither the Law on Associations nor the Law on Foundations expressly deals with inurement. However, Article 34 of the Law on Associations states that proceeds from the economic activities of an association must serve the association's statutory goals and not be shared among the association's members. As for foundations, a court has ruled that a foundation may not pay dividends to its founder or to members of its board. Many aspects of inurement, however, are not comprehensively governed by foundation or association law.

In **Croatia**, the law is much more restrictive and explicit. An association cannot perform any activities to gain profit for its members or third parties. Any profit that the association generates must be used exclusively to advance the purposes set forth in its charter.⁴⁰ An association is not permitted to return donations and assets to the founders upon dissolution, even if its founding charter allows it. The property

³⁶ [Recommendation CM/Rec\(2007\)14 of the Committee of Ministers to member states on the legal status of non-governmental organisations in Europe](#), par. 9.

³⁷ Slovenia, Societies Act, Art. 23.

³⁸ Slovakia, Law on Associations, Art. 1(3)(b)).

³⁹ [Council of Foundations, Country note – Romania](#).

⁴⁰ Croatia, Law on Associations (Zakon o Udrugama), Art. 30 par. 2 & Art. 31 par. 2.



of a foundation may not be returned to the founders upon dissolution but can be given to another foundation or association pursuing a similar purpose or to local or regional governments.⁴¹

The approach in **France** is also explicit in the prohibition of inurement. An association is permitted by law to pursue any purpose “other than the sharing of profits”. By law, foundations may only engage in public benefit activities. The tax legislation explicitly forbids all insiders – including board members, managers, employees, and other third parties – from having a financial interest in any NPO. Financial disinterestedness is characterised under French law by the following:

- The management and administration of the organisation are carried out voluntarily by those having no direct or indirect interest in its operations;
- Profits are not distributed either directly or indirectly but used only for the statutory purposes of the organisation; and
- In the event of dissolution, members of an organisation or their successors may not receive any part of the assets except for the right to recover their contributions.

A specific of the **French** legislation also present in **German** law is an explicit prohibition for unreasonable (excessive) salaries to employees and managers and excessive benefits to members and board members, which is not the case in other countries.

3.3 Economic activities

Similarly, there are different approaches in regulating the scope and the type of for-profit activities CSOs might conduct. **Slovenia** has a more comprehensive regulation of this issue. According to the Law on Societies:

- An association may only engage in economic activities to the extent necessary to achieve their primary purposes.
- The economic activities must be specifically indicated in the association’s governing documents and be related to the organisation's primary purposes.
- Any earnings from economic activities must be used to promote the association’s statutory activities.

In **Slovenia**, under the Social Entrepreneurship Act, an NPO may engage in social entrepreneurship if it is established and operates for public benefit purposes. A social enterprise must use the profit and excess revenue generated by social enterprise activities to fund its main activities or implement permitted activities specified in the Social Entrepreneurship Act.

In **Slovakia** associations are in general free to pursue economic activities as long as economic activities are not their primary purpose. Foundations may not engage in economic activities except for administering a special trust given to their custody, renting real estate constituting a part of their endowments, and organising cultural, educational, social and sporting events—provided that these activities support the public benefit purposes for which the foundation or trust were created. An NPO may

⁴¹ Croatia, Law on Foundations (Zakon o zakladama), Art. 35 par. 8.



engage in economic activities to the extent that these activities enable better utilisation of its property and do not diminish the scope, quality, or accessibility of its public benefit services.

The **Romanian** law states that an association or foundation may directly carry out economic activities that have an “accessory character” and are closely connected to the organisation's main purpose. Income from these related economic activities is exempt from corporate tax if the income falls below a threshold set in the tax laws. For income exceeding those thresholds and for all income from unrelated economic activities, the NPO pays taxes at the same rate as commercial firms. The association, foundation, or federation can establish a commercial company, provided that all dividends from the company are used to advance the purpose of the NPO or are reinvested in the company; they must not be distributed to any other shareholders.

In **Croatia**, an association may “engage in activities for the purpose of gaining profit,” but any resulting profit must be devoted exclusively to advancing the purposes outlined in the association’s charter. The law also expressly forbids an association from undertaking any activities, whether for-profit or not-for-profit in nature, to provide profits to its members or third parties. In **France**, associations and foundations may engage directly or indirectly in any commercial activity, and generally, there is no distinction between related and unrelated economic activities. To remain an NPO and receive concomitant tax benefits, however, an organisation’s economic activities should not be its “predominant” activity.

Associations in **Czech Republic** may carry out an auxiliary economic activity, such as entrepreneurship or other income-generating activity, if the activity’s objectives are to support the association’s main activities or to enable more efficient use of association property. The profit generated from an association’s activities may be used only for the association’s activities, including administrative costs. **German** NPOs are generally allowed to engage in economic activities, if the activity is necessary to pursue the organisation’s statutory purpose and does not compete with for-profit organisations more than necessary.

The **Polish** law requires that associations may conduct economic activities so long as they abide by the rules imposed by other regulations. In theory, an association could be formed primarily for economic purposes, though excessive economic activity would render it ineligible to become a PBO. Proceeds from an association's economic activities must serve to realise its statutory goals and may not be shared among its members.



4. Supportive environment for CSOs

4.1 Scope and rationale for legal regulation of measures for supporting an enabling environment for CSOs

Until the last two decades, the legislation on CSOs was overwhelmingly focused on regulating the traditional subject areas of non-profit law, such as status, forms, registration, operation and termination of the organisation. However, the increased demand for democratisation and pluralism and amplifying the voices of civil society resulted in the introduction of special mechanisms for building a supporting enabling environment for CSOs. This was especially the case for the countries of central and eastern Europe who, under the auspices of their accession to the EU, were obliged to ensure that civil society has a constructive role in supporting democratic processes and recognise that only an empowered civil society is a crucial component of any democratic system and should be treated as such by state institutions.

To meet this requirement, the member countries have used a variety of different measures such as strategic planning of policies for the development of civil society, establishing mechanisms for structured cooperation between the Government and civil society, ensuring civil society's active participation in the law, policy and decision-making process on national and local level, providing support to volunteering and activism, etc. These types of support were introduced mostly either through so-called *soft law* (*codes, standards, guidelines, etc.*) or by *bylaws* (*decisions of Government, rulebook, etc.*). This type of regulation has its advantages, such as flexibility for easy amendments when necessary. However, there are also cons, particularly the vulnerability to change of political powers and, thus, potentially the sudden discontinuation of support to such measures.

4.2 Comparative examples in legislating measures for a supportive environment to CSOs

a. Slovenia

With the purpose of minimising the political impact of these measures, some countries have started to elevate them from the level of regulation to the level of law. **Slovenia's** Act on NGOs from 2018 as well as the amendments to the **Bulgarian** Law on Non-Profit Legal Entities⁴² from 2016 are introducing a novel regulatory approach in legislating measures for an enabling environment to the civil society.

Slovenia's approach is unique and innovative. In its Law on NGOs, it outlines in detail the obligations and tasks of the ministries for ensuring an enabling environment for CSOs.⁴³ The Ministry of Public Administration is obliged, among other things, to:

- monitor the development and operations of non-governmental organisations and perform the following tasks:
- prepare, implement and evaluate policies, regulations and measures that influence the development and operation of non-governmental organisations.

⁴² Bulgaria, Law on Non-Profit Legal Entities ([Закон за юридическите лица с нестопанска цел](#)), Heading III, Public Benefit Organisations. Art. 4.

⁴³ Slovenia, [Act on Non-Governmental Organisations](#), Art. 23.



- be responsible for coordinating and implementing policies among ministries and government services concerning the development and operation of non-governmental organisations.
- be responsible for the development of the support environment for non-governmental organisations and the enforcement of this Act.

The other ministries also have obligations to:

- participate in preparing, implementing and evaluating policies, regulations and measures that influence the development and operation of non-governmental organisations.
- prepare and implement policies, regulations and measures that influence the development and operation of non-governmental organisations in their own fields.
- prepare and implement measures for the cooperation of the State with non-governmental organisations in the making of policies and regulations in their own fields.

The law also defines the following support environment entities for CSOs:⁴⁴

- **A horizontal network** is an NGO which at the national level brings together NGOs from different thematic areas of operation and performs the activities of informing, consultancy, education, research, advocacy, networking, promotion and support for the benefit of all non-governmental organisations at the national level.
- **A regional hub** is an NGO which, at the level of a development region or at the level of several municipalities representing a complete spatial entity, brings together NGOs from different thematic areas of operation and performs the activities of informing, consultancy, education, research, advocacy, networking, promotion and support for the benefit of all NGOs at the level of its operation.
- **A thematic network** is an NGO at the national level, at the level of a development region, or at the level of several municipalities representing a complete spatial entity, which brings together NGOs from the same thematic area and performs the activities of informing, consultancy, education, research, advocacy, networking, promotion and support for the benefit of all NGOs from the same thematic area at the level of its operation.

The law also requires that local self-governing units should plan, fund and implement policies intended for the development of NGOs and interconnect among themselves when performing this task.⁴⁵ The law regulates the process of planning the development of NGOs.⁴⁶ It regulates the content of a strategy, the action plan, and the duty for implementation and monitoring. The law also refers to the Council of the Government of the Republic of Slovenia for promoting the development of voluntarism and NGOs as a body that monitors the implementation of the Strategy.

⁴⁴ Slovenia, [Act on Non-Governmental Organisations](#), Art. 24.

⁴⁵ Slovenia, [Act on Non-Governmental Organisations](#), Art. 25.

⁴⁶ Slovenia, [Act on Non-Governmental Organisations](#), Art. 26.



b. Bulgaria

An amendment to the Law on Non-Profit Legal Entities in **Bulgaria** from 2016 introduced a special article within the general provisions of the law, titled “Support and help from the state”.⁴⁷ The article outlined several measures for state support and cooperation with CSOs. It defined the types and manner of support to CSOs who are pursuing public benefit activities (tax and other financial and economic forms of support & state funding). It also sets an obligation to the state to implement policies to support the development of CSOs and financial support to civic initiatives. The Council of Ministers is in charge of implementing policies in this area and periodically adopts and implements a Strategy for support to the development of CSOs.

The amendments established a Council for Development of Civil Society within the Council of Ministers for the development and implementation of policies for support to the development of civil society. Representatives of public benefit CSOs participate in the Council, which is chaired by the deputy prime minister, who does not have the right to vote. The Council’s functions include:

- giving opinions on all drafts of normative acts, strategies, programs and plans that relate to the activities of civil organisations.
- coordinating and monitoring the implementation of the Strategy for supporting the development of civil organisations in the Republic of Bulgaria and the Action Plan under the Strategy.
- proposing an action plan to the Council of Ministers, including a financial plan and reviews and evaluating its implementation.
- collecting information on the financing of civil organisations with public funds to determine the effectiveness of the allocated funds.
- performing an annual review of the needs and problems of civil organisations, as well as their results and achievements.
- supporting the process of cooperation between the state and local authorities and civil organisations.
- determining the priorities and adopting the rules and procedures, as well as allocating funds for the promotion and financial support of projects of public importance to non-profit legal entities for the implementation of public service activities.

The Council is composed of 15 members who are elected for a three-year mandate in a procedure prescribed in the law. There is a requirement for the qualifications of the members of the civil society. The work of the Council is governed by a rule of procedures adopted by the Council of Ministers.

⁴⁷ Bulgaria, Law on Non-Profit Legal Entities ([Закон за юридическите лица с нестопанска цел](#)), Heading III, Public Benefit Organisations. Art. 4.



5. Conclusions

This comparative assessment reveals the diversity and heterogeneity of the different legislative practices used by the EU member states in regulating the foundational aspects of the work of CSOs. As it can be concluded from the selected and presented examples, there are no “one-size-fits-all” solutions to the problems and challenges. Each country, depending on its political, economic, and societal context, the level of democratic development and its legal system, has a certain level of discretion to pass laws and regulate the status and the work of CSOs. However, the laws must comply with the international standards on freedom of association, expression, and assembly, particularly those adopted within the framework of the Council of Europe.

With regards to the four specific areas, the subject of this assessment, the document identifies and describes the diverse approaches used by EU countries. For some of the areas, such as the legal forms of CSOs, there are great similarities, as opposed to the non-profit status and the possibility to conduct economic activities where there are significant differences. Though certain practices might look like logical solutions to a practical problem, their copy-paste application in a national context without due consideration of the local context should be avoided.

The dual model of associations and foundations is present in all reviewed systems; however, in almost half of them, additional forms of organisations are considered as CSOs, such as private scientific or cultural institutes, endowments and even not-for-profit companies and social enterprises. The informal groups are gaining increased impact, and the laws must not prevent their operation. The individuals involved in informal civic organisations should have strong legal protection in exercising their rights guaranteed under international and national law.

Regarding public interest status, the comparative practices of the EU member states provide two different alternatives. The first one is to **keep the PBO status while reforming the rights and privileges, criteria, procedure and decision-making body**. The second option is to **abolish the PBO status and replace it with support for activities/functions of public interest**. Both options have sound arguments for and against.

Concerning the conduct of economic activities, there are both more liberal and more restrictive approaches. Among the international standards, there is a consensus that the non-profit principle should be operationalised in the relevant laws in detail. The CSOs 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.

Legislating the measures for enhancing a favourable enabling environment for CSOs is a relatively new phenomenon. The legislation on an enabling environment for CSOs includes legal provisions that state obligations to state organs to conduct activities in favour of supporting the functioning of NGOs as well as setting up structures for cooperation and participation in policy-making processes. Some countries are using non-regulative measures for this issue, while in other countries, there is a more comprehensive legal framework (e.g., Slovenia and Bulgaria).

The comparative legislative practices presented in this document could and should be used as a solid starting point in initiating a discussion within the working group for amending the LAF as well as the broader civil society. All different approaches and models should be subject to scrutiny in a **broad, inclusive and transparent process**. Only after such consultation and analysis some of the models could be utilised as a blueprint for amending the Law on Associations and Foundations.



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