Standing and operational space of non-governmental organisations (NGOs) in contributing to respecting and promoting fundamental rights in EU Member States

Romania 2017

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1 Regulatory environment for the work of non-governmental organisations

<table>
<thead>
<tr>
<th>Title of legislation and reference</th>
<th>Topic (please make reference to categories A-F see guidelines)</th>
<th>Effect on civil society (positive or negative) Please include reference to source of information</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Law no. 227/2015 on the Fiscal Code (Legea nr. 227/2015 privind Codul Fiscal)</td>
<td>C. Freedom of association</td>
<td>Article 25 of the new Fiscal Code, adopted in 2015, is increasing the ceiling of the deductible amount for sponsorships offered by companies to NGOs, from 0.3 % to 0.5 % of their turnover (but not more than 20 % of their profit, a criteria that remains unchanged). Amendments to Article 30, enacted in February 2017, are increasing the ceiling of the micro-enterprise category of companies to € 500,000. The micro-enterprises pay tax on revenues and cannot deduct expenses with sponsorships. Representatives of the umbrella organisation Association for Community Relations, quoted by media, are saying that the measure will include up to 440.000 companies, which will be less likely to donate to NGOs. It will</td>
</tr>
</tbody>
</table>
affect the organisations from small and medium localities, which were receiving small sponsorships from local businesses.

2. Government Ordinance no. 26/2000 on associations and foundations (Ordonanța Guvernului nr. 26/2000 privind asociațiile și fundațiile) Amendments to Article 6, introduced in 2016, decreased the required initial deposit to fund an association from the equivalent of the minimum wage (RON 1,050, approx. € 230, at that time) to RON 200 (approx. € 45), making it easier to establish a new organisation.

3. Law no. 544/2001 on free access to public interest information (Legea nr. 544/2001 privind liberal accesul la informații de interes public)

A. Freedom of expression

In June 2016, the Government updated the methodological norms of the Law 544/2001, for the first time since 2001. The update was focused on using preponderantly electronic means of communication and open formats when providing the requested information.

Article 2 of the Law, defining its scope, was amended in July 2016, and it is now explicitly including state owned companies, regulating authorities, public utilities

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companies, political parties, non-governmental organisations certified as of public utility, and sport federations, if they receive public funding.

In September 2016, an NGO noted that no political party is respecting the legal provisions on pro-actively publishing a set of information, including the budget. The organisation sent requests for public information under the Law to 54 political parties, asking for their annual budget: only 9 replied, and only 4 offered the requested information.

The changes, although positive, do not address the recurrent issue of public institutions refusing to release sensitive information. Human rights organisations are particularly affected because they ask for sensitive information. For example, the Association for the Defence of Human Rights in Romania—the Helsinki Committee (Asociația pentru Apărarea Drepturilor Omului în România – Comitetul Helsinki) announced in February 2016 that it had

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5 Center fo Public Innovation (Centrul pentru Inovare Publică), full report available at: www.inovarepublica.ro/partidele-politice-refuza-sa-publice-bugetele/.
to sue the Police⁶ and the General Prosecutor Office⁷ to obtain information related to the procedure applied when escorting citizens to the police stations, and the strategy for fighting the abuses of the Police, respectively.

A recent report analyses the decisions of the Courts of Appeal in cases in which the Law 544/2001 was applied between 2011-2013.⁸ The report shows that the average length of a case, in all stages, is two years, and that the decisions in similar cases may differ from one Court to another.

2 EU Member State government funding for non-governmental organisations – trends and developments 2011-2016

2.1 Overall amount of government funding

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⁶ www.apador.org/blog/seful-politiei-si-igpr-amendati-de-instanta-cu-350-de-leizi-pentru-refuzul-de-a-comunica-informatii-publice/.


⁸ Bucur, A., Public information obtained in Court (Informații de interes public obținute în instanță), available at: www.inovarepublica.ro/informatii-de-interes-public-castigate-instanta/.
A report\(^9\) of the Ministry for Public Consultation and Civic Dialogue ("Ministerul pentru Consultare Publică și Dialog Civic")\(^10\) from October 2016 identifies sources of government funding for NGOs in 2013-2016. It is the first report of its kind. The following sources were identified:

- **Grants from the state budget:** the total amount increased from RON 41,274,294 (approx. €9,172,065) in 2013, to a maximum of RON 224,837,100 (approx. €49,963,800) in 2014, and then slowly decreased to RON 222,251,910 (approx. €49,389,313) in 2015, and RON 189,878,827 (approx. €42,195,294) in 2016\(^11\).

- **Grants from European Funds:** according to the data published by the Ministry of European Funds ("Ministerul Fondurilor Europene")\(^12\), at the end of 2016, the total amount in contracts where the main beneficiary is an NGO was RON 2,779,003,396 (approx. €617,556,288), for the entire budgetary period 2007-2013. It is not possible to calculate the actual expenditure, yearly, using the available data. For the budgetary period, the MCDPP report estimates the total amount that can be accessed by NGOs to €732,025,000\(^13\).

- **State subventions for NGOs social service provision.** The yearly amount decreased from RON 28,549,973 (approx. €6,344,438) in 2013, to RON 18,306,310 (approx. €4,068,068) in 2016\(^14\).

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\(^10\) The name of the institution was changed to Ministry for Civic Participation and Social Dialog ("Ministerul pentru Participare Civică și Dialog Social") starting with January 2017.

\(^11\) Calculation of the authors based on the figures in Annex 1 of the report.

\(^12\) The amount for the budgetary period 2007-2013 are calculations of the author based on the dataset of contracts published on the governmental open data portal, at: [data.gov.ro/dataset/transparentizare_smis](http://data.gov.ro/dataset/transparentizare_smis).


- Financing from the income tax: the taxpayers may redirect a fraction of their income tax to NGOs, to a ceiling of 2% of the yearly tax for citizens, and 20% of the yearly tax but no more than 0.5% of the yearly turnover for companies. The total amount redirected by citizens (the 2% mechanism) increased from approx. RON 115,000,000 (approx. € 2,560,000) in 2011 to approx. RON 143,000,000 (approx. € 31,780,800) in 2015. The businesses (20% mechanism) redirected in 2015 a total amount of approx. RON 553,800,000 (approx. € 123,070,000).

USAID’s Civil Society Sustainability Index, 2015 edition, mentions, in addition to the above funding sources, that the civil society organisations have the possibility to access funds offered as grants or subventions by the local public authorities. The practice is not standardized and there is no reliable data on the total amounts, according to the same report.

None of these sources distinguish between NGOs working on fundamental rights and other types of organisations. NGOs working on fundamental rights may compete in grants competitions (both national and European funds) and receive financing from the income tax (both the 2% and 20% mechanisms) but the available data is not segregated on the scope of the receiving organisation. Usually, NGOs working on fundamental rights do not receive subventions, unless they are also delivering social services; in this case, they may receive subventions only for the services component.

One notable example is the phasing-out of the Open Society Foundations Romania (Fundația pentru o Societate Deschisă România), one of the most active private donors in the human rights field. According to a press release of the Foundation, the grant-making activities ceased in 2012, and the organisation changed its name and focus in January 2017. Romanian NGOs may still apply for funds to the global Open Society Foundations offices.

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17 www.altreiseasector.ro/soros-se-retraie-din-romania-dupa-investitii-de-200-de-milioane-de-dolari/.
2.2 Distribution of government funding

The evolution of financing from state grants by sector is the following:

<table>
<thead>
<tr>
<th>Year</th>
<th>Arts and Culture</th>
<th>Youth</th>
<th>Development Aid</th>
<th>Ethnic minorities</th>
<th>Environment</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>2016</td>
<td>3,865,000</td>
<td>139,198,82</td>
<td>13,350,00</td>
<td>3,500,000</td>
<td>30,000,000</td>
<td>189,913,827</td>
</tr>
<tr>
<td>2015</td>
<td>6,700,000</td>
<td>161,145,07</td>
<td>20,126,61</td>
<td>4,387,000</td>
<td>30,000,000</td>
<td>222,358,689</td>
</tr>
<tr>
<td>2014</td>
<td>10,200,000</td>
<td>173,500,00</td>
<td>12,473,00</td>
<td>3,900,000</td>
<td>25,000,000</td>
<td>225,073,000</td>
</tr>
<tr>
<td>2013</td>
<td>13,920,000</td>
<td>4,049,281</td>
<td>11,430,00</td>
<td>1,900,000</td>
<td>10,000,000</td>
<td>41,299,21</td>
</tr>
</tbody>
</table>

(amounts in RON\textsuperscript{18})

The subventions for provision of services are focused on the social sector.

The MCPDC report mentions that the type of activities financed from both grants and subventions remains unchanged in the last few years\textsuperscript{19}.

2.3 Restrictions (or other changes) on NGO funding from other sources

USAID’s Civil Society Sustainability Index, 2015 edition, mentions the gradual withdrawal of private donors from Romania in the last few years, which is partially compensated by the NGOs diversifying their offer of


services and a slight increase of Corporate Social Responsibility programs by businesses. The report also underlines that NGOs working in the social, educational and health sector attract funds much easier than the watchdog, human rights and democracy NGOs.

A recent study shows that the total revenues of the NGO sector doubled between 2010 and 2015, from € 1,260,000 to € 2,500,000 (approximate numbers, see the table below for details). The study is using official data from the National Institute of Statistics. The average revenue per organisation raised from € 48,000 to € 59,000. The number of active organisations increased, in the same period, from around 26,000 to over 42,000 but a limited number of NGOs have a significant economic activity. The study shows that, in 2015, only 15 % of the NGO had revenues higher than € 50,000, and 20 % had revenues between € 10,000 and € 50,000. In 2015, 7.9 % of the NGOs (3,381 organisations) accounted for 82 % of the total sector revenues.

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</thead>
<tbody>
<tr>
<td>Total sector revenues</td>
<td>5,674.974</td>
<td>7,025.410</td>
<td>7,742.043</td>
<td>9,021.471</td>
<td>9,402.044</td>
<td>11,291.064</td>
</tr>
<tr>
<td>Average revenue</td>
<td>215.729</td>
<td>236.897</td>
<td>236.897</td>
<td>229.939</td>
<td>230.228</td>
<td>264.384</td>
</tr>
</tbody>
</table>

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<tbody>
<tr>
<td>Total revenues ONG sector</td>
<td>1,261.105</td>
<td>1,561.202</td>
<td>1,720.454</td>
<td>2,004.771</td>
<td>2,089.343</td>
<td>2,509.125</td>
</tr>
<tr>
<td>Average revenue</td>
<td>47.940</td>
<td>52.644</td>
<td>52.644</td>
<td>51.098</td>
<td>51.162</td>
<td>58.752</td>
</tr>
</tbody>
</table>

The amount in EUR is calculated using an average exchange rate EUR/RON of 4.5


Analyzing the data from the Ministry of Finance, the same study calculates the structure of revenues of the sector: 69.64% - non-profit activities (grants, donations, sponsorships, contributions of members); 28.66% for-profit activities (services provided); and 1.70% special revenues established by law (e.g. special taxes that finance the arts and culture sector). Only a limited number of organisations (5.302 or 12.44%) have declared revenues from for-profit activities. Only half of these managed to obtain profit from their activities.

Starting from these numbers, the study argues that the majority of NGOs have low and very low revenues, and are unable to diversify their income sources to achieve long term sustainability. The study does not differentiate between human-rights NGOs and other types of organisations, because the row data does not allow it.

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### Access to the decision-making process for non-governmental organisations working on fundamental rights

<table>
<thead>
<tr>
<th>Title of legislation/policy</th>
<th>Reference</th>
<th>Short summary (max 500 characters)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Law on transparency in decision making</td>
<td>Law no. 352/2013 on amending the law 52/2003 on transparency in decision making[^26] (Legea nr. 352/2013 pentru amendarea Legii nr. 52/2003 privind transparența decizională)</td>
<td>The amendments to the Law on transparency in decision making introduced in 2013 clarified the compulsory component of public consultation when an executive agency is proposing new legislation or regulations. The Law stipulates a period of minimum 10 days for the consultation, regulates how the written comments are received and answered to, and what are the formal rules of the public debates, when organised. An independent report[^27] shows that, in 2014, only a limited number of legislative proposals was actually observing the legislation: 18.2 % of the bills initiated by local councils; 8 % of those proposed by county councils; and 18.5 % of the bills initiated by Ministries.</td>
</tr>
</tbody>
</table>


The operationalization of RUTI was made in October 2016, through a Memorandum adopted by the Government. According to the Memorandum, „RUTI aims at increasing the quality of a more participatory public policy decision making process, by creating the framework and shaping the principles based on which interactions of the top policy makers with specialised groups will take place with regards to an already issued policy that the groups want to amend or to a new policy idea arising from outside the public administration which the Government might endorse.”

Until the end of 2016, the participation to RUTI was volunteer. A decision to make the Registry compulsory for decision-makers of the central government is expected in 2017, assuming that the new government, installed after the December 2016 elections, will continue the same policy. In November 2016, the last full month of the previous government, the number of declared meetings amounted to

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29 ruti.gov.ro.

241. It dropped to 60 in December, and to 32 in January, but in February (until 22 February 2017), the number of meetings was 71. An announcement on the official Facebook page of MCPDC on 21 February mentioned that the team of the Ministry was still working on creating accounts for the new dignitaries.


The content of the NAPs evolved from one iteration to another:

- The 1st NAP included only commitments related to open data and e-government.
- The 2nd NAP added access to information to open data, but it no longer included e-government (which is the subject of different governmental strategies).


- The 3rd NAP, under implementation, is again expanding the scope of OGP in Romania, adding commitments on participation. However, the pillar of accountability remains poorly represented.

The progress on the implementation of the NAP is limited, mostly because of the political instability before and after the general elections in December 2016.

One remarkable achievement is the launch of the platform consultare.gov.ro, where all ministeries should publish the draft legislation for public debate. However, the platform is not used consistently. One important reason is that the Government Memorandum is non-binding, thus most ministries see it as a recommendation.

4 Further information

In the last several months, starting with the electoral year 2016, and continuing during the massive street protests in early 2017, civil society organisations become the target of increasingly virulent nationalists attacks. NGOs, and in particular human rights and watchdog NGOs, are accused of “serving foreign interests” and acting against national interest. The name of American philanthropist George Soros is mentioned in contexts similar with the other countries in the region, as being the master-mind behind an international conspiracy, of which NGOs are willing agents. On January 31, the National Audio-Visual Council (Consiliul Național al Audiovizualului), the arbiter of the television and radio markets, decided to fine the RomaniaTV news channel with RON 100,000 (approx. € 23,000) for repeatedly disseminating such allegations against George Soros and Romanian NGOs. RomaniaTV is the news channel with
the highest rating in Romania. The decision of the Council\textsuperscript{34} is listing over 30 instances only in the month of December. The decision also shows that representatives of the governing party actively participated in all mentioned programs.

There are black lists of NGO leaders circulating in nationalist media outlets.\textsuperscript{35} Politicians from both radical and mainstream parties, including high level ministers or members of the Parliament,\textsuperscript{36} had a similar discourse. Although there are no concrete legislative or administrative measures planned against NGOs, civil society leaders are concerned that the recurrent hate speech is affecting the image and credibility of the organisations, with long term negative impact.

\begin{flushleft}
\textsuperscript{34} http://www.cna.ro/IMG/pdf/Dec37-RTV-am_100000_Lege_si_Cod_AD.pdf.
\textsuperscript{35} For example, this list including the names of many human rights organizations and their leaders is widely circulated: http://www.evz.ro/reteaua-soros-bani-pentru-organizatiile-civice-1.html.
\end{flushleft}