

Recommendation **CM/Rec(2007)14**
of the Committee of Ministers to member states
on the legal status of non-governmental organisations in Europe

*(Adopted by the Committee of Ministers on 10 October 2007
at the 1006th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve greater unity between its members and that this aim may be pursued through the adoption of common rules;

Aware of the essential contribution made by non-governmental organisations (NGOs) to the development and realisation of democracy and human rights, in particular through the promotion of public awareness, participation in public life and securing the transparency and accountability of public authorities, and of the equally important contribution of NGOs to the cultural life and social well-being of democratic societies;

Taking into consideration the invaluable contribution also made by NGOs to the achievement of the aims and principles of the United Nations Charter and of the Statute of the Council of Europe;

Having regard to the Declaration and Action Plan adopted at the Third Summit of Heads of State and Government of the Council of Europe (Warsaw, 16-17 May 2005);

Noting that the contributions of NGOs are made through an extremely diverse body of activities which can range from acting as a vehicle for communication between different segments of society and public authorities, through the advocacy of changes in law and public policy, the provision of assistance to those in need, the elaboration of technical and professional standards, the monitoring of compliance with existing obligations under national and international law, and on to the provision of a means of personal fulfilment and of pursuing, promoting and defending interests shared with others;

Bearing in mind that the existence of many NGOs is a manifestation of the right of their members to freedom of association under Article 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms and of their host country's adherence to principles of democratic pluralism;

Having regard to Article 5 of the European Social Charter (revised) (ETS No. 163), Articles 3, 7 and 8 of the Framework Convention for the Protection of National Minorities (ETS No. 157) and Article 3 of the Convention on the Participation of Foreigners in Public Life at Local Level (ETS No. 144);

Recognising that the operation of NGOs entails responsibilities as well as rights;

Considering that the best means of ensuring ethical, responsible conduct by NGOs is to promote self-regulation;

Taking into consideration the case law of the European Court of Human Rights and the views of United Nations human rights treaty bodies;

Taking into account the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, United Nations General Assembly Resolution A/RES/53/144;

Drawing upon the Fundamental Principles on the Status of Non-Governmental Organisations in Europe;

Having regard to the European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations (ETS No. 124) (hereinafter Convention No. 124) and to the desirability of enlarging the number of its contracting parties;

Recommends that the governments of member states:

- be guided in their legislation, policies and practice by the minimum standards set out in this recommendation;
- take account of these standards in monitoring the commitments they have made;
- ensure that this recommendation and the accompanying Explanatory Memorandum are translated and disseminated as widely as possible to NGOs and the public in general, as well as to parliamentarians, relevant public authorities and educational institutions, and used for the training of officials.

I. Basic principles

1. For the purpose of this recommendation, NGOs are voluntary self-governing bodies or organisations established to pursue the essentially non-profit-making objectives of their founders or members. They do not include political parties.
2. NGOs encompass bodies or organisations established both by individual persons (natural or legal) and by groups of such persons. They can be either membership or non-membership based.
3. NGOs can be either informal bodies or organisations or ones which have

legal personality.

4. NGOs can be national or international in their composition and sphere of operation.

5. NGOs should enjoy the right to freedom of expression and all other universally and regionally guaranteed rights and freedoms applicable to them.

6. NGOs should not be subject to direction by public authorities.

7. 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.

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

9. 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.

10. 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.

II. Objectives

11. 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.

12. 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.

13. 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.

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

15. NGOs should be free to pursue their objectives through membership of associations, federations and confederations of NGOs, whether national or

international.

III. Formation and membership

A. Establishment

16. Any person, be it legal or natural, national or non-national, or 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.

17. 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.

B. Statutes

18. NGOs with legal personality should normally have statutes, comprising the constitutive instrument or instrument of incorporation and, where applicable, any other document setting out the conditions under which they operate.

19. The statutes of an NGO with legal personality should generally specify:

- a.* its name;
- b.* its objectives;
- c.* its powers;
- d.* the highest governing body;
- e.* the frequency of meetings of this body;
- f.* the procedure by which such meetings are to be convened;
- g.* the way in which this body is to approve financial and other reports;
- h.* the procedure for changing the statutes and dissolving the organisation or merging it with another NGO.

20. The highest governing body of a membership-based NGO should be the membership and its agreement should be required for any change in the statutes. For other NGOs the highest governing body should be the one specified in the statutes.

C. Membership

21. No person should be required by law or otherwise compelled to join an NGO, other than a body or organisation established by law to regulate a profession in those states which treat such an entity as an NGO.

22. The ability of any person, be it natural or legal, national or non-national, to join membership-based NGOs should not be unduly restricted by law and, subject to the prohibition on unjustified discrimination, should be determined

primarily by the statutes of the NGOs concerned.

23. Members of NGOs should be protected from expulsion contrary to their statutes.

24. 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.

25. Membership-based NGOs should be free to allow non-members to participate in their activities.

IV. Legal personality

A. General

26. The legal personality of NGOs should be clearly distinct from that of their members or founders.

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

B. Acquisition of legal personality

28. 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.

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

30. Persons can be disqualified from forming NGOs with legal personality following a conviction for an offence that has demonstrated that they are unfit to form one. Such a disqualification should be proportionate in scope and duration.

31. 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.

32. 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.

33. Fees can be charged for an application for legal personality but they

should not be set at a level that discourages applications.

34. 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.

35. 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.

36. 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.

37. A reasonable time limit should be prescribed for taking a decision to grant or refuse legal personality.

38. 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.

39. 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.

40. 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.

41. NGOs should not be required to renew their legal personality on a periodic basis.

C. Branches; changes to statutes

42. NGOs should not require any authorisation to establish branches, whether within the country or (subject to paragraph 45 below) abroad.

43. 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.

D. Termination of legal personality

44. 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.

E. Foreign NGOs

45. Without prejudice to applicability of the articles laid down in Convention No. 124 for those states that have ratified that convention, foreign NGOs can be required to obtain approval, in a manner consistent with the provisions of paragraphs 28 to 31 and 33 to 39 above, 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.

V. Management

46. 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.

47. 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 authorisation from a public authority in order to change their internal structure or rules.

48. The appointment, election or replacement of officers, and, subject to paragraphs 22 and 23 above, 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 offence that has demonstrated that they are unfit for such responsibilities. Such a disqualification should be proportionate in scope and duration.

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

VI. Fundraising, property and public support

A. Fundraising

50. 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.

B. Property

51. NGOs with legal personality should have access to banking facilities.

52. NGOs with legal personality should be able to sue for the redress of any harm caused to their property.

53. 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.

54. NGOs with legal personality should not utilise property acquired on a tax-exempt basis for a non-tax-exempt purpose.

55. 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.

56. 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 honoured. 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.

C. Public support

57. 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.

58. Any form of public support for NGOs should be governed by clear and objective criteria.

59. 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.

60. 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.

61. A material change in the statutes or activities of an NGO can lead to the alteration or termination of any grant of public support.

VII. Accountability

A. Transparency

62. 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.

63. 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.

64. 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.

65. 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.

66. Foreign NGOs should be subject to the requirements in paragraphs 62 to 65 above only in respect of their activities in the host country.

B. Supervision

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

68. 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.

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

70. 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.

71. 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.

72. 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.

73. Foreign NGOs should be subject to the provisions in paragraphs 68 to 72 above only in respect of their activities in the host country.

74. 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 and 45 above have been met. Such an order should be subject to prompt appeal.

C. Liability

75. 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.

VIII. Participation in decision making

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.