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**REGULATING POLITICAL ACTIVITIES
OF NON-GOVERNMENTAL ORGANISATIONS**

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on behalf of the Expert Council
at the request of the Standing Committee of the Conference of INGOs**

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REGULATING POLITICAL ACTIVITIES OF NON-GOVERNMENTAL ORGANISATIONS

A. Introduction

1. Legislation currently drafted or adopted around the world and in particular in some member states of the Council of Europe (e.g. Russia, Azerbaijan and Turkey) reduces the possibility for active engagement of non-governmental organisations (NGOs). The threats particularly concern the inability of organisations to voice their opinions and shape policies.¹
2. The ability of NGOs to engage in activities that influence politics and policy-making is particularly important for those that engage in advocacy activities. Such organisations aim to actively take part in policy-making in order to contribute to shaping the future of the country around elections and to defend human rights of fellow citizens.
3. The most recent example in restricting areas of NGO engagement is the *Law Introducing Amendments to Certain Legislative Acts of the Russian Federation Regarding the Regulation of Activities of Non-Commercial Organisations Performing the Function of Foreign Agents ('the Law')*, dated July 20, 2012, №. 121-Φ3.
4. One of the key concerns with the so-called “foreign agents’ law” is the definition of political activities. Under the Law a “political activity” is defined as “*taking part (including by financing) in the organisation and conduct of political actions aimed at influence over the decision-making by state bodies intended for the change of state policy pursued by them, as well as in the shaping of public opinion for the aforementioned purposes.*” The Law excludes several areas of NGO work from this definition. However, experts agree that the definition as provided in the law goes beyond what is considered as political engagement. Indeed, the definition is too broad to include activities dedicated to changing state policy as well as to influencing public opinion related to changing public policy. In other words,

¹ For further information on standards please see: http://www.coe.int/t/ngo/expert_council_en.asp and <http://associationline.org/guidebook>, whilst on trends in restrictive laws regarding NGOs please see: <http://www.icnl.org/research/monitor/index.html>. All links to internet pages referenced in the footnotes of this study were last accessed in December 2013.

under the Law, any advocacy activity undertaken by NGOs could be considered a “political activity”.

The Council of Europe Commissioner for Human Rights specifically noted that “*from the outset the Law did not clearly and unequivocally exclude human rights advocacy from the notion of political activity*”.² As concluded by the Commissioner, the Expert Council on NGO Law and other international organisations including the International Center for Not-for-Profit Law (ICNL), “*one can reasonably assume that the law will have a disproportionate effect on democracy, governance, and human rights activities.*”³ Unfortunately, the implementation of the Law justified these concerns. Furthermore, there are recent examples of other countries attempting to follow the trend.⁴

5. The current study was commissioned in order to provide a deeper understanding of the approaches in defining and regulating political activities vis-a-vis public policy and advocacy related activities.
6. The study provides an overview of the international and European guarantees regarding the ability of NGOs to engage in political activities. The study also summarises approaches in regulating political activities and public participation in a selected number of member states of the Council of Europe which have undergone a similar transition to Russia.
7. The study was prepared at the request of the Conference of International Non-Governmental Organisations of the Council of Europe. It was developed based on desk research and legal advice obtained from country experts regarding the two case studies. The study further develops information presented in the paper “*Political Activities of NGOs: International Law and Best Practices*” by ICNL.⁵ To this end, the study updates the regulatory approach in Hungary, discussed in ICNL’s paper and introduces a case study on Slovakia.⁶ Parts of the study were presented at the roundtable on “*Developments in Legislation on Non-commercial*

² Opinion of the Commissioner for Human Rights on the Legislation of the Russian Federation on Non-Commercial Organisations in Light of Council of Europe Standards, CommDH(2013)15

³ <http://www.icnl.org/news/2012/2-Jul.html>; see also: Expert Council on NGO Law: Country study on NGO legislation in the Russian Federation

http://www.coe.int/t/ngo/Articles/Expert_Council_Russia_country_study_en.asp

⁴ Drafting of laws similar to the Russian foreign agent law were initiated in Hungary and Kyrgyzstan for example.

⁵ Available at: http://www.icnl.org/research/journal/vol12iss1/special_1.htm

⁶ At the time of writing this study the situation in the other countries discussed in ICNL paper remains unchanged.

Organisations. International Experience”, co-organised by the Conference of International Non-Governmental Organisations of the Council of Europe and the Civic Chamber of the Russian Federation on 31 October 2013, in Moscow.⁷

8. This study is a step towards understanding the framework within which these activities can take place including the international guarantees that exist. It aims to support governments and NGOs in creating a conducive legal framework for NGO engagement and to give further arguments to citizens and NGOs to defend their rights to be active contributors in shaping policies and developing their societies.

B. The concept of and standards for engagement

9. The right to engage in any activities, including political activities as well as public policy is closely linked to the freedoms of expression, association and assembly. This right is an expression and manifestation of these freedoms.
10. As previously stated by the Expert Council on NGO Law, NGOs should be allowed to engage in any kind of activities otherwise allowed to individuals, without additional restrictions imposed on them.⁸ Several international and European instruments have integrated concrete guarantees for NGO engagement in political and public policy activities.
11. The *International Covenant on Civil and Political Rights (ICCPR)* recognises and protects the right of every citizen to take part in the conduct of public affairs, the right to vote and to be elected and the right to have access to public service.⁹
12. As the General Comment on Article 25 of ICCPR provides in the conduct of public affairs:

“... is a broad concept which relates to the exercise of political power, in particular the exercise of legislative, executive and administrative powers. It covers all aspects of public administration, and the

⁷ The presentation was delivered by Maria Pomazkova, member of the Expert Council.

⁸ See Expert Council on NGO Law, 'Conditions of Establishment of Non-Governmental Organisations', par. 33 and further.

⁹ Article 25 of ICCPR.

formulation and implementation of policy at international, national, regional and local levels. The allocation of powers and the means by which individual citizens exercise the right to participate in the conduct of public affairs protected by article 25 should be established by the constitution and other laws.”¹⁰ (§5) Citizens may participate directly by taking part in popular assemblies which have the power to make decisions about local issues or about the affairs of a particular community and in bodies established to represent citizens in consultation with government”(§6).

13. The Comment further stipulates that:

“Citizens also take part in the conduct of public affairs by exerting influence through public debate and dialogue with their representatives or through their capacity to organise themselves. This participation is supported by ensuring freedom of expression, assembly and association”. (§8) “The right to freedom of association, including the right to form and join organisations and associations concerned with political and public affairs, is an essential adjunct to the rights protected by article 25” (§26).

14. In line with this the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association in response to the United Kingdom’s “Transparency in Lobbying, Non-Party Campaigning, and Trade Union Administration Bill” stated:

“...the work of some of these [civil society] organisations is political by definition, which is protected by the international covenant on civil and political rights. This is, in fact, part of the reason they constitute such a crucial component of a free and democratic society, for engaging in political activity should not and must never be left to politicians and political parties alone. Civil society's engagement in political activities promotes and influences focus on issues, principles and ideology, rather than seeking political power. Independent civil society is one of the best vehicles we have for dialogue, pluralism, tolerance and broadmindedness. It is a prerequisite for a legitimate democracy. In the UK, civil society groups perform a vital function by promoting political participation, undertaking voter education,

¹⁰ General Comment No. 25: The Rights to participate in public affairs, voting rights and the right of equal access to public service (Art. 25):12-07-1996. CCPR/C/21/Rev.1/Add.7, General comment No. 25. (General Comments). Office of the High Commissioner for Human Rights

campaigning for good governance reforms and providing vehicles for the expression of different interests. They also act as platforms that cut across ethnic, linguistic and other barriers, and catalyse public debate on issues that affect them. Shutting down this debate wholesale does nothing to advance democracy. It only threatens to indelibly mar future elections with the stain of silenced voices.”¹¹

15. Similar guarantees are found in other international documents. For example, the *Declaration on Human Rights Defenders of the UN General Assembly*¹² which sets a series of principles and rights that are based on standards enshrined in other international legally binding instruments provides the following guarantees:

“Article 7

Everyone has the right, individually and in association with others, to develop and discuss new human rights ideas and principles and to advocate their acceptance.

Article 8

1. Everyone has the right, individually and in association with others, to have effective access, on a non-discriminatory basis, to participation in the government of his or her country and in the conduct of public affairs.

2. This includes, inter alia, the right, individually and in association with others, to submit to governmental bodies and agencies and organisations concerned with public affairs criticism and proposals for improving their functioning and to draw attention to any aspect of their work that may hinder or impede the promotion, protection and realization of human rights and fundamental freedoms.”

16. The *European Convention on Human Rights and Fundamental Freedoms (ECHR)* guarantees the right of NGOs to engage in any kind of activities otherwise allowed to individuals, and it provides a limited list of legitimate interests that may justify restrictions on fundamental freedoms of individuals or activities of organisations.¹³ Any interference in the rights and freedoms, including the ability of organisations to undertake activities

¹¹ “Coalition’s lobbying bill threatens to leave a stain on British democracy”, Maina Kiai, in theguardian.com, 12 January 2014

¹² UN General Assembly resolution A/RES/53/144, 8 March 1999, Annex.

¹³ See Expert Council on NGO Law ‘Conditions of Establishment of Non-Governmental Organisations’, pars. 33-45

to pursue their objectives must be ‘necessary in a democratic society’ to achieve legitimate state interests, which include the interests of national security or public safety, the prevention of disorder or crime, the protection of public health or morals, or the protection of the rights and freedoms of others.¹⁴

“...the permitted restrictions on internationally guaranteed rights and freedoms must also not be exceeded and thus make it impossible for an NGO to be established to pursue objects that are entirely legitimate. No blank cheque is thus given to States that would allow them to make unlawful anything to which they object.”¹⁵

17. Furthermore, Article 14 of ECHR provides that enjoyment of the rights and freedoms set forth in the Convention shall be secured without discrimination on any ground including political.
18. The *European Court of Human Rights* addressed the capacity of citizens and NGOs to engage in public policy and political activities in several cases. The Court stated that allowing participation in public life and policy is in keeping with one of the principal features of democracy — that is, to create the possibility for members of a society to resolve social and political problems through dialogue, without recourse to violence, *“even when they are irksome”*.¹⁶ A State has some margin of appreciation in setting out conditions for the establishment and oversight of political parties and other associations participating in elections, however, other than that the ECHR provides broad protection to NGOs "political" activities.
19. More importantly, the Court also stated that the fact that an NGO's objectives might be seen as "political" should not necessitate it seeking the status of a political party where this is separately provided for under a country's law. In the case of *Zhechev v. Bulgaria*, where an association with objectives deemed “political” was precluded from acquiring legal personality other than as a political party, the Court noted that the mere fact that an organisation demands political changes or that its activities are otherwise deemed "political" does not *per se* justify interference with its freedom of association, including a request that the organisation be registered as a political party, in order to participate in political life.

¹⁴ ECHR, Article 11(2)

¹⁵ Expert Council on NGO Law, 'Conditions of Establishment of Non-Governmental Organisations', para 35.

¹⁶ *United Communist Part of Turkey and Others v. Turkey*, no 19392/92, 30 January 1998, paras 57-58.

"The first thing which needs to be noted in this connection is the uncertainty surrounding the term "political", as used in Article 12 § 2 of the Constitution of 1991 and as interpreted by the domestic courts. ... Against this background [of different interpretations by national courts] and bearing in mind that this term is inherently vague and could be subject to largely diverse interpretations, it is quite conceivable that the Bulgarian courts could label any goals which are in some way related to the normal functioning of a democratic society as "political" and accordingly direct the founders of legal entities wishing to pursue such goals to register them as political parties instead of "ordinary" associations. A classification based on this criterion is therefore liable to produce incoherent results and engender considerable uncertainty among those wishing to apply for registration of such entities. It would also mean subjecting it to a number of additional requirements and restrictions..., which may in some cases prove an insurmountable obstacle for its founders. Moreover, such an approach runs counter to freedom of association, because, in case it is adopted, the liberty of action which will remain available to the founders of an association may become either non-existent or so reduced as to be of no practical value ...".¹⁷

20. The protection also extends to NGOs rights to publish and distribute propaganda materials, advocate with authorities by promoting their ideas and aims, and involve volunteers in their activities. Otherwise, the right to engage in political activities would be deprived of any content.¹⁸
21. The freedom of NGOs to pursue any objectives, including political activities and public policy is noted also in the Council of Europe *Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organisations in Europe*. The Recommendation emphasises four important guiding principles:

¹⁷ *Zhechev v Bulgaria*, no 57045/00, 21 June 2007, Par. 55-56. of the judgment. See also Expert Council on NGO Law, 'Conditions of Establishment of Non-Governmental Organisations', pars. 18-24.

¹⁸ See e.g. *Koretsky and Others v. Ukraine*, 40269/02, 3 April 2008, discussed in Expert Council on NGO Law 'Conditions of Establishment of Non-Governmental Organisations', pars. 33-45.

- 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 (§11).
- NGOs should enjoy the right to freedom of expression (§5).
- 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 (§12).
- 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, subject to legislation on the funding of elections and political parties (§13).

22. The Recommendation also provides specific guidance that governments should allow effective participation of NGOs, without discrimination, in dialogue and consultation on public policy objectives and decisions.

“76. 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.

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

23. The *Explanatory Memorandum* to the Recommendation explains that NGO support to political parties or their agenda can be an important means of realising a particular objective, whether in whole or in part, as the outcome of an election or referendum may lead to a change in law or policy favourable to that objective. NGOs should, therefore, be free to provide such support. A condition however may be imposed that they be transparent when declaring their motivation, particularly to ensure that their members and funders are aware of such support being given and that the law on the funding of elections and political parties is observed.

24. The Council of Europe *Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on*

grounds of sexual orientation or gender identity also reinforces the importance of the inclusion of different types of NGOs in public policy:

“Member states should ensure that non-governmental organisations defending the human rights of lesbian, gay, bisexual and transgender persons are appropriately consulted on the adoption and implementation of measures that may have an impact on the human rights of these persons.”

25. The Council of Europe’s *Code of Good Practice for Civil Participation*¹⁹ underpins the general principles, guidelines, tools and mechanisms for active participation of NGOs in public affairs with focus on the decision-making process. The Code is a reference document which aims to set the basis for further development of the framework for citizens’ involvement in conducting public affairs in European countries. The Code describes four gradual levels of participation, from least to most participative: information; consultation; dialogue; and partnership. Furthermore, the Code defines the forms through which NGOs can contribute at each stage of participation. Typical forms include: advocating for issues, concerns and needs, information and awareness building; expertise and advice sharing; providing innovation in addressing needs, engaging in service provision, watchdog functions.
26. In an effort to promote dialogue with civil society as undertaken by the Lisbon Treaty and following up on the EC Principles and Minimum standards, in 2009 the European Parliament adopted a resolution on the perspectives of *Developing Civil Dialogue under the Treaty of Lisbon*.²⁰ The resolution is important in that it reinforces the significance of consultation and calls on EU institutions to adopt binding guidelines concerning the appointment of civil society representatives, methods for organising consultations and their funding. In addition, the resolution calls on EU institutions and Member States to make full use of legal provisions and best practices to “*step up dialogue with citizens and CSOs*”, and especially in those regions and sectors where it is not fully developed.²¹

¹⁹ CONF/PLE(2009)CODE1, adopted by the Conference of INGOs at its meeting on 1st October 2009; http://www.coe.int/t/ngo/Source/Code_English_final.pdf

²⁰ P6_TA(2009)0007, 13 January 2009

²¹ As described in Hadzi-Miceva Evans Katerina, Comparative Overview of European Standards and Practices in Regulating Public Participation, commissioned by OSCE and the Macedonian Center for International Cooperation (MCIC), 2010

C. Political activities and public policy activities: the approach in European countries²²

27. There is no universally accepted definition of political activities for the purposes of NGO engagement; the term “political activity” is subject to multiple interpretations and meanings. When countries regulate political activities they explicitly list what is considered as ‘engagement in political activities’. When limiting such engagement, those restrictions are clearly prescribed and narrowly defined.
28. “Depending on the context, “political activity” could be defined narrowly or broadly to include supporting or opposing candidates for public office, supporting particular political parties, lobbying for or against specific laws, engaging in public advocacy, pursuing interest-oriented litigation, or engaging in policy debate on virtually any issue.”²³
29. In general, the definition of political activities is not tied to areas of work or influence of NGOs (such as human rights, children, women, disabilities, science, culture, arts) but follows the nature of what constitutes engagement in the political arena. In almost all countries, NGOs generally have the right to criticise or endorse state officials and candidates for political office.
30. When the laws impose limitations to political activities those limitations are closely linked to activities that political parties engage in versus broad policy and advocacy activities of NGOs. Regardless of the scope or limitations to engagement in political activities, NGOs are allowed to advocate and engage in activities with state actors which help them further their cause.
31. In the broadest sense, most NGO activities have implications for public policy. Hence, in many European countries, the laws and practice distinguish between political activities and other kinds of activities, which are grouped as “public policy activities”. Public policy activities include

²² The following two sections (C) and (D) of the Study are developed based on two primary sources supplemented with information collected through desk research: Political Activities of NGOs: International Law and Best Practices, by ICNL, the International Journal of Not-for-Profit Law, Volume 12, Issue 1, November 2009, and United States International Grantmaking (USIG): Country Overviews <http://usig.org/countryinfo.asp>, information available as of October 2013

²³ As described in International Law and Best Practices, by ICNL, the International Journal of Not-for-Profit Law, Volume 12, Issue 1, November 2009

attempting to influence legislation, engaging in decision-making processes, lobbying, campaigning on issues of relevance, raising awareness of issues of concern, monitoring elections, participating in public affairs and criticism of actions by public authorities. The state may decide to or decide not to engage with or support organisations with such activities. But these activities would not be prohibited, and in civil law countries they would not typically fall under the definition of political activities.

32. In many European countries, there is a tendency to introduce legislation that gives the right to NGOs to engage in legislative processes and that prescribes legal guarantees to exercise this right. In Hungary, the law provides explicit right to any state, local government or other organisation to comment on a draft legal regulation affecting their legal status or responsibilities. The detailed rules are laid down in the Act on the social participation. In France, NGOs can advocate for changing a law or a regulation/decision, criticise government, and organise meetings on topics of concern. In Germany, regulations governing the application of the German Tax Code and related commentaries say that an organisation is allowed to comment on politics related to its public-benefit purpose. NGOs may participate in public hearings, which are routinely held in advance of parliamentary reviews of proposed legislation.

D. Overview of regulatory approaches to political activities in European countries

33. Some European countries allow or, do not prevent, NGOs from engaging in political activities. In Romania, NGOs may engage in political activities so long as those activities are not specifically covered by the Political Parties Law. They can contribute funds to political parties or for election-related activities.²⁴ In Poland, there are no limitations on the political activities of associations and foundations. The preamble of the Law on Associations lists the opportunity to participate actively in public life as one of the inherent purposes of associations and the law explicitly grants associations *"the right to voice their opinion on public issues"* regardless of their stated goals or activities. Hence, Polish law explicitly gives associations the right to engage in almost any political activity, even participation in electoral

²⁴ The law uses the term 'electioneering', which means political campaigning and trying to persuade people to vote for a candidate.

campaigns (through special elective committees). Foundations can participate in such activities if they are listed in their governing documents. The Montenegro Law of Non-Governmental Organizations does not address the extent to which NGOs may engage in political activities. There is an example of one NGO in Montenegro which entered into politics and established a political party and voluntarily dissolved the NGO.

34. When states regulate the issue, the practice varies in terms of the scope of engagement. As discussed above, while there is no agreed definition of “political activities”, some European countries proscribe specific activities which are considered as political activities and impose limitations on NGOs to engage in these activities. These limitations provide the framework and scope of what is considered a “political activity” for the purposes of NGO engagement. Examples include:

- Registering a candidate for election (e.g. in the Czech Republic it is reserved for political parties only);
- Nominating candidates for election. For example, in Hungary a "direct political activity" includes
“political activity undertaken for the benefit of a political party, nomination of candidates during the Parliamentary election, nomination to county or metropolitan local government council (including the capital Budapest), nomination of a member of the European Parliament, nomination to the council of a city with county rights, and nomination of a mayor”;
- Supporting candidates or an election campaign. For example, in England, charities cannot support a political party or candidate although they may engage with a political party in support of their own charitable purposes;
- Direct or indirect financing of political party or elections is prohibited in England, Macedonia and Bulgaria. In France, the involvement of NGOs in the funding of political parties and election funds is prohibited, except for associations created specifically for political campaign funding purposes;
- Raising funds for candidates or parties is prohibited in Serbia;

- Participating in election campaigning is prohibited in Serbia, Latvia, Macedonia and Bulgaria).
35. Differences can also be found based on the legal system (common law vs. civil law), types of legal entities (e.g., associations, funds, foundations or non-profit corporations), acquisition of status or benefits (e.g., tax exempt, public benefit or charity status).
36. There is a difference of approach in countries with a common law system (such as England and Ireland) and those with a civil law system (the majority of Western and Eastern European countries). In countries with a common law system there are more direct limitations to political activities than in countries with civil law systems. This is because in the common law system, the majority of the sector is established for pursuing public benefit purposes.
37. Some countries have limitations based on the legal status – they may allow associations to engage in political activities but prohibit foundations.
- In the Czech Republic associations cannot be founded for political purposes; however they can lobby, endorse candidates, provide information and advocate.
 - In France, there are no explicit provisions prohibiting the involvement of an association in political activities and political advocacy. Political parties may be registered as associations, and the distinction between the two is that the political parties are engaged in political campaigning, at both national and local levels. A special category of associations may provide direct financial support to a political party or an election campaign. Such political associations are established for a limited period of time and are restricted to engaging in these stipulated activities only.
 - In Hungary, foundations and associations may nominate and support candidates freely.
 - In Germany, NGOs without tax exemptions may take part in campaigns and may make monetary contributions to political parties.

- In Slovakia, associations are similarly free to engage in a range of political activities, including endorsing candidates, lobbying and contributing to political campaigns; foundations, however, are restricted from financing political parties. Foundations, non-investment funds and NGOs are expressly forbidden from using their assets to support political parties or political movements
38. Most commonly, when limitations to political activities occur those are linked to public benefit/charity status or other state benefits (such as tax benefits) given to NGOs.
- For example in Hungary, when the organisation is registered as a public benefit organisation, its statute must state that it does not pursue direct political activity, it is independent of political parties, and it does not provide financial support to political parties. But public benefit organisations can nominate candidates for the councils set up on local government level (but not mayors). And, although public benefit organisations cannot support political parties, political parties may support such organisations. So in practice, NGOs can make monetary contributions to political parties, provide facilities, endorse party candidates, and conduct similar partisan activities. In 2006, a candidate nominated by a (non-PBO) NGO also was voted into the Parliament (and later became a Minister for Local Self-Government).
 - In both England and Ireland, a charity can never be formed for the purpose of engaging in political activities. A charity may, however, engage in some political activities as a means of achieving its charitable purposes.
 - In France, associations and foundations which are of public utility, may not engage *primarily* in political activities.
 - In Germany, tax-exempt organisations must not spend any of their assets for the direct or indirect support of political parties. Thus, the support of an election campaign is not allowed. However, those organisations are allowed to comment on politics and organise campaigns related to its public-benefit purpose. In this respect, they can communicate with legislators about proposed legislation without losing tax-exempt status.

- In Latvia, a public benefit organisation may not transfer donated property or financial means for the performance of such activities, which are associated with the activities of political organisations (parties) or the support of the election campaign thereof.

E. Conclusion

39. The examples of European countries show that the regulatory practice of NGO engagement in political activities differs. While in some countries there are no limitations, others may limit the engagement.
40. However, when limitations to political activities apply then (1) the limitations are clearly prescribed in the law and specify the exact type of activities that are affected; (2) those are clearly linked to activities related to political parties and elections, versus the broad spectrum of public policy activities that NGOs are engaged in; (3) the limitations typically relate to a specific legal form of an NGO or its public benefit/charity status; (4) there is an increased tendency to separate political activities in the sense of party politics and elections from public policy activities and to allow NGOs to freely express their opinions and engage in policy processes.

F. Country cases

Hungary²⁵

General overview

41. In Hungary the two traditional legal forms of NGOs are association and foundation. In addition, there are other legal forms, including non-profit corporations.
42. An association is the main form of membership-based organisations, established under Act IV/1959 (Civil Code) and Act CLXXV/2011 (CSO Act). The special forms of associations are: alliance, political party and trade union. According to Article 3 (4) of the CSO Act an association may be created for any purpose that is consistent with the Basic Act of Hungary and is not unlawful. An association cannot be formed for criminal, military,

²⁵ This section is developed based on the case study in ICNL's Political Activities paper, and updated with the support of Eszter Hartay, Legal Advisor at the European Center for Not-for-Profit Law (ECNL)

unlawful purposes or to undertake a public task which is reserved for state bodies.

43. The establishment and operation of foundations is also regulated in the Civil Code and the CSO Act, while the establishment and operation of non-profit corporations is regulated in the Company Code (Act IV/2006). None of these three main Acts governing non-profit organisations in Hungary place any restrictions on legislative or political activities of NGOs. Foundations, associations, and non-profit corporations may nominate and support candidates and legislation freely.
44. NGOs are generally free to engage in all forms of political activities. In addition, the legal and institutional framework guarantees NGO ability to take part in policy-making processes through a wide range of advocacy, campaigning, and lobbying activities.
45. Restrictions to engage in political activities apply, only if the organisation acquires the status of a public benefit organisation (PBO). In this case, the NGO must not pursue direct political activity, but instead must be independent of political parties, and it must not provide financial support to them.²⁶
46. The operation and management of political parties is regulated in Act XXXIII/1989.

Scope and definition of political activity

47. Under Article 2 point 22 of the CSO Act, "direct political activity" includes *"political activity undertaken for the benefit of a political party, nomination of candidates during the Parliamentary election or to the county or metropolitan local government council, nomination of a member of the European Parliament, nomination to the council of a city with county rights, and nomination of a mayor; the nomination of mayor by certain minority organisations determined by law at the election of the local and minority local government representative is not considered as direct political activity."*

²⁶ Act CLXXV/2011, Article 34 (1) (d).

48. Based on this definition, there are no limitations to nominate candidates for local government councils at the municipal level (including districts of the capital); in fact, even PBOs may nominate and/or support candidates for *local* elections.

Public benefit status

49. As noted above, if an NGO acquires PBO status then the organisation is subject to limitations in terms of its engagement in political activities.

50. Chapter VII of the CSO Act regulates the eligibility criteria, operation, management and supervision of PBOs. As a precondition for the status, the NGO shall undertake public benefit activity, which is defined as an activity that directly or indirectly serves the completion of public (governmental or local governmental) tasks and thereby contributes to the satisfaction of the common needs of society and the individuals.

51. In order to obtain PBO status the organisations must fulfil a set of criteria. For the purposes of the present study the most important criteria are that the organisation shall not undertake direct political activity, shall be independent from any parties, and shall not provide financial support to them.

52. Although PBOs cannot support political parties, political parties may support PBOs.

53. Except for “direct political activities,” other forms of “political” engagements are allowed for PBOs in Hungary. At the same time, they must be “independent from political parties” in order to receive the status. Theoretically, if they lose their independence, the PBO status may be revoked by the court. However, there is no clear legal guidance as to when a PBO, which is legitimately involved in campaigning and advocacy, violates the independence requirement. Also, there has been very little case law which would help to determine “good practice” or the limits of political involvement of PBOs in Hungary.

Public policy activities

54. The legal framework enables NGOs to take part in policy and decision-making process of Government and Parliament.

55. Article 19 of the Act on Legislation (Act CXXX/2010) stipulates that in case the law provides explicit right to any state, local government or other organisation to comment on a draft legal regulation affecting their legal status or responsibilities, the drafter of the legal regulation shall ensure that the affected entity can exercise its right. The detailed rules are laid down in the Act on the social participation in the preparation of legal regulations (Act CXXXI/2010). The rules of procedure of the Government may determine further regulations as well.
56. According to the Act on the social participation in the preparation of legal regulations, the drafts and motivation of all laws, government decrees and ministerial decrees shall be subject of consultation. However, according to the scope of the Act it applies only to those legal regulations which were drafted by one of the ministries. Consequently, if a Member of Parliament submits a draft law directly to the Parliament, it can circumvent the requirement of consultation.
57. The two main forms of consultation are general consultation and direct consultation. General consultation means the disclosure of the draft legal regulation on the website of the ministry and the possibility to send comments via e-mail. Direct consultation refers to a closer co-operation with organisations based on a partnership agreement. A partnership agreement may be concluded with organisations which are ready for mutual co-operation and represent broader social interest or undertake scientific activity in the given field of law. Strategic partners can be civil society organisations, churches, professional and scientific organisations, public bodies, national minority self-government trade unions, higher education institutions.
58. In addition, several ministries have introduced specific procedures for working with NGOs and have established consultative bodies in their respective fields. Through these cross-sectoral advisory bodies NGOs can follow and analyse the development of the specific field; inform the Government of the situation; share their opinion related to the proposed measures and the draft legal regulations; and propose specific decisions, programmes and legal regulations. Thus in many fields (environment, disability etc.) there are institutional mechanisms established for NGOs through which they can become well informed, may submit their views on a regular basis, and monitor the government's work in the given field.

59. In addition, NGOs, including PBOs, may submit position papers, opinions, policy papers, analyses, and recommendations to members of the Parliament at any time. NGOs, including PBOs, may also organise campaigns and protests for or against a legislative initiative, including freely mobilizing their members to write letters, send emails, join a protest event, or any other campaign activity relating to a certain piece of legislation.
60. NGOs in Hungary are free to conduct a workshop or a conference to educate the public on an issue of importance with or without taking a position on the issue. For example, during the government's campaign for EU accession, there were NGOs which campaigned in support of the accession; there were others that held workshops, conferences, and public events about why people should vote against accession; and there were NGOs which aimed to present a fair assessment of the arguments of both sides and organised educational events to discuss advantages and disadvantages of joining the EU.
61. NGOs can also criticise government policy or officials at any time and at any place, based on the right to freedom of speech enshrined in the Basic Act as well as in domestic and international law.

Foreign funding restrictions

62. According to the Law on Operation and Financing of Political Parties (Act XXXIII/1989), political parties may not accept monetary support from a foreign government. However, such a restriction does not apply to NGOs in any form; therefore there are no restrictions for NGOs supporting political parties to accept support from a foreign government and then support the political party as a domestic NGO. (However, as noted above, PBOs may not support political parties.) At the same time, parties have to report on all donations (including monetary and in-kind support) they receive, listing the name of the donor and the amount. Anonymous donations cannot be accepted; those would have to be paid to the Foundation of the Party.

Slovakia²⁷

General overview

63. NGOs in Slovakia can be civic associations, non-profit organisations providing public benefit services, foundations and non-investment funds. Each legal form is regulated under separate Act providing basic information on establishment of the NGO, its activities, decision-making body and conditions under which the organisation can be dismissed.
64. The most common legal form of NGOs in Slovakia is the *civic association*.²⁸ The purpose of associations is to provide a legal opportunity for citizens to exercise their fundamental right to freely associate. However, not all forms of associations of citizens are considered to be *civic associations* under the Act No. 83/1990 on Association of Citizens. There is an exhaustive list of exceptions and the one relevant for this study is an association of citizens in political parties and political movements. They have to be established under a different Act²⁹ and their field of interest and activities differ from the civic associations.
65. There are also several legislations that, by the content of their provisions, affect all forms of NGOs. The most important one is the Constitution³⁰ which guarantees freedom of association. Another important law for the purposes of this paper is the Act on Political Parties and Political Movements³¹, which is lacking the definition of political activities.
66. Generally, CSOs in Slovakia can freely address matters of public debate and express criticism. The most common way of communication with the government is through the Council of the Government for Non-Governmental Organisations and Solidarity and Development Council. Consequently, the Legislative Rules of the Government of the Slovak

²⁷ This section is developed with the support of Ivana Rosenzweigova, Legal Associate at the European Center for Not-for-Profit Law (ECNL)

²⁸ Act No. 83/1990 on Association of Citizens, available at: <http://www.vyvlastnenie.sk/predpisy/zakon-o-zdruzovani-obcanov/>

²⁹ No. 85/2005 on Political Parties and Political Movements

³⁰ Constitution of the Slovak Republic, No. 460/1992, available at: <http://www.vyvlastnenie.sk/predpisy/ustava-slovenskej-republiky/>

³¹ Article 24 d.) of the Act No. 85/2005 on Political Parties and Political Movements, available at: <http://www.infolby.sk/index.php?base=data/legislativa/volebne/1273704239.txt>

Republic gives them an opportunity to comment on draft laws and thus pursue their objectives.

Public benefit status

67. There is no legal definition of “public benefit status” in Slovak legislation. However, there is a legal form of NGO called non-profit organisation providing public benefit services, which is operating under this term. This type of NGO is regulated under Act No. 213/1997 on non-profit organisations providing public benefit services.³² The Act provides a list of services considered as public benefit.
68. The legislation regarding foundations³³ and non-investment funds³⁴ is using the term “public benefit objective”, which is the compulsory condition for their establishment. Act No. 147/1997 on Non-investment funds is providing a list of public benefit purposes, which is less specific than the one provided by Act No. 213/1997. Act No. 34/2002 on Foundations³⁵ gives a definition of a public benefit objective which relies on the same list of activities as in Act No. 213/1997.

Scope and definition of political activity

69. Slovak legislation does not clearly define the term *political activities*. Act No. 85/2005 on Political Parties and Political Movements³⁶ is not very detailed and provides only a restrictive definition. Activities of the parties that are not in compliance with the Constitution of the Slovak Republic, constitutional laws, other laws and international treaties are, with respect to this Act, prohibited.
70. The Act on Civic Associations uses the term political activities in the case of involuntary termination of the association. If the responsible state body determines that a civic association established under this Act is exercising an activity *that is reserved for the political parties and movements*, it immediately notifies the association and asks it to stop engaging in the

³² Act No. 213/1997 on non-profit organisations providing public benefit services, available at: http://www.tretisektor.gov.sk/data/att/3174_subor.pdf

³³ Act No. 34/2002 on Foundations, available at: http://www.tretisektor.gov.sk/data/att/3172_subor.pdf

³⁴ Act No. 147/1997 on Non Investment funds, available at: http://www.tretisektor.gov.sk/data/att/3173_subor.pdf

³⁵ Article 2 of the Act No. 34/2002 on Foundations, available at: http://www.tretisektor.gov.sk/data/att/3172_subor.pdf

³⁶ Article 2 of the Act No. 85/2005 on Political Parties and Political Movements

given activity. If the association continues to exercise the activity, the association will be dissolved.³⁷

71. Both foundations and non-investment funds are prohibited from using their property for financing political parties and political movements. Additionally, the Act on Non-investment Funds prohibits the financing of a candidate for elective office. No NGO, regardless of the category/type, is allowed to donate a gift or provide free benefits to political parties.

Public policy activities

72. The functioning of NGOs is regulated by laws mostly in development and protection of human values, protection of human rights and environment, development of social services etc. NGOs use several tools to engage in the decision-making process and to influence legislation in order to achieve their goals. They actively participate in discussion platforms and other mechanisms aimed influencing the general policy and direction of the state.
73. The most efficient way to communicate with the government and to participate in the administration of public affairs is through the Council of the Government for Non-Governmental Organisations. The Council operates as a permanent expert, advisory, co-ordination and consultancy body to the Slovak government in the field of civil society organisations and development of civil society in Slovakia. The scope of activities and competences are regulated under the Statute of the Council.³⁸ In addition, CSOs can pursue their own interests more effectively by inviting their representatives to participate in meetings of a Solidarity and Development Council, which serves as a platform to discuss issues that concern society as a whole.³⁹ This Council is also a form of partnership between Government and NGOs in the policy making process and the preparation of important decisions regarding the development of the society.⁴⁰
74. The other important form of influencing the direction of the state policy is through commenting on draft laws. According to the Legislative Rules of the Government of the Slovak Republic, a draft act shall be deliberated

³⁷ Act No. 83/1990 on Association of Citizens

³⁸ Statute of the Council of the Government for Non-Governmental Organisations from 1 August 2012, available at: http://www.tretisektor.gov.sk/data/files/3781_statut-final.pdf

³⁹ USAID 2012 CSO Sustainability Index

⁴⁰ Solidarity and Development Council, source of information: <http://www.vlada.gov.sk/rada-solidarity-a-rozvoja-sr/>

with the respective bodies and institutions in an inter-institutional review. Among others, the inter-institutional review of the draft act shall be carried out also with the general public, prior to submitting the draft act to the Government for deliberations.⁴¹

Foreign funding restrictions

75. There are no limitations to NGOs to receive foreign funding.

⁴¹ Article 13 of the Legislative Rules of the Government of the Slovak Republic