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DISCUSSION PAPER

**THE REGULATION OF
NON-GOVERNMENTAL ORGANISATIONS WITHIN THE FEDERATION
OF BOSNIA-HERZEGOVINA
AND PROPOSALS FOR THE FUTURE**

OCTOBER 1998, SARAJEVO

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FOREWORD

In the context of the project "Development of the Local NGO Sector and Promoting its Sustainability in Bosnia-Herzegovina", implemented with the support of the Government of The Netherlands, IBHI has undertaken a series of action oriented research projects dealing with problems facing local NGOs. The present situation of the local NGO sector was reviewed in the document "The Local NGO Sector within Bosnia-Herzegovina – Problems, Analysis and Recommendations". This discussion paper, is based on the analysis and recommendations made in the above document. It provides policy suggestions to the local authorities and proposes amendments to the law aimed at improving the position of NGOs.

Together they represent the start of IBHI's research in this field and will be presented to the local authorities and NGOs, as well as international organisations.

This document was produced by Milijana Lasica and Momir Stefanović, while Žarko Papić, IBHI – Resident Director, Gavin Hood – IBHI consultant and Ana Abdel Basit – IBHI Research Officer, coordinated their work and edited the text. A similar document will be produced for the Republika Srpska, in view of the different regulations.

This document, like the above-mentioned documents, was based upon the results of the work, achieved so far within the LEA / LINK Project. It presents a continuation and expansion of activities aimed at bolstering the NGO sector.

Annex I provides integral discussion material, from the Law Group of the LEA / LINK Project, relating to proposed changes to customs and fiscal regulations in the Federation of Bosnia-Herzegovina and the Republika Srpska.

IBHI will continue its activities, in the coming period, relating to researching and proposing changes to laws and policies that are of significance for bolstering the local NGO sector.

October 1998, Sarajevo

IBHI

- the seat of the organisation,
- the main aims for which the organisation is founded,
- the size of the founding deposit and the manner of financing humanitarian activities,
- the first and last name of the responsible person who will be involved in registering the organisation (Article 40 of the Law on Association of Citizens and Article 14 of the Law on Humanitarian Activities and Humanitarian Organisations).

Humanitarian organisations shall be registered in the registry of humanitarian organisations of the Ministry of Social Policy, Displaced Persons and Refugees and shall attain legal status on the day of registration (Article 16 of the Law).

Any changes in the information provided for registration, must be reported, within 20 days of the date the changes are made, to the responsible Ministry (Article 19).

The humanitarian organisation shall obtain resources for performing its activities:

- from the founding deposit,
- from membership fees, contributions and gifts from members,
- from the Federal budget, Cantonal and Municipal budgets, upon request by the humanitarian organisation,
- from donations given by local and foreign legal and physical entities,
- from other sources (Article 20).

The humanitarian organisation shall keep business records and make financial reports, pursuant to the regulations of the Federation and the Canton. The basic laws in this regard are:

- The Law on Accounting ("Official Gazette of the Federation of Bosnia-Herzegovina", no: 2/95 and 9/96),
- The Law on Financial Operation ("Official Gazette of the Federation of Bosnia-Herzegovina", no: 2/95), and
- The Law on Domestic Payment Operations ("Official Gazette of the Federation of Bosnia-Herzegovina", no: 2/95 and 35/98).

2. Foreign Humanitarian Organisations

A foreign humanitarian organisation, pursuant to the Law, is a humanitarian organisation seated in another country, established pursuant to the regulations of that country, which performs humanitarian activities in the territory of the Federation.

II CITIZENS' ASSOCIATIONS

1. Local Associations

The Law on Association of Citizens ("Official Gazette of the Federation of Bosnia-Herzegovina", no: 6/95) and Regulations on the Procedure of Registration ("Official Gazette of the Federation of Bosnia-Herzegovina", no: 4/96) guide the establishment of the citizens' associations and their registration.

The citizens' association shall have legal personality. The association may be founded by a minimum of 30 citizens of the Federation who are of age and able to work. The founding decision shall be made by the Founding Assembly of the association (Article 6).

The founding decision shall include:

- the first and last names of the founders,
- the name of the association,
- the seat of the association,
- the main aims for which the association is founded,
- the first and last name of the responsible person who is involved in registering the organisation (Article 10).

The association shall be registered in the registry of associations and shall obtain legal status on the day of registration.

If the association operates in the area of two or more cantons, the registry of associations shall be kept by the Ministry of Justice. Where the association operates in the area of one canton, responsibility for registration lies with the Ministry of the Canton.

Together with the registration application, the following shall be submitted:

- the founding decision,
- a report on the work of the Founding Assembly,
- a list of founders and members of managing organs,
- the statute,
- the first and last names of persons who are authorised for representation (Article 25)

The registration application shall be submitted within 15 days of the day of holding the Founding Assembly meeting (Article 27).

The responsible ministry shall be obliged to make a decision on the application for court registration within 30 days of the submission of the application. (Article 28).

1. For those goods originating from countries, or groups of countries, with which Bosnia-Herzegovina has concluded agreements that include a clause on preferential status, the following customs tariffs shall be applied:

- 0%,
- 5%,
- 10% and
- 15%, depending on the type of goods from the Nomenclature.

For goods from other countries (countries with which no agreement has been concluded), the above rates, increased by 10%, shall be applied. This shall not, however, be applied until Bosnia-Herzegovina becomes a member of GAT (WTO).

For goods imported from the Republic of Croatia, no customs duty shall be paid, but only customs registration. customs duty shall, however, be paid on the importation of oil and oil derivatives, according to the rates set by the Law on Customs Tariff.

2. For goods intended for personal household use (except for goods exempted from customs duty and goods with a zero rate of customs duty), the unified customs rate shall be 10%.

3. For goods that are imported, 1% of the customs base shall also be charged for customs registration.

4. For certain food and agricultural products, bearing in mind the aim of harmonising relations in the payment balance with foreign countries and protecting domestic production, a special fee (so-called customs levies) shall be paid on imports in 1998. The amount of the fee shall be determined for each unit and shall range from 0.08 KM or DEM (per egg) to 10 KM or DEM (per kilogram of tea).

5. Customs duty and customs fees shall be paid to the customs office.

Article 30 of the Law on Customs Policy of Bosnia-Herzegovina defines who shall be exempted from paying customs duty. Amongst the first failing within this category, are the following:

- a) State organs and services, enterprises and other legal entities who received goods for free from abroad for scientific, educational, cultural, sports, humanitarian, religious, medical and social purposes (Article 3). Note: The term "for free" also includes procurement using donated funds.
- b) Enterprises, art associations and other associations dealing with scientific research, education, culture, cultural and artistic activities, activities related to the protection of cultural goods, newspaper publishing or radio and TV activities, i.e.

SALARIES AND SALARY OBLIGATIONS

Non-governmental organisations must also comply with payroll regulations. The basic regulations in the field of salaries are:

1. The Law on Salaries and Other Personal Income (“Official Gazette of the Republic of Bosnia-Herzegovina”, no: 1/95),
2. The Law on Payroll Tax (“Official Gazette of the Federation of Bosnia-Herzegovina”, no: 26/96, 27/97 and 12/98), and
3. The Law on Contributions (“Official Gazette of the Federation of Bosnia-Herzegovina”, no: 35/98).

1. Payroll Tax

Payroll tax shall be paid for all payments made for regular work in resident and non-resident organisations. Taxpayers are therefore local and foreign persons employed by such organisations. These regulations refer, not only to income made by resident persons, but also to persons employed with local diplomatic and consular missions abroad and individuals sent abroad to act on behalf of a resident of the Federation or for an international organisation (Article 3). The payroll tax rate is 15% of the net income (Article 22).

If an organisation engages part-time employees or pays over-time or bonuses, it shall be obliged to pay tax on the additional income. Tax on additional income, according to the provisions of the Law, encompasses temporary or occasional work (temporary service contract), but excludes income that is used for those categories stipulated by the law (for supporting members of the immediate family). Additional income tax shall be paid at a rate of 30% of the net amount and a 10% service tax of the increased net amount of benefits. This shall relate to income from temporary service contracts, however, where income is derived from temporary or occasional work, service tax shall not be paid. For a non-resident, employed as an expert in an enterprise or institution within the Federation, income tax is decreased by 30% (Article 13).

2. Surtax

Payroll tax and additional income tax operate in a number of Cantons of the Federation. In addition to this, a number individuals must also pay a surtax. This form of tax is subject to Cantonal regulations and, in the light of the fact that the largest number of non-governmental organisations are operating in the Sarajevo Canton, we will concentrate upon those regulations. Legal regulations in other Cantons, with regard to this surtax, are almost identical to those of the Sarajevo Canton.

- who are employed full-time in the Federation by a resident organisation or individual,
 - who are employed, in the Federation, by a non-resident organisation or individual, international organisation and institution or foreign diplomatic and consular mission, unless provision has been made by international agreement,
 - who are sent, by resident individuals or organisations, with whom he/she is fully employed, abroad for work or professional training, providing he/she does not have compulsory insurance, under the regulations of the country to which he/she is sent, or subject to international agreement,
 - who are employed abroad by a foreign employer, if he/she does not have compulsory insurance with a foreign social insurance company,
 - who receive an income from royalties, but who does not have compulsory insurance on some other basis,
 - other resident persons, pursuant to the regulations on pension and invalid insurance, health insurance and unemployment insurance.
- b) non-resident persons, who are in the territory of the Federation:
- who are employed full-time by resident individuals or organisations,
 - who are employed by non-resident individuals or organisations, unless provision has been made by international agreement,
 - who are employed by an international organisation, institution or foreign diplomatic or consular mission, unless provision is made by international agreement.

The calculation of income contributions, made by those in regular employment, differs depending on whether a local or a foreign organisation is in question. Contributions made by employees of local organisations are paid from the worker's income. They consist of contributions for pension and invalid insurance, health insurance and unemployment insurance. In addition, the same contributions are paid by the employer. With regard to foreign organisations, the employer is not under an obligation to pay contributions.

PROPOSED AMENDMENTS TO THE NON-GOVERNMENTAL ORGANISATION REGULATIONS

In the light of the above chapters, it can be concluded that those regulations that apply to other legal entities and individuals also apply, to a great extent, to non-governmental organisations. They acknowledge the specific character of non-governmental organisations by making provision for particular areas of work that differ from the general regulations.

Furthermore, Article 4 of the Law on Humanitarian Activities and Humanitarian Organisations indicates that the laws, and other regulations of the Federation and Cantons, shall seek to stimulate humanitarian activities and the work of humanitarian organisations, particularly through financial and other benefits. Considerable financial benefits have thus been granted to non-governmental organisations in the area of customs and fiscal regulations. Practice has however shown that the scope of those benefits provided, is insufficient to fully engage the work of non-governmental organisations. Moreover, a number of regulations place financial burdens upon these organisations, thus acting as a disincentive.

The following sections provide proposals for the amendment of certain regulations.

1. Pursuant to Article 11 of the Law on Profit Tax ("Official Gazette of the Federation of Bosnia-Herzegovina", no. 32a/97), if a legal entity sets aside funds for humanitarian, cultural, educational, scientific and sports purposes (except for professional sports) the highest amount recognised as expenditure shall be 0.5% of total income. Any amount above that shall be subject to taxation. This article should be amended so as to allow money set aside for these purposes, to be recognised entirely as expenditure.
2. According to accounting regulations, donations should be included within an organisations total income. This means that for profit organisations, enterprises, health institutions and schools, this type of income will be subject to taxation. The regulations should be amended so as to provide tax exemption in these cases.
3. The additional income tax rate (for temporary service contracts) of 30% is too high and disproportionate to the financial resources of non-governmental organisations. This percentage should be reduced to 15% in the Law on Payroll Tax.
4. The obligation to pay taxes and contributions on the salaries of persons employed by foreign organisations, limits the opportunities for full-time employment. This stems from the fact that those organisations determine flat rate salaries and do not undertake to register workers. In this regard, provision should be made for

ANNEX 1

**Proposed Amendments to the Customs and Fiscal Laws Affecting
NGOs Within the Federation of Bosnia-Herzegovina and the
Republika Srpska (PROJECT LEA/LINK, LAW GROUP)**

Article

Turnover tax shall not be paid on donations given to non-governmental organisations.

Article

Any use of private property for public purposes, shall not be considered turnover in the sense of the provisions of this law and shall be exempt from tax.

THE LAW ON ENTERPRISE PROFIT TAX

Article

Non-governmental organisations shall be exempt from the taxation of profits used for achieving its programme aims.

THE LAW ON IMMOVABLE PROPERTY TRANSFER TAX

Article

Non-governmental organisations that acquire property rights to immovable property necessary for achieving its programme aims, are exempt from paying immovable property transfer tax.

If ownership rights to immovable property, specified in the above paragraph, are transferred to a third person, the tax that the organisation was exempt from, at the time of acquisition, shall be paid.

Donations of immovable property for public purposes, either through a contractual agreement or testacy, are exempt from tax.

THE LAW ON THE TAX FOR THE RECONSTRUCTION AND REHABILITATION OF THE REPUBLIKA SRPSKA

Article

Article 6, paragraph 1 subsection 3 is deleted.

elimination of unfair competition, presented by the more lenient treatment of the non-profit sector (particularly large NGOs).

Several approaches exist:

- to tax all income under general regulations,
- to tax only that part of the income that is unrelated to the aims of non-profit NGOs (the so-called income test destinations),
- to tax only that part of the income, over a certain limit, which could be set at a fixed amount (the so-called mechanical test),
- to exempt all income from tax.

At first glance it is clear that the last alternative is the most favourable for NGOs, and that the first alternative is the most unfavourable. It seems, however, that a balanced solution should be sought through the second or third alternative, or a combination of the two.

A further approach would be to grant exemptions or benefits in accordance with a defined list of NGOs and dependant upon the primary aim of their activities (for instance, education, health care, culture, human rights and other organisations seeking to provide a public benefit). The list would therefore be determinative of the tax status of the particular NGO. Concerning value added tax, NGOs should be included in the VAT system, on the condition that they are zero rated. This is however rare in practice, NGOs (mostly NGOs providing a public benefit) are therefore normally granted a more favourable VAT rate than the general rate.

With regard to the way in which benefits are to be allocated, the monetary system in force hinges upon the active role of the applicant. In order to obtain the right to one or more fiscal benefits, a application must be submitted to the relevant fiscal organs.

TAXES AND CONTRIBUTIONS FROM SALARIES AND OTHER PERSONAL INCOME

There is a general consensus that NGOs should not enjoy benefits, under the general regulations, relating to income tax and contributions. Employees should therefore pay taxes and contributions, arising from their work, in the same way as employees in all other sectors.

In order to determine the scope of this tax, a minimum income threshold should be set. One approach would be for this threshold to reflect the average salary paid for the Entity, according to available statistical data. An alternative solution would be to determine different bases, depending on the complexity of the job. NGOs, with the aim of developing the non-governmental sector, may approve scholarships for a certain number of activists, for advanced training in the non-governmental sector. The scholarship should not be higher than 50% of the average salary in Bosnia-Herzegovina using income statistics from the month before allocation. Tax should not be paid for scholarships.

It is also necessary to review the differentiation made between classic donorship, as a generous transfer of money and sponsorship, and money transfers made with the expectation of publicity and promotion.

Provisions should be made defining other ways through which to generate income, such as lotteries and other types of prize competitions and charity campaigns of a non-economic nature.

TRANSFER OF IMMOVABLE PROPERTY TAX

Tax exemption is provided for those cases where NGOs acquire the ownership rights to immovable property, regardless of the basis on which the right was acquired (purchase, gift, legacy, testament, etc.)

May 27, 1998

Law Group