



Republic of Bulgaria  
ECONOMIC  
AND SOCIAL COUNCIL

**RESOLUTION**  
**on**  
**"Draft of the Amendment and Supplementation Act**  
**for the Non-Profit Legal Entities Act"**

(own-initiative resolution)

Sofia, 2015

The President's Board of the Economic Social Council decided to elaborate a resolution

**"Draft of the Amendment and Supplementation Act  
for the Non-Profit Legal Entities Act"**

(published for public consultation on the website of the Ministry of Justice)

Mr. Ivelin Zheliazkov (group I - Employers) and Mr. Chavdar Hristov (group II - Trade Unions) were appointed rapporteurs.

At its meeting held on 15 May 2015 the Plenary Session adopted the resolution.

## I. Introduction

1. The legislative programme of the Council of Ministers<sup>1</sup> for the first half of 2015 included, under № 69, the Draft of the Amendment and Supplementation Act for the Non-Profit Legal Entities Act (ASANPLEA) proposed by the Ministry of Justice and scheduled for legislative procedure during the period April-May 2015.
2. The Draft of the Amendment and Supplementation Act for the Non-Profit Legal Entities Act was published on the website of the Ministry of Justice for public discussion.
3. The motives to the Draft Act refer to the original documents and the positions, intentions, principles and approaches contained in them, providing also the basis for the specific texts proposed in the Draft of the Amendment and Supplementation Act for the Non-Profit Legal Entities Act. According to them, the Draft Act:
  - aims to settle the principle of partnership between the state and civil society organisations by creating explicit guarantees for legitimate and authentic representation of civil society organisations. In connection with it is justified to implement the principles of mutual respect, independence, transparency and accountability, prevention of conflicts of interests and the like;
  - It is in line with the Strategy to support the development of civil society organisations in the Republic of Bulgaria for the period 2012-2015 and the Vision to create a funding mechanism for the civil sector (CoM decision of 5 September 2012).
4. The ensuing main highlights of the Draft Act are contained in §1 and §7, which provide for the creation of:
  - Council for the Development of Civil Society (new body to represent the civil society) and
  - Fund for Supporting the Development of Civil Society Organizations, i.e. a funding mechanism for the civil sector through a new legal entity - the Fund.The Council and the Fund are the main "instruments" through which it is envisioned to provide partnership and policy support for the development of the civil society, and respectively civic organisations, as stipulated in §1 of the Draft Act.
5. As a civil society body the Economic and Social Council (ESC) expresses its opinion on the proposed changes to the Draft of the Amendment and Supplementation Act for the Non-Profit Legal Entities Act primarily in view

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<sup>1</sup> Decision №79 /05 February 2015 CoM

of the constitutional principle of creating conditions for the development of civil society and the intentions for supporting the development of civil society - laid down in the aforementioned Strategy. The practice of ESC has also been in this direction<sup>2</sup>.

6. ESC considers that the requirement of Art.4 para.2 of the Constitution of the Republic of Bulgaria - that the state should create conditions for the free development of the civil society is incompatible with political and financial protectionism of NGOs by the state authorities. The Draft Act contradicts Convention №87 on the Freedom of Association of the International Labour Organisation (ILO), 1948. Ratified by the Republic of Bulgaria, according to which "...workers and employers without any distinction and without prior authorisation, have the right to form organisations of their choosing and to join these organisations, subject only to compliance with their statutes. Organisations of workers and employers have the right to draw up their statutes and regulations, freely to elect their representatives, to organize their administration and activities and draw up their own action programmes. Public authorities should refrain from any interference which would restrict this right or impede its lawful exercise."

## II. Key finding and proposals

7. The increased civic activity in the past few years found expression in civil protests, public action and a productive civic attitude to the legislative process - for example discussions of changes in the Election Code as well as the increased activity on the occasion of the Act for Amendment and Supplementation of the Attorney Act during recent months (February and March) suggest a comprehensive understanding and assessment of the opportunities, forms, approaches, incl. and statutory regulation, for the development of the civil society, i.e. civic organizations, incl. the provision of support for them.
8. ESC is of the opinion that it is necessary to make a comprehensive analysis of existing opportunities through which Art. 4 para. 2 of the Constitution is

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<sup>2</sup> ESC is a consultative body expressing the will of the civil society in economic and social development (Art. 1 of the Economic and Social Council Act). At the same time, the legislature has entrusted the ESC (Art.2 ESC Act): 1. to ensure the participation of a wide range of representatives of civil society in social and economic life, strengthening the principles of constitutional democratic and social state; 2. to serve as a permanent institutional form of social and civil dialogue and consultations on economic and social policy between the President of the Republic, the National Assembly and Council of Ministers and the structures of civil society organisations; 3. to meet the legitimate aspirations of the social and economic groups of the civil society, to express their views, opinions and proposals regarding the acts of the legislative and executive powers that affect their interests; 4. to promote the principles of direct democracy by applying the experience of the European Economic and Social Committee and other relevant national and international organisations on the basis of cooperation with them.

implemented and relationships with civil society organisations are being developed, incl. the forms of cooperation.

9. Within such an approach and integrated analysis it is necessary to objectively assess the functioning of:
  - ESC and the "Third Sector" represented in it, as the only (so far) long-term legislative solution in line with the declared objective of the Draft Act;
  - The councils with the participation of civil society organisations created and operated under the relevant provisions of the Administration Act;
  - The accidental created during the civil unrest of the period 2012-2014 councils to various public authorities, incl. the one to the President of the Republic of Bulgaria.
  - Civil society organisations with regard to the effect of their participation in the work of the standing committees of the National Assembly.
10. Such an assessment and further improvement is also needed with regard to the activity and statutory framework of the National Council for Tripartite Cooperation (NCTC) governed by the Labour Code, for which improvement the employers and trade unions represented in the council have already made proposals.
11. As an advisory body established in accordance with the objectives set out in the ESC Act, the case of ESC provides a good example of a representation framework involving structures **of the civil society and civil organisations**. Essentially, the Bulgarian ESC is a direct (but hardly sufficient) expression of Art. 4 para. 2 and Art. 44 para. 3 of the Constitution of the Republic of Bulgaria.<sup>3</sup>
12. Furthermore, ESC involves various association created under different constitutional grounds, which undoubtedly goes beyond the scope of the Draft of the Amendment and Supplementation Act for the Non-Profit Legal Entities Act. It brings together representative organisations of workers and employers and representatives of the civil society from the so called "Third sector", whose representatives make up one third of the composition of ESC.
13. ESC finds that that insufficient reasoning is provided for the proposals for amendments to the Non-Profit Legal Entities Act regarding the establishment of the Council and Fund (§7 of the Draft Act, new chapter three "a"). The establishment of a Council for the Development of the Civil Society threatens to encapsulate the cooperation between government bodies

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<sup>3</sup> Constitution of the Republic of Bulgaria Art. 4.(2) The Republic of Bulgaria shall guarantee the life, dignity and rights of the individual and creates conditions for **free development of the individual and of civil society**.

Art.44 para.3 The law shall establish which organizations shall be subject to registration, the procedure for their termination, and their relationships with the State.

and only a limited range of representatives of the civil society selected by unclear criteria. The functions of the Council, including "examining the results of the achievements" of NGOs, suggest placing the latter under the direct control of the government. The efforts of state authorities should be directed to legislative measures which ensure the freedom of association and implementation of real dialogue with a wide range of citizens.

14. ESC notes that the right of association of citizens can be realized on different legal grounds - political parties and movements<sup>4</sup>, religion<sup>5</sup>, civic associations<sup>6</sup> and trade unions<sup>7</sup>. All of them, however, give expression and are emanations of civil society, for the support and development of which the state should direct its efforts. Thus, the aforementioned provisions of Art. 4 para. 2 of the Constitution refer to all these associations, not only to those specified in Art. 44 of the Constitution, which are subject to regulation by the Non-Profit Legal Entities Act, according to Art. 44 para. 3 of the Constitution of the Republic of Bulgaria. (See also Article 12 of the Constitution of the Republic of Bulgaria<sup>8</sup>).
15. In this regard and in order for the reasoning to be complete, the organizations under Art. 49, para. 1 of the Constitution of the Republic of Bulgaria (trade unions), although subject to registration under §2 of the Transitional and final provisions of the Non-Profit Legal Entities Act, they are not associations as per the meaning of the Non-Profit Legal Entities Act. Employers' organizations (under Art. 49, para. 2 of the Constitution of the Republic of Bulgaria<sup>9</sup>) are associations not of citizens, but of employers, and therefore from a strictly formal legal point of view, such organisations should not be subject to regulation by the Non-Profit Legal Entities Act.

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<sup>4</sup> Constitution of the Republic of Bulgaria, Article 11 (3) **Political parties** facilitate the formation and expression of the political will of the citizens. The regime of formation and dissolution of political parties and the conditions for their activity shall be regulated by the law.

<sup>5</sup> Constitution of the Republic of Bulgaria, Art. 13. (1) Religious denominations shall be free.

<sup>6</sup> Constitution of the Republic of Bulgaria Art. 44.

(1) All citizens shall be free to associate. (3) The law shall establish which organizations shall be subject to registration, the procedure for their termination, and their relationships with the State.

<sup>7</sup> Constitution of the Republic of Bulgaria, Art. 49. (1) Workers and employees shall be free to form trade union organizations and alliances in defence of their interests related to work and social security.

<sup>8</sup> Constitution of the Republic of Bulgaria Art. 12

(1) Associations of citizens shall serve to meet and safeguard their interests. (2) Associations, including trade unions, shall not pursue any political objectives, nor shall they engage in any political activity which is in the domain of the political parties.

<sup>9</sup> Constitution of the Republic of Bulgaria, Art. 49 (par. 2) **Employers shall be free to associate in defence of their economic interests.**

16. ESC does not have information about analyses of the number and characteristics of various civic associations, their specific interests and activities of their representativeness and democratic mandate which is assigned, but believes that there is a need for such analyses. It is undeniable that their work is varied and covers a wide range of issues - from climate, economy and ecology to rights, culture, sports, etc. The general organisational and structural framework of the Non-Profit Legal Entities Act cannot significantly reflect this diversity of objectives, activities, interests and social spheres.
17. In connection with the above, ESC is of the opinion that it is possible to look for an objective framework in which to highlight the social importance and usefulness of such organisations, as the provisions of the Non-Profit Legal Entities Act requiring registration of organisations providing public benefit, do not reflect the representativeness and democratic mandate of the organisations. Whether and to what extent, it is possible to draw analogies and use as an example the institute of representativeness, according to Bulgarian legislation, is also part of this question.
18. This process should also take into consideration the relevant European instruments governing the participation of social partners in important decisions at the EU and the national level - Art. 5 of Regulation 1303/2013 and Regulation 240/2014 (Art. 2 and 3).
19. Based on such a complex analysis it is possible to look for new ways and approaches to upgrade existing forms, opportunities, incl. and financial, but not direct support for civil society organisations through which to create new conditions for the developing the civil society.
20. As a separate and independent opportunity in line with these findings and recommendations may be considered amending the ESC Act as to enable the ESC to create forms, bringing together organisations represented in ESC according to their common interests, objectives and activities, whether or not they are registered as non-profit entities. The above was prompted largely by the model of participation of civil society organisations from the so-called "Third sector" in the work of the ESC.

### **III. Regarding the proposed Council for the Development of Civil Society,**

21. ESC holds the opinion that the activities of such a council will largely overlap with:
  - The role and functions of the ESC, given that it is a body which, through

its overall activity performed partnership with public authorities and especially the executive and the legislative powers (See in Article 50, para. 4 of the Draft Act for Amendment and Supplementation of the Non-Profit Legal Entities Act);

- The role and functions of the National Council for Tripartite Cooperation concerning its line of work as outlined in Art. 3 of the Labour Code;
- The role and functions of other councils established by an Act of the National Assembly.

22. It is unjustified and unreasonable that only organisations falling under the definition of Art. 38, para. 1 of Non-Profit Legal Entities Act can participate in the composition of this new body, i.e. organisations **registered for public-benefit work** (See in Article 50, para. 2 and 3 of the Draft Act).

- Registration for public-benefit work depends on the will of the founding associations, not on external, independent, objective assessments, incl. in accordance with the requirements and criteria of the Act or a delegation of government authority, in this case the Council of Ministers justified on public utility (need).
- The Act for Amendment and Supplementation of the Non-Profit Legal Entities Act does not distinguish between **public utility (need)** and **public-benefit work**. Also, whether an association under the Non-Profit Legal Entities Act will be represented on the proposed Council will not depend on any objective factors but on the will and discretion of the founders.
- The criteria for representation should be regulated by the law, not by secondary legislation - the type of public relations in question yield to long-term regulation, and have a relatively stable nature, and therefore their regulation should be executed in primary legislation (requirement of Article 3, Paragraph 1 of the Law on Normative Acts).
- The Draft Act **automatically excludes** from the range of associations which can be represented in the Council, those who have not been set up with the idea to be registered in the register for public-benefit work under Art. 45 of the Non-Profit Legal Entities Act. Quite another issue is what their actual activity is.

23. **The final result** is that:

- With such a restrictive approach to the associations of citizens under Art. 44 of the Constitution, whose activities are governed by the Non-Profit Legal Entities Act, neither the objectives of the Constitution (Art. 4 para. 2) nor those of the Strategy to support the development of civil society organisations in the Republic of Bulgaria for the period 2012-2015 are achieved. (See in Article 50, para. 4 of the Draft Act). The same fully



- applies to the employers' associations referred to in Art. 49, para. 2 of the Constitution of the Republic of Bulgaria;
- From this body are excluded the associations of citizens - workers who, given their constitutionally defined objectives, we are historically accustomed to call professional or trade unions.
24. Doubts about the dominance of the Council of Ministers over the work of such a body, overt or covert influence on the activities and discretion of the associations involved, are raised by:
- The delegation of the adoption of the Organisation and procedure rules of the Council which needs to be approved by the Council of Ministers (See Article 50, para. 2);
  - The complete obscurity that accompanies the idea of the procedure by which representatives of civil society organisations in the Council will be nominated and elected (See Article 50, para. 3 of the Draft Act).
25. There is total discontinuity between the provisions in Article 50, para. 1 of the Draft Act concerning the objectives of the Council and its functions listed more specifically in Article 50, para. 4 of the Draft Act. The first paragraph directs the activities of the Council to cooperation in the development and implementation of policies to support the development of civil society organisations (of course, all kinds of such organisations, not just those registered for public-benefit work), while the second paragraph directs (and does specifically so) to activities that do not fit into the general framework established by the former paragraph - but rather transcend them without providing justification and reasons for such a broad scope of the functions of the Council.
26. It should be recalled that the Administration Act contains provisions that allow the formation of such councils, which allow the involvement of NGOs<sup>10</sup>. All this leads to the conclusion that under the existing legislation there are sufficient opportunities for achieving the goals proposed in the Draft Act.
27. In conclusion, the creation of a new advisory body bringing together representatives of just one type of civil society organisations will complicate the current situation of already existing and functioning consultative bodies through which the civil society is adequately and broadly represented, including the ESC itself. It is namely in the ESC that the structures of civil society organisations are represented using a

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<sup>10</sup> Administration Act, Art. 21. (1) The Council of Ministers **can establish councils** as permanent **government advisory bodies** providing **coordination in the area of the executive power, as well as cooperation** with other state bodies, local authorities and **NGOs** for determining and implementing state policy in a given area or in crucial issues of public significance.

democratic and transparent procedure. In addition to the above considerations and taking into account the obscure and essentially unrepresentative composition of the proposed consultative body, it is reasonable to expect that it will render conflicting opinions or that it will be impossible to express a common view.

#### **IV. Regarding the proposed Fund for Supporting the Development of Civil Society Organisations**

28. The main problem regarding the Fund arises from the very idea of its creation contained in the Draft Act "*...to ensure the sustainability of the civil sector and the possibility of long-term activities based on priorities and resourcing of the activities of civil society organisations ...* "
29. **The sustainability of association** and the activities of the association are the fruit of the will of the founders, of the coherence and consistency in their behaviour and many other characteristics of the civic organisation. The question arises - is it appropriate from the standpoint of the relevant constitutional provisions for the state to set such goals through the creation of this Fund. The same applies to the resourcing, and in particular the financial **support**, for such an activity.
30. Thus formulated, the main argument of the reasons accompanying the Draft Act creates doubts for:
  - Deviation from the argumentation and reasoning for exercising the right of association under Art. 12 and Art. 44 of the Constitution;
  - Undue influence on the will and activities of civil organisations.
31. More doubts are raised by: the composition of the Fund (Art. 50 e, para. 1), the lack of clarity on how and what majority the Management Board of the Fund can make decisions, provided that there is equal participation of the parties; the idea that the rules adopted by the Management Board are to be approved by the Council of Ministers.
32. The text of the Draft Act does not provide sufficient clarity as to the question in what direction collected funds will be directed, what they will be spent on, i.e. what exactly will be the meaning of the term "support", in view of which the Fund is to be created.
33. The Amendment and Supplementation Act for the Non-Profit Legal Entities Act provides that the representatives of civil society organisations in the Management Board of the Fund, referred to in the Draft Act as non-profit legal entities, are to be elected using a "*transparent and competitive procedure for the nomination and election stipulated in the Rules of organisation and operation of the Fund ...*". At the same time, the Rules is

to be adopted by the Management Board of the Fund, whose composition is formed on the basis of the same Rules. This effectively creates a "vicious circle" and factual impossibility for the election and formation of the Management Board under the terms provided in the Amendment and Supplementation Act, with all consequences ensuing from this fact.

34. The impossibility to adequately form the Management Board leads to the impossibility to create the rest of the management structure - executive director, decision making, implementation of these decisions, etc.
35. However, the same "vicious circle" stems from the formulation of Art. 50 c, para. 2 and 3 on the Council for the Development of Civil Society.
36. As evidenced by Art. 50 h para. 1, item 1, the financing of the Fund will be done partly from the state budget. In other words, the declaration contained in the reasoning of the Draft Act - that it will not have any direct and/or indirect effect on the state budget, is not true. This plan does not contain even the vaguest idea what the size of budget subsidy for the Fund will be, or at least how and on what basis it is to be determined.
37. The proposed statutory framework regulating the operation of the Fund, when viewed in addition to the statutory framework regulating the Council (objectives, authorities, tasks), creates the impression of a particular association between some civil society organisations - registered as entities for public-benefit work - and the state, represented by the Council of Ministers, created and functioning under an Act of the National Assembly.
38. In practice, the Fund will only support non-profit entities registered to carry out public-benefit work. ESC proposes once again to consider whether such an approach is acceptable and justified.

Again the question arises that participation in the Fund will be available only to a narrow circle of associations under Art. 44 of the Constitution of the Republic of Bulgaria, subject to the provisions of the Non-Profit Legal Entities Act and registered as carrying out public-benefit work under the procedure prescribed therein, and that there are no clear criteria for verifying their democratic mandate and no provisions to ensure equitable representation of the major groups of civil society organisations. This structure is contrary to the requirement of Art. 4 para. 2 of the Constitution, which clearly refers to all civil associations.

39. ESC welcomes the initiative of the Ministry of Justice and proposes to initiate a discussion on the main issues relating to the amendments to the Non-Profit Legal Entities Act. The need for such a discussion has increased also due to the critical comments expressed by some civic organisations.
40. This Resolution is part of the practice of ESC to share and demonstrate by means of its acts the need for achieving public consensus on important

public priorities, and such a priority undoubtedly is the structuring and functioning of civil society.

(signed)

**Professor Lalko Dulevski, Ph.D**

**PRESIDENT OF THE ECONOMIC AND SOCIAL COUNCIL**