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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

BOSNIA AND HERZEGOVINA

DRAFT LAW
ON THE SPECIAL REGISTRY AND PUBLICITY
OF THE WORK OF NON-PROFIT ORGANIZATIONS

AND

REASONING FOR THE DRAFT LAW*

**Unofficial translation*

Banja Luka, March 2023

REPUBLIKA SRPSKA

DRAFT

LAW
ON THE SPECIAL REGISTRY AND PUBLICITY OF THE WORK OF NON-PROFIT
ORGANIZATIONS

Article 1.

This law regulates the establishment of a special Registry of the non-profit organizations founded in the Republika Srpska that are financially or in some other way assisted by foreign entities as agents of foreign influence (hereinafter referred to as: Registry) and regulates the conditions and manner of ensuring the publicity of the work, and prescribes other issues related to the work of those organisations.

Article 2.

(1) Non-profit organisations (NPO) refers to associations and foundations, as well as foreign and international non-governmental organizations founded and registered in the Republika Srpska in accordance with the Law on Associations and Foundations of the Republika Srpska ("Official Gazette of the Republika Srpska", no. 52/01 and 42 /05), which are entirely or partially financed by other countries, their bodies or their authorised representatives, international and foreign organisations, foreign citizens or registered non-governmental institutions that are financed from abroad.

(2) The term "foreign entity" refers to the government, the executive body of another country or a foreign political party, a natural person who does not have the citizenship of Bosnia and Herzegovina and with no residence in Bosnia and Herzegovina, or a legal entity or a group of legal entities organised according to the regulations of another country or that are seated in another country.

(3) The government of another country means the executive body of any country apart from Bosnia and Herzegovina.

(4) Foreign political party refers to any political party registered in line with the regulations of another country.

Article 3.

(1) Political action ("Политичко дјеловање") of the NPOs in the sense of this law concerns participation in pre-election campaign of political parties and candidates, collection of funds for political parties and candidates, financing of candidates, that is political parties and implementation of political activities with an aim to frame public opinion for the purpose of accomplishing political goals.

(2) Political activity ("Политичка активност") entails any activity towards bodies, institutions or elected representatives of the Republika Srpska or representatives of the Republika Srpska in the institutions of Bosnia and Herzegovina in terms of formulating, adopting or amending the regulations and policies of the Republika Srpska or in regard to political and public interest.

(3) In terms of paragraphs 1 and 2 of this Article, the NPOs are not allowed to engage in political action nor the performance of political activities.

Article 4.

The term political action does not concern in light of this law any operations/activity in the area of science, culture, social and healthcare protection, sports, consumers' protection, protection of national minorities and persons with disabilities, environmental protection, fight against corruption, philanthropy, volunteerism and information.

Article 5.

The materials of NPOs that are published through electronic media, information and telecommunication networks or distributed in any other way must contain the NPO mark.

Article 6.

The following data are included in the Registry for NPOs:

- 1) name, surname and address, seat and name of the founder;
- 2) act of foundation and decision on registration issued by the competent body;
- 3) statute; and
- 4) NPO bodies.

Article 7.

The registry of NPOs is managed by the Ministry of Justice.

Article 8.

- (1) The NPO files an application for registry inclusion, to be defined by the Minister, with the Ministry of Justice.
- (2) The application is submitted within 15 days following the date of registration of the NPO with the competent body.
- (3) The applicant is obliged to submit addenda to the application within 30 days following any change regarding its activities.

Article 9.

The rules of the general administrative proceeding shall be applied if it is determined during the process of submitting or supplementing the application that either the application or the addenda to it were incomplete.

Article 10.

- (1) The data recorded in the Registry, as well as the documentation on the grounds of which registration is performed, must be available and provided for inspection to the competent inspection body.
- (2) Upon request of the bodies of the Republika Srpska or the competent committee of the National Assembly of the Republika Srpska, the Ministry of Justice of the Republika Srpska submits information on the Registry content.

Article 11.

- (1) An NPO is obligated to submit semi-annual and annual financial reports to the to the Ministry of Justice with a clear indication of who paid it, the amount of allocated funds, the type and amount of fee and revenue expressed in currency or other value, as well as the report on expenditure of funds.
- (2) The Ministry of Justice submits the financial report to the Tax Administration for review/control of financial operations.

Article 12.

The competent inspection body is in charge of performing control over the legality of the work of the NPO.

Article 13.

Regular inspection control of the legality of the work of the NPO is performed once a year.

Article 14.

Under extraordinary circumstances, the inspection control over the legality of the work of an NPO can be performed upon requests of citizens, legal entities, publicly available information, authorities of the Republika Srpska or upon request of the competent committee of the National Assembly of the Republika Srpska.

Article 15.

In the event of NPO acting contrary to the provisions of this law, the Minister of Justice submits a request to the competent court to ban work of the NPO in line with the provisions of the Law on Associations and Foundations of the Republika Srpska.

Article 16.

If the NPO, when performing its activities, acts contrary to the Constitution of the Republika Srpska and the regulations of the Republika Srpska, that is when it acts as an agent of foreign influence to the detriment of the individual and other rights of citizens or incites violence, uses speech of hatred or incites religious or any other intolerance with the aim to accomplish political goals or if the Tax Administration determines irregularities in the financial operation, the Ministry of Justice shall initiate proceedings before the competent court for a ban of work, as well as initiate procedure against responsible representatives in line with the Criminal Code of the Republika Srpska ("Official Gazette of the Republika Srpska", No. 64/17, 104/18 – Decision of the Constitutional Court of the Republika Srpska, 15/21 and 89/21).

Article 17.

The provisions of the Law on Associations and Foundations of the Republika Srpska are applied for issues not regulated under this law.

Article 18.

The NPO shall be fined with BAM 1,000 to 5,000 in the event of:

- 1) failing to mark the promotional material in line with Article 5 of this law,
- 2) failing to submit an application, or provides inaccurate information/data on the application for registration or its addenda foreseen under Article 6 of this law,
- 3) failing to submit addenda to the application of changes within deadline foreseen under Article 8, para 3 of this law;
- 4) failing to submit financial report foreseen under Article 11 of this Law.

Article 19.

(1) The Ministry of Justice will create the Registry within six months from the date of entry into force of this law.

(2) The Minister of justice shall determine and define the application form foreseen under Article 8, para 1, within 60 days from the date of entry into force of this law.

Article 20.

This act shall take effect on the 8th day following its publication in the "Official Gazette of the Republika Srpska".

Number:
Date:

THE PRESIDENT
NATIONAL ASSEMBLY
Ненад Стевандић

REASONING
DRAFT LAW ON THE SPECIAL REGISTER
AND THE PUBLICITY OF THE WORK OF NON-PROFIT ORGANIZATIONS

I CONSTITUTIONAL BASIS

The constitutional basis for enactment of the Law contained is in Amendment XXXII to pts. 5), 6) and 17) of the Article 68. of the Constitution of Republic Srpska by which it is prescribed that the Republic shall regulate and ensure: the exercise and protection of human rights and freedoms (5), ownership and obligation relations and protection of all forms of ownership, legal status of enterprises and other organisations, their associations and chambers, those economic relations with foreign countries which have not been transferred to the institutions of Bosnia and Herzegovina (6), market relations and planning, and financing, to enable the Republic to exercise its rights and perform its duties (17).

**II COMPLIANCE WITH THE CONSTITUTION, THE LEGAL SYSTEM AND THE RULES OF
NORMATIVE AND LEGAL TECHNIQUES**

According to the opinion of the Secretariat for Legislation of RS Number: 22.02-020-888/23 from the 23. March 2023, the constitutional basis for the enactment of the law is contained in Article 31, paragraph 2 of the Constitution of the Republic of Srpska, which stipulates that any political organisation or activity threatening the democracy, jeopardising the integrity of the Republic, violating the freedoms and rights guaranteed by the Constitution and any incitement to ethnic, racial or religious hatred and intolerance shall be prohibited. In addition, the constitutional basis is included in Amendment XXXII pt. 5 and 18 on Article 68 of the Constitution of the Republic of Srpska that the Republic shall regulate and ensure: the exercise and protection of human rights and freedoms (5) and other relations of interest to the Republic, in accordance with the Constitution (18) while Article 70 paragraph 1. point 2) of the Constitution prescribes that the National assembly shall pass laws, other regulations and general enactments.

As a reason for the adoption of this law, the initiator cited the fact that to date, a special law has not regulated the area of publicity of the work of non-profit organizations, their political activity, publication of financial reports, keeping business books, as well as supervision of the legality of work and other provisions on the work of non-profit organizations.

The Secretariat for Legislation of RS made certain suggestions in order to contribute to a more precise determination of the content of certain provisions of the Draft Law. In the Explanation of the Draft Law, the legal drafters pointed out that the Draft is available to the public through the official website of the Ministry of Justice.

Since there is a constitutional basis for the adoption of this law, as well as the fact that it is harmonized with the Rules for Drafting Laws and Other Regulations of the Republic of Srpska ("Official Gazette of the Republic of Srpska", number 24/14), the opinion is that the Draft Law on the Special Register and the Publicity of the Work of Non-profit organizations can be referred to the Government of the Republic of Srpska for consideration.

III CONFORMITY WITH THE LEGAL ORDER OF THE EUROPEAN UNION

According to the Opinion of the Ministry for European Integration and International Cooperation No. 17.03-020-893/23 of 23 March 2023, after reviewing the regulations of the European Union and analyzing the Draft Law on the Special Register and Publicity of the Work of Non-Profit Organizations, no secondary binding sources of EU law have been established relevant to the subject of the submitted draft. That is why the Declaration of Conformity has the rating "Not applicable".

The initiator of the Draft Law is informed that the matter in question is partly regulated by the Council of Europe through Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organizations in Europe¹.

IV REASONS FOR THE ENACTMENT OF THE LAW

The Law on Associations and Foundations of the Republika Srpska regulates issues of establishment, registration procedure, internal organization and termination of work, but does not regulate the area of publicity of the work. To date, the Republika Srpska has not regulated by special law the area of publicity of the work of non-profit organizations, their political activity, publication of financial reports, keeping business books, as well as supervision of the legality of work and other provisions on the work of non-profit organizations.

The absence of a law that prescribes the area of publicity of the work of non-profit organizations, their political activities, publication of financial reports, keeping business books, as well as supervision of the legality of work and other provisions on the work of non-profit organizations, creates the prerequisites for the collapse of the legal system and constitutional arrangement of the Republic of Srpska and provokes harmful consequences on the work of organs and organizations of the Republic of Srpska.

V JUSTIFICATION OF THE PROPOSED SOLUTIONS

Article 1 prescribes the establishment of a special Register of non-profit organizations established in the Republic of Srpska that financially or otherwise helps foreign entities and regulates the conditions and manner of ensuring the publicity of the work and prescribes other issues related to the work of these organizations.

Article 2 prescribes what is considered a non-profit organization, a foreign entity, the government of another country and a foreign political party in terms of this law. Thus, non-profit organizations are understood as associations and foundations, as well as foreign and international non-governmental organizations established and registered in the Republic of Srpska in accordance with the Law on Associations and Foundations of the Republic of Srpska, which are fully or partially financed by other states, their bodies or their authorized representatives, international and foreign organizations, foreign nationals or registered non-governmental organizations financed from abroad. A foreign subject is understood as the government, executive body of another country or a foreign political party, a natural person who does not have the citizenship of Bosnia and Herzegovina and resides in Bosnia and Herzegovina or a legal entity or a group of legal entities that is organized according to the regulations of another country or that has its headquarters in another country. to the state. Government of another country means the executive authority of every country except Bosnia and Herzegovina, and foreign political party means any political party registered under the regulations of another country.

Article 3 prescribes what is considered political action and political activities of non-profit organizations. In this sense, political activity means participation in the pre-election campaign of political parties and candidates, fundraising for political parties and candidates, financing of candidates, i.e. political parties and the implementation of political activity with the aim of forming public opinion in order to achieve political goals, and political activity means any activity towards bodies, institutions or elected representatives of the Republic of Srpska or representatives of the Republic of Srpska in the institutions of Bosnia and Herzegovina in the sense of formulating the adoption or change of regulations and policies of the Republic of Srpska or in terms of political and public interest. Non-profit organizations are not allowed to engage in political activity or political activity.

¹ ¹ Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organizations in Europe.

Article 4 stipulates that political activity in the sense of this law shall not consider action in the fields of science, culture, social and health care, sports, consumer protection, protection of the rights of national minorities and persons with disabilities, environmental protection, fight against corruption, philanthropy, volunteerism and information.

Article 5 stipulates that the printed materials of non-profit organizations that are published through electronic media, information and telecommunication networks or distributed in another way must be marked as a non-profit organization.

Article 6 prescribes that data for non-profit organizations be entered in the Register, namely: name, surname and address, that is, the name and seat of the founder, the founding act and the registration decision issued by the competent authority, the statute and the bodies of the non-profit organization.

Article 7 stipulates that the Register of Non-Profit Organizations is managed by the Ministry of Justice.

Article 8 stipulates that a non-profit organization submits an application to the Ministry of Justice on the application form prescribed by the minister. The application is submitted within fifteen days from the date of registration with the competent authority. The applicant is obliged to submit an amendment to the application regarding all changes in his activity within 30 days from the date of the change.

Article 9 stipulates that if in the process of submitting or supplementing the application it is determined that the application or supplement is incomplete, the rules of the general administrative procedure will be applied.

Article 10 stipulates that the data entered in the Register, as well as the documentation on the basis of which the entry is made, must be available and made available to the competent inspection authority, and the Ministry of Justice, upon request by the authorities of the Republic of Srpska or the competent committee of the National Assembly of the Republic of Srpska, shall provide information on the state in the Registry.

Article 11 stipulates that the non-profit organization is obliged to submit to the Ministry of Justice a half-yearly and annual financial report with an indication of the payer, the amount of funds transferred, the type and amount of compensation and income expressed in money or other value, as well as a report on the use of funds. Ministry of Justice, with the aim of performing inspection supervision, submits the financial report to the Tax Administration.

Article 12 stipulates that the supervision of the legality of the non-profit organization's work is carried out by the competent inspection body.

Article 13 stipulates that regular inspection supervision over the legality of the work of a non-profit organization is carried out once a year, and Article 14 that exceptionally extraordinary inspection supervision over the legality of the work of a non-profit organization is carried out upon petitions from citizens, legal entities, publicly available information, authorities of the Republic of Srpska or at the request of the competent committee of the National Assembly of the Republic of Srpska.

Article 15 stipulates that in the event that a non-profit organization acts contrary to the provisions of this law, the Minister of Justice submits a request to the competent court for a ban on carrying out work in accordance with the provisions of the Law on Associations and Foundations of the Republic of Srpska.

Article 16 stipulates that in the event that a non-profit organization acts contrary to the Constitution of the Republic of Srpska and the regulations of the Republic of Srpska to the detriment of individual and other rights of citizens, or incites violence, uses hate speech, or incites religious or other intolerance with the aim of achieving political goals, or if the Tax Administration determines

irregularities in financial operations, the Ministry of Justice initiates the procedure for banning the performance of work, as well as the procedure against the responsible persons in accordance with the Criminal Code of the Republic of Srpska.

Article 17 stipulates that the provisions of the Law on Associations and Foundations of the Republika Srpska shall apply to matters not prescribed by this law.

Article 18 prescribes misdemeanour provisions.

Article 19 stipulates the obligation of the Ministry of Justice to establish the Registry within six months from the date of entry into force of this law, as well as the adoption of the application form.

Article 20 prescribes the entry into force of the law.

VI ASSESSMENT OF THE IMPACT OF LAWS, OTHER REGULATIONS AND GENERAL ACTS ON THE INTRODUCTION OF NEW, AMENDMENT OR ABOLITION OF EXISTING FORMALITIES THAT BURDEN BUSINESS

According to the Opinion of the Ministry of Economy and Entrepreneurship, number: 18.06-020-887/23 dated 23.03.2023 reviewing the Draft Law on the Special Register and the Publicity of the Work of Non-Profit Organizations and the filled-in Form 1 of the impact assessment of regulations, the Ministry of Economy and Entrepreneurship notes that the processor has carried out the following methodological actions of assessing the impact of regulations:

As the processor states, the subject area has not been normatively regulated until now, and a problem has been observed of the lack of publicity of the work of non-profit organizations, their political activities, publication of financial reports, etc., which are financed or otherwise assisted by foreign entities. The goal to be achieved by adopting this draft is to increase the transparency of the work of non-profit organizations.

The initiator states that the Draft Law has no impact on the republic budget and budgets of local self-government unit, also states that there is no impact on the social component or on the environment. In connection with the assessment of the impact of formalities, the Draft Law introduces a new formality, Application for registration in the Register of data on a non-profit organization.

Regarding the consultation process, the initiator states that interdepartmental consultations were conducted. The Ministry of Justice is responsible for the implementation of the law, and the initiator states that the control will be carried out by the competent control authorities.

The Ministry of Economy and Entrepreneurship determined that the initiator, when implementing the regulatory impact assessment process, acted in accordance with the Decision on Regulatory Impact Assessment.

VII PUBLIC PARTICIPATION AND CONSULTATION IN LAW-MAKING

In accordance with Article 36, paragraph 1, point 9) of the Rules of Procedure of the Government of the Republic of Srpska ("Official Gazette of the Republic of Srpska", number 123/18) and Guidelines for consultations in the drafting of regulations and other general acts ("Official Gazette of the Republic of Srpska", No. 86/22) the drafter determined that this law is of interest to the public.

VIII FINANCIAL RESOURCES AND ECONOMIC JUSTIFICATION OF LAW ENACTMENT

The implementation of this law does not require additional financial resources from the budget of the Republic of Srpska.