

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Strasbourg, 15 October 2025

CDDEM(2025)14rev2

STEERING COMMITTEE ON DEMOCRACY (CDDEM)

UPDATING RECOMMENDATION CM/Rec(2007)14 OF THE COMMITTEE OF MINISTERS TO MEMBER STATES ON THE LEGAL STATUS OF NON-GOVERNMENTAL ORGANISATIONS IN EUROPE

DRAFT EXPLANATORY MEMORANDUM

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EXPLANATORY MEMORANDUM TO
RECOMMENDATION CM/REC(2026) XX
OF THE COMMITTEE OF MINISTERS TO MEMBER STATES
ON THE LEGAL STATUS OF CIVIL SOCIETY ORGANISATIONS IN EUROPE

INTRODUCTION

1. For several decades the Council of Europe has worked to reinforce the legal framework for civil society in Europe. This work has included the adoption of the European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations (Convention No. 124), which is the only binding international legal instrument to date on these organisation; Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organisations in Europe (Recommendation CM/Rec(2007)14) and Recommendation CM/Rec(2018)11 on the need to strengthen the protection and promotion of civil society space in Europe.
2. The implementation of Recommendation CM/Rec(2007)14 has been reviewed by the European Committee on Legal Cooperation (CD-CJ) in 2010 concerning responses of 17 member States to a questionnaire and by the Council of Europe's Expert Council on NGO Law in 2021 in its study, The Legal Space for Non-governmental Organisations in Europe. In the former, certain legislative or policy changes in members states were cited but, while noting that most had translated it, the conclusion was that the Recommendation did not seem to have been disseminated other than by being made available on the concerned Ministries' websites. The latter confirmed that the Recommendation was still not widely known and that much still remained to be done to ensure awareness and implementation of its important standards.
3. Annual reports of the Secretary General of the Council of Europe, reports of the Commissioner for Human Rights and Resolutions of the Parliamentary Assembly of the Council of Europe, among others, have raised serious concerns on the position of CSOs and the many challenges faced by CSOs and civil society more generally as threatening their existence and continued operation.
4. In November 2023 the Committee of Ministers instructed the Steering Committee on Democracy (CDDEM) to update Recommendation CM/Rec(2007)14, for which purpose the latter established the working group on civil society participation (GT-CS).
5. The GT-CS met twice in both 2024 and 2025 to prepare the draft updated recommendation.
6. Approved on XX 2025-by the CDDEM, the text of Recommendation CM/Rec (2026) XX was adopted by the Committee of Ministers on XX 2026, at the XX meeting of the Ministers' Deputies.
7. This instrument targets national authorities and the CSOs themselves as well as the private sector and other stakeholders. It recommends standards to shape legislation and practice vis-à-vis CSOs, as well as the conduct and activities of the CSOs themselves in a democratic society based on human rights and the rule of law.
8. This instrument embodies a change in terminology from that in Recommendation CM/Rec(2007)14 in that the term CSOs is used in preference to non-governmental organisations, The change in terminology reflects current practice at the regional and international law, which recognises the nature of the organisations concerned and, in particular, the fact that they can be wrongly perceived as contrary to governmental bodies in member States rather than entities established by individuals independently of such bodies.

9. None of the provisions of this Recommendation can be interpreted as implying a limitation of a right or safeguard already recognised by a member State vis-à-vis the CSOs, or as preventing a member State from recognising wider rights and safeguards.

PREAMBLE

10. The success of efforts to bring about societies committed to democracy and human rights in all the member States of the Council of Europe owes much to the activities of CSOs, whether as formal entities or less formal ones. The Preamble recognises that their contribution has been of historical importance but there is a need to ensure that they can continue to play a significant role in safeguarding and strengthening this commitment so that democracy, human rights and the rule of law are more effectively secured. The importance of their role – which entails not only advocacy in support of implementation of the relevant standards but also monitoring and documenting shortcomings in observing them - has been recognised at the universal level in 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 (UN Declaration on Human Rights Defenders) and at the regional level most recently in the Reykjavík Declaration “United around our values” and the ensuing Reykjavík Principles for Democracy adopted at the Fourth Summit of Heads of State and Government of the Council of Europe (Reykjavík, 16-17 May 2023). Without the extensive campaigning and educational work of CSOs, many would be unaware of, and uninvolved in, the decision making that will affect them and the societies in which they live. Although this contribution to matters of public choice is vital, their part in developing and maintaining a rich cultural life and promoting and securing the social well-being of all in society is equally indispensable.

11. Moreover CSOs, in view of their continuing contribution in the fields of culture, democracy, human rights and social justice, are inevitably central to fulfilment of the goals for which the United Nations and the Council of Europe were established. They do so through their work in individual countries, whether as partners of the two organisations or in reliance on the standards that they have elaborated, and through their participation in international and regional fora.

12. At its Fourth Summit in May 2023, Heads of State and Government of the Council of Europe adopted the Reykjavik Principles for Democracy. In this document, they reaffirmed that civil society is a prerequisite for a functioning democracy and committed themselves to supporting and maintaining a safe and enabling environment in which civil society, as well as human rights defenders, can operate free from hindrance, insecurity and violence.

13. The Preamble recognises the diverse ways in which CSOs can operate (varying in their size, finances and reliance on volunteers or employed staff), not least because this needs to be borne in mind when establishing the legal framework applicable to them and determining the support (both direct and indirect) that public authorities can provide towards ensuring the success of their undertakings. The list here is illustrative of this diversity and should not be regarded as exhaustive. However, the crucial role of CSOs in providing support for people in vulnerable situations during armed conflict and afterwards needs to be especially recognised.

14. Although CSOs play an essential part in securing human rights, the ability to establish and operate those that are membership-based organisations is itself a human right, guaranteed at the regional level for everyone by Article 11 of the European Convention on Human Rights (the European Convention) and for particular groups or forms of organisation by Article 5 of the European Social Charter (revised), Articles 3, 7 and 8 of the Framework Convention for the Protection of National Minorities and Article 3 of the Convention on the Participation of Foreigners in Public Life at Local Level. Furthermore, the ability of CSOs to contribute to public life and to express a wide range of views is itself a key element of the pluralism that is the hallmark of a true democracy.

15. This Recommendation is particularly concerned with the legal and fiscal framework required to ensure that CSOs can continue to make their various contributions to public and social life. It also draws attention to the limitations on objectives and activities that CSOs must observe, particularly those limitations which preclude any objectives and activities that are antidemocratic or are concerned with the making and distribution of profits. In addition, it highlights responsibilities that can arise from receiving public support for their activities as well as underlining their responsibility to be transparent and to observe the generally applicable law.

16. Self-regulation is particularly emphasised as the best way to ensure ethical, responsible conduct by CSOs. This can be achieved in various ways, such as through adherence to and observance of codes of conduct elaborated by CSOs themselves and participation in accreditation schemes for evaluating their governance arrangements and the effectiveness of their programmes; see, e.g., Tacso, Good Governance and Self-Regulation Models for Civil Society Organizations and Civicus, Accountability for Civil Society by Civil Society: A Guide to Self-Regulation and Initiatives. The emphasis on any regulation being risk-based and proportionate is intended to ensure that, where CSOs are subjected to regulation, the measures concerned address problems whose existence has been substantiated, only apply to those CSOs with activities that can give rise to them and, in all cases, the requirements to be fulfilled are no more than is strictly necessary for this purpose.

17. This Recommendation reflects and builds upon the elaboration given to broadly framed guarantees of freedom of association and other human rights and fundamental freedoms that has been provided in rulings of the European Court of Human Rights (the European Court) and the views of the UN human rights treaty bodies. It has also drawn upon the formulation of standards specifically concerned with CSOs or that are of particular relevance for them.

18. Although most CSOs are established within, and restrict their operations to, the territory of an individual member State, there are many CSOs which have objectives of relevance to two or more member States and which also have a membership which is international in character. Convention No. 124 was adopted in order to facilitate the operation of the latter CSOs. While implementation of this Recommendation could also contribute to this objective, the absence from it of any requirement to recognise the legal personality of CSOs established in other member States means that the further enlargement of the number of contracting parties to Convention No. 124 remains highly desirable.

19. Despite the existence of standards for their creation and operation, CSOs have been subject to increasing restrictions in many Council of Europe member States, creating an environment for them that is often hostile rather than enabling. These restrictions – which may be targeted at particular CSOs but which can have a chilling effect on many others – have been documented in the annual reports of the Secretary General of the Council of Europe and the work of the Council of Europe Commissioner for Human Rights, as well as in the opinions, reports or studies of bodies such as the Parliamentary Assembly of the Council of Europe, the Venice Commission, the Expert Council, the Human Rights Council of the United Nations, ODIHR, the European Union Agency for Fundamental Rights (“FRA”) and three United Nations Special Rapporteurs (namely, those on human rights defenders, the promotion and protecting human rights and fundamental freedoms while countering terrorism and the rights to freedom of peaceful assembly and of association).

20. The need to remove unnecessary, unlawful or arbitrary restrictions has already been recognised in Recommendation CM/Rec(2018)11, which refers to civil society in general. However, as many of these restrictions are concerned with the formation, funding, operation, regulation and continued existence of CSOs, as well as with the way in which their nature is sometimes characterised and their activities are targeted through the abusive use of litigation and surveillance, there is a need to restate and reinforce the standards applicable to these matters so that they are assured of a safe and enabling environment in which they can operate safely without stigmatisation and fear of reprisals. In addition, the updating and replacement of Recommendation CM/Rec(2007)14 by this Recommendation provides an opportunity to draw attention to the differences in size and scope of CSOs – ranging from ones focused on self-help and

service provision to advocacy and acting as watchdogs - and the need to take account of the reliance of many of them on volunteers for the pursuit of their activities.

21. The Preamble concludes by highlighting that the implementation of this Recommendation will require member States to take full account of the provisions standards that it sets out in the Appendix – as well as of the case law of the European Court, relevant recommendations and declarations of the Committee of Ministers and other related international standards – in all their legislation, policies and practices that have any bearing on the formation, operation and termination of CSOs. Moreover, as an elaboration of more general commitments, these standards should provide a useful basis for assessing how satisfactory have been the steps taken to fulfil those commitments and this should be undertaken on a regular basis after its adoption.

22. Furthermore, implementation of this Recommendation will only be fully successful through the widest possible dissemination of the standards set out in it. This would need them to be made available not only to all who have some role in regulating CSOS and CSOs themselves but also to the public which (a) has a legitimate interest in the work of CSOs in particular as beneficiaries of their activities and (b) is the source of members for those that are membership-based. Dissemination could be facilitated through the translation of the Recommendation into national and, where appropriate, regional or minority languages of member States as defined in Article 1 of the European Charter for Regional or Minority Languages.

23. In addition, realisation of the standards will require them to be used in the training of all officials concerned with the activities of CSOs.

24. Finally, implementation of the Recommendation could also benefit from a greater appreciation of the nature and needs of CSOs and member States should, therefore, support research to that end.

Appendix to Recommendation CM/Rec(2026)XX

I. BASIC PRINCIPLES

Paragraph 1

25. There is no universal definition of CSO, a term which can be used to cover a wide range of bodies operating within both states and intergovernmental organisations. The definition adopted for the purpose of the Recommendation emphasises certain qualities regarded as constituting the essential character of these bodies, namely, that their establishment and continued operation is a voluntary act (i.e., a matter of choice for those founding and belonging to them and, in the case of non-membership bodies, those entrusted with their direction), that – as underlined in paragraph 6 of the Recommendation - they are genuinely self-governing rather than acting under the direction of public authorities (such as those sometimes referred to as “GONGOs”) and that their principal-objective is not to generate profits from the activities that they undertake. The latter objective does not, however, preclude them from promoting the interests of their members, as is the case of business associations, employers’ organisations and trade unions.

26. CSOs can go under various names, such as associations, charities, foundations, non-profit corporations, societies and trusts. However, it is their actual nature rather than their formal designation that will bring them within the scope of the Recommendation. Thus, even the designation of a particular entity as “public” or “para-administrative” should not mean that it is to be regarded as integrated within the structures of the State and thereby prevent it from being treated as a CSO if that is actually an accurate reflection of its essential characteristics; see, e.g., *Chassagnou v. France*, no. 25088/94, 29 April 1999, at paras. 100-102 and *Mytilinaios and Kostakis v. Greece*, no. 29389/11, 3 December 2015, at paras. 36-46.

27. Political parties are excluded from the definition as in many member States they are the subject of separate provisions from those applicable to CSOs generally. However, this exclusion does not preclude states from choosing to treat such parties as CSOs.

28. Moreover, those professional bodies established by law to which members of a profession are required to belong for regulatory purposes are also likely to fall outside the definition on account of the failure to comply with the requirement of voluntariness and freedom from direction by public authorities. Indeed, the existence of rule-making, disciplinary and administrative responsibilities for regulating a profession has led the European Court to consider that a professional association was not an association within the meaning of Article 11 of the European Convention; see *Le Compte, Van Leuven and De Meyere v. Belgium* [P], no. 6878/75, 23 June 1981, at paras. 63-66. However, this exclusion does not prevent states from treating them as CSOs. Furthermore, the voluntary aspects of certain of their activities could be sufficient to bring sub-entities that they establish within the definition, e.g., the human rights committee of a bar association. Also, an association to promote the professional interests and activities of members of a profession as opposed to one regulating its activities will be an entity to which Article 11 of the European Convention and this Recommendation applies. See in this connection Article 4(4) of the Council of Europe Convention for the Protection of the Profession of Lawyer (ETS No. 226).

Paragraph 2

29. The diversity of CSOs is reflected in the fact that they can be both membership and non-membership-based bodies, echoing the distinction in the explanatory memorandum on Convention No. 124 between “associations” (“a number of persons uniting together for some specific purpose”) and “foundations” (“an identified property devoted to a given purpose”). Furthermore, the persons establishing CSOs can be natural or legal, including a combination of these, and CSOs themselves (uniting several such bodies to pursue aspects of their objectives collectively).

Paragraph 3

30. In many instances, as the European Court recognised in cases such as *Sidiropoulos and Others v. Greece*, no. 26695/95, 10 July 1998, at para. 40, *Gorzelik and Others v. Poland* [GC], no. 44158/98, 17 February 2004, at para. 88, and *Jafarov v. Azerbaijan*, no. 27309/14, 25 July 2019, at para. 54, the right to act collectively would be deprived of any meaning without the possibility of creating a legal entity in order to pursue the objectives of those establishing the organisation concerned. The absence of this possibility will thus result in a violation of Article 11 of the European Convention. Nonetheless those establishing CSOs may find that their objectives, particularly if they are relatively limited in scope or duration, can be achieved through a less formal structure for which there is no need for them to have legal personality. This structure could, e.g., be an *ad hoc* committee of individuals who meet in person to plan activities which they then pursue, with any financial transactions needed for them being carried out through the banking facilities of those involved.

31. It should, therefore, be generally open to those forming CSOs (or their members if the decision is taken after they have been established) to choose whether they should become an entity which has legal personality or they will be (or remain) one that has no formal legal status. Informal entities (i.e., those having some form of organisational structure as opposed to being a mere gathering of persons from time to time) can be particularly important for grassroots, cross-border and youth initiatives, as well as for those who have had to flee their country.

32. However, this paragraph does not preclude the law of a member State from conferring legal personality as an automatic consequence of the establishment of a CSO, i.e., without the need for any formal approval before this status can be obtained.

33. Paragraph 3 also recognises that CSOs can also exist only as virtual entities (albeit through some form of organised structure), with the exchange of ideas about their possible activities and the planning of them taking place exclusively in the online sphere, even if the pursuit of their activities is not limited to the online

sphere. Such entities may be ones without legal personality but member States would not be precluded from allowing them to acquire it.

Paragraph 4

34. Although many CSOs may have a focus that is local or regional in character, the objectives of some CSOs may be best pursued at the national or international level and in the case of others there may be a need to work at several or even all of these levels. The choice of level(s) at which to operate should always be a matter for those founding and belonging to the organisations concerned. It may well be that those belonging to a CSO will wish to change the level(s) at which it operates and they should be free to make such a change.

Paragraph 5

35. Freedom of expression is especially important for CSOs in the pursuit of their objectives. However, although some human rights and freedoms are only enjoyed by those who found and belong to CSOs (e.g., *X and Church of Scientology v. United Kingdom* (dec.), no. 7805/77, 5 May 1979 concerning freedom of religion, there are many others which contribute to their ability to operate effectively, notably, the prohibition on discrimination (e.g., *Bakradze v. Georgia*, no. 20592/21, 7 November 2024), the right to a fair hearing (e.g., *Croatian Golf Federation v. Croatia*, no. 66994/14, 17 December 2020), the prohibition on retrospective criminal liability or penalties (e.g., *Kasymakhunov and Saybatalov v. Russia*, no. 26261/05, 14 March 2013), the right to respect for private life and correspondence (e.g., *Kobaliya and Others v. Russia*, no. 39446/16, 22 October 2024), the right to freedom of peaceful assembly (*Helsinki Committee of Armenia v. Armenia*, no. 59109/08, 31 March 2015), the right to peaceful enjoyment of possessions (e.g., *Chassagnou and Others v. France* [GC], no. 25088/94, 29 April 1999) and the right to an effective remedy (e.g., *Bulgarian Orthodox Old Calendar Church and Others v. Bulgaria*, no. 56751/13, 20 April 2021).

36. Furthermore, a failure to respect the human rights and freedoms of those who belong to membership-based CSOs – especially the right to life (e.g., *Association “21 December 1989” and Others v. Romania*, no. 33810/07, 24 May 2011), the right to liberty and security of the person (e.g., *Rashad Hasanov and Others v. Azerbaijan*, no. 48653/13, 7 June 2018), the right to freedom of thought, conscience and religion (e.g., *Christian Religious Organization of Jehovah’s Witnesses in the NKR v. Armenia*, no. 41817/10, 22 March 2022), the right to freedom of association (e.g., *Zakharova and Others v. Russia*, no. 12736/10, 8 March 2022), the right to political participation (e.g., *Teslenko and Others v. Russia*, nos. 49588/12, 5 April 2022) and freedom of movement (e.g., *Democracy and Human Rights Resource Centre and Mustafayev v. Azerbaijan*, no. 74288/14, 14 October 2021) – will often undermine the pursuit by those organisations of their objectives. Any legislative, policy, or practical measures amounting to restrictions on the establishment and continued operation of CSOs should, therefore, be consistent with the universally and regionally guaranteed rights and freedom applicable to them.

Paragraph 6

37. Although subject to the law like everyone else, the freedom from direction by public authorities is essential to maintain the “non-governmental” nature of CSOs. This freedom should extend not only to the decision to establish a CSO and the choice of its objectives but also to the way it is managed and the focus of its activities. In particular there should be no attempts by public authorities – whether directly or indirectly - to make CSOs effectively agencies working under their control (see the finding of a violation of Article 11 of the European Convention in *Sigurdur A Sigurjónsson v. Iceland*, no. 16130/90, 30 June 1993 as a result of an attempt to use a taxi association to administer the provision of taxi services) or to interfere with the choice by a CSO of its leaders or representatives (see the finding of violations of freedom of religion under Article 9 of the European Convention, which imposes a similar obligation to Article 11 in this regard, in *Serif v. Greece*, no. 38178/97, 14 December 1999, *Hasan and Chaush v. Bulgaria* [GC], no. 30985/96, 26 October 2000 and *Metropolitan Church of Bessarabia and Others v. Moldova*, no. 45701/99, 13 December 2001 following such interferences).

38. This does not mean that public authorities cannot choose to provide particular assistance to CSOs pursuing objectives that they consider to be of particular importance. However, those CSOs should be free to decide whether to accept or continue to receive such assistance. Furthermore, neither legislation nor other forms of pressure should be used to make CSOs undertake particular activities considered to be of public importance. Paragraph 6 of the Recommendation must be read with paragraphs 7 and 9 and those on public support and accountability, and does not preclude the regulation of CSOs in a manner consistent with the provisions set out in the Recommendation.

Paragraph 7

39. The conferment of legal personality on CSOs need not involve the grant of any greater legal powers than those enjoyed by other legal persons; the most essential ones for their operation are likely to be those inherent in such personality, namely, the ability to enter into contracts related to the pursuit of their objectives, to make payments for the goods and services thereby obtained, particularly through the operation of bank accounts, and the ability to own property. However, it ought always to be possible to confer greater capacities on certain types of CSOs and indeed this may be essential for the pursuit of their objectives. Thus, additional rights that have been recognised as necessary for CSOs include: the observation of trials and other proceedings;¹ participation in public affairs and criticism of governmental actions;² promotion of human rights ideas;³ provision of advice;⁴ provision of information to international organisations;⁵ and seeking information⁶. Nonetheless, a CSO cannot claim that it should have particular capacities conferred on professional association to which persons having a particular status may be required to belong even though the former may have similar objectives to the latter; see *Adefdromil v. France* (dec.), no. 20536/17, 1 February 2024, which concerned the special standing in the administrative court of a specific association of military personnel.

40. At the same time, the enjoyment of legal capacities carries with it the responsibility to act within the law and CSOs should not expect any exemption from the application of the administrative, civil and criminal law obligations and sanctions that are generally applicable to legal persons. Such obligations will include ones arising from the employment, health, safety and other requirements relating to employees and volunteers. The application of the general law to CSOs does not, as paragraphs 8 and 63 of the Recommendation makes clear, preclude the extension to CSOs of financial and other benefits not available to other legal persons. Nor does it preclude them being subject to specific obligations and sanctions relating to matters covered by this Recommendation provided that these are consistent with its provisions, the European Convention and other human rights standards. Furthermore, all obligations and sanctions to which CSOs are subject should be consistent with the quality of law requirements established by the European Court; see, e.g., *Andrey Rylkov Foundation and Others v. Russia*, no. 37949/18, 18 June 2024.

Paragraph 8

41. In view of the contribution that CSOs can make to the achievement of a wide range of societal objectives, it is appropriate to have a legal and fiscal framework applicable which encourages and facilitates their establishment and continued operation. This entails a flexible regime governing the acquisition of legal

¹ UN Declaration on Human Rights Defenders, Art. 9(3)(b) and Document of the OSCE Moscow Meeting, 1991, para. 43.

² Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters ("Aarhus Convention"), Arts. 6-8, European Charter on the Statute for Judges, Art. 1.8, UN Declaration on Human Rights Defenders, Art. 8 and Document of the OSCE Moscow Meeting, 1991, para. 43.

³ UN Declaration on Human Rights Defenders, Art. 7.

⁴ UN Declaration on Human Rights Defenders, Art. 9(3)(c).

⁵ UN Declaration on Human Rights Defenders, Art. 9(4).

⁶ Aarhus Convention, Art. 4 and rulings of the European Court such as *Magyar Helsinki Bizottság v. Hungary* [GC], no. 18030/11, 8 November 2016 and *Centre for Democracy and the Rule of Law v. Ukraine*, no. 10090/16, 26 March 2020.

personality and non-taxable grants, direct relief from certain taxes on income and expenditure and the provision of incentives to taxpayers to support the activities of CSOs (see further paragraphs 59-64 of the Recommendation). It likewise entails an approach towards the regulation of their activities that starts from the premise that self-regulation should be the preferred approach but ensures that, where formal measures are required, these are not overly strict, heavy-handed or burdensome – with due account being taken of the activities, size and capacities of those being regulated - and the taking of appropriate measures of protection so that the CSOs and those involved in them are not subjected to harassment, intimidation, stigmatisation and violence on account of either their objectives or the pursuit of them, with effective investigation and prosecution of any offences committed and appropriate redress for the victims concerned. An illustration of what such protection entails in one sector can be seen in the Guidelines on protecting NGO work in support of refugees and other migrants. These were developed by the Expert Council on NGO Law of the Conference of INGOs with a view to ensuring that laws, policies and practices concerned with human trafficking, migrant smuggling and the treatment of refugees and other migrants do not encroach on the legitimate activities of CSOs.

42. The safe and enabling environment to be established for CSOs should also be one that takes full account of the fact that they exist and operate both offline and online. Such an environment includes the protection of a CSO/s digital freedoms, including the confidentiality of online communications. In addition, due account should be taken in framing the legal and fiscal environment of the differences in scale of CSOs, with many of them being small or volunteer-based organisations and some being established by young people.

Paragraph 9

43. The freedom to establish CSOs is essentially civil and political in character rather than an economic right. So CSOs should not be established with the principal objective of making profits from their activities. Any profits accruing from those activities should be ploughed back into the pursuit of their objectives rather than be distributed to their members or founders. Nevertheless, this does not mean that membership-based CSOs cannot exist to advance the interests of their members, securing moral, physical, social or spiritual benefits for them and even economic ones such as through improved labour conditions.

Paragraph 10

44. The paragraph recognises the need for some regulatory controls over the establishment and continued operation of CSOs. However, it is essential that such controls are not applied in either a mistaken or improper manner. Fundamental safeguards against such a possibility occurring will be provided by the administration being prepared itself to review decisions that it has taken and by those decisions being subject to the supervisory control of the courts acting in conformity with the requirements of Article 6 of the European Convention (as is the case with all references to a “court” in the Recommendation). Indeed, in a State governed by the rule of law it is essential that CSOs and their members should be able to challenge acts or omissions affecting them in an independent and impartial court which has the capacity to review all aspects of their legality. Without this latter possibility there is likely to be a violation of the right to an effective remedy under Article 13 of the European Convention. This possibility is elaborated in paragraphs 39, 75 and 85 of the Recommendation.

II. OBJECTIVES

Paragraph 11

45. As CSOs are formed to pursue the objectives of their founders or members, this provision underlines that they are entitled to determine the focus of those objectives.

Paragraph 12

46. CSOs should be able to pursue any objective that can be pursued by an individual since a grouping of individuals cannot make that objective inherently objectionable. Although the pursuit of unlawful objectives can generally be prohibited, this should not preclude the pursuit of a change in the law (including the constitution) by lawful means as it is of the essence of democracy to allow diverse political programmes to be proposed and debated; see *X v. United Kingdom* (dec.), no. 7525/76, 3 March 1978 (advocacy of criminal law reform) and *Socialist Party and Others v. Turkey* [GC], no. 21237/93, 25 May 1998 (advocacy of a federal constitution).

47. Moreover it is essential that activities prohibited by the law do not cover any activities that are protected under universally and regionally guaranteed rights and freedoms; see the reliance in *Sidiropoulos and Others v. Greece*, no. 26695/95, 10 July 1998 on the fact that Conference on Security and Cooperation in Europe documents allowing the formation of associations to protect cultural and spiritual heritage had been signed by the respondent state in supporting the conclusion that the objective of preserving and developing the traditions and folk culture of a region was perfectly legitimate.

48. However, it is not permissible either to use anti-democratic means to pursue a change in the law or the constitution or to seek a change that is inherently anti-democratic or otherwise contrary to the values of the European Convention; see, e.g., *Refah Partisi (The Welfare Party) and Others v. Turkey* [GC], no. 41340/98, 13 February 2003 and *Hizb Ut-Tahrir and Others v. Germany*, no. 31098/08, 12 June 2012. On the other hand, see *Etxebarria and Others v. Spain*, no. 35579/03, 30 June 2009 (in which it was confirmed that the expression of separatist ideas could not be regarded as in itself threatening a State's territorial integrity and national security) and *Eğitim ve Bilim Emekçileri Sendikası v. Turkey*, no. 20641/05, 25 September 2012 (in which the principle defended by the applicant union, according to which individuals making up Turkish society could receive education in a mother tongue other than Turkish, was not considered to be incompatible with the fundamental principles of democracy).

49. The exercise of the right to freedom of association can be restricted in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. However, restrictions must always be necessary in a democratic society and be prescribed by law. In particular, any legal provision proscribing particular objectives or activities must always satisfy the “prescribed by law” criterion, both enabling CSOs and those founding or directing them to foresee what is covered by the proscription and precluding the exercise of an unrestricted discretion by the authorities or the courts; *Andrey Rylkov Foundation and Others v. Russia*, no. 37949/18, 18 June 2024, at paras. 106-113.

Paragraph 13

50. The ability of CSOs to undertake research, education and advocacy on issues of public debate will often be crucial in the pursuit of their objectives. It would be pointless of them to undertake such research, education and advocacy if they were not also able to disagree with governmental policy or propose changes in the law. This has been reaffirmed in the definition of public participation in Recommendation CM/Rec(2024)2 of the Committee of Ministers to member States on countering the use of strategic lawsuits against public participation (SLAPPs). The recommendation refers to “everyone’s democratic right to participate in public debate and public affairs, online and offline, without fear or discrimination. This includes the right to express opinions and ideas that run counter to or are critical of those defended by the official authorities or by a significant part of public opinion, or which offend, shock or disturb the State or any sector of the population” (para. 4).

51. Characterising a position taken, an idea expressed or an outcome sought as “political” cannot be used to limit the research, education and advocacy undertaken by CSOs as the European Court *has not only considered* that *this* term has been unjustifiably used to restrict the holding of meetings, demonstrations, assemblies and other forms of public campaigning *but has also pointed* to the incoherence and uncertainty

that would result from labelling any goals which are in some way related to the normal functioning of a democratic society as “political” so that these could only be pursued by political parties (*Zhechev v. Bulgaria*, no. 57045/00, 21 June 2007, at para. 55). Moreover, such “political” activity need not be concerned only with matters in the member State in which CSOs are established or operate. Indeed, the importance of strategic networks and coalition alliances involving civil society and others is underlined in the report Participation of civil society organizations seeking to express international solidarity through transnational, international and regional networks of the United Nations Independent Expert on human rights and international solidarity.

52. Furthermore, as everyone has the right to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters (UN Declaration on Human Rights Defenders, Article 6), it would be perverse if advocacy invoking human rights and fundamental freedoms or any other international standards should be regarded as the representation of any form of foreign interests. Indeed, as the European Court observed of a “foreign agent” law in *Ecodefence and Others v. Russia*, no. 9988/13, 14 June 2022, at para. 139, that “the regulation appears to be based on a notion that matters such as respect for human rights and the rule of law are ‘internal affairs’ of the State and that any external scrutiny of such matters is suspect and a potential threat to national interests. This notion is not compatible with the drafting history and underlying values of the Convention as an instrument of European public order and collective security, whereby the rights of all persons within the legal space of the Convention are a matter of concern to all member States of the Council of Europe”.

Paragraph 14

53. Although CSOs are not political parties, support or opposition by the former for the latter – including in elections and referenda – 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. CSOs should, therefore, be free to provide that support or opposition but this may be conditioned on them being transparent in declaring their motivation, particularly to ensure that their members and funders are aware of such support being given and that the generally applicable law on the funding of elections and political parties is observed. That law may, for example, set limits on the level of funding that can be provided or prohibit funding from sources outside the state concerned.

54. Furthermore, while CSOs should be able to support candidates and/or political parties on particular issues, such support may be incompatible with the objectives or requirements of some funders (whether private or public); and of the grant of public benefit status, which can lead to the funding or public benefit status being refused or withdrawn. See further paragraphs 61 and 63 of the Recommendation.

Paragraph 15

55. The fact that CSOs are non-profitmaking is one of their essential characteristics, distinguishing them in particular from commercial enterprises. However, CSOs will be unable to pursue their objectives without some source of income and this can be provided not only by fees, grants and donations but also through undertaking economic, business or commercial activities.

56. There should, therefore, be no obstacle to them undertaking such activities subject to the prohibition on the income thereby derived being distributed to their members and founders (see Paragraph 9 of the Recommendation) and to the licensing and regulatory requirements generally applicable to those activities.

57. The ability to undertake economic, business or commercial activities should also not preclude a requirement that certain modalities be followed, such as the formation of a subsidiary company for this purpose.

Paragraph 16

58. Associations, federations and confederations of CSOs (which are themselves CSOs) play an important role in that they foster complementarity amongst such bodies and allow them to reach a wider audience, as well as enabling them to share services and set common standards. CSOs, in pursuit of their objectives, should thus be free to join or not join such associations, federations and confederations. See the recognition by the European Court in *Yakut Republican Trade-Union Federation v. Russia*, no. 29582/09, 7 December 2021, that a union should be free to join a federation by way of extension of the freedom of a worker to join a union (para.30) and the successful invocation of Article 11 of the European Convention by a federation of associations in *Croatian Golf Federation v. Croatia*, no. 66994/14, 17 December 2020. A similar role can also be performed through less formal structures, including the collaboration of certain CSOs with other ones, whether established in the same country or a different one, in pursuing the same common objectives. See also paragraph 51 above.

III. FORMATION AND MEMBERSHIP

A. Establishment

Paragraph 17

59. As it is a fundamental principle that any person or group of persons should be free to establish a CSO, restrictions on the formation of CSOs either by persons who do not have the nationality of the state in which this takes place or by legal persons should not be imposed. In the case of non-nationals, this freedom is also specifically recognised in Article 3 of the Convention on the Participation of Foreigners in Public Life at Local Level (ETS No. 144).

60. Moreover, subject to their evolving capacities, the freedom of association explicitly guaranteed to children by Article 15 of the Convention on the Rights of the Child would enable them to establish CSOs.

61. In the case of a non-membership-based CSO, establishment should be possible through the making of a gift where the founder is alive or of a bequest following his or her death. However, this provision should not be interpreted as being applicable to all legal forms. In some member States, for instance, the possibility of establishment by will does not exist for all non-profit-making legal forms.

Paragraph 18

62. No minimum number is prescribed in guarantees of freedom of association for the number of persons required to establish a membership-based CSO. The guarantee of this freedom to everyone should, in principle, mean that only two persons are required to establish such a body. However, it is accepted that the acquisition of legal personality might afford a justification for setting a higher threshold for the establishment of a membership-based CSO. Nonetheless there could be no justification for setting a minimum that clearly could discourage or inhibit the establishment of membership-based CSOs. In this connection, the European Court in *Zhechev v. Bulgaria*, no. 57045/00, 21 June 2007, at para. 56, noted that forcing an association to take a legal shape which its founders did not seek, namely, as a political party, could prove an insurmountable obstacle for them because of the rule that a political party could not be formed by less than fifty enfranchised citizens. The Court also considered in *Republican Party of Russia v. Russia*, no. 12976/07, 12 April 2011 that a minimum membership requirement for a political party – which exist in some member States and can be considerably greater than the minimum suggested in this paragraph of the Recommendation - would be justified only if it allowed the unhindered establishment and functioning of a plurality of political parties representing the interests of various population groups.

B. Statutes

Paragraph 19

63. CSOs, especially those with legal personality, must heed the needs of various parties – members, founders, users, beneficiaries, donors, staff and public authorities – as regards their organisation and decision-making processes. This is most easily achieved by CSOs with legal personality having clear statutes - howsoever described under the law of the member State in which they have been established - setting out the conditions under which they are to operate. Nonetheless it is recognised that in some legal systems it is possible to achieve this goal without formally adopted statutes (e.g., informal associations in the Netherlands).

Paragraph 20

64. The requirements set out in this paragraph concern the matters that are most likely to be crucial to establishing the conditions under which CSOs are to operate. Those establishing or belonging to CSOs (as well as those responsible for their direction in the case of non-membership-based bodies) are free to specify additional matters in their statutes but they should not normally be under any obligation to do so. The term “powers” refers to the authority given by the statutes (expressly or impliedly) to do particular things in pursuit of a CSO’s objectives.

Paragraph 21

65. The requirement that the membership should form the highest governing body of a membership-based CSO is a manifestation of the exercise of freedom of association by their members. Indeed, “as to the formal requirement that public associations have certain governing bodies and, more specifically, periodically convene a general assembly of members, the Court does not consider this to constitute, in itself, an undue interference with freedom of association. This requirement serves to ensure, *inter alia*, the right of association members to directly participate in the management and activities of the association”; *Tebieti Mühafize Cemiyeti and Israfilov v. Azerbaijan*, no. 37083/03, 8 October 2009, at para. 73. This does not mean that the members cannot delegate the authority to take action to other bodies, but they should always be able to revoke that delegation and determine the matter themselves.

66. Such a consideration does not apply in the case of non-membership-based CSOs and so the highest governing body should be determined by the statutes, whether as originally drawn up by their founders or as subsequently amended in the prescribed manner.

C. Membership

Paragraph 22

67. Freedom of association has a very important negative dimension, namely, that persons should not be unduly coerced into joining or remaining members of a CSO to which they do not wish to belong on account of ethical, philosophical, political or religious grounds. In particular individuals should not be required to forego their objections to membership of a particular CSO in order to retain a job or to continue to pursue their livelihood; see in the context of trade unions, *Young, James and Webster v. United Kingdom*, no. 7601/76, 13 August 1981.

68. Outside of the context of work, it would also be unacceptable for someone to be compelled to belong to a CSO where they had a deep-seated objection to one or more of its objectives; see *Chassagnou v. France*, no. 25088/94, 29 April 1999 with regard to enforced membership of a hunting association. It does not matter whether the constraints imposed on someone to belong to a CSO are directly imposed by the law or are merely facilitated by it.

69. There cannot be regarded as compulsion to join a CSO where persons have opportunities for real and effective choice not to join one which does not carry the same ideals as their own, as was the case in *A.S.P.A.S. and Lasgrezas v. France*, no. 29953/08, 22 September 2011. Furthermore, where the aim being pursued through compulsion to belong to a CSO might be legitimate, such compulsion would be unjustified where this could also be achieved by other, much less restrictive, means, as in *Mytilinaios and Kostakis v. Greece*, no. 29389/11, 3 December 2015, in which the aim of protecting the quality of a grape variety could be secured through using a certification procedure.

70. However, a requirement that someone join a professional association as part of the regulatory control of that profession – where such an association is treated as a CSO in a particular member State, a possibility envisaged in paragraph 28 above - would not be objectionable so long as there is no restriction on the members setting up their own organisation in addition to the one which they were obliged to join; see *Le Compte, Van Leuven and De Meyere v. Belgium*, no. 6878/75, 23 June 1981.

Paragraph 23

71. The guarantee of freedom of association in Article 11 of the European Convention and in other human rights instruments is applicable to “everyone” within a State’s jurisdiction and the scope for imposing limitations will thus be quite narrow. Certainly, children should not be excluded – particularly since this freedom is also specifically guaranteed to them by Article 15 of the Convention on the Rights of the Child – but that does not preclude the adoption of protective measures to ensure that they are not exploited or exposed to moral and related dangers. Any limitations on their ability to join membership-based CSOs will need to take account of their evolving capacities and, as well as being proportionate and respecting legal certainty, should never be such as totally to exclude them from becoming members.

72. Similarly the freedom should normally be exercisable by persons who are non-nationals and any limitation on this would need to be compatible with the limited authorisation to restrict the political activity of nonnationals allowed under Article 16 of the European Convention; see *Piermont v. France*, no. 15773/89, 27 April 1995. It would thus be hard to justify a bar on political activity in the non-party context and impossible to do so for one where no politics was involved at all (e.g., in the field of sport and culture).

73. It is possible that a prohibition on involvement in CSOs might be a legitimate consequence of having committed certain offences, but its scope and duration must always respect the principle of proportionality (see *X v. The Netherlands* (dec.), no. 6573/74, 19 December 1974) and a ban on membership as an automatic consequence of imprisonment would never be justified.

74. The essence of freedom of association is that individuals should be free to choose with whom they associate and so the law should not normally enable someone to join a CSO against the wishes of its members. However, there would be a good justification for constraining the freedom of members of an association to determine whom to admit as new members where this was done in order to fulfil obligations to prevent discrimination on any inadmissible ground and thereby protect the rights of others, as permitted by Article 11(2) of the European Convention; see *Staatkundig Gereformeerde Partij v. Netherlands* (dec.), no. 58369/10, 10 July 2012, in which the position of the applicant party that women should not be allowed to stand for elected office on its own lists of candidates was incompatible with the goal of the advancement of the equality of the sexes as that necessarily prevented the State from lending its support to views of the man’s role as primordial and the woman’s as secondary.

Paragraph 24

75. As with admission, the expulsion of someone from a membership-based CSO is generally a matter for the organisation itself. However, the rules governing membership in its statute must always be observed and national law should thus ensure that someone facing expulsion or who has been expelled has available an effective means on insisting on such observance; see *Cheall v. United Kingdom* (dec.), no. 10550/83, 13 May 1985. Moreover, the rules governing expulsion should not be wholly unreasonable or arbitrary; in particular there should be a fair hearing before any decision is taken. Given their role as data controllers, CSOs are responsible for ensuring compliance with data protection requirements applicable to any data they hold about their members.

Paragraph 25

76. Sanctions should not be imposed on persons merely because of their membership of a CSO. Thus, there ought to be a remedy for anyone dismissed because he or she belongs to a trade union (see *Frederiksen v. Denmark* (dec.), no. 12719/87, 3 May 1988) or because of the objectives of any other organisation to which they belong (see *Vogt v. Germany* [GC], no. 17851/91, 26 September 1995).

77. Similarly there ought to be protection for any other forms of sanction or pressures not to belong to a CSO, such as the loss of eligibility for certain benefits or posts; see *Grande Oriente D'Italia di Palazzo Giustiniani v. Italy*, no. 35972/97, 2 August 2001 and *Wilson, National Union of Journalists and Others v. United Kingdom*, no. 30668/96, 2 July 2002.

78. There is also a need to provide protection against even more aggressive forms of action taken against persons on account of their membership of a CSO, namely, harassment, intimidation, stigmatisation and the use of violence. However, some sanctions will be admissible where membership of a CSO is clearly incompatible with the performance of either a person's responsibilities as an employee or office-holder (see *Van der Heijden v. Netherlands* (dec.), no. 11002/84, 8 March 1985) or of other obligations that have been undertaken (such as where there is a conflict of interest between the interests of two organisations to which a person belongs). Nonetheless, where there is a prima facie case of persons having been treated differently during a selection process for a post on account of their role in a CSO, there will be a need to demonstrate that the alleged difference in treatment had an objective and reasonable justification, which was found not to have been the case in *Bakradze v. Georgia*, no. 20592/21, 7 November 2024 with respect to appointment to a judicial position.

79. The risk of incompatibility with a person's employment where the member concerned is a public employee is expressly recognised in the stipulation in Article 11(2) of the European Convention that the guarantee of freedom of association does not "prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State". However, as with any other conflict of interest, the existence of such an incompatibility must be demonstrated by direct evidence and should not thus be a matter of supposition. Moreover the restrictions must always have a basis in law and respect the principle of proportionality.; see the *Vogt* case, *Ahmed and Others v. United Kingdom* [GC], no. 22954/93, 2 September 1998, *Rekvényi v. Hungary* [GC], no. 25390/94, 20 May 1999 and *Strzelecki v. Poland*, no. 26648/03, 10 April 2012. In particular, the restrictions should not prevent those subject to them from expressing their political opinions and preferences in other ways, such as through joining unions and associations, voting and standing for local election Furthermore those regarded as belonging to the administration of the State should be seen as covering only higher-ranking officials and not all employees paid out of public funds; see the *Vogt* and *Grande Oriente* cases.

80. Criminal sanctions for membership of an organisation should not be inconsistent with the requirement in Article 7 of the European Convention establishing that offences and the relevant penalties must be clearly defined by law; see *Parmak and Bakir v. Turkey*, no. 22429/07, 3 December 2019, in which the courts had adopted a novel interpretation of the definition of “terrorism” in an offence proscribing membership of a terrorist organisation. This is an aspect of the quality of law noted in paragraph 40 of this Explanatory Memorandum.

Paragraph 26

81. This paragraph confirms that membership of a CSO need not be a precondition to becoming involved in any activities that it might undertake. Whether or not membership is required for this purpose – whether as regards some or all of its activities - should be a matter for the CSO itself to determine. However, membership is essential for participation in meetings of the highest governing body of a membership-based CSO since membership must be a precondition to take part in such meetings (see Paragraph 21 of the Recommendation).

IV. LEGAL PERSONALITY

A. General

Paragraph 27

82. The existence of legal personality has been recognised by the European Court as essential for the functioning of many CSOs (see, e.g., *Sidiropoulos and Others v. Greece*, no. 26695/95, 10 July 1998 and *Gorzelik and Others v. Poland* [GC], no. 44158/98, 17 February 2004) and such personality would be meaningless if it were not distinct from that of those who have established the organisation or who belong to it. However, as Paragraph 76 of the Recommendation makes clear, the distinct personality of an organisation from that of its founders and members should not be an obstacle to either of the latter being held liable to third parties or the CSO itself for any professional misconduct or neglect of duties arising from their involvement in the activities of the CSO concerned.

Paragraph 28

83. It follows from the fact that a CSO has a distinct personality from that of its founders and members that it should be the new organisation created in the event of a merger of two or more existing ones that succeeds to their rights and liabilities.

B. Acquisition of legal personality

Paragraph 29

84. Where the acquisition of legal personality is not an automatic consequence of forming a CSO, there will inevitably have to be a process of assessing whether the legal requirements have been met. In order to minimise the risk of the resulting discretion being inappropriately exercised, the grounds for taking a decision on the grant or refusal of legal personality should always be stated with an appropriate degree of precision and be such as to permit objective assessment of the observance of these legal requirements. The formulation in Paragraph 38 of the Recommendation should serve as a guide in this respect.

Paragraph 30

85. The formation of CSOs will be facilitated if those interested in so doing have ready access to the applicable rules and the process to be followed is easy to understand and to satisfy. The latter requirement could be met by producing a guide to the requirements for establishing a CSO. It could also be facilitated by establishing or supporting a body with the object of assisting those who wish to establish CSOs. These requirements should, in particular, be consistent with paragraphs 29-42 of the Recommendation.

Paragraph 31

86. Although the ability to form a CSO ought, in principle, to be open to anyone, some disqualification on being able to do so might be an appropriate consequence of the past activities of the person concerned. This might be particularly the case where the person concerned has been found guilty of an offence which entailed the pursuit of objectives that are not ones for which a CSO might be formed. Similarly, a bankruptcy determination might mean that someone ought not to be allowed to establish a CSO, or at least not ones that can be expected to be in receipt of significant funding. In all cases the scope of such restrictions would need to be clearly connected with the activities concerned and their duration should also not be disproportionate.

Paragraph 32

87. In order to ensure that those seeking to establish CSOs are not unduly burdened and that any decision-making process is appropriately focused, the only information that should need to be filed with an application for legal personality will be the statute, the address of the CSO and the details needed to identify the persons concerned.

88. In the case of non-membership-based CSOs, which are likely to require some form of funding or property before they can pursue their objectives, there could be an additional requirement of demonstrating that such funding or property is available so that entities that will never operate cannot be created. However, it is not essential that there be such a requirement, particularly as the circumstances in a particular member State may be such that the acquisition of the necessary funding or property is dependent upon the intended recipient first obtaining legal personality. Furthermore, as paragraph 32 of the Recommendation makes clear, the provision of additional information may be required from CSOs in any process established to determine whether they should be granted public benefit status.

Paragraph 33

89. The requirement that the members of a membership-based CSO should first adopt a resolution in favour of acquiring legal personality is a reflection of the fact they constitute its highest governing body. In order for the members to have an opportunity to take part in such an important decision, the invitation of the meeting at which such a resolution is to be adopted must be one that gives them a reasonable prospect of attending - two weeks' notice might be appropriate for this purpose – but it cannot be expected that every member actually attends and the use of proxies and online arrangements ought to be permitted.

90. Proof that the necessary meeting had been held could be provided by a copy of the invitation, evidence of how the invitation to attend was communicated, a record of the proceedings and the signatures of those attending, as well as any authorisations for proxies.

Paragraph 34

91. Although there will be costs involved in the processing of applications to acquire legal personality, the level at which any fees are set should reflect both the desirability of encouraging the formation of CSOs (with most of them likely to have limited resources at the time of their formation) and the fact that their character is essentially non-profitmaking.

Paragraph 35

92. The case law of the European Court demonstrates the real risk of authorities being too ready to assume the worst about the objectives of a CSO; see, e.g., *United Communist Party of Turkey and Others v. Turkey*, no. 19392/92, 30 January 1998, *Sidiropoulos and Others v. Greece*, no. 26695/95, 10 July 1998 and *Association of Victims of Romanian Judges and Others v. Romania*, no. 47732/06, 14 January 2014. As the European Court has made clear in such cases, it is particularly difficult to draw adverse conclusions about broadly framed objectives where a CSO has yet to undertake activities which demonstrate a commitment to the pursuit of inadmissible objectives.

93. While a CSO's stated aims might conceal certain inadmissible objectives and intentions, this is likely to be demonstrated only by concrete action and not in an application for legal personality. Although past behaviour might give some indication as the way in which someone will behave in the future, there will be a need for significant corroboration that a risk exists before such personality could be legitimately refused. See *United Macedonian Organisation Ilinden and Others v. Bulgaria (No. 3)*, no. 29496/16, 11 January 2018, in which the European Court found that conclusions on the potential risks resulting from Ilinden's registration had not been based on a solid assessment of the relevant facts or provided convincing and compelling reasons for the refusal.

94. Furthermore the importance of political pluralism in a democracy means that the establishment of CSOs with objectives that challenge the established order must be permitted unless there is compelling evidence that they will be pursued in a manner that is anti-democratic and this cannot be assumed simply because change is being proposed; see *Refah Partisi (The Welfare Party) and Others v. Turkey [GC]*, no. 41340/98, 13 February 2003.

Paragraph 36

95. This paragraph is concerned with the acquisition of legal personality by a CSO where this is not an automatic consequence of a decision taken by its founders. Although in some member States the responsibility for decisions relating to grant of legal personality to CSOs is vested in courts, this is not an essential means of ensuring that the process is not affected by political considerations. It is sufficient that the authority with this responsibility is genuinely independent not only of an executive elected or chosen as part of the political process but also of any other entity whose interests might be affected by the coming into being of a new CSO; see *Metropolitan Church of Bessarabia and Others v. Moldova*, no. 45701/99, 13 December 2001.

96. The authority concerned may thus be an administrative one but, whatever its formal status, it is essential that it have an appropriate level of staff to ensure that the requirement of expeditious decision making is fulfilled and that those staff be persons who are suitably qualified and trained for the task expected of them.

97. The decision-making process should, wherever possible, be facilitated and accelerated by the use of online processes. Insofar as such processes are automated, the requirements set out in Recommendation CM/Rec(2021)8 of the Committee of Ministers to member States on the protection of individuals with regard to automatic processing of personal data in the context of profiling should always be observed.

Paragraph 37

98. The right to form CSOs with legal personality will only be truly meaningful where any process of approval that may be involved is completed in a reasonably speedy manner; delay in decision making should not be allowed to frustrate the pursuit of the objectives of the proposed organisation. A lengthy waiting period prior to obtaining legal personality or procrastination in decision-making on the issue cannot be considered "necessary in a democratic society"; see *Church of Scientology of St Petersburg and Others v. Russia*, no. 47191/06, 2 October 2014. A useful point of comparison in judging what is reasonable might be the time taken to register corporations or business since these also have objectives to be scrutinised and the fulfilment of requirements to be checked. However, in most member States this is something that can be

completed in a matter of days rather than of weeks or months. Failure to decide within the prescribed time limit should then be automatically treated as either a refusal of legal personality or the granting of it. As a result, there should be no scope for prolonged or indefinite postponement of taking decisions on applications for legal personality.

99. Technical failures do not lead to an automatic rejection. Moreover, the opportunity to correct errors should be a genuine one, and that requires a clear explanation of them (see *Mariya Alekhina and Others v. Russia* (No. 2), no. 10299/15, 28 November 2023). Also, any changes made should be properly considered (*The Argeş College of Legal Advisers v. Romania*, no. 2162/05, 8 March 2011). The repeated discovery of errors that ought to have been apparent at the first examination of an application for legal personality should not be used to prolong the decision-making process. See, e.g., *Abdullayev and Others v. Azerbaijan*, no. 69466/14, 20 May 2021, in which the European Court found a failure to comply with a legal requirement set out in domestic law to identify all the alleged deficiencies in one review.

100. In addition, particular requirements for an application should not be interpreted and applied in an unforeseeably broad manner, which was found to have occurred in *Election Monitoring and Democracy Education Centre and Others v. Azerbaijan*, no. 70981/11, 12 January 2023, so that the refusal to register the applicant association was considered to be arbitrary and not “prescribed by law” within the meaning of Article 11(2) of the European Convention.

Paragraph 38

101. The grounds stipulated for refusal of legal personality in this provision reflect the only considerations relevant for such a decision. Prescribed documents must be actually specified in the applicable legislation and ones authorised by it should not, therefore, be rejected as defective (see *Church of Scientology of St Petersburg and Others v. Russia*, no. 47191/06, 2 October 2014). Furthermore, as to names belonging to another organisation or institution or which were found to be confusing or misleading, see *Apeh Uldozotteinek Szovetsege, Ivanyi, Roth and Szerdahelyi v. Hungary* (dec.), no. 32367/96, 31 August 1999, *Hayvan Yetiştiricileri Sendikası v. Turkey* (dec.), no. 27798/08, 11 January 2011, and *Bulgarian Orthodox Old Calendar Church and Others v. Bulgaria*, no. 56751/13, 20 April 2021. Cf. “*Orthodox Christian Church and Others v. Bulgaria* (dec.), no. 31387/17, 4 February 2025. Concrete evidence is needed to demonstrate that a name poses a present and imminent threat to public order; *Association of Citizens Radko & Paunkovski v. the former Yugoslav Republic of Macedonia*, no. 74651/01, 15 January 2009, at para. 75. However, a reference in the name of a CSO to a foreign state should not be regarded, in itself, as capable of undermining the territorial integrity or unity of the member State concerned; *National Turkish Union and Kungyun v. Bulgaria*, no. 4776/08, 8 June 2017. As to inadmissible objectives (to which paragraph 12 of the Recommendation applies), see *Refah Partisi (The Welfare Party) and Others v. Turkey* [GC], no. 41340/98, 13 February 2003, *Ayoub and Others v. France*, no. 77400/14, 8 October 2020, and *Internationale Humanitäre Hilfsorganisation e.V. v. Germany*, no. 11214/19, 10 October 2023. The fourth ground follows on from the stipulation in paragraph 31 of the Recommendation about persons being disqualified from forming CSOs. However, this ground would not be applicable if some of the persons seeking to form a CSO are disqualified but there are others who are not and, in the case of a membership-based one, these are sufficiently numerous for the purpose of any requirement adopted in conformity with paragraph 18 of the Recommendation. The foregoing points underline the structured nature of the discretion that must be established by national law.

Paragraph 39

102. The provision of a reasoned decision to the person affected by it is a fundamental principle of good administration that not only assists acceptance of a well-founded but adverse decision but also ensures that such a decision can be subjected to appropriate scrutiny. Although the review of a refusal of legal personality might in the first instance be a matter for internal review within the decision-making body, the ultimate guarantee that the rights of those seeking legal personality for a CSO have been respected can only be afforded by an appeal to an independent and impartial court.

Paragraph 40

103. The separation of decision making about the grant of legal personality from that about the grant of financial or other benefits (including public benefit status) is necessary in order to avoid the possibility of these two quite discrete matters becoming confused, with the result of inappropriate conclusions being reached in respect of the former. Such a risk might be most easily avoided by having two different decision-making bodies but this objective could also be achieved by giving these two functions to separately run units within the same body.

Paragraph 41

104. In order to protect the interests of all who may have dealings with CSOs with legal personality, the fact that this has been granted and the information submitted for this purpose should be recorded in a manner that allows members of the public to check any details that may be of concern to them. Ideally this should take the form of an electronic database that can be accessed without formality or fee over the internet.

Paragraph 42

105. The legal personality granted to a CSO should normally be for an indefinite duration, with this being determined only in accordance with the terms of its statute or pursuant to termination fulfilling the requirements in the Recommendation (see Paragraphs 45 and 75 of the Explanatory Memorandum). The grant of legal personality should not, therefore, be for a limited duration or subject to a requirement of renewal unless this is the wish of those establishing the CSO concerned. Furthermore, the enjoyment of legal personality should not be undermined by the adoption of additional requirements in order to be able to continue exercising any of the capacities inherent in it.

C. Branches; changes to statutes**Paragraph 43**

106. The establishment or accreditation by a CSO of branches should be a matter for its own internal organisation and thus subject only to the requirements of its statute. The only circumstance in which any official authorisation for the establishment of a branch could be required would be where a discrete legal personality for the branch from that of the CSO establishing it was being sought for this purpose. In such a case the grant of approval could be made subject to the rules generally applicable to the grant of legal personality to CSOs. At the same time, there should be no need for a CSO to have a branch in a particular location before it can carry out its activities there.

Paragraph 44

107. Approval for a change in the statutes of a CSO should only be required where this concerns a matter that might be the basis for a refusal to grant legal personality (see Paragraph 38 of the Recommendation). However, the legitimate interest of members of the public in being able to verify the content of the statute of a CSO with which they have dealings would justify a requirement that other changes are notified prior to their coming into force. Therefore, a member State may require that a change in the statutes must be entered in the register before it can be applied. This notification requirement may be necessary for the

benefit of members, those intending to join as members and creditors, bodies granting subsidies, authorities and other contact groups.

108. Although seeking approval for a change should be governed by the procedure already set out with respect to the initial grant of legal personality, the grant of approval should not involve the CSO concerned first having to establish itself as an entirely new entity. The term “approval” for the purpose of this paragraph of the Recommendation does not cover any involvement of a lawyer or notary in preparing the change to the statutes.

D. Termination of legal personality

Paragraph 45

109. The termination of the legal personality of a CSO should normally be a voluntary act. Any termination against the will of its members or, in the case of a non-membership-based organisation, its founders, is not something that should be easily done as this would undermine the principle that such bodies ought not to be subject to the direction of public authorities (see Paragraph 6 of the Recommendation).

110. Involuntary termination ought, therefore, only to be possible where there is a compelling public interest in so doing. This will be just where the CSO concerned has become bankrupt to pursue its objectives (this was the situation in *Mihr Foundation v. Turkey*, no. 10814/07, 7 May 2019 but, as was pointed out in *Croatian Golf Federation v. Croatia*, no. 66994/14, 17 December 2020, the mere opening of bankruptcy proceedings against a CSO is insufficient for a conclusion that it has ceased its activities). This will also be the case where a CSO has not been active for an extensive period, which is probably not something that can be claimed unless at least several years have elapsed between meetings of the highest governing body and there have been at least two failures to file annual reports on their accounts. Finally, involuntary termination may be justified where a CSO has engaged in serious misconduct in the sense of wilfully engaging in activities that are fundamentally inconsistent with its objectives becoming an essentially profit-making body or pursuing objectives or undertaking activities that are inconsistent with the requirements of a democratic society; see paragraphs 9 and 12 of the Recommendation.

V. MANAGEMENT

Paragraph 46

111. In a membership-based CSO the members should ultimately determine who carries out its management but, while in some cases they might decide this directly, they should be free to delegate the task to an intermediary body, which may be especially desirable where the membership is particularly large. Nonetheless the status of the membership as the highest governing body must mean that any such delegation cannot be irrevocable.

112. In the case of a non-membership-based CSO the statutes do not have to protect the rights of members and are thus not subject to any particular limitations regarding the choice of management.

Paragraph 47

113. Although the decision-making process of a CSO must always comply with the requirements of its statutes, the limited requirements as to what these must contain and the principle of self-regulation (see Paragraphs 1, 69 and 72 of the Recommendation) mean that there should be no other constraints on how they decide to pursue their objectives and manage the organisation.

114. Thus, the CSO should be free to adopt organisational arrangements that it considers appropriate and to change them as and when it considers this to be necessary. Such internal matters should not require the approval of anyone outside the organisation concerned.

115. The freedom that CSOs ought to have with respect to decision making should not, however, lead their management to ignore the wide range of persons with a legitimate interest in the way in which the organisations concerned conduct themselves. The taking into account of these interests will require the use of a number of different techniques – notably consultation and reporting – and their precise form and scope will vary according to the character of the interest in question.

116. The provision also reflects the stipulation in Article 5 of the Convention on the Rights of the Child regarding the possibility of appropriate direction and guidance being given by parents, members of the extended family or community and legal guardians or other persons legally responsible for children (i.e., human beings below the age of eighteen years unless majority is attained earlier) in the exercise of the rights recognised in that Convention. However, it also takes account of the Convention's stipulation that such direction and guidance should be exercised in a manner consistent with the evolving capacities of the child.

Paragraph 48

117. This provision reflects concerns that some members involved in the decision-making of CSOs might act in a way that benefits them rather than the CSOs concerned. However, it does not necessarily entail the adoption of a legislative provision as, consistent with the Recommendation's starting point that self-regulation is the best means of ensuring ethical and responsible conduct, these concerns might well be satisfactorily addressed in other ways. These could include the adoption by a CSO of a code of conduct to regulate its decision-making, which includes a requirement for the prior disclosure by decision-makers of any potential conflict and their withdrawal from involvement in taking any decision where an actual conflict cannot be avoided.

Paragraph 49

118. The freedom of CSOs to determine the arrangements for pursuing their objectives also extends to the choice of officers and the admission and exclusion of members. See *Yefimov and Youth Human Rights Group v. Russia*, no. 12385/15, 7 December 2021, in which the European Court reiterated that the organisational autonomy of associations constitutes an important aspect of their freedom of association protected by Article 11 of the European Convention. It held that there was an unjustified interference with the applicant association's internal organisation where it was required to expel a founding member on the grounds that he had been charged with an extremist offence and the relevant legal provisions did not meet the "quality of law" criterion in so far as they gave unfettered discretion to the investigative authorities and offered no protection against abuse.

119. It is possible that, as with the ability to form a CSO (see Paragraph 31 of the Recommendation), a prohibition on acting as an officer in a CSO might be a legitimate consequence of committing certain offences. In all cases, the offences must not be inconsistent with international human rights standards, their scope would need to be clearly connected with the activities constituting the offences and their duration of any disqualification should also not be disproportionate.

120. The freedom of CSOs to determine the admission or exclusion of members is, as paragraphs 23 and 24 of the Recommendation make clear, subject to the prohibition on discrimination and the right to be protected against arbitrary exclusion.

Paragraph 50

121. Foreign nationals or stateless persons employed by CSOs or involved in their management should be subject to the generally applicable laws of the member State in which those CSOs are established or operate as regards entry, stay and departure, but there should not be any special limitation on such nationals becoming employees or being involved in the management of such organisations or acting as volunteers in them.

VI. FUNDING, PROPERTY AND PUBLIC SUPPORT

A. Funding

Paragraph 51

122. The ability of CSOs to solicit donations in cash or in kind will, notwithstanding the possibility of them also engaging in some economic activity, always be a crucial means for them to raise the funds required in order to pursue their objectives. The European Court in *Ecodefence and Others v. Russia*, no. 9988/13, 14 June 2022, at para. 165, underlined that the ability of an association to solicit, receive and use funding in order to be able to promote and defend its cause constituted an integral part of the right to freedom of association. It is important that the widest range of possible donors can be approached by CSOs. Thus, CSOs may fund their activities from income derived from, for example: membership fees and voluntary contributions; returns from investments in their endowments; earnings from services provided; grants and subsidies obtained from governments, individuals, business corporations and private foundations (whether in the member State where they are established or elsewhere), as well as from international and regional organisations.

123. The only limitation on donations coming from outside the member State concerned should be the generally applicable law on customs, foreign exchange, taxation, money laundering and terrorist financing, as well as those on the funding of elections and political parties, reflecting the stipulation in paragraph 14 of the Recommendation. Such donations should not be subject to any other form of taxation or to any special reporting obligation.

Paragraph 52

124. The provision underlines that the receipt of funding from outside the member State in which a CSO is established or operating cannot in itself be a reason for considering that such receipt is contrary to the law specified or for inadmissible objectives. Such a presumption would require convincing evidence to be rebutted. This is something also underlined in the report General principles and guidelines on ensuring the right of civil society organizations to have access to resources of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Venice Commission's Report on funding of associations.

125. Furthermore, the European Court in *Ecodefence and Others v. Russia*, no. 9988/13, 14 June 2022, at para. 136, considered that attaching the label of a “foreign agent” to any CSOs which had received any funds from foreign entities had been unjustified and prejudicial and was also liable to have had a strong deterrent and stigmatising effect on their operation. In its view, that label had coloured them as being under foreign control in disregard of the fact that they saw themselves as members of national civil society working to uphold respect for human rights, the rule of law, and human development for the benefit of Russian society and the democratic system. In addition, in *Kobaliya and Others v. Russia*, no. 39446/16, 22 October 2024, at para. 76, the European Court emphasised that the “foreign agent” label was also misleading in so far as the legislation presumed that support in any form – funding, consultation or guidance – amounted to foreign control.

B. Property

Paragraph 53

126. Access to banking facilities will be essential if CSOs with legal personality are to be able to receive donations and to manage and protect their assets. This does not mean that banks should be placed under an obligation to grant such facilities to every CSO seeking them. However, their freedom to select clients should be subject to the principle of non-discrimination and the justified application of requirements relating to money laundering and terrorist financing. The ability to operate bank accounts should otherwise be a necessary incident of the grant of legal personality to CSOs.

Paragraph 54

127. The possibility of CSOs protecting their property rights, as well as any other legal interests, through being able to bring and defend legal proceedings is essential since any taking of, the loss of control over or damage to their property could frustrate the pursuit of their objectives; see, e.g., the finding of a violation of the right to peaceful enjoyment of possessions under Article 1 of Protocol No. 1 to the European Convention in *The Holy Monasteries v. Greece*, no. 13092/87, 9 December 1994, which concerned a religious entity that had lost the right to bring legal proceedings in respect of its property.

Paragraph 55

128. The fact that the assets of some CSOs have come from public bodies and that their acquisition has been assisted by a favourable fiscal framework are reasons to ensure that these assets are carefully managed and that the best value is obtained when buying and selling them. It would, therefore, be appropriate to adopt a requirement in these cases that CSOs be guided by independent advice when engaging in some or all such transactions.

Paragraph 56

129. It can be a corollary of the adoption of a special tax regime to facilitate the acquisition of property for certain purposes that that property should not be utilised for other purposes. In the event of a CSO not being in a position to use the property for such purposes, it could thus be required to return the property concerned to the donor, to transfer it to another CSO that can use it for those purposes or to retain it on payment of the applicable taxes. It is a matter for each member State to decide if it wants to take this approach where property has been acquired on a tax-exempt basis.

Paragraph 57

130. Most CSOs are unlikely to be able to pursue their objectives without employing some staff and/or having volunteers carrying out some activities on their behalf. It should, therefore, be recognised that it is a legitimate use of CSOs' property to pay their employees and to reimburse the expenses of those who act on their behalf. While market conditions and/or legislation will influence the level of payments made to staff, the need to ensure that property is properly used for the pursuit of a CSO's objectives would justify imposing a criterion of reasonableness for the reimbursement of expenses.

Paragraph 58

131. National law should permit a CSO to designate, whether in its statutes or by resolution of its highest governing body, another CSO to receive its assets in the event of its termination. This should, however, only apply to assets left after all the liabilities of the CSO being terminated have been met and this would include the fulfilment of a condition in a donation that funds unspent on the purpose for which it was given should either be returned to the donor or transferred to a CSO specified by the donor.

132. The freedom otherwise left to the CSO to determine who should succeed to its assets will, however, be subject to the prohibition on distributing any profits that it may have made to its members (see Paragraph 9 of the Recommendation) and may also be constrained by an obligation to transfer assets obtained with the assistance of tax exemptions or other public benefits to other CSOs pursuing objectives for which such exemptions or benefits are granted. In addition, a CSO whose objectives or activities have been found to be inadmissible for reasons set out in Paragraph 12 of the Recommendation should not have any right to determine the successor to its assets, but these should instead be applied by the member State for public purposes.

C. Public support

Paragraph 59

133. Public support and encouragement are key elements in ensuring that there is a safe and enabling environment for CSOs being provided since, without its existence, the ability of many CSOs to pursue their objectives can become precarious, especially where those objectives are concerned with assisting people in vulnerable situations. Moreover, it is appropriate to grant public support to CSOs since they are often able to answer the needs of society in ways that public bodies cannot.

134. The grant of public support can extend beyond CSOs in a member State to ones established in other states. The forms that such support can take will be wide-ranging and will need to be settled according to the conditions prevailing in the member State concerned at a particular time. However, apart from direct funding and access to public facilities and infrastructure, various forms of tax exemption, whether directly to the CSOs themselves or indirectly to those who might thereby be encouraged to make donations to them, are likely to be the most useful as they enable CSOs to determine the best use of the resulting income.

135. In the case of direct funding, sustainability is most likely to be achieved through an approach to grant-making that is flexible, takes account of the different capacities of small and larger CSOs to make applications and favours core/programmatic support over multi-year terms. In addition, mechanisms may be needed to facilitate the continued operation of CSOs adversely affected by emergencies such as a pandemic or natural disaster.

Paragraph 60

136. It is essential that clear, fair and objective criteria and accessible procedures should govern the grant or refusal of any form of public support to CSOs so that any such decision should be by an autonomous body and can (a) be taken only following a process that is fair and transparent before a body independent of government; (b) be scrutinised by all who may be interested in it – not only the CSOs specifically concerned but also other CSOs working in the same field and members of the public interested in the use made of public resources; and (c) be subject to challenge in a court where it is considered that these requirements have not been properly applied.

Paragraph 61

137. In deciding whether to grant public support, or particular forms of it, to a CSO or a certain category of CSO, it will be appropriate to take into account the nature and beneficiaries of any activities undertaken by such an organisation or category of organisation and thereby establish whether they address those needs of society considered to be a particular priority. What is seen as a priority and thus what forms of activity are regarded as worthy of public support can change over the course of time.

138. There will be discrimination in the provision of public support where a CSO is in a similar or comparable situation to that of another CSO which had received such support that had not been provided to it, (see *Demokrat Parti v. Turkey* (dec.), no. 8372/10, 7 September 2021) that concerned assistance to political parties).

Paragraph 62

139. The provision of public support (in the form of financial or other benefits) for the activities of CSOs is something that can be made contingent upon them qualifying for a special category or regime (e.g., a charity or public benefit status), or even a specific legal form (e.g., a trade union, church or religious association). A failure to obtain such a status or classification or to be allowed to take on such a legal form should not, however, lead to the loss of any legal personality already acquired.

Paragraph 63

140. This provision is consequent upon the recognition in paragraph 13 of the Recommendation that CSOs 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 and whether its goal could be regarded as political in nature. In the light of this provision, it would not be appropriate for CSOs either to feel constrained about exercising this freedom where they are in receipt of public support or to be penalised through losing it because they have exercised it. Paragraph 63 must, however, be read subject to the specification in paragraph 14 that the ability to undertake advocacy will be subject to legislation on the funding of elections and political parties and on the grant of public benefit status.

Paragraph 64

141. Since the granting of public support can be conditional upon certain objectives being pursued or certain activities being undertaken, it should be expected that a material change in either those objectives or activities will lead to a review of the provision of this support and possibly its modification or termination. However, where a grant of public support is being withdrawn before the expiry of the term initially specified, it is important that the CSO concerned be given sufficient time to reorganise its own undertakings in the light of its changed financial position. The decision for any withdrawal of support should always be reasoned so that the CSO can assess whether this withdrawal complies with the rules governing the grant of such support.

VII. ACCOUNTABILITY**A. Transparency****Paragraph 65**

142. Those CSO receiving any form of public support, as well as those whose activities can be justifiably characterised as lobbying or the representation of foreign interests (i.e. those of a foreign state or of an entity established in it) or whose activities have been established as bringing them within the definition of the Financial Action Task Force (the FATF) definition of non-profit organisation in its Interpretive Note to Recommendation 8, should expect to account for the use made of it. Indeed, the European Court in *Ecodefence and Others v. Russia*, no. 9988/13, 14 June 2022, at para. 122 accepted in principle that the objective of increasing transparency with regard to the funding of CSOs may correspond to the legitimate aim of the prevention of disorder in Article 11(2) of the European Convention.

143. Thus, it is not unreasonable for CSOs to be required to make publicly available or report each year on the activities that they have undertaken and the accounts for the income and expenditure concerned. However, such a disclosure or reporting obligation should not be unduly burdensome (taking into account, in particular, the level of support received), should not require the submission of excessive detail about either the activities or the accounts, and should not entail any duplication of the disclosure or reporting requirement.

144. Recommendation CM/Rec(2017)2 of the Committee of Ministers to member States on the legal regulation of lobbying activities in the context of public decision making defines “lobbying” as “promoting specific interests by communication with a public official as part of a structured and organised action aimed at influencing public decision making”. It recommends that its provisions be applied to activities undertaken on behalf of (a) a third party, (b) a person’s employer and (c) professional or sectoral interests. While the first two sets of activities would certainly cover the representation of foreign or commercial interests, the activities undertaken by CSOs would more likely be seen as falling under the third set, whether the interests being promoted or defended are public or private ones; see the Explanatory Memorandum to Recommendation CM/Rec(2017)2, at para. 12.

145. The reference to the FATF definition is intended to underline the need for a proper risk assessment to be conducted before any disclosure or reporting requirement is imposed on the CSOs concerned and to avoid the undue targeting of CSOs. It is important that there should not be any misapplication of FATF standards in this regard as this can lead to unintended consequences, such as the illegitimate targeting and suppression of legitimate NPOs.⁷

146. As the European Court underlined in *Ecodefence and Others v. Russia*, no. 9988/13, 14 June 2022, at para. 666 “the objective of increasing the transparency of the financing of associations, although legitimate, cannot justify legislation which is based on a presumption, made on principle and applied indiscriminately, that any financial support by a non-national entity and any civil society organisation receiving such financial support are intrinsically liable to jeopardise the State’s political and economic interests and the ability of its institutions to operate free from interference. A regulatory framework needs to correspond with the scenario of a sufficiently serious threat to a fundamental interest of society, which those obligations are supposed to prevent”.

147. The disclosure or reporting requirement is not an absolute one, following the possibility envisaged in Recommendation CM/Rec(2017)2 of exemptions to legal regulations on lobbying being allowed.

148. The disclosure arrangement envisaged by this provision would satisfy paragraph 13 of Recommendation CM/Rec(2017)2, namely, “In the case where a member State can demonstrate that alternative mechanisms guarantee public access to information on lobbying activities and ensure equivalent levels of accessibility and transparency, it may be considered that the requirement for a public register is satisfied”. Such an arrangement would be consistent with the stipulation in Principle 4 of Recommendation CM/Rec(2017)2 that “Legal regulation of lobbying activities should not, in any form or manner whatsoever, infringe the democratic right of individuals to: a. express their opinions and petition public officials, bodies and institutions, whether individually or collectively; b. campaign for political change and change in legislation, policy or practice within the framework of legitimate political activities, individually or collectively”. In addition, it would contribute to ensuring that any disclosure or reporting requirement is not unduly burdensome. This provision also takes into account the synergies with independent transparency mechanisms arising from self-regulation by different sectors of civil society.

149. The requirement in this provision is distinct from any generally applicable requirement regarding the keeping and inspection of financial records and the filing of accounts.

Paragraph 66

150. In order to allay any concern that CSOs might not be devoting as much of their resources as is practicable to the pursuit of their objectives, an obligation to require them to disclose the proportion in fundraising and administrative overheads can be imposed. This provision is not meant to set a particular limit for expenditure on fundraising and administrative overheads but to ensure transparency. Where there

⁷ See [FATF launches new procedure to address unintended consequences affecting Non-Profit Organisations](#).

is such an obligation, guidelines should be issued as to what is considered to constitute “fundraising and administration”.

Paragraph 67

151. Obligations to report should be tempered by other obligations relating to the rights to life and security of beneficiaries and to respect for private life and to confidentiality of donors, beneficiaries, members, staff and volunteers. In particular, there will be a need to demonstrate a genuine public interest for there to be any requirement to report or disclose the personal data of those involved in a CSO (e.g., dates of birth, tax and social security numbers and personal income and expenses); see *Kobaliya and Others v. Russia*, no. 39446/16, 22 October 2024, at paras. 103 and 107. Moreover, a donor’s desire to remain anonymous should be respected.

152. However, the need to respect private life and for confidentiality are not absolute and should not be an obstacle to the investigation of criminal offences (e.g., in connection with money-laundering or terrorist financing). Nonetheless, any interference with respect for private life and confidentiality should always observe the principles of necessity and proportionality.

Paragraph 68

153. In order to guarantee objectivity, there can be a requirement that CSOs have their accounts audited by a person or institution independent of its management. The scope of any such requirement should take account of the size of the CSO concerned. In smaller ones the requirement of independence might be satisfied where the audit is carried out by a member who has no connection with the management. For those with substantial income and expenditure the use of the services of a professional auditor is likely to be considered more appropriate.

154. It is recognised that there may also be a general legal obligation for all entities with legal personality (including CSOs) of meeting certain objective criteria, such as net value of assets or average number of employees, to have their accounts audited, which would be applicable even where CSOs do not receive any public support.

B. Supervision

Paragraph 69

155. The best means of ensuring ethical, responsible conduct by CSOs is to promote self-regulation in this sector at the national and international level. Certainly, responsible CSOs are conscious of the fact that their success depends to a large extent on public opinion concerning their efficiency and ethics. Nonetheless states may have a legitimate interest in regulating CSOs so as to guarantee respect for the rights of third parties (whether donors, employees, members or the public) and to ensure the proper use of public resources and respect for the law.

156. In most instances the interests of third parties can be adequately protected by enabling them to bring the relevant matter before the courts; there should generally be no need for a public body to take any other action on their behalf.

157. Whatever the form of regulatory control employed, it is essential that it be governed by objective criteria, be based on credible evidence and be subject to the principle of proportionality so that its exercise can be amenable to control by the courts. It is also vital that public authorities, in supervising the activities of CSOs, apply the same assumption that holds good for individuals, namely, that their activities are lawful unless the contrary is proved. This was not the situation found by the European Court in *Ecodefence and Others v. Russia*, no. 9988/13, 14 June 2022, in which the control of the donor over the recipient of funds was effectively presumed rather than established on a case-by-case basis, even in a situation where the recipient of funds retained full managerial and operational independence in terms of defining its programmes, policies and priorities. This presumption was irrebuttable because any evidence of operational

independence of the grantee from the donor was legally irrelevant, which contributed to the finding by the European Court that the relevant legislative provisions constituted a violation of Article 11 of the Convention, read in the light of Article 10.

Paragraph 70

158. It should be possible to scrutinise the financial records and activities of CSOs where there are sufficient grounds for inquiry. In most instances this is only likely to be justified where a CSO has failed to comply with reporting requirements, whether because no report has been made or because what has been produced gives rise to genuine concerns, but it is possible that circumstances will warrant an inquiry even before a report is due. Mere suspicion should not be the basis for any such inquiry; there must always be reasonable basis for believing that impropriety has occurred or is imminent.

159. As the European Court observed in *Ecodefence and Others v. Russia*, no. 9988/13, 14 June 2022, at para. 158, regarding the carrying out of routine inspections of “foreign agent” organisations on a triannual rather than an annual basis despite the existence of a power to conduct unscheduled inspections, “[W]hile the important purpose served by inspections is undeniable, excessive use of the power to interfere with the operation of a civil society organisation should never be used as a tool to exercise control over NGOs”.

Paragraph 71

160. This provision requires that CSOs should have the benefit of the guarantees under Article 8 of the European Convention applicable to the search of persons and premises and the use of surveillance; see, e.g., the violations of Article 8 found in *Aliyev v. Azerbaijan*, no. 68762/14, 20 September 2018 (search of an association’s office), and *Segerstedt-Wiberg and Others v. Sweden*, no. 62332/00, 6 June 2006 (storage of information on political dissidents gathered through surveillance).

161. Judicial authorisation should normally be obtained prior to any such search or surveillance taking place but this can be dispensed with where the power is subject to both very strict limits and subsequent judicial control, providing a sufficient guarantee against arbitrary interference with the right to respect for private life; see, e.g., *Vinks and Ribicka v. Latvia*, no. 28926/10, 30 January 2020 and *Roman Zakharov v. Russia* [GC], 47143/06, 4 December 2015.

Paragraph 72

162. Intervention by an external body in the actual running of a CSO should be extremely rare. It should be based on the need to bring an end to a serious breach of legal requirements where either the CSO has failed to take advantage of an opportunity to bring itself into line with those requirements or an imminent breach of them should be prevented because of the serious consequences that would follow.

Paragraph 73

163. The possibility of seeking suspension of administrative action is something expected of all administrative law systems – see Recommendation Rec(2003)16 of the Committee of Ministers on the execution of administrative and judicial decisions in the field of administrative law – but it is especially important that this is available in respect of directions to a CSO to desist from particular activities as these are often tied to particular moments in time and so could not usefully be undertaken at a later date after a challenge to the directions has been successfully pursued.

164. Although there may be good reasons in a particular case for refusing suspension of an order to desist from certain activities or of any other measure taken in respect of a CSO, the significance of so doing is such that there should then be the possibility of this being subjected to a prompt judicial challenge.

Paragraph 74

165. CSOs, like everyone else, are subject to the law and sanctions may thus be imposed on them for failing to observe its requirements. However, it is essential that the principle of proportionality be respected in both framing and applying sanctions for non-compliance with a particular requirement so that these always reflect the level of seriousness of any actual shortcoming in observing it. As the provision indicates, a sanction should be imposed in the more serious cases of non-compliance, with most shortcomings being resolved through a requirement for the CSO concerned to rectify its affairs. Moreover, there should always be a clear legal basis for any sanctions that are imposed in a given case.

Paragraph 75

166. Resort to the sanction of enforced termination of a CSO for the reasons set out in Paragraph 45 of the Recommendation should be very rare and in full respect of the principle of proportionality. An extremely well-founded basis for such drastic action as enforced termination is essential; see, e.g., *Refah Partisi (The Welfare Party) and Others v. Turkey* [GC], no. 41340/98, 13 February 2003. *Herri Batasuna and Batasuna v. Spain*, no. 25803/04, 30 June 2009, *Les Authentiks and Supras Auteuil 91 v. France*, no. 4696/11, 27 October 2016 and *Humanitäre Hilfsorganisation e.V. v. Germany*, no. 11214/19, 10 October 2023.

167. Dissolution would not be justified, e.g., where there was no concrete evidence of a threat to national security (as in *Association of People of Silesian Nationality (in liquidation) v. Poland*, no. 26821/17, 14 March 2024) or of the commission of criminal offences or dangerous conduct (*Church of Scientology Moscow and Others v. Russia*, no. 37508/12, 14 December 2021), as well as where efforts had been made by the CSO to mitigate failures to comply with certain legal requirements (*Savenko and Others v. Russia*, no. 13918/06, 14 September 2021) or the violations committed by it which were purely formal and did not relate to the essence of its activity (*Vladimir Regional Public Association of Refugees and Displaced Persons 'Sodeystviye' v. Russia*, no. 53097/08, 9 November 2021).

168. Where enforced termination does appear to be justified, it is a measure that must be adopted by a court and should be subject to prompt appeal. It should only be in the most exceptional case that the effect of a termination ruling would not be suspended until the outcome of an appeal; see the contribution of the absence of such a possibility to the measure being found to be disproportionate in, e.g., *United Communist Party of Turkey v. Turkey* [GC], no. 19392/92, 30 January 1998, at para. 61, and *Socialist Party and Others v. Turkey* [GC], no. 21237/93, 25 May 1998, at para. 51.

C. Liability

Paragraph 76

169. The principles set out in this provision are a necessary consequence of the legal personality of a CSO. Such personality confers on it a separate existence from its members and founders, and it should normally, therefore, be the only one liable for its debts, liabilities and obligations. However, legal personality cannot operate as a barrier to liability – whether civil or criminal - on the part of a CSO's members, founders and staff for any professional misconduct or neglect of duties with regard to its functioning that affects the rights or other legal interests of third parties.

170. In some member States, it is possible to choose to establish a CSO **without legal personality** where the officers **and/or members** can be held personally liable for the CSO's debts, liabilities and obligations (for **example, unincorporated associations in England and Wales and** informal associations in the Netherlands).

Paragraph 77

171. It is important to be convinced that the reprehensible activities of members and even officeholders of a CSO can justifiably be regarded as engaging the responsibility of the latter. The unjustified institution of proceedings against them should not be used as a means of indirectly harming their CSO.

172. In *Herri Batasuna and Batasuna v. Spain*, no. 25803/04, 30 June 2009, the fact that a political party had not openly distanced itself from actions or speeches by its members or local leaders that were likely to be interpreted as tacit support for terrorism was considered by the European Court could reasonably be regarded as corresponding to a pressing social need which would justify dissolution.

173. On the other hand, in *Dicle for the Democratic Party (DEP) of Turkey v. Turkey*, no. 25141/94, 10 December 2002, a single speech by a former leader of the party that had been made overseas in a language other than Turkish and to an audience that was not directly concerned by the situation in Turkey was considered by the European Court to have only a limited potential impact on Turkey's "national security" public "order" or the "territorial integrity" so that that speech could not by itself justify so general a penalty being imposed as the dissolution of an entire political party. Similarly, in *Adana TAYAD v. Turkey*, no. 59835/10, 21 July 2020, the dissolution of an association for mutual aid and solidarity with the families of prisoners and convicts on the grounds of the illegal activities of certain members of its board of directors – while the judgments handed down in the proceedings relating to those offences were not yet final – was considered to be unjustified as the civil courts should have carried out an independent assessment that did not simply reproduce the non-final findings of the criminal courts. In the European Court's view, some of the facts on which the criminal court had based its findings did not amount to incitement to terrorism and, in any event, the national authorities had failed to consider whether less stringent measures could have achieved the aims concerned.

Paragraph 78

174. As with membership (see paragraph 76 of this Explanatory Memorandum), sanctions should not be imposed on persons merely because of their volunteering in a CSO. Thus, there ought to be a remedy for any person dismissed, prosecuted or otherwise penalised for having done so or because of its objectives.

VIII. PARTICIPATION IN DECISION MAKING

Paragraph 79

175. Notwithstanding the different perspective of CSOs and public authorities, it is in their common interest and that of society as a whole for them to have available effective mechanisms for consultation and dialogue so that their expertise is fully exploited. Certainly, competent and responsible input by CSOs to the process of public policy formulation can contribute greatly to efforts to find solutions to the many problems that need to be addressed.

176. Although direct consultation and dialogue with all interested CSOs may not be feasible in every instance, the adoption of techniques (such as structured dialogue) to facilitate their input through bodies playing a co-ordinating role should be encouraged. In this connection, particular account should be taken of CM(2017) 83-final of the Committee of Ministers to member states on Guidelines for civil participation in political decision-making and the revised Code of Good Practice on Civil Participation in the Decision-Making Process prepared by the Conference of INGOs of the Council of Europe.

178. No CSO should be excluded from participation on a discriminatory basis and the expression of a diversity of views should be ensured. In all cases, transparent procedures should be applicable and be followed. In addition, the provision of financial support may be necessary to facilitate participation in the consultation process by some CSOs. Moreover, member States should fully implement the guidelines in Recommendation CM/Rec(2024)2 of the Committee of Ministers to member States on countering the use of strategic lawsuits against public participation to counter efforts directed against public participation by CSOs and the measures in Recommendation CM/Rec(2022)6 of the Committee of Ministers to member States on protecting youth civil society and young people, and supporting their participation in democratic processes.

179. The quality of the input of CSOs should not be undermined by inappropriate restrictions on access to official information.

Paragraph 80

1180. It is essential that CSOs not only be consulted about matters connected with their objectives but also on proposed changes to the law which have the potential to affect their ability to pursue those objectives. Such consultation is needed not only because such changes could directly affect their interests and the effectiveness of the important contribution that they are able to make to democratic societies but also because their operational experience is likely to give them useful insight into the feasibility of what is being proposed.

Paragraph 81

169. This provision recognises the potential impact that systems and arrangements developed by the private sector actors, including for example digital tools and algorithmic systems, can have on matters of concern for CSOs and the need, therefore, for these actors to actively engage on participatory processes with CSOs as they design, develop and deploy such systems and arrangements.

IX. FOREIGN CSOS

Paragraph 82

170. States that have not ratified Convention No. 124 may retain some discretion as to whether they recognise the legal personality of foreign CSOs – i.e., CSOs established in another state – and as to whether they allow them to operate within their territory, but neither can such discretion be absolute. Namely, residents of the states concerned enjoy freedom of association, and also, instruments such as the UN Declaration on Human Rights Defenders (Articles 5, 16 and 18) recognise the legitimacy of international human rights CSOs operating within individual member States. Certainly, any process of prior approval to operate should be restricted and should not entail any requirement that CSOs first establish a new and separate entity under the law of the state in which they are seeking to operate. Furthermore, the process of approval and its withdrawal should emulate, insofar as appropriate, the approach required for granting and terminating legal personality to CSOs set out in the provisions of the Recommendation.

Paragraph 83

171. Although there is no reason to differentiate between foreign and other CSOs as regards the applicability of the provisions in Section VII of the Recommendation, it is only appropriate to subject foreign CSOs to them in respect of the activities that they actually carry out in the host member State.

Paragraph 84

172. This provision is concerned with mitigating the situation of CSOs which are unable to remain in the country where they were established because of measures taken against them that are inconsistent with human rights standards. Such mitigation can be achieved by granting the officers and staff of the CSOs concerned the possibility of entering and staying lawfully in a member State and enabling them to continue to pursue their objectives in it, as well as by assisting those CSOs to comply with any formalities that must be observed, to find suitable accommodation, ~~and~~ to obtain access to banking facilities and to secure funding and operational support. Wherever feasible, expedited procedures should be employed.

Paragraph 85

173. This provision makes the requirements set out in paragraphs 45 and 75 of the Recommendation applicable whenever a member State proposes to withdraw any approval given for a CSO to operate in it.