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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

ROMANIA

DRAFT LAW 140/2017

ON AMENDING GOVERNMENTAL ORDINANCE NO. 26/2000

ON ASSOCIATIONS AND FOUNDATIONS

Law 140/ 2017 on Associations and Foundations

*Current text of Law adopted by the Senate, proposing the amendments
Unofficial translation*

Chamber of Deputies

Senate

Law for amending and completing the Government Ordinance no. 26/2000 regarding associations and foundations

The Romanian Parliament adopts this law

Article I - Government Ordinance no. 26/2000 regarding associations and foundations, published in the Official Gazette of Romania, Part I, no. 39 of 31 January 2000, with all amendments and changes adopted at later stages, shall be amended and completed as follows:

1. Article 38 shall be amended and shall have the following content:

"Art. 38.

(1) An association or foundation may be recognized by the Government of Romania as being of public utility if the following conditions are met simultaneously:

a) Its activity is carried out for the general or community interest, as the case may be, in one of the following areas:

- Social Services (Assistance-Protection-Inclusion-Cohesion-Security-Development-Social Economy), Charity and Humanitarian Aid, Health, Sport
- Education
- Science, Research, Innovation, Environment and Animal Protection, Consumer Protection
- National and national minorities' values, Traditions and Cultural Assets
- Diplomacy and International Relations, Military-Defence-Respect for heroes

as defined in its creation act;

b) Has been operating for at least 2 years and achieved some of the set up objectives;

c) Has carried out significant previous activities, by carrying out programs or projects specific to its purpose, accompanied by balance sheets and financial statements (income and expenditures) for the past 2 years;

d) The value of assets for each year of operation is at least equal to the value of the initial assets;

e) It has not been in the past 2 years and does not currently carry out any kind of political activities: fundraising or campaigns to support or oppose a political party or a candidate for a public office in which he/ she may be appointed or elected.

(2) The Government of Romania shall recognize the of public utility status for foundations or associations according to the following percentage algorithm:

- 40% - Social Services (Assistance-Protection-Inclusion-Cohesion-Security-Development-Social-Economy), Charity and Humanitarian Aid, Health, Sport; 30% - Education;
- 10% - Science, Research, Innovation, Environment and Animal Protection, Consumer Protection;
- 10% - National values and national minorities - Traditions and Cultural Assets;

10% - Diplomacy and International Relations, Military-Defense-Respect for Heroes.

(3) The Government of Romania may, at the proposal of the competent administrative authority, grant an exemption from the conditions in paragraph (1) lit b) and c), if the applicant association or foundation was the result of the merger of several pre-existing associations or foundations and each of these pre-existing associations or foundations would have fulfilled the two conditions in case they would have requested independently"

2. Article 41 shall be amended and shall have the following content:

"Art. 41.

The recognition of public utility status grants the association or foundation, additionally, the following rights and obligations:

a) the right to receive free use of public property and access to funding from central and local budgets, according to the following percentage algorithm:

40% - Social Services (Assistance-Protection-Inclusion-Cohesion-Security-Development-Social-Economy), Charity and Humanitarian Aid, Health, Sport; 30% - Education;

10% - Science, Research, Innovation, Environment and Animal Protection, Consumer Protection;

10% - National values and national minorities - Traditions and Cultural Assets;

10% - Diplomacy and International Relations, Military-Defense-Respect for Heroes.

b) the possibility to mention in all its documents that the association or foundation is recognized to be of public utility;

c) the obligation to discharge any kind of political activities: fundraising or campaigns to support or oppose a political party or a candidate for a public office in which he/ she may be appointed or elected

d) the obligation to maintain the conditions specified in art. 38 para. (1), at least at the level which warranted the recognition;

e) the obligation to communicate to the competent administrative authorities any amendments to the association acts and statutes, as well as to the activity reports and annual financial statements, and the obligation to publish the activity reports in the Official Gazette of Romania, Part IV and in the National Register of Non for Profit Legal Entities."

3. Article 42 shall be amended and shall have the following content:

"Art. 42.

(1) The recognition of public utility status lasts for a period of 5 years and may be renewed under the provisions of this Chapter.

(2) The competent administrative authorities together with the Ministry of Justice shall draw up, for each public utility association or foundation, an annual report of compliance with the conditions that led to the Government's recognition of the public utility status. The report for the previous year will be published on the Ministry of Justice website until 30 January.

(3) If the association or foundation no longer fulfils one or more of the conditions underlying the recognition of public utility, the Government, at the proposal of the competent administrative authority or of the Ministry of Justice, withdraws the recognition act.

(4) The withdrawal also occurs in case of non-fulfilment of the obligations stipulated in art. 41.

(5) The circumstances stipulated in paragraph (3) and (4) may be reported to the competent administrative authority, the Ministry of Justice or the Government, by any interested person.

4. After Article 48, a new Article 48¹ shall be inserted, having the following content:

“Art. 48¹

(1) Associations, foundations and federations have the obligation to publish each six months, by 31 July and 31 January, in the Official Gazette of Romania, Part IV, the financial statements for the previous semester.

(2) in the published statements, the individual or activity (whichever is the case), generating each income, as well as the value of each income shall be mentioned separately.

(3) Failure to publish the declaration under this article conditions infers the suspension of the association, foundation or federation's functioning for 30 days. If within 30 days, the association, foundation or federation fails to publish the financial statements according to the conditions specified in paragraph (2), the association, foundation or federation, as the case may be, ceases its activities immediately, according to the conditions provided for in Chapter IX "

Article II

(1) Within 90 days from the date of entry into force of this law, associations and foundations which are recognized as being of public utility according to the previous legal provisions, have the obligation to require to public authorities a new recognition, according to the conditions specified in Chapter VI of the Government Ordinance no. 26/2000 on Associations and Foundations, as amended by this Law.

(2) For the associations and foundations requesting a new recognition before the expiration of the deadline provided for in paragraph (1), the previous recognition shall be maintained until the competent public authority has a final decision regarding the application.

(3) Failure to respect the deadline in paragraph (1) shall entail, as a matter of law, the termination of the public utility recognition for the association or foundation in question.

Art. III - Within 30 days from the date this law entries into force, the Government will elaborate the rules on procedures for recognizing public utility status for associations and foundations.

Article IV - On the date this law enters into force, the differing provisions are abrogated.

This law was adopted by the Parliament of Romania, in compliance with the provisions of art. 76 par. (2) of the Romanian Constitution, republished.

President
Chamber of Deputies

President
Senate