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**Ordinance #37 of 30 January 2003, modifying and completing Ordinance #26 of 30 January 2000 on Associations and Foundations**

**Issued by:** the Government of Romania

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Pursuant to the provisions under article 107 of the Constitution and to the article 1, point III.9 of the Law #680 of 2002 on the ability of the Government to issue ordinances,

The Government of Romania issues the following Ordinance:

**Article I.**

The Ordinance #26 of 2000 on associations and foundations, published in the Official Gazette #39 of 31 January 2000, is modified and completed as follows:

1. Paragraph (1) of **article 1** shall have the following contents:

“(1) Natural and legal persons aiming to carry out activities of general interest or of community interest or, if such be the case, of their personal non-patrimonial interest may establish associations and foundations under the conditions of the present ordinance.”

2. Next to **article 1**, a new article, **article 1.1**, is introduced, with the following contents:

**Article 1.1.**

(1) For the purpose of this ordinance, activities such as the following are considered to be of general interest: economical, cultural and social development, promoting and protecting human rights and freedoms, promoting health, education, science, arts, traditions, culture, preserving cultural monuments, social assistance, helping the poor and the underprivileged, assisting the physically disadvantaged, the children, and the aged people, youth activities, increasing civic knowledge and participation, protecting environment and nature, supporting religion and human values, sustaining social welfare, supporting public works and infrastructure, supporting sports.

(2) Community interest is defined as any interest which belongs to:

- a) a community: a neighborhood, a locality, a territorial-administrative unit<sup>1</sup>.
- b) any group of natural or legal persons who pursue a common objective or share common beliefs, common culture, common religious, social professional identity and other similar interests.”

3. Letter d) of **article 2** shall have the following contents:

“d) facilitating associations’, foundations’ and federations’ access to private and public resources;”

4. Next to paragraph (4) of **article 6**, two new paragraphs , (5) and (6), are introduced, with the following contents:

“(5) It is prohibited to include in the denomination of associations words or phrases which are specific to public institutions and authorities or to liberal professions or to any other activity which is regulated by special laws.

(6) In case paragraph (5) is not observed, the Ministry of Justice will decline to issue the proof regarding the availability for the denomination.”

5. Next to letter c) of **article 7**, paragraph (2), a new letter, letter d), is introduced, with the following contents:

“ d) the approval of the ministry or of the specialized central administrative body in the competence of which falls the activity of the association<sup>ii</sup>.”

6. Next to letter c) of **article 17**, paragraph (2), a new letter, letter d), is introduced, with the following contents:

“ d) the approval of the ministry or of the specialized central administrative body in the competence of which falls the activity of the foundation.”

7. Paragraph (3) of **article 17** shall have the following contents:

“(3) The provisions under article 6, paragraphs (4) to (6), article 7, paragraph (1), articles 8-12 and article 14 apply accordingly.”

8. Paragraph (3) of **article 19** shall have the following contents:

“(3) If the foundation acquires legal status after the death of the founder, the effects of the liberality made by the latter in favor of the foundation previous to its establishment, will come into force from the date of the constitutive act for those foundations created through acts *inter vivos*, and from the date of the testator’s death for those foundations created by will.”

9. Paragraph (4) of **article 27** shall have the following contents:

“ The committee of censors consists of an odd number of members, whereof the majority is made of associates. The members of the board of directors cannot be censors. At least one of the censors has to be an authorized accountant or an expert accountant, in accordance with the law.”

10. Paragraph (6) of **article 29** shall have the following contents:

“(6) In all cases, changing the purpose of the foundation may be done only if it has been totally or substantially accomplished or if it cannot be accomplished anymore.”

11. **Article 37** shall have the following contents:

“ **Article 37**

(1) In case of dissolution of the federation, unless otherwise stipulated by the law or by the statute, the assets remaining after the liquidation shall be transmitted, in equal shares, to the constituent legal persons.”

(2) The provisions under paragraph (1) apply accordingly should an association or a foundation choose to withdraw from a federation.”

12. The title of **Chapter VI “Associations and Foundations of Public Utility”** is changed to:

“ **Chapter VI-Associations, Foundations and Federations of Public Utility”**

13 **Article 38** shall have the following contents:

**“Article 38.**

(1) An association or foundation can be recognized by the Government of Romania as being of public utility if the following conditions are met cumulatively:

- a) its activity is carried out for the general or community interest, as may be the case, and it has been operating for at least three years prior to the date it applied for public utility status.
- b) it has achieved most of the proposed goals;
- c) it presents an activity report showing the development of significant prior activities, by carrying out programs and projects specific to its purpose, together with annual financial reports and budgets of revenues and expenditures for the last three years prior to the date it applied for public utility status.
- d) the value of the patrimonial assets for each of those three years is at least equal to the value of the initial patrimony.”

(2) The Government of Romania, through its specialized body, can grant, upon advice from the competent administrative authority, a waiver from the terms stipulated in paragraph (1), letters a) and b) if:

- a) the association or foundation applying for public utility status has resulted from the merger of two or more pre-existing associations or foundations; and,
- b) each of the pre-existing associations or foundations would have met the two conditions, if they were to apply independently.”

14. Next to **article 38** a new article, **article 38.1**, is introduced, with the following contents:

**“Article 38.1.**

Public utility is defined as any activity that aims to accomplish purposes that are beneficial for the general public interest and/or the community interest.”

15. Next to paragraph (1) of **article 39**, a new paragraph, paragraph (1.1), is introduced, with the following contents:

“ (1.1) The application provided for by paragraph (1) shall enclose, along with the proof of compliance with the conditions set in article 38, paragraph (1), the following documents:

- a) copies of the constitutive act and of the statute of the association or foundation;
- b) copy of the registration certificate<sup>iii</sup>;
- c) proof of solvency of the association or foundation, issued by the bank where it had opened an account;
- d) copy of the certificate regarding the legal status of the headquarters of the associations or foundation<sup>iv</sup>;
- e) the name and address of the natural persons, and, if such be the case, denomination and headquarters of the legal persons with whom the association or foundation cooperates frequently for the accomplishment of the purposes for which public utility status is required.”

16. Paragraph (2) of **article 39** shall have the following contents:

“(2) The conflicts of competence among public authorities stipulated in paragraph (1) with respect to registering the application are solved by the specialized body of the Government which is competent over the associative environment field, upon notification from any of the parties, within 15 days from registering the notification. In case a conflict of competence appears, the period stipulated for the examination of

the public utility status application is prolonged with the equivalent of the time necessary for the resolution of the conflict.”

17. Paragraph (3) of **article 39** shall have the following contents:

“ In order to solve the conflict, the public authorities stipulated in paragraph (1) are obliged to give the specialized body of the Government all the information necessary for the resolution. The order of the head of the specialized body of the Government is final.”

18. **Article 40** shall have the following contents:

“**Article 40.**

(1) Within 60 days, the competent administrative authority is obliged to examine the application and the fulfillment of the conditions stipulated by the law, also by requiring additional information from the natural or legal persons with whom the association or the foundation collaborates frequently. If these conditions are met, the administrative authority shall advise the government for recognition. If not, the authority shall transmit to the applicant association or foundation a motivated answer within 30 days from the date when the decision was taken.

(2) Within 90 days from the date of submitting the application stipulated in paragraph (1), as well as all the additional documents necessary for taking the decision, the Government of Romania shall decide upon the proposal for recognition. If the proposal is rejected, the decision shall be communicated to the association or foundation by the administrative authority where the application for recognition was registered, within 120 days since the application and the additional documents necessary for taking the decision were submitted.”

19. Next to **article 40**, a new article, **article 40.1**, is introduced, with the following contents:

“Article 40.1.

All Ministries and all the bodies of the central administration that are competent to examine the applications for public utility status will adopt, on the basis of this Ordinance, their own regulations providing for criteria for recognition of the status, specific to each field of activity.”

20. Letter b) of **Article 41** shall have the following contents:

“b) the right to financial resources from the state and local budgets, according to whether they carry out activities of general interest or of local community interest, as follows:

1. from the state budget, from the budgets of the ministries or from the budgets of other bodies of central administration in the competence of which falls the activity of the association;
2. from the local budgets-the amount of funding is decided by the local councils.”

21. Letter f) of **article 41** shall have the following contents:

“f) the obligation to publish excerpts after the activity reports and the annual financial reports within three months after the year ends in the Official Gazette of Romania, Part IV, as well as in the National registry of legal persons without patrimonial aim. The balance sheets excerpt form shall be approved by the Minister of public finances.”

(2 priedas)

1. The organiser shall be obliged to:

- 1.1. ensure the following work performance conditions: \_\_\_\_\_;
- 1.2. instruct the volunteer on the nature of work, health and safety at work;
- 1.3. reimburse the expenses incurred due to the work performed (travel, accommodations, special outfit and others) against the due justifying documents;
- 1.4. \_\_\_\_\_  
(other obligations)

2. The volunteer shall be obliged to:

2.1. perform the following work (full title of specific job, amount, working time, duration, etc.):

- 2.1.1. \_\_\_\_\_;
- 2.1.2. \_\_\_\_\_;
- 2.1.3. \_\_\_\_\_;

2.2. follow the established special requirements for the performance of voluntary work provided in the internal work regulations of the organiser;

2.3. follow health and safety at work requirements.

3. This contract shall become effective under its undersigning by both parties hereto.

4. The damage caused during voluntary work to the organiser or the volunteer shall be indemnified pursuant to the procedure provided in the law of the Republic of Lithuania.

5. This contract may be terminated by mutual agreement between the parties or if one of the parties fails to fulfil the obligations herein.

6. The contract was concluded in two copies bearing equal legal power, one for the volunteer and the other for the organiser.

7. Parties to the contract:

Person designated by the organiser (SEAL) (Signature) (Name)

Volunteer (Signature) (Name)

\_\_\_\_\_

22. Next to paragraph (1) of **article 41**, a new paragraph, paragraph (2), is introduced, with the following contents:

“(2) The sums stipulated in paragraph (1), letter b) will be expressly provided for in the annual budgets of the ministries, of the other central administrative bodies or of the local councils, as it may be the case.”

23. Next to **article 41**, two new articles, **articles 41.1** and **41.2**, are introduced, with the following contents:

“ **Article 41.1.**

(1) The association or the foundation recognized as being of public utility shall open a special bank account for the financial resources received according to article 41 paragraph (1) letter b), and the expenditures from these resources will be reported distinctly.

(2) The sums received from the state budget or from the local budgets, which were going to be spent during a certain year, and which remained unused by the end of that year in the account of the association or foundation, shall be returned to the budgets from which they were originally obtained, within the first 5 working days of the following year.

(3) The sums allocated for projects that cover periods of two years or longer shall be referred to the following year and they may be spent for their initial destination.”

(4) The way in which the sums received from the state budget or from the local budgets is subject to supervision, according to the law.

#### **Article 41.2**

Within the Government a specialized body shall operate at department level, that has the following functions:

- a) promotes and evaluates governmental policies in the field of associative environment and formulates recommendations regarding these policies;
- b) centralizes the applications for public utility status;
- c) solves the conflicts of competence stipulated at article 39 paragraphs (1) and (2);
- d) analyzes annually the activity of the associations and foundations with public utility status.”

24. Paragraph (2) of **article 42** shall have the following contents:

“(2) In case the association or foundation no longer meets one or more of the conditions whereupon recognition of public utility status was based, the Government shall withdraw the recognition act by adopting a decision to this end, upon the advice from the competent administrative authority or the Ministry of Justice.”

25. Paragraph (4) of **article 42** shall have the following contents:

“(4) The circumstances stipulated under paragraphs (2) and (3) may be announced to the competent administrative authority, to the Ministry of Justice or to the Government, by any interested natural or legal person”

26. **Article 45** shall have the following contents:

**“Article 45.**

(1) The provisions of the present chapter referring to the conditions for recognition of public utility status, as well as to the rights and obligations of associations and foundations recognized as being of public utility status apply accordingly to federations.

(2) The Government of Romania can recognize a federation as being of public utility if at least two-thirds of the associations and foundations forming the federations are recognized as being of public utility.”

27. **Article 47** shall have the following contents:

**“Article 47.**

Associations, foundations and federations may establish commercial companies. Dividends obtained by associations, foundations and federations from the activities of these commercial activities, unless reinvested in the same commercial companies, shall be obligatorily used for achieving the purpose of the association, foundation or federation.”

28. **Article 48** shall have the following contents:

**“ Article 48.**

Associations, foundations and federations may carry out any other economic activities, if they have accessory character and are closely connected to the main purpose of the legal person.”

29. Paragraph (1) of **article 51** shall have the following contents:

(1) Within the Chambers of the Parliament, the Presidential Administration, the administrative structure of the Government, the institution of Ombudsman, the autonomous administrative authorities, the ministries, the other specialized bodies of the central and local public administration authorities, special structures shall work on the relation with the associative environment. In those places where such structures do not exist, they shall be established.”

30. Paragraph (2) of **article 56** shall have the following contents:

“(2) The competent instance to decide dissolution is the court in whose circumscription the association has its headquarters.”

**Article II**

The phrase “balance sheets” used throughout Ordinance #26 is replaced with the phrase “annual financial reports”.

**Article III.**

This Ordinance comes into force within 30 days from the date of publication in the Official Gazette of Romania, Part I.

**Article IV**

During the period stipulated in Article III, each ministry or competent central administrative body shall adopt, on the basis of this Ordinance, own regulations that



include the specific criteria for recognizing the status<sup>v</sup>, corresponding with every field of activity.

#### **Article V**

The Ordinance # 26 of 2000 on associations and foundations, as modified and completed by the present Ordinance shall be republished in the Official Gazette, after it will have been approved by the Parliament, including a new numeration of the articles.

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<sup>i</sup> Article 3, paragraph (3) of the Romanian Constitution: "The territory is organized administratively into **communes, towns and counties**. Some towns are declared municipalities, according to the provisions of the law."

<sup>ii</sup> This provision is similar to the one applicable in Romania until the adoption of Ordinance #26/2000: "Associations and establishments having non-profit or non-patrimonial aims cannot obtain legal status but on the basis of a motivated decision of the civil court in the district of which they were created. This decision cannot be given but on the request of those interested:

a) after having requested the approval of the ministry in the competence of which falls the aim of the association or establishment" (Law #21 for Legal Persons of 1924)

<sup>iii</sup> See Article 12 of Ordinance #26.

<sup>iv</sup> Certificate for owner or tenant status.

<sup>v</sup> Probably the public utility status.