

Assessment of the Legal Framework for
Non-Governmental Organizations in
the Republic of Belarus¹

**International Center for Not-for-Profit Law under
Belarus Reforms and Media Assistance Program (BRAMA)**

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Executive Summary

The *Assessment of the Legal Framework for Non-governmental Organizations in Belarus* (Assessment) was prepared by the International Center for Not-for-Profit Law (ICNL), under the auspices of the Belarus Reforms and Media Assistance Program (BRAMA). The Assessment provides a comprehensive overview of different areas of Belarus legislation relating to CSOs (including citizen participation, taxation, citizen participation, and good governance, in addition to the basic framework legislation). This overview is accompanied by an analysis which allows the reader to compare Belarus legislation with legislation of the neighboring countries and with European best practices. It intends to inform the international stakeholders about the CSO legal environment in Belarus. At the same time, it will assist Belarus stakeholders to plan and prioritize comprehensive reforms of CSO legislation. The overview and analysis were completed in English as well as in Russian.

Freedom of association faces substantial challenges in Belarus as compared to other countries in the Eurasia region. For example, the participation in and the management and financing of unregistered public associations are considered punishable criminal and administrative offenses in Belarus. Despite these challenges, many CSOs exist and are active in Belarus and its civil society is still lively and vibrant. The fact that Belarus has both a restrictive operating environment and an active civil society necessitates an in-depth understanding of the legal framework for CSOs that will allow CSOs and international stakeholders to understand and properly implement the existing legislation while at the same time working to improve it.

Both the Belarus government and CSOs would benefit from improved CSO legislation. CSOs play an important role in the economic and social life of many democratic countries. A prominent sociologist, Lester Salamon, called the CSO sector a strategically important linkage in the search for the middle way between market and state.² In fact, CSOs may play an important role in resolving quality of life issues and the deficit of social services. These issues usually cannot be solved by the government alone, and businesses often do not have enough economic incentive to contribute to their resolution.

² Global Civil Society Dimensions of the Nonprofit Sector, by Lester M. Salamon; Helmut K. Anheier; Regina List; Stefan Toepler; S. Wojciech Sokolowski; and Associates, The Johns Hopkins Center for Civil Society Studies Baltimore, MD, 1999.

According to global research study conducted by The Johns Hopkins University Center for Civil Society Studies in 35 countries,³ the CSO sector in these countries constitutes:

- **A \$1.3 trillion industry.** The civil society sector, including religious congregations, had aggregate expenditures of US\$1.3 trillion as of the late 1990s. This represents 5.1 percent of the combined gross domestic product (GDP) of these countries.
- **The world's seventh largest economy.** To put these figures into context, if the civil society sector in these countries were a separate national economy, its expenditures would make it the seventh largest economy in the world, ahead of Italy, Brazil, Russia, Spain, and Canada and just behind France and the U.K.
- **A major employer.** The civil society sector in these 35 countries is also a major employer, with a total workforce of 39.5 million full-time equivalent workers including religious congregations. This means that civil society organizations:
 - employ, on average, 4.4 percent of the economically active population, or an average of almost one out of every 20 economically active persons;
 - employ, in the aggregate, 10 times more people than the utilities and textile industries in these countries, five times more people than the food manufacturing industry, and about 20 percent more people than the transportation industry.

However, sustainable and capable CSOs ready to make substantial contributions into economy are not created without support and investment from the government. When a government wants to strengthen small and medium size businesses, it creates a legal enabling environment that includes providing tax incentives. Similarly, in order to strengthen the CSO sector, it is essential to create enabling legal environment for them. A legal regulatory environment for CSOs would be considered enabling if it allowed for a simple registration procedure for all types of CSOs, supported and promoted the sustainability of CSOs by providing certain tax incentives and preferences that would help CSOs to generate income from various sources, and allowed CSOs to be part of political life and contributors to economy.

The most effective formula for CSO law reform occurs when government and CSOs build mutual trust and jointly seek solutions to existing issues within CSO legislation. The following issues are covered in the Assessment:

Registration. The Assessment provides a detailed overview of the procedure for establishing various types of local CSOs as well as for opening of the offices and branches of foreign CSOs. The registration procedure for a new CSO in Belarus is a very complex and gives the government broad discretion on whether to grant the initiative group a registration. The Assessment identifies the main issues that must be taken into account

³ Global Civil Society. An Overview, by Lester M. Salamon, S.Wojciech Sokolowski, Regina List. The Johns Hopkins University Center for Civil Society Studies, 2003 pgs. 13-15, http://www.wingsweb.org/download/global_civil_society.pdf.

when registering a new organization and notes that some forms are easier to register than others. For example, registering an institution is a relatively simple procedure, similar to the procedure available for businesses.

Governance and operational requirements. The Assessment also provides a detailed overview of the legal requirements in regards to internal governance and activities of CSOs. The internal governance rules under Belarus law are very detailed and they must be taken into account when establishing a new CSO. It is also important that CSOs be aware of operational requirements during its lifetime; if a CSO violates its own bylaws, including internal governance rules outlined in the law and/or in its own bylaws, the CSO's activities can be terminated. On a positive note, the majority of Belarus CSOs (with exception of foundations) enjoy freedoms in regards to engaging in political activities, especially in consultations with the government on policy and legislative issues.

Sustainability. The Assessment also closely reviews legislation relating to the sustainability of CSOs. While certain types of CSOs (active in the area of sports and culture, in particular) do enjoy special preferences, such as the possibility for businesses supporting them to deduct the contributions from their taxable income, the majority of CSOs are facing challenges to obtain any kind of income. Specifically, public associations (the most popular type of CSOs) are prohibited from selling goods and services even if directly related to their statutory goals. It is extremely challenging to obtain foreign funding, as all foreign funding must be pre-approved by the Belarusian government. Local businesses are prohibited from supporting any non-profit causes other than those specified in the presidential decree, under the threat of financial penalty for supporting unauthorized causes. There is no special legislation in regards to volunteers. However, activities in this unregulated area have not faced challenges from the government thus far.

Government control. The Belarus government in general and government authorities in charge of registration of CSOs in particular enjoy very broad powers in terms of control and suspension of activities of CSOs, both local and foreign operating in Belarus. Such authority is frequently exercised in regards to those CSOs engaged in advocacy and human rights. Severe penalties are applied against those who do not comply with the legislation. CSO legislation that is in compliance with international standards and best practices provides an enabling environment for all kinds of associational life, for CSOs as well as informal groups. Belarus CSO legislation would benefit from reform effort led by Belarus stakeholders. This Assessment provides an informational foundation for such efforts and ICNL hopes that it will be helpful in kick-starting the process.

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7.1 Transparency and Accountability

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Introduction

The Assessment of the Legal Framework for Non-Governmental Organizations in the Republic of Belarus (Assessment) consists of an overview of Belarus legislation relating to non-governmental organizations (NGOs) as well as a comparative analysis. We hope that this Assessment will inform international and Belarus stakeholders about Belarus NGO legislation and will also provide the foundation for the development of future strategies for legal reforms in Belarus.

This Assessment focuses on the following seven areas of the legal framework for NGOs:

1. Protection of the Freedom of Association;
2. Legal Existence of NGOs;
3. Structure and Internal Governance;
4. Activities of NGOs;
5. Sustainability;
6. Government Oversight; and
7. Transparency and Accountability.

We are aware that a broader set of issues has impact on civil society, including the judiciary system, corruption, mass media, access to information about the government's work, free assembly and expression, etc. Each of these issues affects not only NGOs, but the society as a whole, and requires its own review. Therefore, we will not address them in this Assessment. This Assessment focuses on the areas of legislation which have specific implications for NGOs.

Each section in this Assessment begins with a statement of international good practices for the relevant topic. The good practice statements are based on the International Covenant for Civil and Political Rights⁴ (ICCPR), Council of Europe Recommendation on the Legal Status of Non-governmental Organizations in Europe (2007)⁵ (the CoE Recommendation) the European Convention for the Protection of Human Rights and Fundamental Freedoms⁶ (ECHR), and relevant case law of the European Court of Human Rights (ECtHR).⁷ Each international good practice statement is followed by a brief overview of the Belarus legislation addressing the relevant issue and a section on comparative analysis of the Belarus law provisions with the international law and good practices.

⁴ The International Covenant on Civil and Political Rights, adopted by the United Nations General Assembly on 16 December 1966, ratified by Belarus on November 12, 1973, as the Byelorussian Soviet Socialist Republic (ICCPR).

⁵ Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organizations in Europe, adopted by the Committee of Ministers on 10 October 2007 at the 1006th meeting of the Ministers' Deputies (CoE Recommendation).

⁶ The European Convention on Human Rights (adopted by the Council of Europe in Rome November 4, 1950) (ECHR).

⁷ www.echr.coe.int.

The main body of this Assessment addresses issues relating to all NGOs. The Belarus Law on Public Associations⁸ (PA Law), the Regulation on Establishing, Activities and Liquidation of Foundations in the Republic of Belarus, approved by the President's Decree⁹ (Decree on Foundations), and the Civil Code¹⁰, accordingly, regulate the establishment, activities of and other relationships involving public associations, foundations, institutions and unions of legal entities. Therefore, for the purposes of this Assessment, "NGOs" are understood as public associations, foundations, institutions, and unions of legal entities. A public association is defined as "a voluntary associations or citizens, associated in compliance the order established in legislation based on common interests for the purpose of joint implementation of civic, social, cultural and other rights."¹¹ A foundation is defined as "a non-commercial organization, without a membership, established by citizens (citizen) and (or) legal entities (legal entity) based on voluntary contributions of property, and pursuing social, charitable, cultural, educational purposes, as well as supporting development of physical culture and sport, science or other public benefit purposes, stated in the bylaws of a foundation."¹² An institution is defined as "an organization, established by its owner for the purpose of carrying managerial, social-cultural or other functions of non-commercial nature and funded by the owner fully or partially."¹³ A union of legal entities is defined as "a union of commercial and (or) non-commercial organizations established with the purpose to coordinate their activities, represent and protect common interests."¹⁴

Throughout the Assessment we usually refer to "NGOs," since most provisions in the referenced Belarus legislation affect all of the main legal organizational forms of NGOs. We only discuss "public associations" or "foundations," or other specific forms of NGOs in those cases where a particular provision relates only to the identified legal organizational form.

This Assessment does not address the peculiarities of regulating political parties, labor unions, religious organizations, or other types of associations which are governed by special laws.

⁸ The Law of the Republic of Belarus on Public Associations, dd. October 4, 1994 r. with changes and amendments as of February 15, 2013 (PA Law).

⁹ The Decree of the President of Belarus dd. July 1, 2005 # 302 "On Certain Measures of Streamlining Activities of Foundations" (Decree on Foundations).

¹⁰ The Civil Code of the Republic of Belarus, dd. December 7 1998 (Civil Code).

¹¹ Article 1 of the PA Law.

¹² Article 118 of the Civil Code.

¹³ Article 120 of the Civil Code.

¹⁴ Article 121 of the Civil Code.

1. Protection of Freedom of Association

Everyone shall have the right to freedom of association, including the right to form and join trade unions for the protection of his interests. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.¹⁵

NGOs can be either informal bodies or organizations or ones which have legal personality. NGOs can be national or international in their composition and sphere of operation. 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.¹⁶

Belarus Law

1.1. Freedom of Association under Belarus's International Obligations and Constitution

Belarus is a signatory to the ICCPR¹⁷ and to the International Covenant on Economic, Social, and Cultural Rights.¹⁸

The Belarus Constitution:¹⁹

- Recognizes the priority of commonly recognized principles of international law and requires that Belarus legislation comply not only with its specific legal commitments but also with the general principles; (Article 8)
- States that “Everyone has right to freedom of association;”(Article 36) and
- Guarantees the right to freedom of association to all individuals, citizens and non-citizens. (Article 11)

1.2. Restrictions on Freedom of Association

The following provisions of the Constitution allow for restrictions on the freedom of association:

¹⁵ Article 22 of ICCPR.

¹⁶ Sections 2-5 and 10 of the CoE Recommendation.

¹⁷ The International Covenant on Civil and Political Rights, December 16, 1966, ratified by Belarus on November 12, 1973, as the Byelorussian Soviet Socialist Republic.

¹⁸ The International Covenant on Economic, Social, and Cultural Rights adopted by the United Nations General Assembly on 16 December 1966. (ICESCR) ICESCR was ratified by Belarus on 12 November 1973, as the Byelorussian Soviet Socialist Republic.

¹⁹ The Constitution of the Republic of Belarus (1994, with subsequent amendments as of October 17, 2004) (the Constitution).

- “Restriction of personal rights and liberties shall be permitted only in the instances specified in law, in the interest of national security, public order, the protection of the morals and health of the population as well as the rights and liberties of other persons. No one may enjoy advantages and privileges that are contrary to the law.” (Article 23)
- “Judges, employees of the Procurator's Office, the staff of bodies of internal affairs, the State Supervisory Committee and security bodies, as well as servicemen may not be members of political parties or other public associations that pursue political goals.” (Article 36)
- “The creation and activities of political parties and other public associations that aim to change the constitutional system by force, or conduct propaganda of war, social, ethnic, religious and racial hatred shall be prohibited.” (Article 5).

The activities of unregistered public associations and unions of public associations (unions) are prohibited in Belarus.²⁰ The activities of unregistered foundations are also prohibited in Belarus.²¹

The activities of associations (unions) and foundations are also prohibited if they pursue goals of forceful change to the constitutional order or dispersing propaganda of war, social national, religious or race hatred.²² Also, foundations are not allowed to pursue goals relating to defining and expressing the political will of citizens.²³ In addition, the activities of public associations (unions) designed to promote the provision of benefits and advantages by foreign countries to citizens of Belarus, in relationship to political, religious views or national identity in violation of legislation, are prohibited.²⁴

In accordance with the PA Law, foreign citizens cannot be founders of public associations, with the exception of public associations with the international status established in Belarus.²⁵

The PA Law provides a list of vague reasons for which the registration of a public association may be denied, including any violation of the procedure of establishing a public association or failure of the public association's founding documents to comply with Belarus legislation.²⁶

Compared to the PA Law, the Decree on Foundations provides an even longer list of reasons for which the registration of a foundation may be denied, including: if the foundation's office is located in a residential area without a permit from the local government, if one of the founders used to be a manager of another NGO that was

²⁰ Article 7 of the PA Law.

²¹ Article 5 of the Decree on Foundations.

²² Article 2 of the Decree on Foundations and Article 7 of the PA Law.

²³ Article 2 of the Decree on Foundations.

²⁴ Article 7 of the PA Law.

²⁵ Article 2 of the PA Law.

²⁶ Article 15 of the PA Law.

subsequently liquidated by court decision within a three year timeframe, or if a foundations violates its own charter.²⁷

A foreign NGO may not operate in Belarus before it has registered its local representative office²⁸ or a branch office in compliance with the PA Law.²⁹ Registration of a branch of a foreign NGO may be denied at the government's discretion.³⁰ Registration of a branch of a foreign NGO occurs in compliance with the PA Law.³¹

1.3. Governmental Guarantees in Cases of Alleged Violations of Freedom of Association

Belarus law provides a number of provisions guaranteeing the implementation of the freedom of association and establishing penalties for violation of this freedom.

The Constitution says that the state guarantees the rights and freedoms of citizens of Belarus, as defined in the constitution, laws and as provided under the state's international commitments.³² In addition, the Constitution guarantees the rights of citizens to receive, keep and disseminate complete, truthful and timely information about the activities of government bodies, public associations, political, economic, cultural and international life, and the status of the surrounding environment. Furthermore, state bodies, public associations and government officials shall provide citizens of the Republic of Belarus the opportunity to familiarize themselves with materials relating to his/her rights and lawful interests. The use of this information can only be restricted to defend the honor, dignity and personal and family lives of other citizens and the exercise of their rights.³³

Both the Code of Administrative Offenses³⁴ and the Criminal Code³⁵ establish penalties for government officials who violate the rights of citizens, including the right to freedom of association. The Code of Administrative Offenses, for example, establishes penalties for government officials who unlawfully deny access to information or provide false information to citizens;³⁶ and for other violations of legislation relating to citizen and legal entities' appeals to government bodies;³⁷ the unlawful prevention of assemblies;³⁸ and

²⁷ Article 37 of the Decree on Foundations.

²⁸ The Decree of the Council of Ministers of the Republic of Belarus #929 On the Procedure of Opening Representative Offices of Foreign Organizations in the Republic of Belarus and Their Activities (July 22, 1997 with changes and additions as at May 12, 2010), approved Regulation on Procedure of Opening in the Republic of Belarus of Representative Offices of Foreign Organizations ("Decree #929").

²⁹ Article 8 of the PA Law.

³⁰ Section 3 of Decree #929.

³¹ Article 8 of the PA Law.

³² Article 21 of the Constitution.

³³ Article 34 of the Constitution.

³⁴ Code on Administrative Offenses of the Republic of Belarus (April 21, 2003) (Code on Administrative Offenses).

³⁵ Criminal Code of the Republic of Belarus (July 9, 1999) (Criminal Code).

³⁶ Article 9.6 of the Code of Administrative Offenses.

³⁷ Article 9.13 of the Code of Administrative Offenses.

³⁸ Article 9.7 of the Code of Administrative Offenses.

preventing citizens from being able to associate and/or forcing them to associate in political parties or in public associations.³⁹

The Criminal Code establishes penalties for government officials who prevent or interfere in the lawful activities of public associations;⁴⁰ for unlawful prevention of assemblies;⁴¹ for violation of the rights, freedoms and lawful interests of citizens by a government official resulting from a citizen's complaint to a government body, or, as a result of a citizen's criticism of a government body/official in any form;⁴² and for refusal to provide information to citizens.⁴³

1.4. NGOs without Legal Personality

The activities of unregistered associations (unions) are prohibited in Belarus.⁴⁴ Activities of unregistered foundations are also prohibited in Belarus.⁴⁵ Article 193.1 of the Criminal Code of the Republic of Belarus establishes criminal responsibility for organizing or participating in the activity of a political party or other public association, religious organization, or foundation regarding which there is an effective decision of a competent state body to liquidate or suspend their activity, and for organizing or participating in the activity of a political party or other public association, religious organization, or foundation which has not been registered with appropriate state authorities in accordance with established procedure. Such activity is punishable by a fine, detention for up to six months, or imprisonment for up to two years.

Analysis

1.1. Freedom of Association under Belarus's International Obligations and Constitution

It is remarkable that the Belarus Constitution recognizes the priority of commonly recognized principles of international law and requires compliance of Belarus legislation with these principles, and not only with international legal commitments.⁴⁶ This constitutional provision makes a strong case for recognizing provisions of the ECHR, as "commonly recognized principles of international law." All European countries, except for Belarus, are signatories to the ECHR and have an obligation to implement its provisions.

1.2. Restrictions on Freedom of Association

The Belarus Constitution's provisions on freedom of association are in compliance with international law and meet international standards of good practice. The restrictions placed in the Constitution related to the freedom of association are limited and legitimate.

³⁹ Article 9.8 of the Code of Administrative Offenses.

⁴⁰ Article 194 of the Criminal Code.

⁴¹ Article 196 of the Criminal Code.

⁴² Article 197 of the Criminal Code.

⁴³ Article 204 of the Criminal Code.

⁴⁴ Article 7 of the PA Law.

⁴⁵ Article 5 of the Decree on Foundations.

⁴⁶ Article 8 of the Constitution.

However, there is a gap between the content of the Constitution and other Belarus laws. For example, according to Belarus Constitution, foreign citizens and persons without citizenship in the territory of Belarus have the same rights and freedoms and carry the same responsibilities as Belarus citizens, unless otherwise provided by the Constitution, laws and international treaties.⁴⁷ However, in accordance with the PA Law, foreign citizens cannot be founders of public associations, with the exception of international public associations established in Belarus.⁴⁸ Even though such a restriction is set by a law, it will not pass the test for permitted restrictions of the right to association under international law⁴⁹ or the Belarus Constitution, which requires Belarus legislation to be in compliance with international law and commonly recognized principles.

The numerous and vague reasons for denying the registration and prohibiting the activities of associations and foundations found in the PA Law and the Decree on Foundations contradict international law. The reasons listed in the laws are much broader than international law permits. NGOs may be denied registration, have their activities suspended, or be forced to liquidate for reasons such as violating their own bylaws, which, in most instances, should remain a private issue of an NGO and its founders and members. In fact, the lists of reasons for denial of registration and prohibition of activities of NGOs are broader than similar lists in any country in Europe. For example, Belarus is unique in that it may deny a foundation registration based on the lack of permission from the local governing body to have the foundation's office at a residential property. In Belarus, foundations may also be prohibited from pursuing goals related to defining and expressing the political will of citizens⁵⁰ and public associations and unions are prohibited from carrying out activities, "designated to promote the provision of benefits and advantages by foreign countries to citizens of Belarus, in relationship to political, religious views or national identity in violation of legislation."⁵¹

While Belarus legislation is in compliance with good international practices in that it allows persons to appeal denial of registration to the courts, the perceived lack of independence of the courts from the executive branch has resulted in very few appeals.⁵² Consequently, the value of the right to appeal in guaranteeing the freedom of association may be more an illusion than reality. Similarly, while it is remarkable that the law allows government officials to be held responsible for their actions when they violate the rights of citizens, including right to freedom of association, we are not aware of any instances when such legal provisions would be enforced in practice. The lack of implementation of the law diminishes the value of such provisions.

⁴⁷ Article 11 of the Constitution.

⁴⁸ Article 2 of the PA Law.

⁴⁹ Article 2 of the ICESCR clearly states that "The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. See more under Section Analysis: 2.1.1. Founders_

⁵⁰ Article 2 of the Decree on Foundations.

⁵¹ Article 7 of the PA Law.

⁵² The 2012 Country Reports on Human Rights Practices: Belarus, Bureau of Democracy, Human Rights, and Labor available at: <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>.

1.3. Governmental Guarantees in Cases of Alleged Violations of Freedom of Association

Belarus law provides a number of provisions guaranteeing implementation of the freedom of association and establishes penalties for violation of this freedom. It would be remarkable if they were implemented in practice.

1.4. NGOs without Legal Personality

It is important to note that the prohibition on unregistered associations and foundations, as well as of the activities of foreign NGOs that are not registered in Belarus, is a direct violation of international treaties and conventions to which Belarus is a party, specifically, the ICCPR (Article 22). Article 22 of the ICCPR states:

“1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

3. Nothing in this article shall authorize States Parties to the International Labor Organization Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.”

It is an accepted fact that “freedom of association” includes the right to informal associations, i.e. groups without legal personality. Many other sources of international law confirm that the exercise of the right to freedom of association does not require a person to register a public organization, or even to notify the government about its creation. “Registration should not be an obligatory requirement. Civil society organizations should have the right to exist and to work without registration, if they do not want to register.”⁵³ “The legislation of particular countries should in no way prohibit informal associations only because of absence of their legal personality.”⁵⁴

Prohibition of unregistered NGOs under Belarus law contradicts the very notion of freedom of association.

⁵³ A report submitted by the Special Representative of the UN Secretary General on human rights defenders, Hina Jilani, in accordance with UN General Assembly Resolution № 58.178 (October 1, 2004.), P. 21 (<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N04/533/18/PDF/N0453318.pdf?OpenElement>)

⁵⁴ The OSCE/ODIHR document, Key guiding principles of freedom of association, with an emphasis on non-governmental organizations, page 67 (https://www.humanrights.gov.au/sites/default/files/document/page/OSCE_Guidelines_freedom_of_association.pdf).

2. Legal Existence of NGOs

2.1. Registration (Incorporation) of NGOs.

Any person, be it legal or natural, national or non-national, or a 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. 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.⁵⁵ Persons can be disqualified from forming NGOs with legal personality following a conviction for an offense that has demonstrated that they are unfit to form one. Such a disqualification should be proportionate in scope and duration.⁵⁶

NGOs can be either informal bodies or organizations or ones which have legal personality. 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.⁵⁷

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. The rules for acquiring legal personality should be widely published and the process involved should be easy to understand and satisfy. 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.⁵⁸

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. 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. Fees can be charged for an application for legal personality but they should not be set at a level that discourages applications.⁵⁹

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. Any evaluation of the acceptability of the objectives

⁵⁵ Sections 16 and 17 of the CoE Recommendation.

⁵⁶ Section 30 of the CoE Recommendation.

⁵⁷ Sections 3 and 7 of the CoE Recommendation.

⁵⁸ Sections 28, 29 and 10 of the CoE Recommendation.

⁵⁹ Sections 31-33 of the CoE Recommendation.

of NGOs seeking legal personality should be well informed and respectful of the notion of political pluralism. It should not be driven by prejudices. 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. A reasonable time limit should be prescribed for taking a decision to grant or refuse legal personality. 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.⁶⁰

NGOs should not be required to renew their legal personality on a periodic basis. NGOs should not require any authorization to establish branches, whether within the country or abroad. 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.⁶¹

Without prejudice to applicability of the articles laid down in Convention No. 124⁶² for those states that have ratified that convention, foreign NGOs can be required to obtain approval 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.⁶³

Belarus Law

The establishment and registration procedures for NGOs are outlined in the PA Law and Decree on Foundations, as well as in the President's Decree #1.⁶⁴ Below we will outline general rules for registering NGOs, as well as peculiarities of registration procedure of public associations (unions), foundations, and institutions.

As of January 1, 2013, there were 2477 public associations, including 229 with the international status, 688 with the nationwide status, and 1560 with local status. According to the Ministry of Justice (MoJ), in 2012 it registered 111 new public associations, including 2 international, 10 nationwide, and 99 local, 4 unions of public associations, 22 foundations (2 international and 20 local).⁶⁵ The total number of NGOs registered in 2012

⁶⁰ Sections 34-38 of the CoE Recommendation.

⁶¹ Sections 41-43 of the CoE Recommendation.

⁶² The European Convention on the Recognition of the Legal Personality of International Non-Governmental Organizations, Strasbourg, 24.IV.1986.

⁶³ Section 45 of the CoE Recommendation.

⁶⁴ The Decree of the President of the Republic of Belarus #1 on State Registration and Liquidation (Termination of Activities) of Subjects of Economic Activities (January 16, 2009) (Decree #1).

⁶⁵ Website of the Ministry of Justice of Belarus http://minjust.by/ru/site_menu/about/struktura/obschestv/

is similar to numbers in previous years.⁶⁶ Amongst registered public association, there were 56 public associations that were organized for sports/athletic purposes. Other registered public associations were concerned with various social and charitable areas, but none were focused on human rights or democracy development. 44% of registered public associations carry out activities in Minsk (the capital of Belarus)⁶⁷.

According to the MoJ,⁶⁸ 19 public associations were denied registration in 2012. However, unlike information on registered NGOs, detailed information on a group's denied registration is not posted on the MoJ's website. According to the Center for Legal Transformation, decision making on whether to register an NGO depends, to a large extent, on the personalities of the founders and on the NGO's goals. In 2012, a public association «Краёвае згуртаванне літвінаў» (Regional Association of Lithuanians) was denied registration for the third time. The founders have hired a legal professional to assist them with preparing all the documents in compliance with legislation. Each time they have applied, the founders were given different reason why their registration was denied. Additional similar examples of denial of registration of NGOs are provided in the NGO Sustainability Index report of 2011.⁶⁹ The Center for Legal Transformation experts believe that registration denial disproportionately affects those NGOs with goals to promote human rights or to democratize political environment in Belarus.

2.1.1. Founders

Belarus citizens older than 18 years of age can be founders of public associations. The only exception is for youth organizations and for children's organizations, where the founders can be 16 years old.⁷⁰

Youth organizations are public associations, whose membership consists of at least two thirds of persons younger than 31 years old and whose activities are designed to represent youth-specific interests and provide assistance with the well-rounded development of youth. Children's organizations are public associations, whose membership consists of at least two thirds of persons younger than 18 years old and whose activities are designed to represent children-specific interests and to provide assistance with the well-rounded development of children.⁷¹

The PA Law requires a minimum of 10 founders for public associations. However, the PA Law may require many more founders in order to establish public associations depending

⁶⁶ According to information of the Center of Legal Transformation.
<http://lawtrend.org/ru/content/nko/monitoringsvobodiasociaciiBelarus/monitoringsvobodiasociaciiBelarus-2012/>

⁶⁷ According to information of the Center of Legal Transformation.
<http://lawtrend.org/ru/content/nko/monitoringsvobodiasociaciiBelarus/monitoringsvobodiasociaciiBelarus-2012/>

⁶⁸ <http://news.tut.by/society/333830.html>

⁶⁹ http://transition.usaid.gov/locations/europe_eurasia/dem_gov/ngoindex/reports/2011/2011CSOSI_Index_complete.pdf#page=44

⁷⁰ Article 8 of the PA Law.

⁷¹ Article 8 of the PA Law.

on the territory within which a public association plans to carry out its activities (forms of public associations relating to territorial status). A public association may be established as an international, nationwide (republic-wide), or local public association. An international public association shall have at least 10 founders (members) from Belarus and no less than three founders from one or more foreign country(ies) where the public association plans to carry its activities. At least 50 founders are required to establish a nationwide public association, which is permitted to carry activities throughout Belarus, of which ten must reside in Minsk and ten in four different oblasts. A local public association must have at least ten founders representing the majority of administrative-territorial subdivisions of the territory in which it is planning to operate. (The law refers to village councils, raions, urban type communities, towns as administrative-territorial subdivisions.) In the Minsk region, for example, there are 22 raions (districts), 307 village councils, 22 towns and 20 urban-type communities, so, according to the law, 186 founders are required to establish a local public association that can carry out activities in the Minsk region.⁷²

Legal entities and individuals are not allowed to co-found public associations or unions.

Legal entities (public associations only) can be founders only of unions of public associations)⁷³. At least two public associations are required in order to establish a union of public associations. However, such unions also must satisfy additional requirements, depending on the territory of their activities, i.e. international, nationwide and local. International unions require at least one local and one foreign public association as a founder. Nationwide unions require at least two public associations with nationwide status, or, one with nationwide and one with local status, as founders. International unions require one local and one foreign public association as co-founders. Local unions require at least two local public associations.

Foreign citizens can only be founders of international public associations but can be members of other public associations, if the bylaws of a public association permit it.⁷⁴

Foundations can be established by one or more physical or legal entity, including foreign citizens and legal entities.⁷⁵ Legal entities and individuals are allowed to co-found foundations.

An institution can be established by one legal entity or an individual, either local or foreign.⁷⁶

2.1.2. Territorial Status

⁷² According to information of the Center of Legal Transformation.

<http://lawtrend.org/ru/content/nko/monitoringsvobodiasociaciiBelarus/monitoringsvobodiasociaciiBelarus-2012/>

⁷³ In addition, the Civil Code allows for establishment of unions of legal entities, where both NGOs and businesses (including individual entrepreneurs) can be founders and members (Article 121 of the Civil Code).

⁷⁴ Article 2 of the PA Law.

⁷⁵ Articles 2, 3 of the Decree on Foundations.

⁷⁶ Article 120 of the Civil Code.

All public associations (unions) and foundations shall define the territory within which they plan to carry out their activities at the time of their registration as legal entities (territorial status).⁷⁷ These NGOs may be established and operate with international, nationwide (republican), or local status.

Nationwide NGOs may conduct their activities throughout the territory of Belarus. Local NGOs shall limit their operation to one or more administrative-territorial units of the country. International NGOs are NGOs that have areas of operations covering the entire territory of Belarus and at least one foreign state.⁷⁸ If, following registration as a legal entity, an NGO decides to change the territory of its activity, it must register the change through a procedure similar to the original registration procedure for NGOs.

The higher the territorial status, the greater requirements for registering an NGO. In addition to requirements for the founders discussed in Section 2.1.1, an international NGO (a public association (union) or a foundation) is required to register a branch in at least one foreign country. A nationwide foundation is required to register its organizational structures (such as representative offices) in at least four regions of Belarus, within six months from the date of its registration as a legal entity. If it fails to do so, it is required to re-register within six months of the date of the original registration, with another territorial status.

The higher the territorial status, the higher the registration fees for NGOs. For example, the registration fee for a local foundation is 5 basic minimal amounts,⁷⁹ while for registration of nationwide and international foundations is 10 basic minimal amounts (approximately \$120).⁸⁰ In addition, to set up a foundation, the founders must have capital. Local foundations must have 100 basic amounts or \$1,240. International or nationwide foundations must possess 1,000 basic amounts or \$12,400.

International and nationwide NGOs can only appeal denials of their registrations or other decisions of the government body in charge of their registration, control or supervision over their activities, to the Supreme Court. This eliminates their opportunity to appeal a lower court's decision.

If the government body that controls and/or supervises the activities of an NGO discovers that an NGO violated its bylaws by conducting activities outside of the territory defined in

⁷⁷ Two forms of NGOs considered in this paper, specifically, institutions and unions of legal entities and/or individual entrepreneurs, do not have to have a territorial status, and can operate anywhere upon their registration. Please note that a union of legal entities and /or individual entrepreneurs is a legal organizational form different from a union of public associations. Only business entities and /or individual entrepreneurs, but not NGOs, can be founders of a union of legal entities. Its legal status is regulated under Civil Code (Articles 121-123), and registration procedure is established under Decree of the President of the Republic of Belarus #1 On State Registration and Liquidation (Termination of Activities) of Subjects of Economic Activities (January 16, 2009).

⁷⁸ Article 3 of the PA Law; Articles 7-10 of the Decree on Foundations.

⁷⁹ One basic amount equals 100,000 Belarusian rubles, approximately USD 12.4.

⁸⁰ Article 26 of the Decree on Foundations.

bylaws, the NGO is subject to a warning,⁸¹ suspension of activities,⁸² and, if it does not eliminate the violation, to an involuntary liquidation through the courts.⁸³

2.1.3. Rules for Establishing and Registering NGOs

List of documents. Public associations (unions) and foundations are required to register as legal entities with the MoJ and judicial departments within local government authorities (hereinafter collectively referred to as the MoJ). Both are required to submit an extensive list of documents. In addition to common documents required in most other countries (application by founders, bylaws, list of founders and managers with their names and contact info, etc.), public associations, for example, are required to provide a “graphic drawing of the organizational structures with statement of their location,” lists of founders, as well as members of managing bodies, which shall contain detailed information (home address, place of work, citizenship, personal signature, etc.), a document proving existence of office space as a legal address, and a decision to delegate authority to at least three members of managing bodies to represent a public association in court during the registration procedure. International public associations are required to provide protocols of their meetings and lists of members of the organizational units overseas. Such documents, if adopted overseas, must be legalized in compliance with international treaties (i.e. Apostille, or similar certification).

Foundations are also required to submit completed questionnaires for each founder, a letter of guarantee from the founders where they commit to contribute assets of a certain minimum value to the endowment of a foundation within three months of its establishment, or a payment document confirming such contribution if it takes place during the establishment of the foundation, and, in case of contributions of non-monetary assets, experts affidavit confirming their value.⁸⁴

The law also provides a detailed description of the content of each document, in particular bylaws.⁸⁵

Terms. The application package shall be considered and the decision shall be made by the authorized government body (MoJ) within one month of its submission.⁸⁶ The MoJ has the authority to conduct an investigation into the accuracy of the submitted documents.⁸⁷ In regards to foundations, the MoJ also has the authority to request information from other government bodies (i.e. police, national security service, tax inspection, any other), in regards to founders.⁸⁸ The registration procedure can be suspended if the MoJ determines that there are deficiencies in the submitted application package that can be eliminated. The procedure can be suspended for up to one month. The MoJ shall notify the applicants about suspension of the registration procedure and about deficiencies with the submitted application package,

⁸¹ Article 27 of the PA Law and 44 of the Decree on Foundations.

⁸² Article 28 of the PA Law.

⁸³ Article 29 of the PA Law and Article 49 of the Decree on Foundations.

⁸⁴ Article 31 of the Decree on Foundations.

⁸⁵ Article 9 of the PA Law; Article 13 of Decree on Foundations.

⁸⁶ Article 35 of the Decree on Foundations; Article 14 of the PA Law.

⁸⁷ Article 36 of the Decree on Foundations; Article 14 of the PA Law.

⁸⁸ Article 36 of the Decree on Foundations.

within five days of making the decision on suspension.⁸⁹ If the applicants eliminate the deficiencies, the registration procedure continues.⁹⁰ The general term for the registration procedure includes the one month plus up to one month for suspension, if applied.

The MoJ shall notify applicants about decision on registration, suspension of registration procedure, or denial of registration within 5 days once the decision is made.⁹¹

2.1.4. Approval of name and registration of symbolic

Institutions and unions of legal entities are required to get approval of their name. Their names must reflect their legal organizational form and type of activity. Additionally, it is prohibited to use a number of words in the name of an NGO, including, for example, “Belarus,” “Belorussian,” “national,” “academy,” “people’s” official names of foreign countries, names of individuals (without the explicit permit from the later), statement of superiority of one nation, race, religion or social group⁹². The name also shall differ from the name of other NGOs registered in Belarus or liquidated through court’s decision, and must not contradict the law, the bylaws of the NGO, or violate intellectual property rights.⁹³

Public associations (unions) have the right to have their symbolic, including banners, emblems, anthem (music), badges, kerchiefs, and pennants.⁹⁴ A special procedure for state registration of official heraldic symbols applies to registration of banners and emblems. (For their registration, an NGO shall apply to the Committee on Archives and Documentary Maintenance Management with the Council of Ministers of Belarus after obtaining an experts opinion from the Heraldic Council with the President of Belarus.) An anthem (music), badge, kerchief, and pennant are registered through the same registration procedure as registration for obtaining a legal entity status for public associations and can be done simultaneously with obtaining a status of a legal entity, or separately.⁹⁵

2.1.5. Registration of changes into bylaws

All changes to an NGO’s bylaws require registration with the MoJ. Changes to the bylaws of a public association (union) or a foundation must be submitted to the MoJ for registration within one month after they are made. Registration of these changes occurs through the similar procedure as registration of an NGO as a legal entity.⁹⁶ In order to register changes to the bylaws of a foundation, for example, the foundation must submit an application, a copy of the decision from the foundation’s authorized body making change to the bylaws, two copies of the text of the changes to the bylaws (as appendixes to the original text of bylaws), the original certificate of registration of a foundation as a legal entity, and a receipt for the

⁸⁹ Article 15 of the PA Law; Articles 38, 39 of the Decree on Foundations.

⁹⁰ Article 38 of the Decree on Foundations; Article 15 of the PA Law.

⁹¹ Article 34 of the Decree on Foundations; Article 14 of the PA Law.

⁹²The Decree of the President of the Republic of Belarus #425 on the Use of Words “National” and “Belorussian” in the Names of Legal Entities and Mass Media (dated September 8, 2005).

⁹³ Article 12 of the PA Law.

⁹⁴ Article 12 of the PA Law.

⁹⁵ Article 13 the PA Law.

⁹⁶ Article 13 of the PA Law; Article 32 of the Decree on Foundations.

registration fee.⁹⁷ A similar list of documents is required from a public association (union).⁹⁸ The fee for registration of changes to by laws is 3 basic minimal amounts⁹⁹ (approximately \$37) for local NGOs and 8 basic minimal amounts for nationwide and international NGOs (approximately \$99).

The fee for registration of changes to bylaws of local foundations is 1 basic minimal amount, with the exception in instances when a foundation is changing its form (relating to territorial status), in which case it shall pay the same fee as for registration of a new legal entity. The fee for registration of changes to the bylaws of international and nationwide foundations is 3 basic minimal amounts. The fee for registration of changes to the bylaws of a public association is 30% of the amount of the fee due for registration of a public association (unions) as a legal entity. Public associations of war veterans are exempt from such fees.

2.1.6. Registration rules for organizational structures of NGOs

NGOs have the right and, in some instances, are required to establish their organizational structures. NGOs with international status (public associations and foundations) are required to establish an organizational structure in at least one country other than Belarus.¹⁰⁰ Foundations are required to register such structures in foreign countries and submit relevant changes to their bylaws, indicating establishment of such structures to the MoJ within 6 months of registration of the NGO. A nationwide foundation is required to establish organizational structures (representative offices and/or affiliate offices) in at least four regions (oblasts) and the city of Minsk. Such foundations are required to establish their organizational structures and submit to the MoJ relevant changes to the bylaws, indicating establishment of such structures, within six month of the time they register as an NGO. If it fails to establish organizational structures, a NGO is requires to apply for re-registration into a form with different (local) territorial status, prior to expiration of 6 months.

Whether the organizational structures have the status of a legal entity depends on the bylaws of the NGO.

The following documents are required to register an organizational structure with the MoJ:¹⁰¹ an application signed at least by three managers of the NGO establishing the structure; a list of members of the managing bodies of the structure including their positions in the managing body; documented confirmation of the legal address for the structure (office location); and receipt proving payment of the registration fee.

The term of registration is up to 60 days (including 30 days of suspended registration process, if the MoJ identified some deficiencies in the application package and required the applicant to eliminate them).

⁹⁷ Article 32 of the Decree of Foundations.

⁹⁸ Article 13 of the PA Law.

⁹⁹ One basic minimal amount equals 100,000 Belarusian rubles, approximately USD 12.4.

¹⁰⁰ Article 8 of the PA Law; Article 8 of the Decree on Foundations.

¹⁰¹ Article 16 of the PA Law.

2.1.7. Peculiarities of Registration Procedure of Certain Forms of NGOs

Union of legal entities, consumer cooperatives, gardening cooperatives, and institutions, among other forms of NGO, must be registered under the Regulation on State Registration of Economic Subjects.¹⁰² The registration procedure for these forms of NGOs is the same as for businesses. Local executive government bodies carry out the registration procedure and then submit the registration information to the MoJ. The registration occurs the same day that the list of documents is submitted (i.e. the application, bylaws, a documented confirmation of legal entity status of the founder(s) and/or a documented confirmation of identity of individual founder(s) (if founders are foreigners or persons without citizenship), and a receipt confirming payment of registration fee). It is prohibited to require any additional documents, other than those listed in Decree #1.¹⁰³ Decree #1 prohibits the registration authority from demanding that these entities include a list of activities in the bylaws submitted for registration.¹⁰⁴ The registration may be denied if: the applicants did not submit all documents required by law, the application, as completed, violates legislation, or documents are submitted to the wrong registration body. The registration body shall inform applicants about the denial on the same day of submission of the application package. The denial of registration can be appealed to the economic court.

If applicants intentionally submitted false information during the registration process, their activities are prohibited and the legal status might be considered invalid according to a decision of the economic court through proceedings initiated by interested parties.

2.1.8. Registration¹⁰⁵ of Foreign NGOs

Foreign NGOs are required to register a representative office, if they intend to carry out activities in Belarus. The process of registration of such offices, including the list of required documents is the same for all foreign entities, NGOs, as well as businesses, according to Decree #929. Foreign entities are prohibited from conducting activities in Belarus without registering an office; however, there are a few exceptions, including conducting events, such as concerts and other performances.¹⁰⁶

Representative offices of foreign legal entities shall be registered with the Ministry of Foreign Affairs of Belarus (MoFA). A representative office is a sub-division of a legal entity, which represents and protects the rights of the legal entity. They are permitted to carry out entrepreneurial activities only on behalf of the legal entity.¹⁰⁷ Decree #929 lists the purposes permitted for opening offices of both commercial and non-commercial legal

¹⁰² Approved by the Decree of the President of the Republic of Belarus #1 On State Registration and Liquidation (Termination of Activities) of Subjects of Economic Activities (January 16, 2009) (Decree #1).

¹⁰³ Article 13 of Decree #1.

¹⁰⁴ Article 19 of Decree #1.

¹⁰⁵ Technically, Belarus law calls it “receipt of permit to operate” vs. registration, which applies to registration of legal entities only, and representative offices of foreign NGOs do not constitute independent legal entities.

¹⁰⁶ Article 11 of Decree #929.

¹⁰⁷ Article 2 of Decree #929.

entities. Amongst permitted purposes for opening an office of a foreign NGO are: social support and protection of citizens, including improving the well-being of the disabled, unemployed, and other persons who cannot independently exercise their lawful rights and interests; preparing the population for natural disasters; assisting those who have suffered from natural and other disasters; promoting peace and friendship among ethnicities and nations; promoting strong family values; and promoting activities in the areas of culture, education, arts, protection of wildlife, and other public benefit activities. The MoFA makes a determination whether to register an office only after consultations with other government authorities, which have competence in the chosen area of activity.¹⁰⁸ If a government authority determines that activities of a foreign organization are unnecessary in Belarus, the registration of the office of such organization will be denied.

The MoFA shall issue a decision on registration within 10 days from the date of submission of the application package. This term can be extended to up to one month, if the MoFA determines that it needs additional information from other government bodies.¹⁰⁹ The Decree does not list the reasons for which registration may be denied; registration may be denied at the discretion of the MoFA, which is not required to provide a rationale for such denial. The denial cannot be appealed to court.

If the MoFA registers an office of a foreign NGO, the office shall conduct activities based on programs and projects approved by the authorized body of the foreign NGO, which shall be presented to the MoFA. Decree #929 defines such programs as a “comprehensive set of events, designated to solving specific problems, in compliance with the purposes of opening of an office, which sets specific terms and resources for their implementation.”¹¹⁰ Representative offices are permitted to issue grants only within approved programs and projects.

Once the MoFA issues a registration permit, a foreign NGO shall implement certain actions required to physically open the office, within six months of the date of issuance of the registration permit, otherwise the registration permit will become invalid.¹¹¹ For example, a foreign NGO shall register with tax and statistics authorities, open bank account and rent an office, amongst other required activities.

Registered offices of foreign NGOs are required to submit biannual reports to the MoFA. Reports shall include the address of the office, up-to-date phone, e-mail, and fax numbers; a list of employees with job descriptions and salaries; bank account information; information about projects and programs being implemented, including terms and resources allocated to their implementation; amounts of grants issued and a list of their recipients, as well as description of other activities of the representative office.¹¹²

¹⁰⁸ Article 3.2 of Decree #929.

¹⁰⁹ Article 17 of Decree #929.

¹¹⁰ Article 4 of Decree #929.

¹¹¹ Articles 13, 16 of Decree #929.

¹¹² Article 18 of Decree #929.

If the MoFA determines that an office conducted activities in violation of Decree #929 or other legislation, it may issue a written warning requesting that the office eliminates the violation. The representative office may be liquidated by a court decision for violations of Belarus legislation.¹¹³

2.1.9. Reasons for Denial of Registration

The MoJ may deny the registration of a public association (union) on the following grounds:

- Violation of a prescribed order for establishment of a public association (union);
- Failure of the founding documents to comply with legislative requirements;
- Provision of other documents in violation of legal requirements, including false information, fake or invalid documents;
- Failure of the name of organization to match its symbolic;
- Failure of membership requirements to meet legislative requirements or/and requirements of the bylaws; and
- Failure to eliminate deficiencies in the application package identified by the MoJ as a base for suspension of registration procedure.¹¹⁴

In addition to list above, foundations may be denied registration for a number of additional reasons, specifically:

- The foundation's office is located in an apartment without a special permission from the local government or, in the office of another legal entity, jointly with this other legal entity;
- A founder-individual was a founder/manager of a public association that was liquidated through a court decision for violation of the law and less than three years have passed since the date of court's decision on liquidation; and
- In regards to one of the founders, the court's decision on confiscation of his property has not yet been implemented.

Although official statistics on denials of registration of NGOs are not available, anecdotal data indicates that NGOs may be denied registration for insignificant breaches of legislation.

The organizational structure shall be denied registration if: the NGO violates the procedure for establishing an organizational structure prescribed in law; the submitted documents fail to comply with legislative requirements; the submitted name of the organizational structure fails to comply with the NGO's bylaws or legislation; or, if deficiencies triggering suspension of registration process are not eliminated by the NGO according to the terms established in the warning letter from the MoJ.

2.1.10. Appeals Procedure

¹¹³ Article 24 of Decree #929.

¹¹⁴ Article 15 of the PA Law.

Decisions on denial of registration, as well as missing the deadlines for consideration of the application package for registration can be appealed to courts, within one month after the decision was made/registration deadline missed. The decision of the MoJ's central office can be appealed to the Supreme Court of Belarus, while decisions of local offices of MoJ can be appealed to local courts.¹¹⁵

An NGO may appeal the denial of registration of an organizational structure to court. The activities of non-registered organizational structures are prohibited.¹¹⁶

Analysis

2.1.1. Founders

There are several provisions in Belarus law regarding founder requirements that contradict international law and good practices. These are:

The number of founders required to establish an association. While the PA Law requires a minimum of 10 persons to be founders of a public association, the actual number of the founders required in most cases is greater than 10. Laws that require an excessively large number of founders interfere with the ability of individuals to exercise their freedom to associate and are contrary to international law and standards and the good practice of other countries. It is not possible to justify such requirements as “necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.”¹¹⁷ What harm to democratic society or to national security would be done by permitting two or five individuals to form an association as opposed to demanding 50 founders, for example? The CoE Recommendations state: “Two or more persons shall have opportunity to establish an NGO, based on membership....” In Belarus, however, at least 50 founders are required to establish a nationwide public association that is permitted to conduct activities throughout Belarus, of which ten must reside in Minsk and ten in four different oblasts. A local public association must have at least ten founders representing the majority of administrative-territorial subdivisions of the territory in which it is planning to operate. In the Minsk region, for example, there are 22 raions (districts), 307 village councils, 22 towns and 20 urban-type communities, so according to the law, 186 founders are required to establish a public association that can carry out activities in the Minsk region. In addition, founders must reside in various administrative-territorial subdivisions, within the territory identified for the purpose of territorial status. The residence requirement for founders makes it even more difficult to identify such individuals and to register an association. An international public association shall have at least 10 founders (members) from Belarus and no less than three founders from one or more foreign country(ies), where the public association plans to carry its activities.

¹¹⁵ Article 15 of the PA Law; Article 40 of the Decree on Foundations

¹¹⁶ Article 16 of the PA Law.

¹¹⁷ Article 22 of ICCPR.

The excessive requirements for founders are perhaps one reason why so few public associations are registered annually at the nationwide and international level and why the majority of organizations are registered to operate in Minsk only.

It is important to note that many countries in Europe only require two or three founders in order to establish an association (for example, two founders are required in Austria, Estonia, France, Latvia, Netherlands, Spain; three are required in Bulgaria, Poland, Romania, Czech Republic, Slovakia, Lithuania, Luxembourg, Ireland, etc.) In regards to neighboring countries in the former Soviet Union region, the majority of countries also require 10 or less founders, for example, two founders are required in Ukraine, Georgia, Armenia, Azerbaijan, Kyrgyzstan and three in Russia, Moldova, Tajikistan.

Legal entities and individuals are not allowed to co-found public associations (unions) in Belarus. While the lack of such permission does not necessarily constitute violation of international obligations for Belarus, it would be contrary to international common and good practices, as defined in the CoE Recommendations: “Any person, be it legal or natural, national or non-national, or group of such persons, should be free to establish an NGO.”¹¹⁸ In international practice, it is common to allow co-founding by legal and/or individual persons. The majority of European countries (Albania, France, Germany, Bulgaria, Belgium, Luxemburg, Ireland, Italy, Greece, Lithuania, and some others) permit such co-founding. Only a few countries (Poland or Croatia, for example) do not allow such co-founding yet. Within the former Soviet Union region, several countries permit co-founding of associations by legal and physical persons, including Ukraine, Georgia, Azerbaijan, Kyrgyzstan. However, several countries in this region (Armenia, Kazakhstan, Moldova, Tajikistan, Russia, Turkmenistan, and Uzbekistan, amongst others) still do not allow such co-founding.

Many countries allow for co-founding (membership) of legal entities and individuals for a number of reasons. In countries, where such co-founding has always been permitted (France, Germany, US, UK), there have never been problems with implementation of such legislation specifically related to the fact of co-founding, even though thousands of such associations exist. Taking into consideration very few peculiarities in regulation of associations, whether they are established exclusively by legal entities, by individuals, or, by a combination of both, it simply makes sense to allow them to co-found associations. Countries permit associations with mixed founders and members as way to facilitate associational life by allowing more choices for people and legal entities to unite their efforts and resources to solve social and other public benefit issues.

Foreign citizens cannot be founders of public associations, other than the founders of international public associations, under Belarus law. This provision contradicts Belarus’s international commitments, as Article 2 of the ICESCR clearly states that “The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” The right to associate, including the right to found or become a member of

¹¹⁸ Sections 16 and 17 of the CoE Recommendation.

an association, is protected by the ICCPR (Article 22) as well as by ECHR (Articles 1, 10 and 11) and as a result must be made available to all within the jurisdiction of the member states. According to the ECoHR, the benefits of the ECHR were intended to extend to “all persons in the territories of the signatory States, even those who could not be considered as residing there in the legal sense of the word.”¹¹⁹ The concept of jurisdiction also extends outside of the territory of the country to include those persons who are subject to the exercise of the “authority and responsibility” of the signatory.¹²⁰

To bar a foreigner from establishing or participating in an NGO is a clear infringement of Article 22 of the ICCPR and Articles 10 and 11 of the ECHR. As the signatory state has the burden under the ECHR to justify any restriction, the Belarus Government, if challenged, must demonstrate why restrictions on foreign founders and foreign members are ‘necessary in a democratic society’ to achieve particular state interests.¹²¹ Here, it is far from clear what state interest is served by the bar on certain foreign founders, members, and participants and how the bar can be justified as necessary in a democratic society.

In European countries, as a rule, any physical person or legal entity can set up or participate in the work of an NGO on the territory of any European country. In Germany, foreign nationals are allowed to create associations, foundations and other types of NGOs. There are no restrictions on NGOs’ foundation in the Netherlands. The countries that have joined the EU more recently do not have many restrictions in regard to foreign citizens either. In Hungary, for instance, one is not expected to comply with any requirements pertaining to nationality or the length of residence in the country when setting up an association or a foundation (the main two organizational forms of NGOs).

Certain categories of individuals are not permitted to establish foundations. Under Belarus law, foundations may be denied registration if a founder- individual was a founder/manager of a public association that was liquidated through a court decision for violation of the law and less than three years have passed since the date of the court’s decision on liquidation; or if, in regards to one of the founders, the court’s decision on confiscation of his property has not yet been implemented. These restrictions are excessive and restrict an individual’s rights in violation of international law and good practices.

International law does permit certain restrictions of the rights of certain categories of individuals.¹²² The CoE Recommendations further clarify that “Persons can be disqualified from forming NGOs with legal personality following a conviction for an offense that has demonstrated that they are unfit to form one. Such a disqualification should be proportionate in scope and duration” (Section 30). One should keep in mind that even in light of the CoE Recommendation provision, the eligibility of founders must not be limited except where prescribed by law and necessary in a democratic society in the interests of

¹¹⁹ See *Bankovic v. Belgium*, (2001) 11 BHRC 435, Para. 19/21.

¹²⁰ See *G v. United Kingdom and Ireland* (Application No. 9837/82), Para. 25.

¹²¹ See ECHR Article 11; *Sidiropoulos v. Greece*, 4 Eur. Ct. H.R. 500 (1998).

¹²² According to Article 22 of the ICCPR: “This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.”

national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.

In case of Belarus law, it is difficult to prove how a person who used to be a founder/manager of a judicially liquidated NGO may be a threat to democratic society or to national security. First, there is not necessarily a direct causal link between the liquidation of the NGO and the actions of the founder/manager. Similarly, the court decision on confiscation of private property of an individual might have nothing to do with his/her right to found an NGO (in case of foundations under Belarus law, some founders might not even be required to contribute to the endowment, if other founders agree to take responsibility for the endowment). Second, the three year term is excessively long. Third, even in cases where the confiscation of property is due to the actions of the founder, it is not the government's responsibility to judge the prospective founder's intentions simply based on past activity. Any such judgment will lead to restriction of freedom of association and will contradict the letter and spirit of international law.

2.1.2. Territorial Status

The practice of defining the status of a public association based on the territorial principle stems from traditions of the Soviet law (USSR, just like the Russian Federation today, used to have various jurisdictions that were entitled to adopt their own laws and regions with a certain degree of autonomy regarding the adoption of their own legislation). This tradition was preserved in several countries in the former Soviet region, even when such countries do not have territorial divisions.

Setting up and conducting activities within the constraints of a certain territory imposes restrictions on the organizational development. The requirement to re-register with government agencies, in order to change the territorial status creates additional workload for the registration bodies while subjecting public associations to a host of bureaucratic procedures.

Moreover, it may be hard to observe such statutes. For instance, we do hope that representatives of a local public association registered in Gomel would be able to participate in a conference in Minsk or to join a European international organization despite the fact that its own registration in the Gomel region of Belarus.

The provisions requiring territorial registration are not applicable to commercial legal entities and they should not be applied in regard to non-commercial entities including public associations (unions) and foundations. The process of registration should not be any more complicated or burdensome than the process of setting up a commercial entity.

2.1.3. Rules for Registering NGOs

Timeline for consideration of registration. The process for registering an NGO (a public association (union) or a foundation) in Belarus may take up to 60 days, which is substantially longer than that for a commercial entity (one day). The fact that commercial

entities can be registered in one day indicates that there is no legal or procedural rationale to justify a 60 day process. As Section 7 of the CoE Recommendations states: “NGOs with legal personality should have the same capacities as are generally enjoyed by other legal persons....” Good NGO registration practices require limited administrative discretion and equity with similar processes as those used for other types of legal entities.

Registration fee. While, in general, the amount of a registration fee is comparable with registration fees in other countries, the amount should also be assessed from the perspective of the average income of individuals in the respective country. In general, Belarusian legislation discriminates against public associations and foundations in comparison with for-profit and some other not-for-profit organizations, which effectively only need to apply to get registered. As CoE states: “Fees can be charged for an application for legal personality but they should not be set at a level that discourages applications” (Section 33).

List of required documents. Public associations (unions) and foundations are required to submit a long list of documents at the time of application for a registration as a legal entity. While several documents on the list are common and necessary for a registration according to laws of all European countries (i.e. an application form, signed by the founder(s) or a designated person, bylaws, protocol of the founding meeting (for some countries and for some legal forms of NGOs), name and contact information for the person authorized to represent an NGO, and a receipt for paying a registration fee, other documents required under Belarus law seem to be excessive and unnecessary. For public associations, the latter include: the requirement to provide a “graphic drawing of the organizational structures with statement of their location,” lists of founders, as well as members of managing bodies, which shall contain detailed information (home address, place of work, citizenship, personal signature, etc.), a document proving existence of office space, and a decision to delegate authority to at least three members of managing bodies to represent a public association during the registration procedure. NGOs are also required to produce a letter of guarantee from the owner of the building where the legal address of a foundation will be, a letter of commitment of founders to contribute assets into endowment, or documents proving that such contributions were made at the time of establishing a foundation, as well as a document by experts proving the value of non-monetary contributions.

Remarkably, none of these extra documents are required when business entities and certain forms if NGOs (i.e. institutions and unions of legal entities) apply for registration under Decree # 1. Only an application, a document proving legal entity status by the legal entity-founder and/or a copy of an identification document for an individual-founder, bylaws, and a receipt for the registration fee are required. This list is in full compliance with international practices, unlike the extensive list of required documents for public associations (unions) and foundations.

Legal address. Belarus foundations are prohibited to have their legal address (a location of a managing body) in residential apartments without a special permission from the local government; or, in the office of another legal entity. Public associations (union) are required to produce documented confirmation of existence of a legal address at the time of applying for registration as a legal entity. These requirements are contradictory to good

international practices. An NGO's bylaws must state its legal address, amongst other mandatory information, which makes it necessary to re-register bylaws every time a public association changes its offices.

In international practice, the legal address (sitting) refers to the address that is communicated by the organization when it initiates a registration process with the competent authority (administration, court, or other body). This same address is used by the government authorities to communicate with the organization following its registration. In legislation of certain European countries, similar to Belarus, the legal address also is defined as the place from which the NGO is administered (i.e. NGO's physical office). German law requires the legal address to be the place from where the NGO is administered. Under Hungarian law, the registered office is the place from where the activities are run. In France, the legal address of a legal person is the place of its main establishment. In some countries' laws, the legal address is defined as the place where the core documents of the organization can be found (charter, accounting, minutes, etc.) This is the case in Hungary and in Poland.

Generally, it is legitimate for the registration authority to seek contact information from the applicant and require the organization to keep that information updated. The statement of the legal address or office in the founding documents is a standard requirement of most of the legislation on NGOs. It facilitates communication with the established entity, but also determines the competent body for registration purposes. In most of European countries, the implications of establishing the competent body are only administrative- it determines the jurisdiction for the competent body.

However the legal address is defined, all European countries allow the legal address to be at the address of a natural person or a legal person. Note, that in France, general provisions of the Commerce Code regarding legal entities¹²³ applicable to NGOs, allow them expressly to have their legal sitting at the personal address of their legal representative.¹²⁴

All European countries require the legal address to be stated in the articles of incorporation (or bylaws, statutory documents, charter- different terminology for the same document). In Hungary, for example, the statement of the detailed address (*i.e.* down to the street address) is required by law. It is not necessarily the case for the other countries. France, for example, requires an association's registration filing to state its full address. However, the detailed address does not have to appear in the articles of incorporation. This nuance has a significant legal and practical impact as the legislation requires the association to file any changes in the article of incorporation. The requirement of a detailed address in the charter might consequently be burdensome as it would impose not only an administrative filing,

¹²³ Article L 123-11-1 enacted 3 August 2005.

¹²⁴ A lot of associations already had their legal address at the personal address of one of their founders prior to this provision. To that extent, it "legalizes" the prior informal practice, which may anyway be considered as the expression of the constitutionally protected freedom of association. The amendment might be helpful mostly in the relationship between the tenants and owners of a building with regard to practical aspects of the domiciliation of an NGO at the tenant's personal address (for example the ability to put the name of the association on the mailbox, which may be restricted by condominium regulations).

but potentially¹²⁵ also a vote of the legal entity's general assembly on any minor changes regarding the address (even if the association moves to the next door building in the same street), as well as a requirement to re-register bylaws with the government, which is the case in Belarus.

In addition, most of European countries either do not require any special document evidencing the right of an organization to use a certain place as a legal sitting (i.e. lease agreement, owner's consent, etc.), or they do not have a clearly established practice on that issue. On the contrary, Belarus requires an affidavit from the owner or user of the building stating her approval for the legal entity to be situated at the related address.

Review of application package. Under Belarus law, the MoJ has the authority to conduct an investigation into the accuracy of submitted documents.¹²⁶ In regards to foundations, the MoJ also has the authority to request information from other government bodies (i.e. police, national security service, tax inspection, any other), in regards to founders.¹²⁷ This is in addition to complicated requirements for the documents required to be submitted for registering an NGO. Such practice and the legislation authorizing such practice contradict international good practices. According to the Recommendations of the CoE, "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."¹²⁸

"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."¹²⁹

The 60 days also appear to be unreasonably long for the registration procedure. According to international good practice, "a reasonable time limit should be prescribed for taking a decision to grant or refuse legal personality."¹³⁰ The common term in European countries is between one day and one month. In Belarus, business entities and certain forms of NGOs (i.e. institutions and unions of legal entities) can be registered in one day. If the Belarus government has the administrative capacity to register these entities in one day, the same rule should apply to the registration of all NGOs.

Registration of name/symbol. The procedure for registering of public association's (union's) symbol¹³¹ is unusually complicated compared to European legislation. Also, the restrictions and requirements regarding the name of an NGO are extremely burdensome, compared to European legislation where there are typically very few restrictions. For example, in European countries, there are certain restrictions on the use of names and

¹²⁵ Depending on whether the board of directors has been granted the power to decide of such a change or not in the association's articles of incorporation.

¹²⁶ Article 36 of the Decree on Foundations; Article 14 of the PA Law.

¹²⁷ Article 36 of the Decree on Foundations.

¹²⁸ Sections 28, 29 and 10 of the CoE Recommendation.

¹²⁹ Sections 34-38 of the CoE Recommendation.

¹³⁰ Sections 34-38 of the CoE Recommendation.

¹³¹ Symbol in Belarus would be similar to a logo.

symbols that constitute propaganda of war or bigotry. Other restrictions exist to prevent the violation of someone's intellectual property rights, or duplication if another organization already exists with the same name/symbolic. Finally, other typical requirements exist to prevent an organization from intentionally using its name to mislead the public. Such rules apply to all entities, not just to NGOs.

Registration of organizational structures of NGOs. It appears that under Belarus law, the requirement to establish branches (organizational structures) is a burdensome requirement that makes it more difficult to register an NGO, especially if founders seek to carry out activities nationwide or internationally. The complicated process of registering such branches makes it difficult and discouraging for Belarus NGOs to expand the territory of their activities, therefore it interferes with their plans and activities. The requirement to establish branches contradicts European common practices. According to CoE Recommendations: "NGOs should not require any authorization to establish branches, whether within the country or abroad" (Section 41).

One shall note that granting legal entity status to a branch under Belarus law is also unusual, as compared to European practices. On one hand, it does justify the requirement to register, as all legal entities require some registration with the government in order to obtain a legal status. On the other hand, the common civil law practice in European countries is such that organizational structures, such as representative offices and affiliate offices do not have legal personality. Such structures usually do not require special registration, separate from registration of the headquarters NGO, unless they are established outside of the country.

Registration of amendments into bylaws. Any and all changes to NGO bylaws require their registration with the government. Such requirement is burdensome and unnecessary from the perspective of international good practices. According to CoE Recommendations: "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."¹³²

2.1.4. Peculiarities of Registration Procedure of Certain Forms of NGOs

Institutions and unions of legal entities, and other forms of NGOs which are registered under Decree #1 enjoy a registration procedure in full compliance with the international law and good practices.

2.1.5. Registration of Foreign NGOs

Activities of foreign NGOs are prohibited in Belarus, unless they register representative offices. Belarus law gives the government broad, practically unlimited discretion to deny

¹³² Sections 41-43 of the CoE Recommendation.

such registration and does not allow foreign NGO to appeal the denial. Once registered, the representative offices must submit to the government detailed biannual reports on their activities. This is in addition to seeking approval from the MoFA for all programs and programs to be implemented by the representative office, prior to their implementation. They must also request approvals of all programs and projects, under which they will carry out their activities. If the government finds that they have violated the legislation in any way, it will issue one warning. If the foreign NGO does not eliminate the violation, the government may terminate it.

Such rules clearly restrict the activities of foreign NGOs in Belarus and contradict international good practices in Europe. The right to form an NGO to pursue common goals has been recognized under international law as protected by the right to free association.¹³³ This right may not be limited except where prescribed by law and necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others. Only “convincing and compelling” reasons can justify restrictions on the right to associate and restrictions must be “construed strictly.”¹³⁴ These same rules apply to local and foreign NGOs. Belarus law, in its treatment of foreign NGOs, falls short of compliance with international law.

2.1.6. Reasons for Denial of Registration

Reasons for denial of registration. The provisions relating to NGO registration denial are of special concern. While several reasons for NGO registration denial listed in the Belarus PA Law and the Decree on Foundations are similar to reasons in the laws of European countries, Belarus’s list is much broader, including reasons such as failure of the organization’s name to comply with its symbol and failure of membership requirements to meet requirements found in the bylaws. The list of potential reasons for denying a foundation’s registration includes locating the office in an apartment without a special permission from the local government or in the office of another legal entity or having a founder who was, within the past three years, a founder/manager of a public association that was liquidated by a court decision for violation of the law, amongst some other.

The right to form an NGO to pursue common goals has been recognized under international law as well as the laws of many countries as protected by the right to free association.¹³⁵ This right may not be limited except where prescribed by law and necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others. Only “convincing and compelling” reasons can justify restrictions on the right to associate and restrictions must be “construed strictly.”¹³⁶ It appears that the reasons listed above for denying an NGO’s registration of public associations and foundations do not meet such requirements.

¹³³ See *Sidiropoulos and Others v. Greece*, 4 Eur. Ct. H.R. 500 (1998).

¹³⁴ See *Sidiropoulos and Others v. Greece*, 4 Eur. Ct. H.R. 500 (1998); *United Communist Party v. Turkey*, 4 Eur. Ct. H.R. 1 (1998).

¹³⁵ See *Sidiropoulos and Others v. Greece*, 4 Eur. Ct. H.R. 500 (1998).

¹³⁶ See *id.*; see *United Communist Party v. Turkey*, 4 Eur. Ct. H.R. 1 (1998).

The ECoHR has specifically addressed the application of grounds to deny registration in Greece, and found that the justifications used by the Greek government were not “necessary in a democratic society.” In *Sidiropoulos and Others v. Greece*, a Greek court denied the registration of an association on the grounds that its purpose was not, as claimed, the promotion of local culture, but rather, “the promotion of the idea that there is a Macedonian minority in Greece, which is contrary to the country’s national interest and consequently contrary to law.”¹³⁷ The Greek government asserted that denial of registration was necessary to uphold “Greece’s cultural traditions and historical and cultural symbols.” The Court found that this rationale did not constitute a legitimate state aim which could be used to restrict the right to associate under Article 11, noting that “[e]xceptions to freedom of association must be narrowly interpreted, such that the enumeration of them is strictly exhaustive and the definition of them necessarily restrictive.”¹³⁸

The Court went on to consider whether denial of registration was necessary to protect one of the state aims enumerated in Article 11 – the protection of national security and prevention of disorder. It found: “Territorial integrity, national security and public order were not threatened by the activities of an association whose aim was to promote a region’s culture, even supposing that it also aimed partly to promote the culture of a minority; the existence of minorities and different cultures in a country was a historical fact that a “democratic society” had to tolerate and even protect and support according to the principles of international law.”¹³⁹

The Court accordingly found that denial of the association’s registration violated Article 11 of the ECHR. While Belarus is not a signatory to the ECHR, this and other similar cases of the ECoHR are an important source for interpreting the law and defining “commonly recognized principles of international law,” with which the Belarus Constitution requires laws to comply.¹⁴⁰

Although some reasons for denial of registration are similar to those in other European countries, it is important to note that such reasons are rarely used in European countries. Under French law, the local administration is compelled to acknowledge receipt of a registration filing within five days, unless the documentation is incomplete.¹⁴¹ Only one court decision was identified in which acknowledgement of receipt was appropriately denied because information required by law, the profession of one of the NGO’s officers, was missing. In addition, the French Constitutional Council in 1971 held that because the freedom of association is guaranteed by the constitution, the registration process cannot be an authorization process.¹⁴² Consequently, in France, the registration body does not have the legal power to deny registration when an application is formally complete; assessment of the lawfulness of an NGO’s purpose is left to the interpretation of the courts. Such a mechanical approach to NGO registration prevails in Western Europe and should be implemented in Belarus as well.

¹³⁷ *Sidiropoulos and Others v. Greece* at 10.

¹³⁸ *Id.* at 37, 40.

¹³⁹ *Id.* at 41.

¹⁴⁰ Article 8 of the Constitution (1994, with subsequent amendments as of October 17, 2004).

¹⁴¹ Article 5 of the Law on Associations (July 1, 1901).

¹⁴² Decision n° 71-44 DC (July 16, 1971).

It is also important to mention that institutions and other forms of NGOs and businesses which are registered under Decree #1 enjoy a much shorter list of reasons for denial of registration, which is in full compliance with the international law and good practices.

2.1.7. Appeals Procedure

It is plausible that decisions denying the registration of an NGO, as well as instances where the responsible authority misses the deadline for considering an NGO's application package for registration, can be appealed to courts. The decision of the MoJ's central office can be appealed to the Supreme Court of Belarus; decisions of local offices of MoJ can be appealed to local courts.¹⁴³ It is worth noting that the rights of nationwide and international public associations (unions) and foundation seem to be restricted by the fact that they cannot appeal a court decision, as their court of first is the Supreme Court, the highest court in Belarus.

Unfortunately, no statistics are available in regards to denials of registration of NGOs or the appeals of such decisions to court.

2.2. Termination and Liquidation. 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.¹⁴⁴ 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 [in previous sentence]... have been met. Such an order should be subject to prompt appeal.¹⁴⁵

An NGO created through the merger of two or more NGOs should succeed to their rights and liabilities.¹⁴⁶

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 honored. 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.¹⁴⁷

Belarus Law

¹⁴³ Article 15 of the PA Law; Article 40 of the Decree on Foundations

¹⁴⁴ Section 44 of the CoE Recommendation.

¹⁴⁵ Section 74 of the CoE Recommendation.

¹⁴⁶ Section 27 of the CoE Recommendation.

¹⁴⁷ Section 56 of the CoE Recommendation.

In Belarus, public associations (unions) and foundations can be terminated in accordance with the PA Law and the Decree on Foundations.¹⁴⁸ NGOs can also be re-organized into new legal entities by amalgamation, merger, division, separation, or transformation into a different legal organizational form (the latter is not available for foundations¹⁴⁹). Termination of activities of NGOs may be conducted at the initiative of the NGO itself (in accordance with its founding documents and/or per decision of the highest governing body) (voluntary liquidation) or, at the initiative of third party, through a court's decision (involuntary liquidation). The highest governing body of a public association has authority to decide on voluntary liquidation of a public association.¹⁵⁰ According to the Civil Code, the decision to terminate activities of (to liquidate) a foundation should always be made by the courts based on the application of an interested party (i.e. a board of trustees or a registration body).¹⁵¹ The decision of the highest governing body to dissolve a foundation would require a court's formal approval in order to be carried out. Therefore, in case of a foundation, even the voluntary termination of activities requires court's decision.

Liquidation and re-organization of other types of NGOs (i.e. institutions and unions of legal entities) is governed by Decree #1, which approved Regulation on Liquidation (Termination of Activities) of Subjects of Economic Activities. Representative offices or affiliate offices of foreign legal entities can be liquidated according to voluntary or involuntary liquidation procedure per Decree #929. Below we will provide an overview of the liquidation procedure for public associations (unions), foundations and of representative offices of foreign NGOs. We will not review the re-organization procedure since very few NGOs in Belarus undergo such procedure, or the liquidation procedure for institutions (unions of legal entities), since the latter is identical to the procedure for business legal entities and therefore considered fair and in compliance with international common practice.

A public association (union) is liquidated:¹⁵²

- On decision of the highest body of this association (union);
- On decision of the court in the cases of involuntary liquidation, per reasons stipulated by the law.¹⁵³

The decision of the highest body of the public association (union) or of the court on liquidation of public association (union) is to be sent to the MoJ and published by the public association (union) in periodical printed edition specified by the acts of legislation.

On the basis of the decision of the highest body of public association (union) or of the court on liquidation of public association (union), the MoJ excludes the liquidated public association (union) from the Register of Public Associations (Unions).

¹⁴⁸ Articles 19, 29 of PA Law; Articles 49, 50 of the Decree on Foundations; Article 119 of the Civil Code.

¹⁴⁹ Article 119 of the Civil Code.

¹⁵⁰ Article 19 of the PA Law.

¹⁵¹ Article 119.3 of the Civil Code.

¹⁵² Article 19 of the PA Law.

¹⁵³ Article 29 of the PA Law.

A public association (union) may be liquidated by decision of the court when:

- The public association (union) conducts actions aimed at violent change of the constitutional system or propagation of war, social, national, religious and racial hostility;
- The public association (union) violates legislation and (or) their constituent documents within a year after delivery of a written warning;
- If, during the process of the state registration of a public association (union), its founders commit violations of the PA Law and (or) other acts of legislation that cannot be remedied;
- If the number of members of a public association (union) falls below minimal required by law, or if the composition of a public association does not correspond to the requirements of the PA Law (in regards to special requirements for local, international and nationwide public associations (unions)); or
- If the public association (union) fails to eliminate, within the term specified by the decision of the court, violations which have given ground for the suspension of activity of the public association (union).

A public association (union) can be liquidated on the decision of the court for a single violation of legislation on the mass events, as well as for the violation by public association (union) or its organizational structure of the requirements established by the legislation for the use of foreign grants.¹⁵⁴

A foundation can be liquidated in the following cases:¹⁵⁵

- If the foundation failed to submit to the MoJ, within three months after its registration as a legal entity, documents proving that assets of the minimal value determined by the law have been transferred into endowment of a foundation;
- If the foundation failed to register its organizational structures, required by law, and/or failed to submit documents amending the founding documents of a foundation (i.e. changing the territorial status of a foundation), within six month from the date of establishing a foundation;
- If by the end of the calendar year, the value of assets in the endowment is below the minimum, required by law, and after a foundation failed to increase the value of endowment upon receipt of the written warning from the MoJ;
- If one of the purposes listed for establishing the foundation cannot be achieved and also cannot be changed;
- If the foundation is conducting activities unrelated to the purpose for which the foundation was established;
- In case of carrying illegal activities, or, in case of multiple or gross violations of legislation; and
- In other cases, established by the legislation.

¹⁵⁴ Article 29 of the PA Law.

¹⁵⁵ Article 49 of the Decree on Foundations.

The liquidation of international and nationwide public associations (unions) and foundations is carried out on the decision of the Supreme Court of the Republic of Belarus upon application of the MoJ. The liquidation of a local public association (union) or a local foundation is carried out on the decision of local courts.

Representative offices or affiliate offices of foreign legal entities can be liquidated according to voluntary or involuntary liquidation procedure per Decree #929. Activities of the representative office of a foreign NGO may be terminated if the foreign NGO itself is liquidated; if the international treaty according to which such representative office was opened is terminated; if the foreign NGO that opened the office decides to liquidate it; if the court decides the NGO is in violation of Belarus legislation; or if the term in which the NGO was permitted to open and operate the representative office expires.¹⁵⁶

Analysis

Voluntary liquidation

The voluntary liquidation procedure for public associations (unions) and foundations under Belarus law is generally in compliance with international common practice. According to such common practice, the highest governing body of a public association has a broad authority to make a decision to terminate a public association. As a general rule, associations and their equivalents can choose to terminate activities/dissolve at any time by a resolution of the general assembly (this resolution may require more than a simple majority to pass). Whenever an organization dissolves voluntarily, it generally must inform the registration body of the decision to dissolve.

Broad discretion in regards to voluntary liquidation procedure and property disposal given by Belarus law to founders and managing bodies of NGOs is similar to the approach which may be found in the NGO laws of other countries. In Europe, the one notable exception is for service-providing public benefit organizations, on which some countries impose restrictions in order to avoid the immediate cessation of services which might adversely affect beneficiaries.

Under Belarus law, we assume that the obligation of the highest managing body of a foundation to obtain the court's decision even in case of voluntary liquidation has a similar justification, considering that all foundations in Belarus are for public benefit. However, in regards to foundations, as a legal form of NGO, some European countries allow the founders to dissolve a foundation if certain conditions described in the organization's statute are met (Estonia and Macedonia).

In some countries, such as the Czech Republic, some organizations with public benefit status may be terminated only upon the condition that their remaining property is transferred to another organization of the same legal form or similar charitable status, or for the purposes, for which the liquidating foundation was originally established. If no such foundation exists or is willing to take over the property, it must be transferred to the community where the foundation had its registered headquarters or to the state and must be used for a public benefit purpose. Belarus law expands the requirement to transfer the

¹⁵⁶ Article 24 of Decree #929.

property of a liquidated NGO to other NGOs with similar goals to all NGOs, not only to those with public benefit status. We also note that under Belarus law, there is no clearly defined public benefit status. Therefore, in Belarus, certain mutual benefit public associations might have to deprive their members of their share of the public association's assets upon liquidation.

Involuntary liquidation

Similar to Belarus, almost all European laws allow involuntary liquidation if an organization has violated the law or its statute (although most countries require the violation to be egregious and give the organization a warning before dissolving it). For example, Estonia allows liquidation if the organization's purpose becomes impossible, illegal, or contrary to the constitutional order or to public policy. In some countries, organizations might also be dissolved if they fail to serve their statutory purposes or engage in excessive economic activities. In Europe, in regards to involuntary liquidation, the trend has been to decrease discretion, bringing these provisions more in line with Article 11 of the European Convention on the Protection of Human Rights and Freedoms (1953).¹⁵⁷ In this regard, there are a number of issues of concern in regards to the reasons for involuntary liquidation, under Belarus law. The following reasons for an involuntary liquidation through court would most likely not meet the international standards:

- Violation by a public association (union) of the legislation and (or) their constituent documents within a year after delivery of a written warning (given that such written warnings may be issued in regards to even minimal offenses that should not trigger the liquidation of an NGO);
- If the number of members falls below minimal required by law, or if the composition of a public association does not correspond to the requirements of the PA Law (in regards to special requirements for local, international and nationwide public associations (unions) (this reasons might fall short of compliance with the international law, given that the required minimal number of founders for certain types of public associations is excessive and would also contradict to international law, if examined by the ECoHR); and
- A public association (union) can be liquidated by decision of the court for a single violation of legislation on the mass events in the cases provided in the law, as well as for the violation by a public association (union) or its organizational structure of the requirements established by the legislation for the use of foreign grants (such reasons do not exist in other European countries and do not comply with the international law).

It should also be noted that in many European countries, specific events trigger liquidation as a matter of course, for instance if the time period for which a foundation was established ends. The relevant governing organ of an NGO should move to dissolve the organization in such cases. In many countries, if the organization does not dissolve itself when one of these "automatic" conditions for liquidation arises, the registration authority may dissolve it involuntarily. Again, Belarus law is in compliance in regards to instances when NGOs are

¹⁵⁷ The European Court on Human Rights explicitly extended Article 11 protections to the termination of an organization in the case *on Freedom and Democracy Party (ÖZDEP) v. Turkey (December 8, 1999)*.

dissolved involuntarily if, for example, a foundation failed to submit to the MoJ within three months after its registration as a legal entity documents proving that assets of the minimal value as determined by the law have been transferred into endowment of a foundation or if the purposes for which a foundation was established cannot be changed or achieved. If the minimal membership requirement in Belarus were reasonable (ideally 1 or 2 but certainly below 10), the involuntary liquidation of a public association in case of the membership falling below certain threshold would also be justifiable.

Many countries also dissolve an organization if it stops functioning, although they use differing criteria to determine when an organization is defunct. Slovenia and Serbia have no other criterion; they leave it to the registration body to determine if a given association has “ceased to operate.” Hungary uses a more objective criterion, setting a fixed time period (five years) that an association must be dormant before it can be dissolved. Slovakia takes a different approach, dissolving organizations whose management boards fail to meet or have unfilled vacancies for a fixed period of time, while the Czech Republic requires a community self-government to fill a vacancy in the board, if the founders or other relevant body of the organization fail to do so within 60 days.

Similar to Belarus, in most European countries, a court must decide whether to dissolve an NGO involuntarily. Typically the public prosecutor or administrative body responsible for supervising NGOs requests the liquidation. In several countries, other interested parties (notably founders and organization officers) can seek to have an NGO dissolved. Usually liquidation decisions can be appealed according to normal administrative or judicial procedure.

3. Structure and Internal Governance

3.1 Mandatory and Optional Provisions for Governing Documents. NGOs with legal personality should normally have statutes, comprised of the constitutive instrument or instrument of incorporation and, where applicable, any other document setting out the conditions under which they operate.¹⁵⁸ These statutes generally specify: its name; objectives; powers; the highest governing body; the frequency of meetings of this body; the procedure by which such meetings are to be convened; the procedure for changing the statutes, dissolving the organisation, and merging it with another NGO.¹⁵⁹ The highest governing body of a membership-based NGO should be the membership and its agreement should be required for any change to the statutes. For other NGOs, the highest governing body should be the one specified in the statutes.¹⁶⁰

Belarus Law

Belarus Law provides for very detailed instructions on the content and format of the governing documents of both public associations (unions) and foundations. In this section,

¹⁵⁸ Section 18 of the CoE Recommendation.

¹⁵⁹ Section 19 of the CoE Recommendation.

¹⁶⁰ Section 20 of the CoE Recommendation.

we will review the key requirements for the governing documents of public associations (unions) and foundations.

*Public associations (unions.)*¹⁶¹ The constituent document of a public association is its Statute. The constituent document of a union is the statute and constituent agreement of the union.

The statute of a public association (union) should contain:

- The full and abbreviated name of the public association (union);
- The aims, tasks, subject and methods of operation of the public association (union);
- Indication of the territory which is covered by activities of the public association (union);
- The terms and procedure for obtaining and terminating membership in the public association (union) as well as procedure of registration of members of the public association (union);
- The rights and obligations of members of the public association (union);
- The procedures for management of activities of the public association (union);
- The name, composition, procedure of election, procedure and frequency of convocation, terms of powers of bodies of the public association (union), bodies of organizational structures of the public association and their competence; procedure for making and appealing against decisions made by the bodies of the public association (union), bodies of organizational structures of the public association;
- The sources and procedure for formation of monetary funds and other property of the public association (union); the body authorized to make decisions on property acquisition and disposal thereof; the limits of disposing of property of the public association by its organizational structures;
- The procedure for introduction of changes and (or) additions into constituent documents of the public association (union);
- The procedure for reorganization and liquidation of the public association (union) and procedure for use of property left after the liquidation of the public association (union);
- The legal address of the public association (union) (location of governing body); and
- The structure of the public association, conditions and procedure of creation and termination of activity of its organizational structures (for the bylaws of the public association only).

The bylaws of a public association (union) may also contain other provisions concerning the establishment and operation of the public association (union) that do not contradict the legislation of the Republic of Belarus.

In addition, bylaws (constituent contract) of a union should contain:

- The full and abbreviated name of the union;

¹⁶¹ Article 9 of the PA Law.

- The procedure for joint activity of founders of the union on its establishment;
- The terms of transfer of property of founders and other members to the union;
- The terms of participation in the activity of the union of founders of the union and its other members;
- The terms and procedure of administration of activity of the union;
- The terms and procedure of acquiring and losing membership in the union; and
- The responsibility of members of the union for its liabilities.

By consent of union members, other terms may be included in the constituent contract of the union as well.

It is not allowed to indicate in the constituent documents of the public association (union) the superiority of any race, nationality, religion, or social group.

*Foundations.*¹⁶² A foundation's main governing document is its bylaws, which shall be approved by its founder(s). The statute shall contain the following information:

- The name of a foundation, including the word “foundation” and indication of the type of operations conducted by the foundation;
- Information about founder(s);
- The aims, tasks, subject and methods of operation of a foundation;
- The procedures for internal management of a foundation and procedures for establishing its governing bodies;
- The procedure for establishing the foundation's board of trustees;
- The procedure for appointing and dismissing officials of the foundation;
- The procedure for making changes and/or amendments into statute of a foundation;
- The sources and procedure for establishing its property;
- The time frame for existence of a foundation, or statement of its eternal existence;
- Information about a legal address (location of a governing body) of the foundation;
- Information about organizational structures established by a foundation, including their names and legal addresses (location of their governing bodies);
- Information about the destiny of the property of the foundation, if it is liquidated. (It shall state that the property shall be designated for the purposes for which the foundation was established);
- Other provisions, required by the law, such as indication of the territory which is covered by activities of the foundation; and
- Other provisions, by decision of the founder(s) which do not contradict the law.

A public association or a foundation is required to apply for registration of any changes into bylaws with the MoJ. The procedure for registering such changes/amendments is the same as procedure for registering an NGO as a legal entity, but with a reduced registration fee. A foundation, for example, is required to apply for registration of changes into bylaws, in the following cases: change to the purposes of a foundation; change of the name of a foundation; change of the territorial status of a foundation; change of legal address; establishment and liquidation of organizational structures; changes to the governing bodies

¹⁶² Articles 12-14 of the Decree on Foundations.

of a foundation, including highest governing body; procedure for appointing and dismissing officials of a foundation; procedure for establishing property of a foundation; as well as all other information contained in the bylaws.

3.2 Internal Governing Structure. 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. 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 authorization from a public authority in order to change their internal structure or rules. The appointment, election or replacement of officers, and 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 offense that has demonstrated that they are unfit for such responsibilities. Such a disqualification should be proportionate in scope and duration.¹⁶³

NGOs should not be subject to any specific limitation on non-nationals being on their management or staff.¹⁶⁴

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.¹⁶⁵

Belarus Law

Belarus law provides very detailed instructions on how the internal governance of a public association (union¹⁶⁶) or a foundation¹⁶⁷ shall be organized. In this section we provide an overview of the relevant legal provisions on internal governance of public associations (unions) and foundations.

3.2.1. Governing Bodies in Public Associations

The highest body of the public association (union) is a congress, conference, general assembly or other assembly of members of public association or their representatives (delegates), representatives of union members.

Highest body of public association (union):

- Approves the name and the bylaws of the public association (union);

¹⁶³ Section 46-48 of CoE Recommendation.

¹⁶⁴ Section 49 of CoE Recommendation.

¹⁶⁵ Section 9 of CoE Recommendations.

¹⁶⁶ Articles 10-11 of the PA Law.

¹⁶⁷ Articles 19-22 of the Decree on Foundations.

- Elects the governing body of the public association (union) that manages the activity of the public association (union) between sessions (convocations) of the highest body;
- Elects the auditing body of the public association (union) carrying out the internal inspection of financial and economic activity of the public association (union) as well as internal control over the compliance of activity of the public association (union) with legislation and their constituent documents;
- Introduces changes and (or) additions into the bylaws of the public association (union) unless otherwise provided by the PA Law;
- Makes decisions on reorganization or liquidation of the public association (union), unless otherwise provided by the PA Law; and
- Makes other decisions, obligatory for all bodies and members of public association (union).

Governing body of a public association shall consist of not less than three members of the public association.

Governing body of a union shall consist of not less than three members of public associations belonging to the union.

The governing body of a public association, between sessions (convocations) of highest body of public association, has the right to introduce changes and (or) additions into the statute of the public association to change of the legal address of the public association (location of governing body) or introduce changes stipulated by law.

The highest body of an organizational structure of the public association, in accordance with the bylaws of the public association, is a conference, general assembly or other assembly.

The highest body of the organizational structure of a public association (union): elects, in the order specified by the bylaws of the public association (union), the governing body of the organizational structure that manages the activity of the organizational structure between sessions (convocations) of the highest body of the organizational structure; elects the auditing body of the organizational structure; and makes decisions mandatory to the organizational structure of an NGO. The governing and auditing bodies of a public association (union) and its organizational structures are elected bodies. Only members of this public association who have reached the age of 18 may be elected. Members of public association (union) are not allowed to hold at the same time positions in governing and auditing bodies of public association and its organizational structures.

A public association (union) and its organizational structures may form other bodies necessary for performing statutory activity. The formation procedure of these bodies, their competence and the procedure of decision-making are to be specified by the constituent documents of the public association (union).

Public associations have fixed membership.¹⁶⁸ “Fixed membership” under Belarus law means that names and other personal information about the members shall be recorded by the public association and may be subject to audit by the government. Citizens who have reached the age of 16 may become members of public associations. Foreigners may become members of a public association, if the statute of the public association permits the foreigners to be members.¹⁶⁹ In cases specified in the bylaws of a public association, citizens under the age of 16 may become members with the written consent of their legal representatives. Legal persons cannot be members of public associations. Members of unions are public associations belonging to this union.

3.2.2. Governing Bodies in Foundations

Foundations shall have the following governing bodies: board; executive body (directors), and council of trustees. A foundation’s bylaws might provide for additional governing bodies. The bylaws shall determine the composition and the procedure for establishing all governing bodies.

The board is the highest governing body of a foundation which is formed by the founder(s). Its main function is to guarantee that the foundation’s activities comply with the purposes for which the foundation was established. The exclusive competence of the board includes: changes and/or amendments to bylaws; establishment and dissolution of executive body of a foundation; establishment and dissolution of organizational structures of a foundation and defining their competence; approval of financial annual report of a foundation and deciding on re-organization of a foundation, if such possibility is provided in the bylaws.

The executive body (director(s)) of a foundation is responsible for managing the day-to-day activities of a foundation. It must report to the board. Founders of a foundation also establish a council of trustees, which must supervise activities of a foundation. The council of trustees has a chairman, who manages its work and conducts meetings. The exclusive competence of a council of trustees includes: supervision over compliance of activities of a foundation with the law and its bylaws; supervision over implementation of decisions of the Board and the executive body; supervision over use of financial and other assets of a foundation to make sure it is in compliance with the law and the bylaws of the foundation and preliminary review and approval of the annual report of a foundation. The members of the council of trustees have authority to receive any document from the foundation. Its decisions are mandatory for the executive body and to other governing bodies of the foundation, as well as to its organizational structures.

3.3. Distribution of Profits and Other Private Benefits. NGOs do not have as their primary objective making a profit. NGOs should not distribute any profits which might

¹⁶⁸ Article 11 of the PA Law.

¹⁶⁹ Article 2 of the PA Law.

arise from their activities to their members or founders but can use them for the pursuit of their objectives.¹⁷⁰

NGOs with legal personality should have access to banking facilities.¹⁷¹ NGOs with legal personality should be able to sue for the redress of any harm caused to their property.¹⁷²

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.¹⁷³ NGOs with legal personality should not utilize property acquired on a tax-exempt basis for a non-tax-exempt purpose.¹⁷⁴ 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.¹⁷⁵

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 honored. However, if no successor being designated or the NGO concerned having recently benefited from public funding or other form of support, it can require that the property either be transferred to another NGO or legal person that most nearly conforms to its objectives or be given to 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.¹⁷⁶ The officers, directors and staff of an NGO with legal personality can be made liable to the NGO, third parties or all of them for professional misconduct or neglect of duties.¹⁷⁷

Persons may be disqualified from acting as an officer of an NGO following conviction for an offense that has demonstrated that they are unfit for such responsibilities. Such a disqualification should be proportionate in scope and duration.¹⁷⁸

Belarus Law

Belarus NGOs shall not have derivation of profit as the main goal of their activity, and they cannot distribute profit amongst their participants.¹⁷⁹

Monetary funds and other property of a public association (union)¹⁸⁰ may not be redistributed among members of this public association (union) and are to be used only for

¹⁷⁰ Section 9 of the CoE Recommendation.

¹⁷¹ Section 51 of the CoE Recommendation.

¹⁷² Section 52 of the CoE Recommendation.

¹⁷³ Section 53 of the CoE Recommendation.

¹⁷⁴ Section 54 of the CoE Recommendation.

¹⁷⁵ Section 55 of the CoE Recommendation.

¹⁷⁶ Section 56 of the CoE Recommendation.

¹⁷⁷ Section 75 of the CoE Recommendation.

¹⁷⁸ Section 48 of the CoE Recommendations.

¹⁷⁹ Article 46 of the Civil Code.

¹⁸⁰ Article 21 of the PA Law.

statutory purposes and objectives. Public associations (unions) are allowed to use their own monetary funds for charitable purposes.

A public association (union) is not liable for the obligations of its members. Members of a public association are not liable for the obligations of the public association. However, members of the union bear subsidiary liability for its obligations in order and in the amount provided by the constituent documents of the union.¹⁸¹

In regards to foundations, the law states that the founders shall not be responsible for the obligations of the foundation, and the foundation shall not be responsible for commitments of the founders.¹⁸² It also states that all property transferred to a foundation by its founder(s) is considered the property of a foundation, and that the foundation shall use this property exclusively for the purposes defined in its bylaws.¹⁸³

The bylaws of a public association (union) shall define the sources and procedure for establishing: the property of a public association (union); the governing body which is authorized to make decisions over acquiring assets and disposing them; and the limits for such actions by its organizational structures.¹⁸⁴

Assets of a liquidated public association (union) or a foundation, after full satisfaction of all claims of creditors, are used for the purposes provided by founding documents of this public association (union) or a foundation, if these assets are not subject to appropriation by the State in accordance with legislative acts. In case of a foundation, if it is not possible to use assets for the statutory purposes, assets shall be transferred, after being divided into equal portions, to foundations which have similar purposes and have applied to the court to be beneficiaries. If there are no such applications, the remaining assets of a liquidated foundation shall be transferred to the State and used for the purposes for which the liquidated foundation was established.

The Belarus legislation does not specifically address the issue of compensation of the persons in charge of the administration and management of an NGO.

The Belarus legislation does not set the rules for prevention and resolution of a conflict of interest. It also does not require NGOs to enact internal governance mechanisms which prevent conflicts of interest. NGOs do not have mechanisms for self-regulation and many do not employ conflict of interest policies.

Analysis

Belarus legislation contains an extremely detailed set of requirements in regards to the content of bylaws and internal management and structure, which are applicable to all NGOs (public associations (unions) and foundations). While such detailed regulation might

¹⁸¹ Article 21 of the PA Law.

¹⁸² Article 6 of the Decree on Foundations.

¹⁸³ Article 18 of the Decree on Foundations.

¹⁸⁴ Article 9 of the PA Law.

be reasonable in case of foundations (especially considering that Belarus foundations can only exist as public benefit), it makes less sense to enact such strict regulations on all public associations (unions). Before we start the comparative analysis, it is important to note that the detailed regulations found in Belarus law are subject to special scrutiny, even when compared to equally detailed regulations of some other countries, because violations may result in a suspension of activities of an NGO or even in its involuntary liquidation.

Laws in Europe vary greatly in the amount of detail with which they address NGO internal governance issues. Some simply require that the organization's bylaws outline the structure of the organization. Others spend pages of legislative text laying out voting procedures and quorum requirements, providing for management failures of various kinds, etc. In some cases, these detailed rules can be modified by an organization's bylaws or bylaws; in others, not. The general trend is such that public benefit organizations and foundations are under greater scrutiny and shall comply with more regulations compared to associations, which enjoy fewer special privileges. Below, we will review some of the European laws and compared them to Belarus law.

Structures and internal governance

Association. Laws of many countries establish basic requirements about which information shall be contained in an NGO's bylaws. Such information typically shall include the name of an association; the objectives; the powers; the highest governing body; the frequency of meetings of this body; the procedure by which such meetings are to be convened; the procedure for changing the bylaws and dissolving the organisation or merging it with another NGO. While requirements in regards to by laws greatly varied from country to country, we shall highlight certain unusual requirements found in Belarus that we have not seen in the laws of other European countries and which may seem excessive. These include a requirement to indicate in bylaws not only purpose/aim of an association, but also tasks, subject and methods of operation of the public association (union). These requirements are hard to define and give the MOJ broad discretion to deny registration of a public association. Another requirement is to indicate the territorial status of a public association (international, nationwide, or local). The issues with such status are discussed in detail in Section 2.1.2. Territorial Status. Under Belarus law, NGOs must not only prescribe the terms and procedures of obtaining and losing membership in the public association (union), but also procedure for registering members of the public association (union). Under good international practice, as long as an association keeps track of its members, it is irrelevant how exactly this takes place, with no reason to provide details, which are not easy to change if prescribed in bylaws. (Under Belarus law all changes to bylaws require registration with the government which is a burdensome process). Belarus law also requires a public association's (union's) bylaws to state:

- The name, composition, procedure of election, procedure and frequency of convocation, terms of powers of bodies of the public association (union), bodies of organizational structures of the public association and their competence;
- The procedure for making and appealing against decisions made by the bodies of the public association (union) bodies of organizational structures of the public association; and

- The sources and procedure for obtaining of monetary funds and other property of the public association (union).

Many of these issues shall be addressed by the association, but whether they are addressed in bylaws or some other internal document shall be at the association's discretion.

According to international good practice, an association's highest governing body is a general assembly of members or, for certain large associations, assembly of duly elected representatives. Belarus law requires a similar body. It is common for legislation in Europe to reserve decisions of particular importance to the general assembly. Acts commonly reserved for the general assembly include termination of the association; its transformation, division, or merger with another association; amendments to the association's statutory purpose; the election or recall of officers; and setting the amount of membership dues. Legislation in many countries also requires a super majority of votes of the general assembly members for certain types of "key decisions" (i.e. termination of an association). European countries also differ on the procedure to call a meeting of the general assembly of members. Many allow the procedure to be governed by the organization's bylaws. Some also regulate additional issues, for example, the fraction of the members (ranging from one-tenth in Estonia to one-third in Hungary) required for calling a special meeting of the general assembly. Laws that address the procedure to convene the general assembly usually also determine how many members must be present to constitute a quorum. In addition to the general assembly, many European countries envision a management body to deal with the day-to-day operations of an association. Belarus law also requires such body, specifying that it shall consist of at least three members, defining its competence. Like the laws of other European countries, under Belarus law it is permissible to establish additional bodies.

Foundations and Other Non-Membership Organizations. Usually, laws of European countries contain more requirements in regards to by laws of foundations or other non-membership based organizations. With the exception of the requirement to indicate the foundation's territorial status (See Section 2.1.2. Territorial Status of this Assessment), Belarus's requirements on the bylaws of foundations are generally similar to requirements in Europe.

In general, in Europe, similarly to Belarus, non-membership organizations are governed by a board of directors. They may also have separate management to conduct routine business of the organization and a separate supervisory board (or at least an auditor) to oversee the operation of the organization (making sure it does not act illegally or misuse its funds, etc.). A few organizations do allow founders to play a continuing role in the governance of the organization. In short, the trend in Europe is to provide a few basic provisions dealing with NGO internal governance structures. Typically, these provisions identify the highest governing body (or bodies in the case of some foundations) and their respective responsibilities. At the same time, legislation typically gives the founders or the highest governing body broad discretion to set and change the governance structures of the

organization within the limits set forth by law.¹⁸⁵ Belarus law would benefit from simplification of requirements in regards to by laws and internal governance of public associations in particular.

Distribution of Profits and Other Private Benefits; Conflict of Interest. In general, Belarus legislation meets international standards in regards to distribution of profit and private inurnment. In Europe, similarly to Belarus, as a general rule, the highest governing body has the authority and duty to review and approve the annual budget, the annual financial report, and the annual activity report (if applicable). In addition, the highest governing body is empowered to set policy; to elect or appoint officers; to decide on transformation, termination and dissolution; and to decide on changes to the organization's governing documents. While the highest governing body may delegate certain powers to management—including, for example, signing powers (Hungary)—there are usually limitations on what powers may be delegated, such as the power to amend the bylaws or approve the budget (Bulgaria).

Members of governing bodies may be personally liable for harm to the NGO or to third parties, under certain circumstances, prescribed by law. In many countries (Bosnia, Croatia, Montenegro, and Serbia), any person with a legal interest may sue for damages incurred as a result of the board member's breach of duties. In some countries, such as the Czech Republic, the liability of third parties lies with the organization and not with the individual members of the board. However, the organization may recover damages from the responsible member of the board before a civil court. In other countries, such as Albania and Macedonia, the responsible board members may be held directly responsible for injuries to third parties where the responsible member acted in the exercise of duty, willfully, or with serious negligence. Estonia imposes joint liability on board members for damages wrongfully caused to the NGO or to creditors of the NGO for failures to perform their duties in the manner required.

Legal rules designed to prevent conflict of interest and self-dealing are increasingly common. This is one area that is not addressed in Belarus law. In Albania, conflicts of interest are addressed through: (1) required disclosure of the conflict of interest between the individual and organization, (2) recusal of that individual from the decision-making process, (3) mandatory approval of any associated transaction by the highest decision-making body of the organization, and (4) a requirement that the transaction be at fair market value or on terms more favorable to the organization. Countries with conflict of interest rules generally extend their application to all organizational forms. In Hungary, however, such rules apply to foundations and to public benefit organizations, but not to other organizational forms.

Enforcement of conflict of interest rules may be based on a declaration of compliance with these rules submitted by the organization at the time of registration and subsequent changes in membership of the governing body (Hungary). In Romania, if a member of an association violates the conflict of interest rule—and the required majority approval could

¹⁸⁵ Comparative information is taken from research paper *On the Legal Framework for Not-for-Profit Organizations in Central and Eastern Europe*, ICNL, by Douglas Rutzen, David Moore, and Michael Durham, 2009, www.icnl.org

not have been obtained without the member's vote—he or she is responsible for the damages caused to the association.

In practice, few countries evidence a history of governing body members being held liable for violations of duties, such as the duty of care, duty of loyalty, the duty of good faith, etc. For those found liable of improper conduct, there is generally a right to appeal, according to general civil procedure rules.

4. Activities of NGOs

4.1. General Legal Capacity. 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. NGOs should be free to pursue their objectives through membership of associations, federations and confederations of NGOs, whether national or international.¹⁸⁶

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.¹⁸⁷

Belarus Law

NGOs can be established for the purposes of achieving social, nature protection, charitable, cultural, educations, science and management purposes, for the protection of health, development of physical culture and sports, satisfaction of the spiritual and other non-materials needs of people, rights protection, protection of lawful interests of citizens and legal entities, resolution of disputes and conflicts, provision of legal services, and for other purposes dedicated to achieving public benefit. NGOs can be established with the goal to achieve material needs of citizens or jointly citizens and legal entities in cases provided by Belarus legislation (i.e. such as consumer cooperatives, which are also considered NGOs under Belarus Civil Code).¹⁸⁸

A public association is a voluntary association of citizens, established law, on the basis of common interests for the joint exercise of civil, social, cultural and other rights. A union (coalition) of public associations (union) is a voluntary association of public associations established on the basis of a constituent agreement between them for coordination of their statutory activity, representation and protection of their legal interests.¹⁸⁹ All activities conducted by public associations (unions) shall fall under the scope defined in the above paragraph.

¹⁸⁶ Sections 11, 15 of CoE Recommendation.

¹⁸⁷ Sections 3, 7 of the CoE Recommendation.

¹⁸⁸ Article 46 of the Civil Code.

¹⁸⁹ Article 1 of the PA Law.

NGOs obtain the rights and responsibilities of a legal entity from the date of their official registration. They can have civic rights in compliance with the purposes of their activities, which are stated in their founding documents, as well as to the subject of their activity, which shall be defined in the founding documents.¹⁹⁰ According to Belarus law, NGOs registered as legal entities in general, enjoy many of the same rights enjoyed by other legal entities. For example, as a legal entity, an NGO can be a plaintiff or defendant in court and can possess property in its own name. However, public associations (unions) may only possess property which is necessary for materials support of statutory activities.¹⁹¹ Belarus NGOs have the same capacity as all other legal entities to found another legal entity, including a business, unilaterally or jointly with other entities and persons. A foundation has the right to establish enterprises, economic partnerships, as well as to participate in them, with the exception of partnerships with added liability.¹⁹² Theoretically, NGOs may take out loans; in practice NGOs do not borrow because they lack collateral.

However, public associations (unions) may only have the rights explicitly stated in the law. If a certain right is not written in the law as permitted, public associations (unions) usually do not enjoy it. Public associations (unions) may use certain additional rights that are applicable to all legal entities, according to the Civil Code, but not tied to public associations (unions) directly. The PA Law defines the following rights of public associations (unions):¹⁹³

- To carry out activities aimed at achieving statutory purposes;
- To obtain and disseminate freely information concerning their activity;
- To use state mass media in the order established by the legislation;
- To create their own mass media and carry out publishing activity in the order established by the legislation;
- To protect rights and legal interests, as well as to represent legal interests of their members in state bodies and other organizations;
- To take part in preparations and holding of elections in the order established by the legislation;
- To maintain contacts with other public associations, unions; and
- To create unions.

There are several additional limitations to an NGO's capacity, compared to other legal entities. Specifically, NGOs can carry entrepreneurial activity only to the extent that it is necessary to achieve their statutory purposes, compliant with these purposes and within the main area of activity and the subject of activity of an NGO, as defined in its bylaws, or if they are necessary in order to implement tasks important for the state. Certain forms of NGOs (i.e. public associations (unions)) can conduct entrepreneurial activities only after they establish a separate legal entity or by participation in a different legal entity.¹⁹⁴

¹⁹⁰ Articles 45 of the Civil Code.

¹⁹¹ Article 21 of the PA Law

¹⁹² Article 4 of the Decree on Foundations.

¹⁹³ Article 20 of the PA Law.

¹⁹⁴ Article 46 of the Civil Code.

There are also restrictions on establishment and activities of both public associations (unions) and foundations, which have been considered in Section 2. Legal Existence of NGOs.

Public associations (unions), in accordance with their bylaws, may take part in establishment of international public associations (unions) in the territory of foreign states and join international public associations (unions) established in the territory of foreign states. Public associations (unions) may maintain direct international contacts and relations, conclude appropriate agreements, and carry out other activity that does not contradict the legislation of the Republic of Belarus, including treaties of the Republic of Belarus.¹⁹⁵

4.2. Advocacy and Political Activities. 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.¹⁹⁶ 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.¹⁹⁷

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.¹⁹⁸

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. NGOs should be consulted during the drafting of primary and secondary legislation which affects their status, financing or spheres of operation.¹⁹⁹

NGOs should be consulted during the drafting of primary and secondary legislation which affects their status, financing or spheres of operation.²⁰⁰

Belarus Law

Belarus Constitution states that public associations including political parties, acting within the framework of the Constitution and laws of Belarus, assist with identifying and expressing of political will of citizens and participate in elections. Political parties as well as other public associations have the right to use state mass media, as prescribed by law.²⁰¹

¹⁹⁵ Article 30 of the PA Law.

¹⁹⁶ Section 11 of CoE Recommendation.

¹⁹⁷ Section 12 of CoE Recommendation.

¹⁹⁸ Section 13 of CoE Recommendation.

¹⁹⁹ Sections 76, 77 of CoE Recommendation.

²⁰⁰ Section 76-77 of CoE Recommendation.

²⁰¹ Art. 5 of the Constitution.

The Constitution also grants the right to political parties, labor collectives, initiative groups of citizens and other public associations to nominate candidates for elections into public offices in compliance with the law.²⁰² However, per the Elections Code of Belarus only initiative groups, political parties and labor collectives enjoy this right.²⁰³

As the Constitution guarantees citizens' rights to access to information,²⁰⁴ to free assembly,²⁰⁵ participation in state decision making, for example through participation in discussing drafts of legislation or policy issues during the nationwide and local meetings,²⁰⁶ and to send individual and collective appeals to state bodies,²⁰⁷ such rights can be enjoyed by NGOs as well.

Participation in political process. In addition to the Constitution, other laws provide for rights of NGOs, and public associations in particular, to participate in political activities, including elections. Specifically, according to the Elections Code:

- Representatives of political parties and other public associations, amongst others, may be observers of elections;²⁰⁸
- Representatives of political parties and other public associations, amongst others, may participate in elections commissions to elect the President, members of the national parliament and local councils of deputies, by submitting their applications;²⁰⁹
- Bodies which form elections commissions, shall be constituted of, at least, one third of representatives of political parties and other public associations;²¹⁰
- Political parties, other public associations, amongst others, may conduct pre-elections campaigns in support of election or against candidates into public offices, as well as in support or against of conduct of a referenda;²¹¹
- Political parties, other public associations, amongst others, are permitted to use mass media during elections campaign (registration of candidates), or conduct of a referenda;²¹² and
- Public associations may contribute funds to preparation and conduct of elections campaign, according to legislation, through contributing these funds into non-state budget fund, established by the central elections commission. They are not permitted to provide any funding other than contributing funds into the central elections commission fund and elections funds of individual candidates.²¹³

²⁰² Art. 69 of the Constitution.

²⁰³ The Elections Code of the Republic of Belarus (February 11, 2000, with amendments as of November 7, 2011.) (Elections Code), Arts. 61, 65.

²⁰⁴ Art. 34 of the Constitution.

²⁰⁵ Art. 35 of the Constitution.

²⁰⁶ Art. 37 of the Constitution.

²⁰⁷ Art. 40 of the Constitution.

²⁰⁸ Art. 13 of the Elections Code.

²⁰⁹ Arts. 34-35 of the Elections Code.

²¹⁰ Art. 34 of the Elections Code.

²¹¹ Art. 35 of the Elections Code.

²¹² Art. 46 of the Elections Code.

²¹³ Art. 48 of the Elections Code.

It is important to note, that only those public associations that have the activities listed above in their bylaws are permitted to conduct such activities. However, the current practice of registering NGOs shows that it is very difficult to register an NGO that would have such activities in its bylaws. (See Section 2.1.Registration (Incorporation) of NGOs).

There are several restrictions in regards to advocacy and political activities of NGOs under Belarus law. Foundations cannot have statutory purposes, related to identifying and expressing the political will of citizens.²¹⁴

Any activity of public associations (unions) dedicated to assistance with provision of benefits and incentives by foreign governments to citizens of Belarus, in regards to their political, religious or their national identity, in violation of Belarus legislation, are prohibited.²¹⁵

Political parties and legal entities established by them are prohibited from receiving funding (directly or indirectly) from foreign states, foreign and international organizations, and organizations with foreign investments. They are also prohibited from receiving funding from organizations that received donations or foreign gratuitous aid from foreign states, foreign and international organizations, foreign citizens or persons without citizenship. They are also prohibited from receiving funds from anonymous sources and from legal entities established less than one year prior to a transfer of a donation, from religious organizations and legal entities established by religious organizations, as well as other prohibited sources. Similar restrictions apply to contributions to elections funds of individual candidates.²¹⁶

Representatives of political parties may participate in conferences and other events where expenses are paid by a host organization, including an NGO.²¹⁷

NGOs are prohibited from receiving foreign gratuitous assistance or anonymous donations for political purposes, such as preparing for and conducting of elections and referenda, conducting meetings, protests and other assemblies, preparing and distributing propaganda materials for political purposes, or, for other types of political and promotional work with the population, since it is not explicitly permitted by law.²¹⁸

Consultations. Over 70 legislative acts regulate the mechanisms for consultations with the public about government decision making.²¹⁹

²¹⁴ Article 2 of the Decree on Foundations.

²¹⁵ Article 7 of the PA Law.

²¹⁶ Article 48(1) of the Elections Code.

²¹⁷ Article 24 of the Law of the Republic of Belarus on Political Parties, October 5 1994, № 3266-XII (with amendments as of November 8, 2011) (Law on Political Parties).

²¹⁸ Article 4 of the Decree of the President of the Republic of Belarus #24 On Receipt and Use of Foreign Gratuitous Aid (November 28, 2003, with amendments as of January 16, 2013) (Decree #24).

²¹⁹ *Public Councils in Belarus: Analysis of Legal Regulation*, by Olga Smolyanko, Yuri Chavusau (in Russian). Ann annex to this article contains a comprehensive list of legislative acts governing mechanisms of consultations in Belarus. <http://lawtrend.org/ru/content/nko/communitycouncils/OSRespublikaBelarus/>

Consultative bodies exist at different levels (national and local) and with many governmental bodies. Such bodies are referred to as “consultative,” “experts,” “coordination,” or “public” councils. NGOs are often members of such councils. Each council operates based on its own regulation, approved by the relevant hosting government body and based on a specific legislative act. Members of each council are appointed by respective government bodies.

Many public councils have been created as a result of adoption of the President’s Decree #4 On Development on Entrepreneurial Initiative and Facilitation of Business Activity in the Republic of Belarus, dated December 31, 2010 (Decree #4). Decree #4 requires all draft legislation that might affect entrepreneurial activities to be discussed with the public through different means, including through consultative bodies (i.e. public councils). Many government bodies established such councils and included some representatives from NGOs in them. The Decree of the Council of Ministers of the Republic of Belarus #660 dated May 26, 2011 required establishment of an Expert Council on State Programs authorized to review and provide advice in regards to state programs. Other examples of better known councils include Public Council on Issues of Culture and Arts with the Council of Ministers of the Republic of Belarus, and others.

In spite of constitutional guarantees to access to information and to participation in government decision making, as well as multiple legislative acts on consultations with the public and even existing public councils, not all NGOs have access to the decision making process, such as the opportunity to contribute to the drafting process. Even when NGOs do participate in the legislative process, the common practice is such that only a few NGOs, invited by the authorized government body participate in the discussions. Also, NGOs are not provided with feedback on whether their recommendations were taken into consideration. The majority of NGOs learns about legislation under consideration in the Parliament from the comments by individual members of the Parliament posted in the mass media while the draft legislation is either not posted on line at all or only outdated versions are posted. Examples of such situations are numerous, for example in regards to the package of amendments into laws on public associations, on political parties, and into the elections code in November 2011, drafting of the new Law on Non-commercial Organizations by the Ministry of Justice in 2011, or amendments into law on mass events in November 2011.

4.3. Economic Activities. 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 authorization being required, but subject to any licensing or regulatory requirements generally applicable to the activities concerned.²²⁰

Belarus Law

²²⁰ Section 14 of the CoE Recommendation.

NGOs can conduct entrepreneurial activity only to the extent that it is necessary to achieve its statutory purposes, is compliant with these purposes, and within the NGO's main area of activity as defined in bylaws, or if they are necessary in order to implement tasks important for the state.²²¹ Public associations (unions) can conduct entrepreneurial activities only after they establish a separate legal entity or by participation in a different legal entity.²²² A foundation may conduct entrepreneurial activity only as long as it is necessary for achieving the purposes for which the foundation was established and they are in compliance with such purposes and also in compliance with the subject of its activity. A foundation has the right to establish enterprises and economic partnerships, as well as to participate in them, with the exception of partnerships with added liability.²²³

Certain economic activities are subject to licensing requirements whether performed by NGOs or other entities.²²⁴ Educational, medical, certain social services amongst others are subject to licensing prior to the implementation of such services. NGOs are required to apply for such licenses on the same terms as other legal entities and entrepreneurs. However, the vast majority of NGOs do not apply for such licenses for a number of reasons, specifically because most of the activities requiring licensing are irrelevant to NGOs (not typical NGO activities). Another reason is that the receipt of a license often requires possession of the office and equipment necessary to perform the activities, as determined by the state body conducting licensing,²²⁵ which the vast majority of NGOs do not have. Besides, the majority of NGOs registered as public associations are prohibited from selling goods and services.

Analysis

General Legal Capacity

Registered NGOs (including public benefit organizations) generally have the same rights and powers to act as other legal entities. In this regard, Belarus NGOs have limited legal capacity compared to other legal entities. Unlike commercial legal entities, which have broad rights applicable to all legal entities and are permitted to conduct all activities not prohibited by legislation, Belarus public associations (unions) only have the rights provided by legislation. The list of rights which public associations possess is prescribed by the PA Law and is closed. Any right not prescribed in the PA law is prohibited to an association. These provisions contradict international good practice and the common civil law principle which applies to individuals and other legal entities, i.e. "all is permitted, unless it is prohibited," and substantially limits the general legal capacity of public associations as compared to others.

²²¹ Article 46 of the Civil Code; Article 20 of the PA Law, and Article 4 of the Decree on Foundations.

²²² Article 20 of the PA Law.

²²³ Article 4 of the Decree on Foundations.

²²⁴ Regulation on Licensing of Some Types of Activities, approved by the Decree of the President of the Republic of Belarus #450 (September 1, 2010) (Regulation on Licensing).

²²⁵ Article 185 of the Regulation on Licensing.

Another substantial restriction of NGOs' legal capacity is the legal requirement to perform activities within the territory of its registration (i.e. international, nationwide and local.) For more details see Section 2.1.2. Territorial Status of this Assessment.

Advocacy and Political Activities²²⁶

Laws in Europe allow at least some types of NGOs to participate in political activities, including monitoring and financing elections. In this regard, it is remarkable that Belarus law also provides such a broad competence to public associations. However, there is a concern that such rights are not being broadly used by public associations. The current practices of registering NGOs show that it is very difficult to register an NGO which would have such activities in its bylaws.²²⁷ (See Section 2.1.Registration (Incorporation) of NGOs).

Belarus foundations are all prohibited from pursuing purposes related to identifying and expressing political will of citizens.²²⁸ If defined broadly, this prohibition for foundations might be problematic.

European (civil law) countries typically follow a more permissive regulatory approach regarding political activities. As a general rule, there are no specific provisions regarding political activities of NGOs in the civil codes. Countries including France, Belgium, Holland, Finland, Italy, Spain, Germany, Switzerland, and Denmark place no restraints upon the public policy activities of NGOs. In fact, some European countries actively encourage NGOs' political activities. In Belgium, for example, there is an explicit right entitled "droit de critique" (right to criticize) which permits associations to use all legal means to defend the interests and ideas of an organization.. Political parties in Germany set up foundations specifically for the purpose of channeling resources into partisan activities. And in Switzerland, associations mobilize and represent citizens in the political decision-making process.

Against the background of this permissive approach, restrictions are sometimes imposed through the tax or administrative law to limit the scope of political activities, especially where the NGO is pursuing public benefit or tax-privileged purposes. In Germany, for example, tax-privileged purposes do not include political activities. Tax-exempted organizations may not act as direct supporters of political parties; they are not allowed to support or campaign for political parties or their political representatives.²²⁹ In France, while nothing in the codified law prevents a public benefit organization (public utility association or public utility foundation) from engaging in political activities, a decision of the *Conseil d'Etat* clarifies that organizations with a primarily political purpose, such as

²²⁶ For more information see Political Activities of NGOs: International Law and Best Practices, by International Center for Not-for-Profit Law, 2009 (www.icnl.org).

²²⁷ It is important to note that only those public associations that have the activities listed above in their bylaws are permitted to conduct such activities.

²²⁸ Article 2 of the Decree on Foundations.

²²⁹ Even for tax-privileged NGOs in Germany, a certain amount of influencing public opinion is permissible. Thus, German law permits considerable purpose-related advocacy and lobbying.

engaging primarily in political advocacy, cannot be recognized as public benefit organizations.

In the new EU Member States, the regulatory framework for NGOs and political activities is similarly permissive, with restrictions typically linked either to direct financing of political parties, or applicable only to those NGOs receiving state support. Poland presents perhaps the most permissive framework: Polish law explicitly gives associations the right to engage in almost any political activity, even participation in electoral campaigns (through special elective committees). In Slovakia, associations are similarly free to engage in a range of political activities, including endorsing candidates, lobbying, and even contributing to political campaigns; foundations, however, are restricted from financing political parties. In the Czech Republic, while associations cannot be founded for political purposes, they can lobby, endorse candidates, provide information and advocate; foundations, as in Slovakia, cannot provide financial support to political parties but can lobby, endorse candidates, provide information, and advocate. In Hungary, NGOs are free to lobby, nominate or endorse candidates, and provide information and financial support to political parties. Restrictions arise only for public benefit organizations (that is, those NGOs with public benefit status and preferential tax benefits), which are prohibited from engaging in direct political activity, such as nominating candidates for national elections or funding political parties.

Thus, in the European civil-law context, legislation generally recognizes NGOs as key participants in framing and debating issues of public policy, and like individuals, they have the right to speak freely on all matters of public significance, including existing or proposed legislation, and state policy and actions. Likewise, NGOs generally have the right to criticize or endorse state officials and candidates for political office. They also usually have the right to carry out public policy activities, such as education, research, advocacy, and the publication of position papers. In some cases, however, NGOs (or at least certain categories of NGOs, such as foundations or public benefit organizations) are prohibited from engaging in “party political” activities, such as nominating candidates for office, campaigning, or funding parties or political candidates. As compared to common law countries, therefore, civil law countries take a more permissive approach, restricting NGOs from engaging in only a narrowly defined range of political activities.

Economic Activities

Belarus NGOs can carry out economic activities only to the extent that it is necessary to achieve their statutory purposes and if the activities are compliant with these purposes and within the main area of activity of the NGO as defined in bylaws, or if they are necessary in order to implement tasks important for the state. Such limitations on economic activities might be justifiable, if NGOs are not challenged by the government to prove that such activities are necessary for achieving their statutory purposes, and such necessity is determined by NGOs themselves. Additionally, such limitations are justifiable if NGOs are permitted to broadly define their areas of activities in their bylaws at the time of their registration as legal entities. If such assumptions are incorrect, Belarus law needs to be clarified to minimize these restrictions.

Belarus public associations (unions) are prohibited from carrying out economic activities directly, contrary to international good practice. International good practice suggests that NGOs should certainly be allowed to engage in economic activities as a means of supporting their public purposes.²³⁰ Obviously, however, there shall be some limitation on the extent to which NGOs can engage in economic activities and still be considered NGOs, for an organization that engages primarily in business would appear to be much like a for-profit enterprise and should be treated as such.²³¹ The two most common models for dealing with this problem involve the imposition of one of two restrictions on permissible economic activities of NGOs: (1) that the organization must be operated primarily for not-for-profit purposes (the “principal purposes” test); or (2) that the organization must use the income from its economic activities to support its statutory goals.

Almost all European countries permit at least some NGOs to engage in some economic activities. In most cases, the laws contain the limitation that the purpose of these activities must be to support the goals set forth in an organization’s statutes. For example, in the Federation of Bosnia & Herzegovina, a foundation or fund is explicitly permitted to engage in related economic activities if the income is used solely to support the organization’s statutory goals. Under the Law on Legal Persons with Non-profit Purposes, Bulgaria permits not-for-profit foundations and associations to engage in economic activities that are related to an organization’s main statutory activity, as long as the revenue earned from such activities is used to achieve the organization’s statutory purposes. Other countries requiring that income from economic activities be used to support statutory goals include, for example, the Czech Republic, Latvia, Slovakia, and Yugoslavia.

It is important to note that most countries in the former Soviet Union region permit public associations to carry out economic activities. Ukraine, Russia, Moldova, Georgia, Kazakhstan, Tajikistan, Kyrgyzstan, Azerbaijan, and Uzbekistan all permit public associations to carry economic activities. Only Turkmenistan, Armenia and Belarus impose such prohibition on public associations.

In regards to foundations, international practices vary and a number of countries set limitations to economic activities of foundations that are similar to Belarus law.

5. Sustainability

The legal and fiscal framework applicable to NGOs should encourage their establishment and continued operation. 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

²³⁰ Section 14 of the CoE Recommendation; see also: Survey of the Treatment of Economic Activities of NPOs in Europe, ICNL.

http://www.icnl.org/research/library/files/Transnational/Economic_Activities_Europe.pdf

²³¹ At a more fundamental level, NGOs must comply with the non-distribution constraint. Thus, all profits, even from economic activities, must be retained to support the NGO’s operations, and may not be distributed as such to any person.

authorization being required, but subject to any licensing or regulatory requirements generally applicable to the activities concerned.²³²

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.²³³

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.²³⁴

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. Any form of public support for NGOs should be governed by clear and objective criteria. 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. 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. A material change in the statutes or activities of an NGO can lead to the alteration or termination of any grant of public support.²³⁵

5.1. Foreign Funding.

Belarus Law

There are two types of foreign assistance: foreign gratuitous assistance²³⁶ and international technical assistance.²³⁷ NGOs can be recipients of both. The primary difference between the two is the procedure for registering with the government bodies. Below we will outline the peculiarities of such registration, specifically focusing on the registration procedure for foreign gratuitous assistance, which is the most relevant for Belarus NGOs.

Foreign gratuitous assistance²³⁸ is defined as funds and other assets, or the right to use them, transferred on a gratuitous basis to a legal entity (including an NGO) or an individual of Belarus. Any foreign entity or individual may give a foreign gratuitous assistance.²³⁹

²³² Sections 8, 14 of the CoE Recommendation.

²³³ Section 39 of the CoE Recommendation.

²³⁴ Section 50 of the CoE Recommendation.

²³⁵ Sections 57-61 of the CoE Recommendation.

²³⁶ Decree of the President of the Republic of Belarus #24 On Receipt and Use of Foreign Gratuitous Aid (November 28, 2003, with amendments as of January 16, 2013) (Decree #24).

²³⁷ Decree of the President of the Republic of Belarus #460 On International Technical Assistance Provided to the Republic of Belarus (October 22, 2003) (Decree #460).

²³⁸ Decree #24.

²³⁹ Article 1.1 of Decree #24.

Anonymous assistance is regulated under the same regulation as foreign gratuitous assistance.²⁴⁰

All foreign gratuitous assistance received by NGOs, regardless of its value, must be registered with the Department of Humanitarian Activity of the Secretariat of Affairs of the President of the Republic of Belarus (Department of Humanitarian Activity).²⁴¹ The only exception when such assistance does not have to be registered is when it is provided in accordance with programs approved by the President, or, in accordance with international treaties, ratified by Belarus.²⁴²

NGOs may only receive foreign gratuitous assistance for the purposes defined in legislation, such as in response to the Chernobyl disaster, for the protection of nature, or to provide social assistance to vulnerable groups of population. The list of such purposes is specific and limited and can only be expanded by decisions of the Department of Managing Affairs with the President, with approval of the President.²⁴³

Foreign gratuitous assistance cannot be used for preparing and conducting elections and referenda, conducting meetings, protests and other assemblies, preparing and distributing propaganda materials for political purposes, or, for other types of political and promotional work with the population.²⁴⁴

The use of foreign gratuitous assistance prior to its registration with the government of Belarus is prohibited.²⁴⁵

In order to register foreign gratuitous assistance (in the form of funds) an NGO- recipient shall submit to the Department of Humanitarian Activity a number of documents, including an application, a detailed plan of use (distribution) of foreign gratuitous assistance, a copy of agreement with the donor, a copy of its own registration certificate proving status of legal entity, and document proving receipt of foreign gratuitous assistance on the bank account of NGO- recipient. The Department of Humanitarian Activity may request additional documents.²⁴⁶ In practice, it always requests, for example, a letter of support from a Belarusian governmental body carrying activities in the area of support designated by the foreign assistance.

The registration procedure is conducted free of charge, within one month of the submission of application package²⁴⁷.

²⁴⁰ Preamble to Decree #24.

²⁴¹ Article 1.2 of Decree #24.

²⁴² Article 1.1 of Decree #24.

²⁴³ Article 4 of Decree #24.

²⁴⁴ Article 4 of Decree #24.

²⁴⁵ Article 1.2 of Decree #24.

²⁴⁶ Article 1.2 of Decree #24.

²⁴⁷ Section 18.22 of the List of Administrative Procedures approved by the Decree of the President of the Republic of Belarus # 200 on Administrative Procedures Conducted by State Bodies and Other Organizations Based on Citizens Applications (April 26, 2010).

Registration may be denied for a broad number of reasons, including “inexpedient,” “no basis for registration,” or “other cases, envisioned by the law.” If the registration is denied, the foreign gratuitous assistance shall be sent back to the foreign donor or re-addressed to other recipients.²⁴⁸

If it is not possible to use the foreign gratuitous assistance in accordance with the registered plan within six months from the receipt of the registration certificate, an NGO shall re-submit another plan which would allow use/distribution of the assistance or shall use assistance for similar purposes envisioned in the original plan.²⁴⁹ (See Section 6.1 Supervision and Reporting Requirements.)

International technical assistance is one type of assistance provided on a gratuitous basis to support of social and economic developments, response to the Chernobyl disaster, protection of the natural environment, and similar causes. It can be provided by foreign states, international and foreign organizations, under the bi- and multi- lateral agreements where the government of Belarus as a party to such agreements. It is usually provided in the form of funds, research support, exchanges of students, conferences, etc. Usually, according to agreements of international technical assistance, the government of Belarus and other the governmental bodies are the recipients. NGOs receive such assistance usually as sub-contractors and sub-grantees to the primary party (Belarus government). Such assistance must be registered with the Commission on Issues of International Technical Cooperation with the Cabinet of Ministers of Belarus.²⁵⁰ Since it is usually a government body that applies to this Commission to register an agreement on international technical assistance, we will not address the details of such procedure in this Assessment.

In regards to international technical assistance, it is important to note that the government of Belarus adopted the National Program of International Technical Cooperation in 2012-2016.²⁵¹ This program defines national priorities in the area of international cooperation, as well as on going and future needs of the Republic of Belarus relating to international technical assistance. This National Program contains the list of project proposals on behalf of the Republic of Belarus (governmental and business entities and some NGOs) for the period 2012- 2016. Specifically, two of such proposals are to work with Belarus NGOs: 1) for the development of effective palliative system of assistance to children in Belarus (with the partner to be NGO Public Organization “Belarus Children’s Hospice”), and 2) for the creation of a volunteer bank in the Republic of Belarus (with the partner to be the Republican Youth Public Organization “League of Volunteering Youth”). Amongst

²⁴⁸ Article 3 of the Instruction on Procedure of Registration, Accounting, Receipt, and Use of Foreign Gratuitous Assistance, approved by the Resolution of the General Affairs Office of the President of the Republic of Belarus #9 On the Procedure of Registration, Receipt and Use of Gratuitous Foreign Aid (September 17, 2010, with changes and additions as at September 26, 2011). (Instruction on Foreign Gratuitous Assistance).

²⁴⁹ Article 29 of the Instruction on Foreign Gratuitous Assistance.

²⁵⁰ The Decree of the President of the Republic of Belarus #460 On International Technical Assistance Provided to the Republic of Belarus (October 22, 2003); the Decree of the Council of Ministers of the Republic of Belarus #1522 On Certain Measures to Implement Decree #460 of the President of the Republic of Belarus of October 22, 2003 (November 21, 2003, with changes and additions as at March 27, 2010)

²⁵¹ Approved by the Decree of the Council of Ministers № 411 dated May 4, 2012.

priority areas the most relevant to legal environment of NGOs is “Improving Legislation for carrying Charitable Activities in the Republic of Belarus” (with the National Center of Legislation and Legal Research as the partner.

Analysis²⁵²

Belarus legislation governing foreign assistance is the most restrictive compared to other European countries and one of the most restrictive in the former Soviet Union region.²⁵³ The requirement under Belarus law to register foreign gratuitous assistance with the government, the complex procedure for obtaining such registration which includes soliciting letters of support from government bodies, the prohibition on the use of foreign aid prior to its registration with the government, the restriction that even registered assistance may be used only for limited purposes as defined in the law, as well as broad discretion of the government bodies on whether to grant such registration at all, are all in contradiction to international law and good practices. Access to funding for NGOs is a necessary pre-requisite for them to carry out activities. Therefore, governments respecting human rights shall ensure that NGOs have access to funding, including foreign funding. When other funding is not available,²⁵⁴ foreign funding is the only way many NGOs can support their activities. Depriving them of such funding prevents NGOs from carrying out their activities and may threaten their very existence, which is a direct infringement on the right of individuals to association.

Within broad parameters, NGOs have the right to seek and secure funding from legal sources, including individuals, businesses, civil society, international organizations, and inter-governmental organizations, as well as local, national, and foreign governments. Article 22 of the ICCPR, in protecting the right to freedom of association, places limits on the state’s ability to restrict this right; justifiable restrictions are “those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.” Funding restrictions that stifle the ability of NGOs to pursue their goals may well constitute unjustifiable interference with freedom of association.²⁵⁵

In the Commentary to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human

²⁵² See for more information *Violations of the right of NGOs to funding: from harassment to criminalization*, by Observatory for the Protection of Human Rights Defenders Annual report 2013 http://www.omct.org/files/2013/02/22162/obs_annual_report_2013_uk_web.pdf

²⁵³ Restrictive legislation on foreign assistance also exists in Russia, Uzbekistan, Turkmenistan, and most recently in Azerbaijan.

²⁵⁴ In Belarus public associations are prohibited from generation of income from sales of goods and services, government’s funding is not available to majority of NGOs, and local businesses have no incentives and in many cases even prohibited to support NGOs). See more in Section 5.4 Tax Exemptions for NGOs and Their Donors.

²⁵⁵ See *Defending Civil Society* report, by International Center for Not-for-Profit Law (ICNL) & World Movement for Democracy Secretariat at the National Endowment for Democracy (NED) http://www.icnl.org/research/resources/dcs/DCS_Report_Second_Edition_English.pdfhttp://www.icnl.org/research/resources/dcs/DCS_Report_Second_Edition_English.pdf

Rights and Fundamental Freedoms (issued July 2011), the UN Special Rapporteur on the situation of human rights defenders affirms that “In order for human rights organizations to be able to carry out their activities, it is indispensable that they are able to discharge their functions without any impediments, including funding restrictions. When individuals are free to exercise their right to associate, but are denied the resources to carry out activities and operate an organization, the right to freedom of association becomes void.”²⁵⁶

5.2. Government Funding. 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.²⁵⁷

Any form of public support for NGOs should be governed by clear and objective criteria. 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. 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. A material change in the statutes or activities of an NGO can lead to the alteration or termination of any grant of public support.²⁵⁸

Belarus Law

The two key laws most relevant for regulating public financing of NGOs are the amendments to the Law on Social Services²⁵⁹ and the Law on State Procurement.²⁶⁰

The law on Social Services contains a section dedicated to state social contracts (order), which is defined as a mechanism for engaging legal entities and individual entrepreneurs to perform social services and to implement social projects.²⁶¹ The purpose of the state social contract is to satisfy needs of citizens who happened to be in difficult life situations by providing them with social services and to increase the accessibility and quality of such social services.²⁶² The state social contract shall be based on a competitive and transparent procedure to finance NGOs, who will be providing social services or implementing social projects with funding from the state. The legislation provides uniform and clear

²⁵⁶ Commentary to the Declaration on human rights defenders, UN Special Rapporteur on the situation of human rights defenders, July 2011, page 95.

<http://www.ohchr.org/Documents/Issues/Defenders/CommentarytoDeclarationondefendersJuly2011.pdf>.

²⁵⁷ Section 57 of the CoE Recommendation.

²⁵⁸ Sections 58-61 of the CoE Recommendation.

²⁵⁹ The Law of the Republic of Belarus on Social Services (May 22, 2000, with amendments as of July 13, 2012) (Law on Social Services).

²⁶⁰ The Law of the Republic of Belarus on State Procurement of Goods (Services, Works) (July 13, 2012) (Law on State Procurement).

²⁶¹ Article 1 of the Law on Social Services.

²⁶² Article 17 of the Law on Social Services.

requirements and access to information about the competition for the state subsidies. Competitions for state social contracts can be conducted by local governments as well as by national level executive government bodies (like ministries)²⁶³ (called “state contractors”). However, at this time, only the Ministry of the Republic of Belarus on Social Protection and the local executive government bodies are implementing this legislation. The state contractors define the needs for state social order, conduct competitions to distribute subsidies, sign contracts with NGOs, provide finances as subsidies as well as consultative and informational support to NGOs implementing social order, and monitor its implementation.²⁶⁴ Legislation on state procurement (general) regulates financing of state social contracts from the state budget. The government of Belarus adopted a procedure for provision of subsidies for state social contracts to NGOs,²⁶⁵ including Regulation of Procedure to Conduct Competitions on Implementation of Social Contracts, Financed by Provision to NGOs of Subsidies; Regulation on Conditions and Procedure for Provision to NGOs of Subsidies; standard form of a contract to implement social services under state social orders, and the standard form of a contract to implement social project under state social service orders.

An announcement about the competition shall be posted on the website of the government body conducting competition and also on the website dedicated to state procurement (<http://www.icetrade.by>). All competitions are open to all NGOs, with a few exceptions.

Certain NGOs are excluded from participation in competitions for social order. Such NGOs include those whose assets are under arrest by a court decision; those that are in the process of liquidation or re-organization; those identified as in the state of bankruptcy (by a court decision); those that provided false information about themselves; and those whose representatives are the members of the tender commission reviewing their applications; and political parties.²⁶⁶

NGOs may submit application packages for 30 days following the online posting of the competition announcement.²⁶⁷ In order to participate in the competition, an NGO shall submit an application, copies of its registration certificate (confirming legal entity status) and bylaws; copies of licenses to conduct certain activities (if required); detailed description of activities to be performed under social order meeting requirements of the competition; information about an NGO, perform approved by law, and also, a document from the tax inspection confirming that an NGO does not have any debt to the state budget. An NGO may provide additional information, at its own discretion, which it believes might increase its chance to win the competition.²⁶⁸ The competition commission is appointed by the government body conducting the competition and includes government officials and NGO representatives (at least 5 members).

²⁶³ Article 17 of the Law on Social Services.

²⁶⁴ Article 20 of the Law on Social Services.

²⁶⁵ The Decree of the Council of Ministers of the Republic of Belarus #1219 On Some Issues of State Social Order (December 27, 2012).

²⁶⁶ Article 21 of the Law on Social Services.

²⁶⁷ Article 6 of the Regulation of Procedure to Conduct Competitions on Implementation of Social Contracts.

²⁶⁸ Article 7 of the Regulation of Procedure to Conduct Competitions on Implementation of Social Contracts.

The competition commission opens envelopes with NGOs submissions, registers their submissions, reviews them on compliance with the law and competition requirements, verifies the submitted information, rejects submissions if they are not in compliance with the law and competition requirements, if necessary, requests from NGOs additional information to clarify the description of proposed activities, evaluates submissions based on competition criteria, keeps protocols of its meetings, and publishes the results of the competitions.

The commission's meetings are considered legitimate if more than a half of members are present. All decisions are made by simple majority of members present at the meeting. The chairman's vote is decisive in case of an equal number of votes.

NGO representatives have the right to be present at the commission's meetings when the envelopes with submissions are opened.

Each member of the commission reviews each application and completes an evaluation sheet assigning the score per each criterion, as defined for the competition. The general score is defined as the average amongst all members of the commission. Based on the results, the commission creates a rating list based on format approved by legislation. The final score is determined as the average of all scores given by all members of the commission. The winning NGO is the one who scored the highest. Under certain circumstances defined by law, there might be more than one winner. NGO-participants are informed about results of the competition within three days after the decision is made.

The competition shall be deemed invalid, if less than two NGOs applied, or if after the review, only one or none of NGOs is qualified to participate in competition. In this case, the competition shall be conducted again, according to the same procedure as the original competition.

The procedure on conducting competitions for social order came into effect on January 1, 2013. Therefore, we are not aware of implementation practices yet.

The Law on State Procurement allows NGOs to participate in competitions for state procurements along with other legal entities and business entrepreneurs. The law treats all applicants equally, including NGOs. However, the Law on State Procurement provides some peculiarities for procedure for small and medium size businesses. Specifically, it guarantees their participation in procurement of certain goods and services, according to the list of such goods and services approved by the Council of Ministers. This provision requires that state procurements of approved goods and services would be split into parts, with at least one part (the minimum of 10% of the total value of the procurement) to be subcontracted to a small or medium size business. The Law on State Procurement allows participants of competitions petition state entity conducting the competition to require the bidders to post security deposit, to insure that the bidder will not recall its application prior

to the end of the competition, refuse to sign a contract if it wins, etc. It is remarkable that budget (state) institutions are exempt from such requirements, but not NGOs.²⁶⁹

In general, not many NGOs use state procurement mechanism to obtain state funding. One reason is that the majority of Belarus NGOs are registered as public associations and are not permitted to carry out entrepreneurial activities directly, without setting up a separate business entity. Provision of services under state procurement constitutes entrepreneurial activities, and therefore, is not possible for public associations.

Certain Belarus NGOs are eligible for state financial support based on special legislation. Such NGOs include, for example, physical culture and sports organizations,²⁷⁰ youth and children's public associations.²⁷¹ Usually, certain nationwide public associations in these areas are mentioned by name in the state budget and receive institutional funding without any competition.

Analysis

We commend the new Belarus Law on Social Services which contains section dedicated to state social contract (order). While the law has not yet been implemented, its provisions lay a good foundation for engaging NGOs in social services delivery and providing government support to NGOs engaged in the social sphere. Engaging NGOs in the delivery of social services will have multiple benefits for the government, the public, and NGOs. The procurement of social services at the expense of the state budget not only provides NGOs with a new source of funding but also provides an opportunity to broaden the scope of available services and improve the quality of services delivered to the population. The delivery of services to people strengthens connections between NGOs and the individuals they serve. Strengthening the connections between NGOs and people allows NGOs to gain broader support from the general public and attract volunteers and contributions, which then result in the greater sustainability of NGOs. The government, in turn, procures from NGOs efficient and inexpensive services, which are often subsidized by the NGO's own resources, such as volunteer labor. In addition, when government and NGOs work together to solve social problems, they often improve the trust and cooperation between the each other. In regards to implementation of the new law on social contracting, we note that there are numerous excellent examples of similar legislation which has been implemented for a number of years in various countries in the former Soviet Union region (especially in Kyrgyzstan and in Ukraine) and in Europe.²⁷²

²⁶⁹ Article 34 of the Law on State Procurement.

²⁷⁰ Decree #497 of the President of the Republic of Belarus on Supporting Physical Culture and Sports Organizations of November 3, 2011.

²⁷¹ The Law of the Republic of Belarus On State Support of Youth and Children's Public Associations in the Republic of Belarus of November 9, 1999, #305-Z; Resolution of the Ministry of Education of the Republic of Belarus On Approving the Instruction on the Procedure of Forming the Republican Register of State-Supported Youth and Children's Public Associations of November 30, 2005, #101 (with changes and additions as at May 11, 2009).

²⁷² Such useful practices from Europe are accumulated in the A Handbook on Non-State Social Service Delivery Models: A guide for policy makers and practitioners in the CIS region, by ECNL, UNDP Bratislava, 2012, http://issuu.com/undp_in_europe_cis/docs/undp-ecnl_handbook_on_social_contracting_2012

At the same time, the prohibition under Belarus law for public associations to directly engage in economic activities (sales of any goods and services, even if directly related to the purposes stated in their bylaws) remains a serious obstacle for engaging NGOs in the area of social services delivery, either through social contracts or through procurement mechanisms.

5.3. Tax Exemptions for NGOs and for their Donors.

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.²⁷³ Any form of public support for NGOs should be governed by clear and objective criteria. 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. 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.²⁷⁴ A material change in the statutes or activities of an NGO can lead to the alteration or termination of any grant of public support. NGOs with legal personality should not utilize property acquired on a tax-exempt basis for a non-tax-exempt purpose.²⁷⁵

Belarus Law

NGOs (Non-commercial organizations²⁷⁶) are considered tax payers. The same rules apply to NGOs as to other legal entities. There is no special tax exempt status relevant to NGOs under Belarus Tax Code. Certain exemptions apply to incomes derived from specific sources, as described below.

5.3.1. Income Tax for NGOs

The taxable income of an NGO is defined as a sum of incomes received from entrepreneurial activities, including from sales of goods (services, works), from property rights and as incomes from certain non-entrepreneurial activities (внепределационных доходов), reduced by the amount of qualified expenditures relating to the implementation of entrepreneurial activities or non-entrepreneurial activities, the income from which is subject to income tax. In order for NGOs to benefit from tax exemptions of any kind, NGOs are required to account separately for taxable income and related expenditures and exempt incomes and related expenditures.²⁷⁷

²⁷³ Section 57 of the CoE Recommendation.

²⁷⁴ Sections 58-61 of the CoE Recommendation.

²⁷⁵ Section 54 of the CoE Recommendation.

²⁷⁶ The Tax Code uses the term “non-commercial organization” (NCO).

²⁷⁷ Article 137.1 of the Tax Code.

The incomes from the following sources are exempt from income tax for NGOs:

- Fees to become members, fees for participants and well as other membership contributions, within the provided for in the NGO's bylaws (founding documents).²⁷⁸
- The value of goods (services, works) and funds received by NGOs on gratuitous basis, under the condition that such goods (services, works) are used according to the purpose designated, or, if the purpose was not designated, for implementation of the statutory goals of the NGO-recipient.²⁷⁹

Generally Exempt Types of Income

As noted above, two types of income received by NCOs are exempt from taxation under the Tax Code:

- Fees to become members, fees for participants and well as other membership contributions, within amounts provided in the bylaws (founding documents) of NGOs;²⁸⁰
- The value of goods (services, works) and funds received by NGOs on gratuitous basis, under the condition that such goods (services, works) are used according to the purpose designated, or, if the purpose was not designated, for implementation of the statutory goals of the NGO-recipient.²⁸¹

Below we will review more closely under which circumstances incomes from the sources described above will be tax exempt.

Entry, participation and membership contributions, within amounts provided in the NGO's bylaws (founding documents)

Payments of all fees to become members, fees for participants and well as other membership contributions, shall be envisioned in bylaws or founding documents of an NGO.

Fees to become members, fees for participants and well as other membership contributions, can only be received by NGOs based on membership (such as public associations, labor unions, political parties, religious organizations unions of legal entities). Membership shall be recorded by NGOs (i.e. there shall be a written list of members). If the bylaws do not envision paying fees to become members, fees for participants or other membership contributions, or they do not provide for the specific size/periodicity, such terms shall be established by an authorized body of the organization, in a written decision, made according with the competence of such body. However, the organizational bylaws must at

²⁷⁸ Article 4.2.1. of the Tax Code.

²⁷⁹ Article 4.2.3. of the Tax Code.

²⁸⁰ Article 4.2.1. of the Tax Code.

²⁸¹ Article 4.2.3. of the Tax Code.

least establish the possibility of charging fees to become members, fees for participants and well as other membership contributions.

The law provides a definition of a membership fee only in regards to membership fees for consumer cooperatives²⁸² but not in regards to other NGOs. There is no definition of fees to become members, fees for participants.

Founders of a foundation are required to provide founding/entry contributions at the time of establishing a foundation. Such contributions would also constitute tax exempt income for foundations.²⁸³ In addition all funding of an institution provided by the owner/founder of such an institution is also exempt from income tax.

Value of goods (services, works), funds, received by NGOs on gratuitous basis is exempt from income tax for NGO recipients, under the condition that such goods (services, works) are used according to the purpose designated, or, if the purpose was not designated, for implementation of the statutory goals of the NGO-recipient. Please note that the Belarus Tax Code does not use terms “donation” or “grant.” However, the definition of “donation” is provided under the Civil Code, along with the criteria for a donation. De facto, this definition applies to tax exempt goods (services, works) and funds received by an NGO on a gratuitous basis. A donation is defined as a gift of an asset or a right in public benefit purposes.²⁸⁴ A donation may be given for a designated purpose. If it is not given for a specifically designated purpose, it shall be used for the statutory purpose of an NGO-recipient.

Taxation of Income from Entrepreneurial (Business) Activities

The basic rate for income tax is 18%.²⁸⁵ Entrepreneurial activity is defined by the Civil Code as independent activity by a legal or physical person, carried in its own name, based on its own risk and under its own material liability and dedicated to systematically deriving profit from use of assets, sales of goods, which were produced, processed or purchased by such persons for the purpose of sales, or for the purpose of implementation of services or works.²⁸⁶ Public associations are not allowed to carry out entrepreneurial activities.²⁸⁷ Foundations can conduct entrepreneurial activities only when such activities are necessary for achieving goals set in its bylaws and in compliance with such goals and do not have the generation of profit as the main goal.²⁸⁸

Under the Tax Code, income from entrepreneurial activities by NGOs is taxed.

²⁸² Law of the Republic of Belarus on Consumer Cooperatives dated February 25, 2002.

²⁸³ Article 27 of PA Law and 44 of the Decree on Foundations.

²⁸⁴ Article 553 of the Civil Code.

²⁸⁵ <http://www.old.nalog.gov.by/ndok/kommentarii/a91bc53b4549365a.html>

²⁸⁶ Article 1 of the Civil Code.

²⁸⁷ Article 20 of the PA Law.

²⁸⁸ Article 4 of the Decree on Foundations.

Revenue from charity balls, auctions, and from similar activities undertaken for the purposes of fundraising are presently considered as a tax exempt asset received on a gratuitous basis.

Availability of Exemptions for Passive (Investment) Income

Generally, passive (investment) incomes are subject to taxation. No special incentives are provided to NGOs. For example, the following incomes are considered taxable non-entrepreneurial incomes for NGOs: dividends received by NGOs outside of Belarus, income from sales of a share or stock, or income from increase in value of stock or share, or rent, or positive difference from currency exchange.²⁸⁹ Interest generated from stock is not considered taxable income for the purpose of income tax for all tax payers, including NGOs.²⁹⁰ However, income received as interest from keeping funds on deposit or in other bank accounts is income tax free.²⁹¹ Public associations Belarus Society of Invalids, Belarus Society of Deaf Belarus Society of Blind, and their enterprises are exempted from income tax on income generated through dividends (dividends are not considered taxable income for them, but are considered as such for others).²⁹²

5.3.2. Regulation of Contributions to NGOs for Belarus Donors

Starting from 2012, the taxable income of legal entities can be reduced by the amount of a transfer (up to 10% of the gross income) to a registered budget institution, organizations in the area of healthcare, education, social provision, culture, physical culture and sports, to religious organizations, as well as to public associations “Belarus Society of Invalids,” “Belarus Society of Deaf,” “Belarus Society of Invalids with Eye Sight Problems,” “Republican Association of Invalids in Mobile Chairs,” “Belarus Association of Assistance to Children and Youth with Disabilities,” “Belarus Public Association of Veterans,” to enterprises owned by these associations, or funds used for paying bills for purchased and transferred to such associations goods (works and services), and property rights.²⁹³

Individuals can make contributions to NGOs at their own discretion but do not enjoy any tax preferences relating to such contributions. If such contributions meet Tax Code requirements, they are considered “goods (services, works), funds, received by NGOs on gratuitous basis” and are exempt from income tax for NGO recipient.

However, legal entities and individual entrepreneurs can provide gratuitous (sponsoring) assistance only for the limited list of activities defined in Presidential Decree.²⁹⁴ Per this Decree legal entities may provide assistance only for the specific purposes, including:

- Purchasing of agricultural equipment and spare parts;

²⁸⁹ Article 128.3 of the Tax Code.

²⁹⁰ Article 126. 4-1.1. of the Tax Code.

²⁹¹ Article 128.4.2.4. of the Tax Code

²⁹² Article 126.5 of the Tax Code.

²⁹³ <http://www.old.nalog.gov.by/ndok/kommentarii/a91bc53b4549365a.html>

²⁹⁴ Decree of the President of the Republic of Belarus On Provision and Use of Gratuitous (Sponsoring) Assistance #300 dated July 1, 2005 (Decree of Gratuitous Assistance).

- Support of events designated to implement state programs to revive and develop villages;
- Support of Olympic and Para Olympic movements in Belarus;
- Support for games and types of sports, including events by organizations of sports and physical culture, including training of sportsmen (their teams), building and maintenance of physical cultural facilities;
- Protection and restoration of historic and cultural heritage, development of libraries and museums, cinematography, arts and cultural education, as well as support of native creativity and crafts, concerts by national groups and collectives;
- Purchase of medicines by organizations and other assets of medical purpose; medical equipment; provision of medical assistance to citizens of Belarus and propaganda for a healthy lifestyle; and
- Conducting of competitions, festivals, reviews , other events organized by Decision of the President of Belarus, by the Soviet of Ministers, regional executive councils; and Minsk executive council;
- Production of teaching books and assets of education, organization of means for students and residents of educational institutions;
- Support of organizations conducting activities for the social protection of the population, providing social support to lower income citizens and citizens who require support from the state because of their physical or mental health disabilities or who, for other reasons, cannot implement their rights and legal interests (including elderly, invalids, veterans of war and labor, families with multiple children or with a single parent, children with disabilities, orphans, other categories of citizens , defined in legislation);
- Support of registered religious organizations;
- Response to natural disasters and other emergencies;
Conducting scientific research within state science-research programs;
- Development of natural territories protected by the state (such as national parks and natural resorts); and
- Other purposes by decision of the Belarus President, or with his permission.²⁹⁵

The list above is closed. All assistance provided for purposes other than defined in the Decree is illegal and punishable by administrative penalties.

The gratuitous assistance provided by legal entities must also be non-refundable. Provision of free of charge use of an office or of other property to NGOs is not considered gratuitous assistance, and therefore, not regulated by Decree on Gratuitous Assistance.

The gratuitous assistance shall be provided based on a written agreement between the donor and NGO, based on template approved by the Soviet of Ministers of Belarus.

Legal entities and individual entrepreneurs who provided gratuitous assistance in monetary form are required to determine which goods and/or services shall be purchased by recipient of expense of these funds.²⁹⁶ Besides, they are required to submit additional reports to the

²⁹⁵ Article 1 of the Decree of Gratuitous Assistance.

²⁹⁶ Article 8 of the Decree of Gratuitous Assistance.

government on provision of such assistance.²⁹⁷

Legal entities and individual entrepreneurs who provided gratuitous assistance in violation of legislation and NGOs who use such assistance in violation of legislation, face numerous penalties under the Code of Administrative Offenses (Article 23.84) and under the Decree on Gratuitous Assistance (Article 15). More details are provided under Section 6.2. Sanctions of this Assessment.

5.3.3. VAT for NGOs and Donors

The gratuitous supplies of goods (works, services) is considered subject to VAT.²⁹⁸ The only gratuitous supplies that are not considered as taxable for purpose of VAT (and relevant for NGOs) are the following:

- Transfer of goods (works, services) from an NGO to its own members at the paid for by the membership fees;²⁹⁹
- Transfers within an organization;³⁰⁰
- Transfers of goods and the provision of services and works in implementation of international technical assistance, in compliance with requirements in President's Decree dated October 22, 2003, #460;³⁰¹ and
- Certain transfers within religious activities.³⁰²

The basic VAT rate for most supplies is 20%.³⁰³

Threshold for Registration. There is no such threshold under Belarus Tax Code.

Tax Exempt Transactions. Article 94 of the Tax Code establishes a list of supplies and imports that are exempt from VAT, regardless of whether they are performed by commercial or non-commercial entities. Those exemptions are linked to the nature of services, which, inter alia, include the following.³⁰⁴

- 1.1. medicine, medical equipment...as well as veterinary medicine and equipment according to lists approved by the President;
- 1.2. medical services according to lists approved by the President;
- 1.3. veterinary services according to list approved by the Soviet of Ministers;
- 1.5. services provided by educational institutions, by other organizations and individual entrepreneurs which, according to legislation, are provided with the right to carry educational services;
- 1.6-2. meals produced by cafeteria of health care and social protection institutions;
- 1.6-3. services for children by specialized educational – sports institutions;

²⁹⁷ Article 12 of the Decree of Gratuitous Assistance

²⁹⁸ Article 93.1.1.3 of the Tax Code.

²⁹⁹ Article 93.2.8 of the Tax Code.

³⁰⁰ Article 93.2.9 of the Tax Code.

³⁰¹ Article 93.2.19 of the Tax Code.

³⁰² Article 93.23 of the Tax Code.

³⁰³ Article 109.3 of the tax Code.

³⁰⁴ Article 94 of the Tax Code.

1.7. services in the area of culture according to the list approved by the President, such as services.

1.31 Tourist services according to the list approved by the President; and etc.

Most of the services under preferential tax treatment are only relevant to state or state budget-funded institutions, and often specifically referenced as being implemented by such institutions only, or by providers pre-approved by the President or other state bodies.

The exemption also applies to organizations³⁰⁵ who supply goods (works, services), with certain exceptions for those whose staff consist of more than 50% of employees with disabilities (based on certificate issued by the Belarus Chamber of Commerce).

Goods are exempt from VAT when they are imported in the following cases (particularly relevant to NGOs):³⁰⁶

- Goods as part of foreign gratuitous assistance, according to the procedure established by the President of Belarus; and
- Goods received as international technical assistance and/or purchased at the expense of the international technical assistance, dedicated for the purposes defined in the project (program) and approved according to the procedure established by the President of Belarus.

The Tax Code also provides lower (10%) rates for certain supplies, including a zero rate for some supplies.³⁰⁷ None of the supplies eligible for zero rates are particularly relevant to NGOs. Some of the supplies that are more relevant to NGOs are taxed with 10% VAT and include, for example, sales of certain natural products and importing of food and goods for children according to the lists approved by the President.

Rebate Procedure. Under Article 103 of the Tax Code, VAT payments may be rebated according to the following procedure:

The rebate takes place based on decision of the tax authority at the place of tax registration of an organization. As a rule, the positive difference between VAT that is due and VAT that has been paid VAT is calculated by figuring out the amount of VAT due in the future reporting period, without actually deciding on the rebate. The decision about the rebate shall be made by the tax authority no later than two work days from the day the tax payer provides a VAT declaration and an application asking for a rebate. If the positive difference is greater than 3000 basic minimals, tax authority has the right, according to its own initiative, or at the initiative of tax payer, to conduct an audit in order to justify the rebate. The term for conducting such audit shall not exceed 15 days, and for the tax payer, with the status of the “Best Tax Payer” (granted by the tax authority according to the Tax Code procedure to reward organizations who pay all due taxes on time) shall not exceed 5 days. The tax authority shall inform the organization about its decision within two days of

³⁰⁵ Article 94.1.16 of the Tax Code.

³⁰⁶ Article 96.1.12-1.13 of the Tax Code.

³⁰⁷ Article 102.1.1 and 102.2 of the Tax Code.

making the decision. The denial must be well grounded. If the rebate is granted, it shall take place within one month and for tax payers with the status of the Best Tax Payer – within 10 days.

5.3.4. Property, Land and other Taxes Affecting NGOs.

In addition to VAT and income tax, there are a number of other taxes which are applicable to NGOs. These include:³⁰⁸ excise tax, tax on property; tax on land, ecological tax, and some fees and collections.

Ecological taxes do not apply to NGOs at large as only pollution of air and water and storage and disposal of dangerous wastes qualify as taxable subjects. NGOs usually do not deal with such subjects. Similarly, excise only applied to a limited group of goods (i.e. alcohol, etc.) which mostly does not relate to NGOs. Hereinafter we will review property and land taxes, as the most relevant to NGOs.

Property tax.

The general property tax rate is 1% of the value of the building or construction.³⁰⁹ In regards to property tax, only organizations that own buildings or premises, or rent or use free of charge premises that they receive from international organizations or individuals are considered tax payers. Some NGOs enjoy special exemptions, including:

- Public association Belarus Society of Invalids; public association Belarus Society of Deaf, and public association Belarus Society of Blind, as well as to their subsidiaries and enterprises, assuming that the staff consist of more than 50% of employees with disabilities;³¹⁰
- Organizations in the social-cultural sphere that receive state budget subsidies;
- State budget organizations and educational institutions owned by consumer's cooperatives;
- Educational institutions funded from state budget;
- Specialized educational- sports institutions owned by labor unions and funded from the state budget;
- Science organizations;
- Centers of transfer of technologies; and
- Cultural organizations, amongst some others.³¹¹

The property tax also does not apply to buildings and constructions designed to protect the environment and to improve ecology, according to the list approved by the President. It also does not apply to buildings and constructions recognized as historically and culturally

³⁰⁸ Articles 8 and 9 of the Tax Code.

³⁰⁹ Article 188 of the Tax Code.

³¹⁰ Article 186.1.2 of the Tax Code.

³¹¹ Article 186.2 of the Tax Code.

valuable, also according to the list approved by the Soviet of Ministers.³¹²

Land tax

The basic rate³¹³ of the land tax is 0.57\$ per hectare for agricultural land, and 9\$³¹⁴ or more in city or other populated areas and up to 135\$ and more- for manufacturing/industrial purposes.

Only organizations that have land in permanent or temporary use or in ownership shall be considered tax payers of this tax.³¹⁵

Some lands are not considered subject to land tax³¹⁶ (i.e. lands occupied by national parks and by religious organizations, as well as others).

In addition, the Tax Code provides the following exemptions relevant to NGOs.³¹⁷

- Land lots occupied by historically or culturally valuable institutions that are in the State List of Historic Cultural Valuables of the Republic of Belarus;
- Land plots which are occupied by organizations carrying social- cultural activity and which receive subsidies from the state budget; organizations which are owned by the Federation of Labor Unions of Belarus, which carry social-cultural activity, as well as health rehabilitation, vacation, and children-youth sports schools regardless of the type of ownership (state or private owned) if such land lots are used for their statutory activities;
- Certain agricultural lands;
- Land lots occupied by sports organizations which serve as a base for preparation of national teams of the republic of Belarus; and
- Land lots which are occupied by public associations of disabled people (including their enterprises and institutions) which accommodate healthcare, tourism, physical culture and sports, social services, educational, culture and arts institutions; and some others.

Analysis

Income Tax:

Under Belarus law, there is no distinction amongst NGOs for tax purposes: public benefit organizations performing activities beneficial to the public are treated the same way as organizations exclusively serving their own members. In contrast to Europe, the lack of such specialized treatment in Belarus perhaps explains the minimal tax benefits for NGOs in Belarus. It is common practice that NGOs engaging in public benefit activities (charities) are granted more tax benefits than other types of NGOs. This is particularly true in regards

³¹² Articles 186.1.5 and 1.6 of the Tax Code.

³¹³ Article 196 of the Tax Code.

³¹⁴ Article 197 of the Tax Code.

³¹⁵ Article 192 of the Tax Code.

³¹⁶ Article 193 of the Tax Code.

³¹⁷ Article 194.1 of the Tax Code.

to exemptions from income tax. Granting such special privilege does require a specially defined legal status such as “public benefit” or “charitable” which would be clearly distinguishable from other NGOs. However, such status does not exist in Belarus at this time.

The procedure for obtaining a charitable status for NGOs, as well as scope of activities deemed publicly beneficial or charitable, the particular requirements regarding the income and expenditures of charitable organizations, and their internal governance system and transparency requirements vary from country to country. In some countries this status is granted by the tax authorities; in other countries, it is granted by the courts, while others use a commission composed of representatives of relevant governmental agencies and NGOs. The scope of this assessment does not allow us to delve into greater details on these aspects (except that basic approaches to treatment of income from economic activities will be touched upon below), though ICNL would be glad to assist Belarus in structuring a sound fiscal regulatory regime.

Gratuitous transfers of assets and services, entry, participation and membership contributions, are traditionally not considered taxable income under the tax laws of most European countries. Belarus approach meets the standard of international practice on this issue. However, the implementation of those exemptions would be improved by the introduction of clear definitions, such as defining “membership” contribution in the Tax Code or in the PA Law.

The general prohibition on public associations engaging in entrepreneurial activities is a major issue and it is addressed in Section 4.3. on Economic Activities. However, the complete lack of tax incentives (benefits relating to income generated from entrepreneurial activities of any kind) is another major issue. Countries throughout the world approach the provision of incentives relating to tax treatment of income from entrepreneurial activities differently, and many countries do provide incentives for NGOs to carry out entrepreneurial activities, taking into account that NGOs, by their nature, usually carry out social services. ICNL stands ready to help Belarus stakeholders to examine existing practices and consider introducing at least some such incentives into the Belarus Tax Code.³¹⁸

Taxation of Passive (Investment) Income: International good practices often provide exemptions of at least some forms of passive income for public benefit (charitable) organizations, including dividends, interest, royalties, gains from the sale of assets, and rent. The intent of this policy is to support those NGOs that provide publicly beneficial services to the general public. The tax exemption of passive income is of particular importance for foundations, which rely on passive earnings to preserve and build upon their endowments.

Tax Incentives for Donors: It is important to provide tax incentives for businesses and individuals who support charitable causes and they should be considered in the Belarus.

³¹⁸ See more at: Survey of the Treatment of Economic Activities of Non-Profit Organizations in Europe, www.icnl.org

Another shortfall in Belarus law is the limited purposes for which Belarus businesses can provide their gratuitous support. The limited list of such purposes, defined in the President's Decree, does not include many popular causes, such as protection of the environment, provision of support to animal shelters, and etc. Even when businesses provide support for the activities on the list, they still cannot use any tax incentives. Provision of assistance for purposes which are not explicitly listed in President's decree results in punishment for the donor. This situation is very disheartening for local philanthropy. We are not aware of such provisions in laws of any European country or country in the former Soviet Union region.

VAT: The Tax Code does not provide for any special treatment of NGOs related to VAT. This is in general compliance with the international practice; VAT preferences are usually tied to types of transactions/supplies. In order for Belarus VAT law to comply with the international common practices, it would be necessary to expand the list of tax-exempt transactions by adding certain transaction of public interest, along the lines of the European Union's 6th Directive on VAT,³¹⁹ (which exempts the supply of services and goods closely linked to welfare and social security, including those supplied by elderly people's homes, for the protection of children and young people, for the benefit of members of organizations of a political, trade union, religious, patriotic, philosophical, philanthropic, or civic nature, for the organization of fundraising events, etc.). It is also important not to limit the suppliers of such services to state and state- budget supported institutions, but include NGOs as well. Creating equal treatment of governmental and non-governmental suppliers would create fair and competitive conditions in the social services market benefiting the state and citizens. The use of reduced rates for certain taxable activities offered by NGOs could also generate significant support to the nonprofit sector. In France, for example, cultural services are taxed at rates of between 2.2 and 5.5 percent and NGOs may deduct VAT paid on expenses, usually at the rate of 19.6 percent, thus generating cash flow for the tax payer through the subsequent VAT credit. In addition, it would be beneficial to consider exemption of certain gratuitous transactions (i.e. when goods and services are being provided to NGOs and when NGOs provide goods and services on a gratuitous basis.) Such practices are common in Europe and several countries of the former Soviet Union, including Russia.

5.4. Volunteers. 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.³²⁰

Belarus Law

Belarus law does not contain any provisions relating to legal status or guarantees to volunteers.

Analysis

³¹⁹ European Union's 6th Council Directive on the Harmonization of the Laws of the Member States relating to Turnover Taxes (17 May 1977). *See*, for example, Article 13.

³²⁰ Section 55 of the CoE Recommendation.

While under the legal concept of “all what is not prohibited is permitted,” the lack of legislation is not always a bad thing; the complete lack of provisions on volunteers often results in certain problems. For example, the Labor Codes of many countries, including the Labor Code of Belarus (Article 4), establish the rights of all workers to receive a certain minimal pay and to be eligible to vacation and social insurance. Such rights create corresponding obligations of the part of the employer. When volunteerism is not defined by law as a relationship different from employment, legal problems related to the rights and responsibilities of volunteers arise. Another important issue which requires special regulation is protection of the rights of volunteers. If a worker’s rights are protected by law and in the labor contracts, volunteer’s rights are not defined and protected. There is also a number of tax related issues, i.e. NGOs cannot deduct expenses dedicated to covering work related expenses by volunteers. Furthermore, NGOs are required to withhold income tax from compensation payments made to volunteers. These problems can be fixed by defining the terms volunteer and/or volunteering activity and revision of appropriate provisions in the tax code.

There is no ideal or a single law on volunteers that can meet the needs of every country. Volunteerism laws and policies are driven by domestic needs and concerns. In countries where volunteerism traditions are not well established, for example, policies may focus on promoting public awareness of the need for volunteerism and the value and purpose of volunteerism. In countries with strong social safety nets, volunteerism laws may focus on clarifying the distinction between paid employees and unpaid volunteers, thereby removing obstacles that may arise when volunteerism is treated as a form of employment. In other words, as with other legislation, it is the objectives of the government and constituents that determine the scope of regulation, the specific form of volunteering regulated, and the benefits, incentives, and protections that might apply. Successful legislation is carefully tailored to these factors and responsive to defined goals.

Typically, volunteerism legislation in Central and Eastern Europe and Eurasia addresses the following issues:

- *Definition.* The absence of a legal definition of “volunteer” might make it difficult to set special rules relating to volunteers in other legislation (i.e. tax laws, social insurance, etc.).
- *Rights and benefits.* Acknowledging their rights and expected benefits helps volunteers feel recognized and protected while performing public benefit activities. At the same time, the host NGOs know their responsibilities and rights in regards to volunteers. The lack of such clarity may result in numerous problems, for example, unemployed persons who are treated as employees on account of their volunteer service may lose the unemployment and health benefits to which they are entitled under national law.
- *Taxation.* Taxation of reimbursement of reasonable expenses incurred in the course of volunteering poses serious obstacles to recruiting and mobilizing volunteers.
- *Liability.* In order to protect volunteers and NGOs as well as third parties, volunteers and NGOs should be held responsible for their actions and should be

aware of the liability rules that apply if a volunteer harms a third party or was harmed during the course of service.

- *International volunteering*: Visa and other immigration rules may limit foreigners from volunteering in another country and thus discourage cross-country volunteering.³²¹

6. Government Oversight and Responsibility of NGOs

6.1. Supervision and Reporting Requirements. NGOs should not be subject to direction by public authorities.³²²

The activities of NGOs should be presumed to be lawful in the absence of contrary evidence.³²³

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. NGOs should not be subject to search and seizure without objective grounds for taking such measures and appropriate judicial authorization. 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.³²⁴

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. 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. 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. 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. Foreign NGOs should be subject to the requirements in paragraphs above only in respect of their activities in the host country.³²⁵

Belarus Law

A number of government bodies are charged with oversight of NGO activities. Specifically, the General Prosecutor of the Republic of Belarus and prosecutors subordinate to him, as well as other governmental bodies within their area of expertise (i.e. Tax Inspection, Ministry of Labor, etc.) are entrusted with supervising the strict and uniform

³²¹ For more information see *Laws and Policies Affecting Volunteerism Since 2001*, International Center for Not-for-Profit Law (ICNL) and European Center for Not-for-Profit Law, published by UN Volunteers, 2009.

³²² Section 6 of the CoE Recommendation.

³²³ Section 67 of the CoE Recommendation.

³²⁴ Sections 68-70 of the CoE Recommendation.

³²⁵ Sections 62-66 of the CoE Recommendation.

execution of laws, decrees, edicts and other normative legal acts by public associations (unions).³²⁶

The MoJ ensure the activity of organizational structures of public associations is compliant with the Constitution of the Republic of Belarus, other acts of legislation and bylaws of public associations, unions, and foundations. MoJ officials are entitled to participate in events held by public associations (unions), their organizational structures, as well as foundations and to request and obtain information about the statutory activity of public associations (unions) their organizational structures. Public associations, unions and foundations are required to inform the MoJ about session (convocation) of its superior body at least seven days in advance.³²⁷

To make the following changes to its bylaws, a public association (union) or foundation must present to the MoJ within one month all the documents necessary for state registration of the changes or additions: legal address, statutory purposes, name, territorial status, establishment and liquidation of organizational structures, information about managing bodies of public association, on the changes in the order of establishing property (applies only to foundation), or changes of any other information required changes into bylaws.³²⁸

In addition, before March 1 each year, a public association (union) presents to the MoJ the following information:

- Information about the continuation of its activity with indication of location of the governing body;
- The list of members of elected bodies of the public association (union) in which is indicated the surname, name, patronymic, date of birth, citizenship, address of permanent place of residence and home phone number, place of work (studies) and office phone number, position in these elected bodies and the date of election of each member with enclosure of appropriate protocols. In case of changes to the composition of the elected bodies of public association (union), necessary information must be presented to the appropriate registering body within ten days from the day the decision is made;
- Information of the number of members of public association (union), its organizational structures, composition of union; and
- Information on the events held for statutory purposes by public association (union) during a year.³²⁹

Foundations are required to provide the following information to the MoJ, on an annual basis, prior to March 1:

- Information of continuation of activities of the foundation and the address of location of its governing body;

³²⁶ Article 23- 25 of the PA Law; Articles 43- 47 of the Decree on Foundations.

³²⁷ Article 24 of the PA Law; Article 45 of the Decree on Foundations.

³²⁸ Article 24 of the PA Law; Article 14 of the Decree on Foundations.

³²⁹ Article 24 of the PA Law.

- Information about events conducted by the foundation within its statutory purposes during the reporting year; and
- Annual report on the use of its assets with information about its publishing according to procedure established in the law.

The following information shall be contained in the annual reports of the foundations: information regarding number of founders of the foundation; information of the value of assets, including assets transferred to foundation by founders, revenues received from foundations activities, revenues received from conduct of entrepreneurial activities, and other permitted revenues; information about total expenditures for public benefit purposes; and information about enterprises, business partnerships established by foundation to carry entrepreneurial activity.³³⁰

NGO-recipients of monetary foreign gratuitous assistance shall submit regular reports to the Department of Humanitarian Activity.³³¹ A number of government bodies carry control over use/distribution of foreign gratuitous assistance by NGOs, including State Control Committee, Ministry of Internal Affairs, State Customs Committee, Department of Humanitarian Activity, and the Ministry of Taxation and Collections.³³²

Just like other taxpayers, all NGOs are required to submit tax reports.³³³ If NGOs carry out activities that require licensing, they might be required to submit reports on such activities to authorized government bodies.³³⁴

Institutions, as well as other legal entities (with the exception of public associations (unions), and foundations) are only required to submit tax reports and reports relating to their activities if such activities require licenses. Institutions are required to submit reports and subject themselves to other requirements relating to receipt of foreign gratuitous assistance.

Analysis

Belarus NGOs are under excessive supervision by the government bodies, and, specifically, by the MoJ, as compared to other countries in Europe. However, the level of supervision in Belarus is similar to that in several countries in the Former Soviet Union (i.e. Russia, Uzbekistan, and Turkmenistan). The majority of European countries do not authorize registration authorities to participate in internal events of an NGO or to randomly solicit internal documents. Similarly, NGOs are not required to inform government authorities about internal events. It is not clear what the government is trying to accomplish by requiring NGOs

³³⁰ The Resolution of the Ministry of Justice of the Republic of Belarus # 43 “On Procedure of Publishing and of Content of Information, Subject to Provision in Reports on the Use of Assets by Foundations” (August 3, 2005).

³³¹ Article 30 of the Instruction on Foreign Gratuitous Assistance.

³³² The Decree of the President of the Republic of Belarus # 537 On Approving regulation on Procedure for Conducting Control over Use of Foreign Gratuitous Assistance for Designated Purposes. (November 28, 2003); Article 4 of Decree #24.

³³³ Tax Code.

³³⁴ Regulation on Licensing.

to submit a large amount of information on programmatic activities on an annual basis. Such practices are hard to justify even from the government's perspectives. With this being said, we do recognize the importance and legitimacy of government supervision over NGOs activities. Hereinafter we will provide for a rationale of a legitimate government's control over NGOs and provide a brief overview of government control practices in Europe.

Reporting and other forms of government control over the activities of NGOs are undeniably important to ensure that the public, which constitutes both supporters and beneficiaries, is aware of their activities. Businesses and citizens will be reluctant to support an organization that they do not know anything about. However, reporting is always a constraint on organizations. It is a common international practice that laws encourage NGOs to be transparent to the public. At the same time, legal requirements should relate and be proportionate to the preferences obtained by an organization (whether these preferences relate to tax benefits, a special license, or government funding). Belarus legislation might benefit from a review of existing audit and reporting requirements to insure that their level and content both protect the government and public's interest, and avoid unnecessary expense to the government and bureaucratic burdens to NGOs.

There are several rationales for government control over NGOs. Usually, governments exercise control to prevent misuse of tax benefits, misappropriation of government funds, or public's interest (i.e. fundraising from general public) and safety (i.e. activities requiring licensing such as medical or child care). It is important to keep in mind that the interests to be protected are not specific to NGOs or any other specific kind of organization. Therefore, the many rules on licensing requirements should apply to all legal entities and individuals, including NGOs. In Belarus, all rules that apply to all NGOs should be tested on whether such rules are being applied to other legal entities. For example, Belarus NGOs are required to submit annual activities reports to MoJ. Do such rules apply to businesses? If not, why is there discrimination against NGOs and what government interest is being preserved through solicitation of such reports?

It is important to note that any kind of government control takes time and costs money, not only to NGOs but to the government as well. There is very little use for the information gained through reporting if no one is processing the information or has capacity to react if violations are found. The government should have clear objectives that it is trying to achieve by imposing control on NGOs. Achieving these objectives will justify the government's expenditures on imposing and processing reporting.

Hereafter we will provide a brief overview of the basics of what is considered a good international practice in regards to government supervision over activities of NGOs.

Tax Reports

In European countries, most NGOs as other legal entities are required to report on their financial activities as they relate to their taxation. It is important to note that NGOs benefiting from a special tax preferences are usually subject to greater scrutiny. For example, so called "charitable" or "public benefit" organizations, which enjoy the most preferential tax status compared to other NGOs, are required to submit narrative reports on

their activities (e.g. Form 990 in the USA) in addition to a report on financial activities. At the same time, NGOs are subject to the same rules and exemptions for the tax reporting as businesses. For example, they usually have a choice of whether to pay taxes under the simplified tax system which is usually available to small businesses, or the “common” system. In some instances, NGOs might be subject to more simplified tax reporting rules compared to businesses. For example, in the USA (501(c)(3) organizations with gross receipts that are less than \$100,000 and total assets that are less than \$250,000 in value at the end of the reporting year submit a less extensive annual information return (Form 990-EZ). In Brazil, tax-exempt organizations are only required to produce a simple declaration of exemption from tax.

Financial Reporting

Other than tax reports, financial reports may be required in some instances. For example, an NGO may be required to have its financial statements audited by an independent accountant (e.g. in France, associations which received at least €150,000 of public funding annually must establish a balance sheet and statement of income according to specific accounting standards and have those financial statements audited by a certified professional). The requirement for audited financial statements may be linked to the size of the organization (e.g. in Belgium for associations and foundations above a certain number of full time employees or level of gross receipt or assets, see also the similar provisions of the law for NGOs of a certain size that are engaged in economic activities).

Programmatic Reporting

There are no European countries that would require all NGOs to submit general programmatic reports similar to those required in Belarus. This being said, certain types of NGOs (i.e. charitable foundations or certifies charities) might be obligated to file programmatic reports in additional to general reporting requirements applicable to all NGOs. Additional reporting requirements might apply to those NGOs which receive state budget funds or conduct public fundraising campaign.

Fundraising Reporting

In countries where NGOs commonly raise funds from members of the public, laws or regulation may require reporting designed to promote informed giving and deter fundraising abuses. Such reports require information for the regulation of fundraising appeals and may include information regarding plans for national fundraising appeals (see, e.g., France), identification of professional fundraisers used (see, e.g., United States), information regarding fundraising and administrative costs (see, e.g., Canada), licensing information (see, e.g., United Kingdom), and applications to conduct certain types of fundraising, such as lotteries or street collection (see, e.g., Republic of Ireland).

Other reports.

NGOs may also be required to provide a variety of other reports pertaining to subject areas in which they do business, i.e., they may be required to report in connection with customs or currency transactions, in connection with activities ordinarily requiring a license, etc.

Certain types of disclosures may aid governments in protecting the public in particular circumstances. For example, in environments where corruption, money laundering, and customs violations pose problems, governments might impose disclosure regulations on NGOs and other entities doing business abroad by requiring reporting of certain foreign currency transactions or importation of certain goods. In addition, the customers served by NGOs may include vulnerable populations that require additional protective measures. For example, in cases where NGOs provide care for children, the elderly, or the ill or disabled, governments might properly require reporting as to various facets of the care provided. In many of these situations, however, the required reporting will not be specific to NGOs, but will apply to any organization that provides services of the type regulated. As a result, reporting provisions related to these types of matters will generally not appear in NGO laws, but in laws governing all entities engaged in the regulated activity.

6.2. Sanctions. 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.³³⁵

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.³³⁶

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.³³⁷

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. 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. Foreign NGOs should be subject to the provisions above only in respect of their activities in the host country. 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

³³⁵ Section 75 of the CoE Recommendation.

³³⁶ Section 44 of the CoE Recommendation.

³³⁷ Section 24 the CoE Recommendation.

is compelling evidence of the bankruptcy, prolonged inactivity or serious misconduct. Such an order should be subject to prompt appeal.³³⁸

Belarus Law

Public associations do not carry liability for the commitments of their members, and members are not liable for the commitments of a public association. Unions are not liable for commitments of their members. However, members of unions carry subsidiary liability over commitments of the union in order and within the amount, established in their bylaws.³³⁹ Founder(s) of a foundation do not carry liability over commitments of the foundation, and the foundation does not carry liability over commitments of its founder(s).³⁴⁰ An institution is liable for its own commitments within its own assets. However, if it does not have sufficient assets to cover all of the commitments, the founder shall carry unlimited liability to cover such commitments.³⁴¹

For violation of the Constitution of the Republic of Belarus, the PA Law, and of legislation and (or) constituent documents, following measures of responsibility may be applied in respect of a public association (union) or a foundation:

- Written caution;
- Suspension of activities of public association (union) (does not apply to foundation); and
- Liquidation of public association (union) or a foundation.

A public association (union) or a foundation which has caused any damage to a person or property of a person, as well as property of legal person, is obliged to compensate it in the order established by the legislation. Other measures of responsibility and the procedure of their application may be established in respect to public associations (unions) or foundations by legislative acts on fighting against terrorism and extremism.³⁴²

If a public association (union) or foundation violate the Constitution of the Republic of Belarus, the PA Law, Decree on Foundations, other acts of legislation and (or) constituent documents, except for the cases when violation entails the liquidation of the public association (union) or foundation by decision of the court, the MoJ issues a written warning to the public association (union) or foundation. A written warning is handed out or sent to the governing body of public association (union) or foundation no later than three days after its issuance, indicating the violations committed and the term given for their elimination.

A public association (union) or foundation is obliged to inform the MoJ in writing about the elimination of violations which gave rise to the written caution and present confirming

³³⁸ Section 71-74 of the Council of Europe Recommendation.

³³⁹ Article 21 of the PA Law.

³⁴⁰ Article 6 of the Decree on Foundations.

³⁴¹ Article 120 of the Civil Code.

³⁴² Article 26 of the PA Law; Articles 44, 49 of the Decree on Foundations.

documents no later than three after the expiration of the term given for the elimination of violations stated in the written warning. The MoJ shall issue a written warning to a foundation if it violates legislation or conducts activities in violation of its own bylaws, or, in the case of foundations, if the value of the foundation's assets falls below the minimum required by law.

The written warning issued to a public association (union) or a foundation may be appealed against, within one month of its receipt to the Supreme Court of the Republic of Belarus (for an international or republican public association (union) or foundation), or to the regional Minsk city court at the location of the governing body of the public association (union) and foundations (for local public associations, unions, and foundations).³⁴³

Activity of public association (union) may be suspended for a term of one to six months by the decision of the court upon an application of the appropriate registering body if this body has already issued a written caution and the public association (union) failed to eliminate the violations which gave rise to the written caution within the established term or to confirm with the appropriate registering body that the violations have been eliminated. The MoJ has the right to submit an application for suspension of the activity of a public association (union) to the court, if the written caution was not appealed against in the court in the established order or if it was appealed against and recognized by the court to be justified. Suspension of the activity of local public association (union) is carried out by decision of the court with relevant territorial jurisdiction, upon application of the MoJ.

If the activity of the public association (union) is suspended for the term specified by the decision of the court, the public association (union) is forbidden to carry out any activity, except for activity aimed at elimination of violations which have given ground for the suspension of activity. A public association (union) and its organizational structures are forbidden to use accounts in banks and non-banking credit and financial organizations when their activities have been suspended, except for making settlements on civil and labor contracts, payments to the budget, specific budget and non-budget funds, as well as settlements connected with compensation of damages caused by the activities of public association (union) or its organizational structures.

If violations which have given grounds for the suspension of activity of public association (union) are removed within the term of the suspension, then, upon expiration of the established term, the public association (union) may renew its activity by sending a written notification to the MoJ no later than ten days before expiration of the suspension period, indicating that the elimination of indicated violations along with confirming documents.³⁴⁴

The peculiarities of involuntary liquidation (termination of activities) of a public association (union) or a foundation, as a penalty, are discussed in Section 2.2 Termination and Liquidation of this Assessment.

³⁴³ Article 27 of the PA Law; Article 44 of the Decree on Foundations.

³⁴⁴ Article 28 of the PA Law.

For violations of legislation regulating foreign gratuitous assistance, NGO-recipients, donors and their managers are subject to various penalties. If a recipient uses foreign gratuitous assistance for extremist or other illegal activities or for political activities, or uses it in violation of its designated purpose, the NGO may be subject to liquidation (termination of activities). Receipt of foreign gratuitous assistance by political parties may also lead to liquidation of the political party.

For violations of legislation by a representative office of a foreign NGO registered in Belarus, the Ministry of Foreign affairs issues written warning to representative office of the foreign NGO. Provision of foreign gratuitous assistance by representative offices of foreign organizations registered in Belarus for the purposes prohibited by law or other violation of Belarus legislation may result in termination of activities of the representative offices.³⁴⁵ The written warning, prior to initiation of involuntary liquidation of the representative office, is not mandatory. The Ministry of Foreign Affairs, at its own discretion, may decide to initiate the liquidation of such an office through the courts without a prior written warning.

Penalties for violations of legislation are established in the Criminal Code and Code of Administrative Offenses.

The following crimes, defined in the Criminal Code, are especially relevant to NGOs activities:

- Organization or management of a political party or another public association, religious organization which activities constitute violence over citizens, or cause physical damage to persons or other violation of rights and lawful interests of citizens, or prevent citizens from fulfilling their civic duties³⁴⁶ are punishable with detention of up to 6 months or prison term up to two years; the same actions carried out by non-registered organizations are punishable with detention for up to 6 months or prison term up to three years;
- Organization of activities or participation in activities of a political party or another public association, religious organization or a foundation, against which there is government decision on liquidation or suspension of their activities, as well as organization and participation in activities of non-registered organizations, are punishable with penalty, or detention for to 6 months, or prison term up to two years;³⁴⁷ and
- Receipt, storage, and transferring of foreign gratuitous assistance for the purposes of extremism or other illegal activities, or financing of political parties, unions (associations) of political parties, for preparation or conduct of elections, referenda,

³⁴⁵ Article 24 of the Decree 929.

³⁴⁶ Article 193 of the Criminal Code.

³⁴⁷ Article 193(1) of the Criminal Code. The Criminal Code further defined what constitutes “participation in activities” in this article: “activities designated to achieve the statutory purpose of such organizations, stipulated in their bylaws.” Activities which are designed to eliminate the violations of legislation that have caused the suspension of activities shall not fall under scope of this article. Persons, who voluntarily cease performing such activities and reported themselves to the government bodies, shall be free from criminal charges, unless they repeated such actions within two years, since the previous violation of the law.

recall of members of the parliament, for organizing or conducting assemblies, producing and disseminating propaganda materials, conducting of seminars or other forms of political or propaganda; disseminating work amongst population, which occurred within one year after similar offense punished by administrative penalty, is punishable with penalty or detention up to three months or prison up to 3 years.³⁴⁸

The Criminal Code defines several other crimes that do not specifically mention NGOs but are directly relevant to their activities. Such crimes include the following:

- Libel against the President of Belarus, stated in a public statement or published/broadcasted is punishable with a penalty or with correction works up to 2 year; such actions repeated are punishable with prison up to 5 years.³⁴⁹
- Public insult of the President of Belarus is punishable with a penalty or with correction works up to 2 year, or detention up to 6 months, or prison up to 2 years; such actions repeated are punishable with penalty or corrections works up to 2 years or prison up to 3 years.³⁵⁰
- Public insult of a government representative is punishable with public works, penalty or with correction works up to 2 year or prison up to 3 years.³⁵¹
- Provision to a foreign state, international or foreign organization of knowingly false information about the political, economic, social, military or international situation of the Republic of Belarus or about the legal state of Belarus citizens, which discredit the Republic of Belarus or its government bodies, are punishable with detention up to 6 months or prison up to 2 years.³⁵²
- Public calls for organizing and conducting assemblies in violation of the legislation regulating them, when such actions are accompanied with violence, threats, lying or paying compensations, or any other organizing and conducting illegal assemblies when conduct of such assemblies resulted in unpredictable deaths of people, causing body or property damages, are punishable with detention up to 6 months or prison up to 3 years.³⁵³

Under the Code of Administrative Offenses, the following offenses directly relate to NGOs activities:³⁵⁴

- Use of foreign gratuitous assistance prior to receipt of the registration certificate shall be punishable with penalty from 20-100 of basic minimums;³⁵⁵
- Use of foreign gratuitous assistance (fully or partially) for a purpose other than the one designated or in violation of legislation shall be punishable with penalty from 20-200 basic minimums, with or without confiscation of the foreign gratuitous assistance;

³⁴⁸ Article 396 (2).

³⁴⁹ Article 367 of the Criminal Code.

³⁵⁰ Article 368 of the Criminal Code.

³⁵¹ Article 369 of the Criminal Code.

³⁵² Article 369(1) of the Criminal Code.

³⁵³ Article 369(3) of the Criminal Code.

³⁵⁴ Articles 23.23; 23.24 of the Code of Administrative Offenses.

³⁵⁵ One basic minimal amount equals 100,000 Belarusian rubles, approximately \$12.4.

- If such assistance is received in cash, failure to deposit foreign gratuitous assistance to a bank account within terms defined by legislation shall be penalized with penalty 20-200 basic minimums;
- Provision by a foreigner of assistance for purposes prohibited by law is punishable with the deportation of this person with confiscation of such assistance;
- Receipt, storage, or transferring of foreign gratuitous assistance for purposes of extremism or other illegal activities, or financing of political parties, unions (associations) of political parties, preparing and conducting elections, referenda, recall of members of parliament, organizing and conducting assemblies, producing and disseminating propaganda materials, conducting of seminars or other forms of political or propaganda disseminating work amongst population, are punishable with penalty 50-200 basic minimums, with confiscation of such assistance; for legal entities the penalty is up to 100% of value foreign gratuitous assistance with confiscation of such assistance;
- Dissemination by mass media of knowingly false information dishonoring the President of Belarus is punishable with penalty 2-30 basic minimums, or for business entities up to 500 basic minimums;³⁵⁶
- Violation of the established order on conducting assemblies, as well as public calls for organizing and conducting assemblies in violation of legislation shall be punished with a warning or a penalty up to 30 basic minimums or administrative detention; a repeat offenses conducted within a year of the first offense shall be punished with penalty 20-50 basic minimums or administrative detention. The same office offenses conducted for pay shall be punished with penalty 30-50 basic minimums;³⁵⁷
- Provision by individual entrepreneurs or by managers of a legal person of gratuitous (sponsoring) assistance in violation of legislation is punishable with a penalty of up to 100 basic minimums;³⁵⁸
- Use of gratuitous (sponsoring) assistance for purposes other than those designated in the donor agreement is punishable with a penalty up to 25 basic minimums³⁵⁹ (up to 150 basic minimums under Article 15 of the President's Decree on Gratuitous (Sponsoring) Assistance);
- Use of gratuitous (sponsoring) assistance for purposes prohibited by legislation,³⁶⁰ or its use without conclusion of the agreement are punishable with a penalty up to 200 basic minimums with confiscation of such assistance or, with re-paying its value to the government;³⁶¹ and
- Use by managers of a legal entity of gratuitous (sponsoring) assistance for purposes other than those designated in the donor agreement or for purposes prohibited by

³⁵⁶ Article 23.23 of the Code of Administrative Offenses.

³⁵⁷ Article 23.34 of the Code of Administrative Offenses.

³⁵⁸ Article 23.84.1 of the Code of Administrative Offenses. Similar penalty is envisioned in Article 15 of the President's Decree on Gratuitous (Sponsoring) Assistance.

³⁵⁹ Article 23.84.2 of the Code of Administrative Offenses.

³⁶⁰ Please, note that any purposes not specifically listed as permissible in the President's Decree on Gratuitous (Sponsoring) Assistance # 300 are considered prohibited, in addition to a list of prohibited purposes also stated in this Decree.

³⁶¹ Article 23.84.3 of the Code of Administrative Offenses. A similar penalty is envisioned in Article 15 of the President's Decree on Gratuitous (Sponsoring) Assistance.

legislation, or use of such assistance without conclusion of an agreement, are punishable with a penalty up to 150 basic minimals.³⁶²

In addition to the Code of Administrative Offenses, the President's Decree on Gratuitous (Sponsoring) Assistance #300 also establishes penalties for improper granting/use of such assistance. The Decree explicitly states that managers of legal entities providing gratuitous (sponsoring) assistance are personally liable of truthful reporting to the government about gratuitous (sponsoring) assistance.³⁶³ If a manager demands that a legal entity provide gratuitous (sponsoring) assistance using his/her authority, the result may be disciplinary liability, including firing him from the job.³⁶⁴

If the manager demands such assistance for his own benefit or if such demands resulted in damage to the rights and lawful interests of citizens, the state, or the public, such actions are considered a crime and are punishable under Criminal Code.³⁶⁵

In regards to institutions, their activities shall be considered illegal and prohibited if they submitted false information at the time of their registration as legal entities. The government body shall apply to the economic court to conduct the termination of activities of such institution. The revenue generated by such institution during the time of its activities shall be confiscated in favor of government for the entire period of existence of an institution.³⁶⁶ The same rules apply to all other legal entities (with the exception of public associations, unions, and foundations).

Analysis

Many definitions of crimes and offenses relating to the activities of NGOs and their supporters are unusual and contradictory to international law and practice. For example, organization and participation in activities of non-registered organizations is considered a crime, under the Criminal Code. This provision directly contradicts international law as individuals should be permitted to associate without registering a legal entity.³⁶⁷ See also Analysis for section 1.4. NGO without Legal Personality.

Similarly, Belarus is unique in defining as a crime “receipt, storage, transferring of foreign gratuitous assistance for the purposes of financing of organizing or conducting assemblies, producing and disseminating propaganda materials, conducting seminars or other forms of political or propaganda disseminating work amongst population.” Belarus also criminalizes other aspects of associational life that other countries usually protect as human rights.

³⁶² Article 23.84.4 of the Code of Administrative Offenses.

³⁶³ Article 11 of the President's Decree on Gratuitous (Sponsoring) Assistance. Similar penalty is envisioned in Article 15 of the President's Decree on Gratuitous (Sponsoring) Assistance.

³⁶⁴ Article 14 of the President's Decree on Gratuitous (Sponsoring) Assistance.

³⁶⁵ Article 14 of the President's Decree on Gratuitous (Sponsoring) Assistance.

³⁶⁶ Article 25 of Decree #1.

³⁶⁷ Opinion 633-2011 On the Compatibility with the Universal Human Rights Standards of Article 1993-1 of the Criminal Code on the Rights of Non-registered Associations, adopted by the Venice Commission, Council of Europe ([http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2011\)036-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2011)036-e))

Examples include: libel against the President of Belarus, stated in a public statement or published/ broadcasted (basic right to freedom of expression); public insult of the President of Belarus Public or of a government representative (basic right to freedom of expression); provision to a foreign state, international or foreign organization of knowingly false information about political, economic, social, military or international situation of the Republic of Belarus or about legal state of Belarus citizens, which discredits the Republic of Belarus or its government bodies (basic right to freedom of expression); and broad definition of a crime constituting public calls for organizing and conducting assemblies with violation of legislation (freedom of assembly).

The Code of Administrative Offenses contains numerous offenses specific to NGOs and their supporters, which are accompanied by severe penalties that contradict international law and good practices. These include:

- Penalties for use of foreign gratuitous assistance prior to receipt of a registration certificate;
- Use of foreign gratuitous assistance for purposes other than those designated by its recipient;
- Failure to properly deposit foreign gratuitous assistance to a bank account within terms set forth in the law; provision by a foreigner of assistance for purposes prohibited by law;
- Receipt, storage or transferring of foreign gratuitous assistance for purposes of conducting assemblies, producing and disseminating propaganda materials, conducting seminars or other forms of political or propaganda, disseminating work amongst the population, or dissemination by mass media of knowingly false information dishonoring the President of Belarus;
- Violation of the established order of conducting assemblies, as well as public calls for organizing and conducting assemblies with violation of legislation;
- Provision by individual entrepreneurs or by managers of a legal person of gratuitous (sponsoring) assistance in violation of legislation;
- Use of gratuitous (sponsoring) assistance for purposes other than designated in the agreement; and
- Use of gratuitous (sponsoring) assistance for purposes prohibited by legislation,³⁶⁸ or its use without conclusion of the agreement, and others.

The multiple penalties for these activities are excessive, and in many instances contradictory to international law and good practices.

7. Transparency and Accountability.

³⁶⁸ Please note that any purposes not specifically listed as permissible in the President's Decree on Gratuitous (Sponsoring) Assistance #300 are considered prohibited, in addition to a list of prohibited purposes also stated in this Decree.

Transparency and Accountability. 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.³⁶⁹

Belarus Law

Besides the reporting requirements observed in the Section on Supervision and Reporting Requirements of this Assessment, Belarus legislation contains a few provisions in regards to informing public about their activities. Foundations are required to publish annual reports on the use of their assets. The publishing schedule and the content of such reports are prescribed by law. The following information shall be contained in the annual reports of the foundations: information regarding number of founders of the foundation; information of the value of assets, including assets transferred to foundation by founders, revenues received from foundations activities, revenues received from conduct of entrepreneurial activities, and other permitted revenues; information about the total expenditures for public benefit purposes; and information about enterprises and business partnerships established by the foundation to carry out entrepreneurial activity.³⁷⁰

There are no special disclosure requirements for public associations, unions, or institutions other than submission of reports, as observed in Section Supervision and Reporting Requirements of this Assessment.

The information from the Registry of NGOs is not available to the public, and NGOs do not have to provide information about their activities to individuals. At the same time, Belarus Constitution states that Belarus citizens are guaranteed the right to receive, store and disseminate information about activities of public associations.³⁷¹

Analysis

It is important to note that accountability and transparency is in the best interest of NGOs, and in many instances, shall be addressed not through legislation, but rather through self-regulation mechanisms within the NGO sector. In this regard, the minimal requirements under Belarus law are in compliance with the international common practices. However, it appears that in Belarus NGOs lack transparency and accountability before the public. This is a worrisome factor that weakens reputation of NGOs with the general public.

In many countries, the public plays an important supervisory role over NGO activities. The public's trust is reflected in its support to NGOs. State authorities usually conduct inspections only when the public reports violations either through mass media or by other

³⁶⁹ Section 40 of the CoE Recommendation.

³⁷⁰ The Resolution of the Ministry of Justice of the Republic of Belarus #43 “On Procedure of Publishing and of Content of Information, Subject to Provision in Reports on the Use of Assets by Foundations” (August 3, 2005).

³⁷¹ Article 34 of the Constitution.

means. Consequently, the public should receive information on organizations' activities from the state, news media, and from the organizations themselves. It appears that in Belarus, none of these information sources are effective.

Consideration might be given to making NGO reports on their finances and activities which are already being submitted to the government authorities available to the public in part or in whole. In addition, donors and NGOs themselves might consider encouraging transparency and openness to the public.

II. List of Materials Used in the Assessment

INTERNATIONAL LAWS, AGREEMENTS, AND DOCUMENTS:

1. The Universal Declaration of Human Rights (1948).
2. The European Convention on Human Rights, adopted by the Council of Europe in Rome (November 4, 1950) with its Five Protocols (adopted in Paris March 20, 1952; Strasbourg May 6, 1963, Strasbourg May 6, 1963, Strasbourg September 16, 1963, and Strasbourg January 20, 1966).
3. The International Covenant on Civil and Political Rights (1976).
4. The International Covenant on Economic, Social, and Cultural Rights (1976)
5. The European Convention on Recognizing the Legal Personality Status of International NGOs (April 24, 1986; effective January 1, 1991).
6. European Union Council Directive No. 6 on the VAT (May 17, 1977).
7. Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organizations in Europe, adopted by the Committee of Ministers on 10 October 2007 at the 1006th meeting of the Ministers' Deputies.
8. The OSCE/ODIHR document, Key guiding principles of freedom of association, with an emphasis on non-governmental organizations,
https://www.humanrights.gov.au/sites/default/files/document/page/OSCE_Guidelines_freedom_of_association.pdf
9. Opinion 633-2011 On the Compatibility with the Universal Human Rights Standards of Article 1993-1 of the Criminal Code on the Rights of Non-registered Associations, adopted by the Venice Commission, Council of Europe
([http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2011\)036-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2011)036-e))
10. Case of ECoHR Bankovic v. Belgium, (2001) 11 BHRC 435.
11. Case of ECoHR G v. United Kingdom and Ireland (Application No. 9837/82).
12. Case of ECoHR Sidiropoulos v. Greece, 4 Eur. Ct. H.R. 500 (1998).
13. Case of ECoHR United Communist Party v. Turkey, 4 Eur. Ct. H.R. 1 (1998).
14. Case of ECoHR Freedom and Democracy Party (ÖZDEP) v. Turkey (December 8, 1999).

LAWS AND LEGISLATIVE ACTS OF THE REPUBLIC OF BELARUS:

1. The Constitution of the Republic of Belarus (1994, with subsequent amendments).
2. The Civil Code of the Republic of Belarus (December 7, 1998 with subsequent amendments.)
3. The Tax Code of the Republic of Belarus (General Part) (December 19, 2002 with subsequent amendments.)

4. The Tax Code of the Republic of Belarus (Special Part) (December 29, 2009 with subsequent amendments.)
1. The Code on Administrative Offenses of the Republic of Belarus (April 21, 2003 with subsequent amendments).
2. The Criminal Code of the Republic of Belarus (July 9, 1999 with subsequent amendments).
3. The Elections Code of the Republic of Belarus (February 11, 2000, with amendments.)
4. The Law of the Republic of Belarus on Public Associations (October 4, 1994 r. with subsequent amendments).
5. The Law of the Republic of Belarus on State Support of Youth and Children Public Organizations in the Republic of Belarus (November 9, 1999 with subsequent amendments).
6. The Law of the Republic of Belarus On Mass Events in the Republic of Belarus (December 30, 1997 with subsequent amendments).
7. The Law of the Republic of Belarus On Accounting and Reporting (October 18, 1994 with subsequent amendments).
8. The Law of the Republic of Belarus on State Procurement of Goods (Services, Works) (July 13, 2012).
9. The Law of the Republic of Belarus on Social Services (May 22, 2000, with amendments as of July 13, 2012).
10. The Law of the Republic of Belarus on Political Parties (October 5 1994, with amendments as of November 8, 2011)
11. The Decree of the President of Belarus # 302 “On Certain Measures of Streamlining Activities of Foundations” (July 1, 2005).
12. The Decree of the President of the Republic of Belarus #1 On State Registration and Liquidation (Termination of Activities) of Subjects of Economic Activities (January 16, 2009)
13. The Decree of the President of the Republic of Belarus # 24 On Receipt and Use of Foreign Gratuitous Aid (November 28, 2003, with amendments as of January 16, 2013).
14. The Decree of the President of the Republic of Belarus # 537 On Approving regulation on Procedure for Conducting Control over Use of Foreign Gratuitous Assistance for Designated Purposes. (November 28, 2003).
15. The Decree of the President of the Republic of Belarus # 4 on Development on Entrepreneurial Initiative and Facilitation of Business Activity in the Republic of Belarus (December 31, 2010).
16. The Decree of the President of the Republic of Belarus #6 On Streamlining Benefits On Taxes and Customs Payments (February 27, 2013).

17. The Decree of the President of the Republic of Belarus #460 On International Technical Assistance Provided to the Republic of Belarus (October 22, 2003).
18. The Decree of the Council of Ministers of the Republic of Belarus # 1987 On Some Issues on Implementation of State Procurement (December 16, 2008 with subsequent amendments).
19. The Decree of the Council of Ministers of the Republic of Belarus # 229 On Improving Relations in the Area of State procurement of Goods (Works, Services) using private sources (March 15, 2012).
20. The Decree of the President of the Republic of Belarus # 145 on Some Issues of Taxation in the Areas of Culture and Information (April 14, 2011).
21. The Decree of the President of the Republic of Belarus #300 On Provision and Use of Gratuitous (Sponsoring) Aid (July 1, 2005).
22. The Decree of the Council of Ministers of the Republic of Belarus #779 On Approving the Model Form of an Agreement on the Provision and Use of Gratuitous (Sponsor) Aid (July 13, 2005).
23. The Decree of the President of the Republic of Belarus #497 on Provision of Support to Physical Culture and Sports Organizations (November 3, 2011).
24. The Decree of the President of the Republic of Belarus # 425 on the Use of Words “National” and “Belorussian” in the Names of Legal Entities and Mass Media (September 8, 2005).
25. The Decree of the President of the Republic of Belarus # 200 on Administrative procedures Conducted by State Bodies and Other Organizations Based on Citizens Applications (April 26, 2010).
26. The Decree of the Council of Ministers of the Republic of Belarus #154 On the Adoption of the Provision on the Procedure of Approving the Names of Commercial and Non-Commercial Organizations (February 5, 2009, with changes and additions as at August 31, 2011).
27. The Decree of the President of the Republic of Belarus #425 On Using the Words ‘National’ and ‘Belarusian’ in the Names of Legal Entities and Mass Media (September 8, 2005, with changes and additions as at August 30, 2011).
28. The Decree of the President of the Republic of Belarus #537 On Approving the Provision on the Procedure of Exercising Control Over the Target Use of Gratuitous Foreign Aid (November 28, 2003).
29. The Decree of the President of the Republic of Belarus #374 On Exempting the Union of Public Associations “The Belarusian Confederation of Creative Unions,” and the Creative Unions of the Republic of Belarus and Foundations Thereof from Profit and Value-Added Taxes (July 9, 2001 with changes and additions as at January 21, 2010).
30. Regulation on Licensing of Some Types of Activities, approved by the Decree of the President of the Republic of Belarus #450 (September 1, 2010).

31. The Decree of the President of the Republic of Belarus #497 On Supporting Physical Culture and Sports Organizations (November 3, 2011).
32. The Decree of the President of the Republic of Belarus #510 on Certain Issues of Renting and Free Use of Property (March 29, 2012).
33. The Resolution of the General Affairs Office of the President of the Republic of Belarus #9 On the Procedure of Registration, Receipt and Use of Gratuitous Foreign Aid (September 17, 2010, with changes and additions as at September 26, 2011).
34. The Decree of the Council of Ministers of the Republic of Belarus #550 On Approving the List of Public Organizations (Associations) and Their Structural Units, Foundations, and Associations of Legal Entities and/or Individual Entrepreneurs (Associations and Unions) Entitled to 0.1 Reduction of the Base Rental Rate for Real Property (April 9, 2010, with changes and additions as at June 22, 2011).
35. The Decree of the Council of Ministers of the Republic of Belarus #1522 On Certain Measures to Implement Decree #460 of the President of the Republic of Belarus of October 22, 2003 (November 21, 2003, with changes and additions as at March 27, 2010).
36. The Decree of the Council of Ministers № 411 dated May 4, 2012 on approving the National Program of International Technical Cooperation in 2012-2016.
37. The Decree of the Council of Ministers of the Republic of Belarus #1513 On Approving the Provision on the Procedure of Evaluation of the Progress and Effectiveness of International Technical Assistance Projects (Programs) (November 26, 2004).
38. The Decree of the Council of Ministers of the Republic of Belarus #929 On the Procedure of Opening Representative Offices of Foreign Organizations in the Republic of Belarus and Their Activities (July 22, 1997 with changes and additions as at May 12, 2010).
39. The Decree of the Council of Ministers of the Republic of Belarus #1219 on Some Issues of State Social Order (December 27, 2012).
40. The Resolution of the Ministry of Justice of the Republic of Belarus # 43 “On Procedure of Publishing and of Content of Information, Subject to Provision in Reports on the Use of Assets by Foundations” (August 3, 2005)
41. The Resolution of the Ministry of Justice of the Republic of Belarus # 8 On Certain Measures to Implement Decree #1 of the President of the Republic of Belarus dated January 16, 2009 (January 27 2009 with changes and additions as at October 20, 2011).
42. The Resolution of the Ministry of Justice of the Republic of Belarus #48 On Approving Legal Normative Acts on Issues of Completing and Considering Documents Relating to State Registration of Political Parties, Labor Unions, Other Public Associations, Their Unions (Associations), as well as State Registration and

- Exclusion from the Registry, Inclusion and Taking from Records Information about Their Structural Units (August 30, 2005).
43. The Resolution of the Ministry of Justice of the Republic of Belarus #20 On Approving the Names of Legal Entities (of March 5, 2009, with changes and additions as at October 6, 2010).
 44. The Resolution of the Board of the National Bank of the Republic #150 On Approving the Instruction on the Reporting Target Use of Gratuitous Foreign Aid Provided as Cash (with changes and additions as at November 14, 2008).
 45. Resolution of the Ministry of the Economy of the Republic of Belarus #86 On the Preparation by International Foreign Assistance Recipients of Project Proposals and Descriptions of Projects (Programs) of Said Assistance (May 11, 2005).
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 48. The Resolution of the Ministry of the Economy of the Republic of Belarus #82 on the Form of a Listing of Goods (Property, Including Funds), Works and Services Provided for the Implementation of International Technical Assistance Projects (Programs) (May 4, 2010).
 49. The Resolution of the Committee for Archives and Records Management Under the Council of Ministers of the Republic of Belarus #48 On Approving the Provision on the Procedure of Admitting and Reviewing Documents, Issuing Opinion Letters, and Registering Symbols of Political Parties, Trade Unions and Other Public Associations (with changes and additions as at August 26, 2011).
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