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NOTE ON ASSET DECLARATIONS OF REPRESENTATIVES OF ASSOCIATIONS, CONFLICTS OF INTEREST AND THE RIGHT TO FREEDOM OF ASSOCIATION

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EXECUTIVE SUMMARY

This Note focuses on legal provisions – adopted or under consideration in some OSCE participating States – requiring board members or directors of associations to declare their personal assets and/or the existence of any conflict of interest.

At the outset, it must be underlined that any obligation for directors or board members of associations to declare their assets or conflicts of interest constitutes a restriction on their rights to freedom of association and to respect for their private and family life. Under international human rights law, such restrictions are permissible only if they are established by law – ensuring clarity, accessibility, and protection against arbitrary application, if they serve a legitimate aim exhaustively listed in international instruments, such as national security, public safety, public order, or the prevention of crime, and are necessary in a democratic society and proportionate to reach this aim. In addition, any restriction must be non-discriminatory. Any restrictions require compelling justification, not just abstract concerns. Common reasons invoked for imposing such asset or conflict of interest declarations on representatives of associations – such as transparency, anti-corruption, or preventing conflicts of interest – must be examined in light of whether they genuinely meet these strict criteria.

The need for transparency in the internal functioning of associations (as opposed to public affairs) is not specifically established in international and regional treaties owing to the right of associations to be free from interference of the state in their internal affairs. Enhancing transparency does not by itself constitute a legitimate aim for restricting the rights to freedom of association and freedom of expression as exhaustively listed in international instruments, although there may be circumstances where transparency may be a means in the pursuit of one or more of such legitimate aims as to protect national security, ensure public order or the prevention of crimes including corruption, embezzlement, money-laundering or terrorism financing. While openness and transparency are important for fostering accountability and public trust in associations and the civic sector in general, these should be encouraged and facilitated by the public authorities rather than imposed as mandatory legal requirements.

An association may voluntarily decide to adopt conflict of interest provisions as an important component of its *internal* integrity management system, since they constitute useful tools to effectively address corruption risks. At the same time, measures to prevent conflicts of interest are usually matters of internal governance and do not warrant state interference, unless laws are breached.

Generally, the disclosure of interests and declaration of assets by *public* officials is recognized and widely used as one of the effective tools to prevent and fight corruption, and to enhance the transparency and accountability of the public sector as principles of good *public* governance. As private entities, associations (and their representatives) should not be subject to the same information disclosure laws that

apply to public officials or public entities, unless they are recipient of public funding or other public benefits, or when they carry out certain public functions triggering risks of conflict of interest and abuses of office as long as such declaratory or disclosure requirements are part of tender or grant application processes and limited to the criteria and scope of the application. Even in the latter case, such declaration or disclosure requirements should comply with the principles of legality, necessity, proportionality and non-discrimination. By contrast to assets declarations and disclosure requirements in the public sector, requiring personal financial information or disclosure of conflict of interest from directors or board members of associations is generally hard to justify, unless there is a specific suspicion of illegal conduct. The existence or importance of association representatives' private assets alone does not indicate misuse of authority, and thus does not establish a public interest in general declarations or publication of such information. In addition, while certain obligations may legitimately be imposed on the legal entity itself, the rationale for extending such obligations to its representatives or leadership is weak. Indeed, in principle, the very notion of legal personality implies that an association exists as a separate entity from its leaders or representatives, although the latter should remain personally liable for their individual wrongdoing.

Moreover, declarations of assets inherently involve sharing sensitive personal data, protected by the right to privacy under both the ICCPR and ECHR. Further, requiring the publication of asset declarations would intensify the privacy intrusion and would rarely be justifiable. Such a measure may additionally create a chilling effect on the exercise of the right of freedom of association by board members/directors who may prefer to disengage and not retain their functions rather than submitting themselves to the asset declaration or disclosure regime.

Criminal conduct, such as embezzlement or bribery, is generally already punishable under national law. Instruments such as banking laws or financial surveillance mechanisms to prevent and combat money laundering as well as criminal laws, including specific anti-terrorism financing legislation, already exist. Priority should therefore be given to enhancing these frameworks, rather than resorting to new and cumbersome regulations of the NGO sector, especially when legislative initiatives are not based on a proper, thorough and transparent risk assessment relevant to civil society work, demonstrating the necessity of the legislation, and identifying a genuine, real, present, and sufficiently serious threat linked to the work of specific civil society organizations that the law is seeking to address.

Mandating systematic declarations of assets and disclosure of conflict of interest by representatives of associations for prevention purposes is likely to be disproportionate. Instead of blanket declaration or disclosure rules, more proportionate, less intrusive methods could be considered, such as some forms of (proportionate) tax and financing reporting of the associations – not of its leaders, promoting practices which exist on a voluntary basis, e.g., internal conflict-of-interest policies and rules or voluntary codes of conduct or ethics guidelines

developed by the non-profit sector, and/or targeted risk based investigations when there is reasonable suspicion of wrongdoing by the leadership of an association.

. Special reporting may be permissible if required in exchange for certain benefits, provided it is within the discretion of the association to decide whether to comply with such reporting requirements or forgo them and forsake any related special benefits, where applicable. For associations receiving public funding, some limited reporting requirements may be justified providing that they do not create an undue and costly burden on associations and that they are proportional to the amount of funding received. Expanding these obligations too broadly, including by imposing asset declarations and conflict of interest disclosure obligations on their representatives, risks being ineffective and unnecessarily invasive. The mere participation of associations in policy- or law-making processes, which is inherently part of their legitimate activities, should not be sufficient, on its own, to justify the obligation for the association's representatives to declare their assets, although disclosure of potential conflicts of interest could be justified. Requiring publication of asset declarations would intensify the privacy intrusion and would rarely be justifiable.

By contrast, when an association has introduced internal rules requiring declarations of conflicts of interest, this is generally unobjectionable, as it serves to protect the association's integrity and involves minimal personal disclosure.

In any case, before introducing such measures, governments must show that any new declaratory or disclosure requirements are necessary to counter a real, not hypothetical, threat. Before introducing such measures, a proper, thorough and transparent risk assessment of the civic sector should be carried out, in addition to an in-depth regulatory impact assessment, also examining whether less intrusive alternatives exist and avoid duplicating existing obligations, such as financial or tax reporting already in place for associations, and analysing the potential undue impact that such legislation may have on the exercise of human rights and fundamental freedoms.

As part of its mandate to assist OSCE participating States in implementing their OSCE human dimension commitments, ODIHR reviews, upon request, draft and existing laws to assess their compliance with international human rights standards and OSCE commitments and provides concrete recommendations for improvement.

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I. INTRODUCTION

1. The Panel of Experts on Freedom of Assembly and Association (hereinafter "the Panel")[1] is an advisory and consultative body that enables the OSCE Office for Democratic Institutions and Human Rights (hereinafter "ODIHR") to assist OSCE participating States more effectively in implementing their OSCE commitments on freedoms of peaceful assembly and of association. It is mandated, among others, to monitor and inform ODIHR about important developments and major trends relating to international and national standards and practices on the implementation of freedom of assembly and association standards and commitments across the OSCE region.

2. Since 2017, the Panel has been closely monitoring and discussing certain legislative initiatives whereby states have been aiming to impose new reporting, declaration and/or disclosure requirements[2] on associations[3] and other forms of non-profit or non-governmental organizations (hereinafter "NGOs").[4] These include obligations for their directors or board members to declare their personal assets or potential conflicts of interest in the name of "transparency", or new requirements to disclose such information based on the general consideration that NGOs are implementing public tasks. In view of recent developments observed in the OSCE region, during its last annual meeting in March 2025, the Panel concluded that the topic remains pertinent.

3. The 2015 Joint Guidelines on Freedom of Association[5] (hereinafter "the Guidelines") published by ODIHR and the European Commission for Democracy through Law (hereinafter "Venice Commission") address the issue of reporting and supervision of associations, but do not specifically analyse the question of conflicts of interest or the above-mentioned requirement for representatives of associations to declare their personal assets. As mentioned in their Foreword, the Guidelines are intended as a living instrument that should continue to develop and adapt to the changing circumstances. Recognizing the need to provide additional guidance to law-makers on these matters, the Panel and ODIHR agreed to prepare a *Note on Asset Declarations of Representatives of Associations, Conflicts of Interest and the Right to Freedom of Association.*

4. The Note purports to analyse the above-mentioned issues from the viewpoint of their compliance with international human rights standards and OSCE human dimension commitments, and will also serve as the basis for discussions on preparing, as appropriate, a next edition of the Guidelines on Freedom of Association.

1 For more information on the Panel, see <ODIHR Panel of Experts on Freedom of Assembly and Association | OSCE>.

2 A reporting or declaration obligation consists in reporting certain information (for reporting, generally recurrently and in a prescribed format) to the relevant authorities whereas a "public disclosure obligation" consists in making such information public, for instance on the website of the association concerned, of a public authority or other public source, or available to the public through other means. See, Venice Commission, *Report on Funding of Associations*, CDL-AD(2019)002, para. 83; and Conf/Exp(2018)3 Expert Council on NGO Law, International standards relating to reporting and disclosure requirements for non-governmental organisations, 27 November 2018

3 The term "association" is defined in the ODIHR-Venice Commission Guidelines on Freedom of Association (2015), as "*an organized, independent, not-for-profit body based on the voluntary grouping of persons with a common interest, activity or purpose*" and shall thus include non-governmental organizations (NGOs) which are membership-based and have more than one founder (see paras. 38 and 63 of the Guidelines). As noted in the Guidelines on Freedom of Association (para. 63), there is no universal definition of what constitutes a non-governmental organization, although many relevant international and regional documents have attempted to outline the form that such organizations may take.

4 See e.g., Council of Europe, *Recommendation CM/Rec(2007)14 of the Committee of Ministers to Member States on the Legal Status of Non-governmental Organisations in Europe*, which states that non-governmental organizations are "voluntary self-governing bodies or organisations established to pursue the essentially non-profit-making objectives of their founders or members", which are either membership or non-membership based and do not include political parties (pars 1-2).

5 ODIHR-Venice Commission, Guidelines on Freedom of Association (2015),.

5. ODIHR conducted this assessment within its mandate to assist the OSCE participating States in the implementation of their OSCE human dimension commitments.[6]

II. SCOPE OF THE NOTE

6. The Note only focuses on the matter at hand, namely legal provisions – adopted or under consideration in some OSCE participating States – requiring persons who serve as board members or directors of associations to declare or disclose their personal assets and/or the existence of any conflict of interest. The Note is based on information collected on certain, but not all, OSCE participating States, when available.[7] Thus limited, the Note does not constitute a full and comprehensive overview of international standards, OSCE commitments and practices pertaining to the right to freedom of association.
7. The Note bases itself on international and regional standards, recommendations and practices relevant to the legal issues under review, as well as pertinent OSCE commitments, and provides recommendations on the compliance of the afore-mentioned legal provisions and practices with such standards.
8. Moreover, in accordance with the Convention on the Elimination of All Forms of Discrimination against Women[8] (hereinafter "CEDAW") and the 2004 OSCE Action Plan for the Promotion of Gender Equality, the Note seeks to mainstream a gender perspective throughout the legal analysis.[9]
9. In view of the above, ODIHR would like to make mention that this Note does not prevent ODIHR from formulating additional written or oral recommendations or comments on the respective legal issue or related matters pertaining to the right to freedom of association in the future.

III. LEGAL ANALYSIS

6 OSCE participating States committed "*to ensure that individuals are permitted to exercise the right to association, including the right to form, join and participate effectively in non-governmental organizations which seek the promotion and protection of human rights and fundamental freedoms*" (1990 Copenhagen Document, para. 10.3); see also 1990 Paris Document, where OSCE participating States affirmed that "*…without discrimination, every individual has the right to (…) freedom of association*". The OSCE participating States have also committed themselves to "*recognize as non-governmental organisations those which declare themselves as such, according to existing national procedures, and to facilitate the ability of such organizations to conduct their national activities freely on their territories*" (1991 Moscow Document, para. 43) and to "*enhance the ability of NGOs to make their full contribution to the further development of civil society and respect for human rights and fundamental freedoms*" (1999 Istanbul Document, para. 27).

7 In particular, this overview is based upon information gathered concerning Albania, Belarus, Bulgaria, Canada, Cyprus, Denmark, Georgia, Hungary, Ireland, North Macedonia, the Republic of Moldova, Russia, Serbia, Sweden, Turkey, Ukraine, the United Kingdom and the United States of America; the Legal Framework for Not-for-Profit Organizations in Central and Eastern Europe (ICNL, 2009), by D. Rutzen, M. Durham and D. Moore; and the ECNL Study on Recent Public and Self-regulatory Initiatives Improving Transparency and Accountability of Non-profit Organisations in the European Union (2009).

8 UN Convention on the Elimination of All Forms of Discrimination against Women (hereinafter "CEDAW"), adopted by General Assembly resolution 34/180 on 18 December 1979. Except for the Holy See, which has not signed or ratified this Convention, and the United States of America, which signed it on 17 July 1980 but have not yet ratified it, all other OSCE participating States have ratified or acceded to the CEDAW.

9 See para. 32 of the OSCE Action Plan for the Promotion of Gender Equality, adopted by Decision No. 14/04, MC.DEC/14/04 (2004).

1. RELEVANT INTERNATIONAL HUMAN RIGHTS STANDARDS AND OSCE HUMAN DIMENSION COMMITMENTS

10. For a relevant overview of international standards and OSCE commitments with respect to the freedom of association specifically, please see, amongst others, the ODIHR "*Note on Legislative Initiatives on Transparency and Regulation of Associations Funded from Abroad or So-called 'Foreign Agents Laws' and Similar Legislation and Their Compliance with International Human Rights Standards*".[10]

11. At the outset, it must be underlined that any obligation for directors or board members of associations to declare assets or disclose conflicts of interest constitutes a restriction on their rights to freedom of association and to respect for their private and family life enshrined in major international human rights instruments, including the International Covenant on Civil and Political Rights (ICCPR),[11] the European Convention on Human Rights and Fundamental Freedoms (ECHR),[12] the EU Charter on Fundamental Rights,[13] as well as OSCE human dimension commitments.[14] Any restriction on the rights to freedom of association and expression must be compatible with the strict three-part test set out in the above-mentioned instruments, which requires any restriction to be established by law – ensuring clarity, accessibility, and protection against arbitrary application (requirement of legality), to be in pursuit of one of the legitimate aims exhaustively listed in international instruments, such as national security, public safety, public order, or the prevention of crime (requirement of legitimacy),[15] to be necessary in a democratic society and to respect the principle of proportionality (which *inter alia* presupposes that any imposed restriction should represent the least intrusive measure among all those possible means effective enough to achieve the designated objective).[16] In addition, the restriction must be non-discriminatory (Articles 2 and 26 of the ICCPR and Article 14 of the ECHR (and Protocol 12 to the ECHR)[17]).

12. It should be noted that international treaty provisions dealing with the right to freedom of association do not require, or make reference to, either declarations or disclosure of assets or conflicts of interest by representatives of associations when talking about the possibility of restricting this right. Article 8 (5) of the United Nations Convention against

10 ODIHR, *Note on Legislative Initiatives on Transparency and Regulation of Associations Funded from Abroad or So-called "Foreign Agents Laws" and Similar Legislation and their Compliance with International Human Rights Standards*, 25 July 2023.

11 International Covenant on Civil and Political Rights (hereinafter "ICCPR"), adopted by the UN General Assembly by resolution 2200A(XXI) of 16 December 1966. Article 17 of the ICCPR states that "*1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. 2. Everyone has the right to the protection of the law against such interference or attacks*." Article 22 (1) of the ICCPR provides that "*everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests*".

12 See the Council of Europe's *Convention for the Protection of Human Rights and Fundamental Freedoms* (ECHR), signed on 4 November 1950. Article 8 (1) of the ECHR provides that "*Everyone has the right to respect for his private and family life, his home and his correspondence*"; Article 11 (1) of the ECHR states: "*Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests*."

13 Charter of Fundamental Rights of the European Union, 2012/C 326/02, especially Articles 7 and 8 on respect for private and family life and on protection of personal data, respectively; and Article 12 specifically referring to the freedom to associate "*at all levels, in particular in political, trade union and civic matters*".

14 In particular, CSCE/OSCE, *Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE*, 29 June 1990, para. 9.3; and Charter of Paris for a New Europe (1990), where the OSCE participating states affirmed that "*…without discrimination, every individual has the right to (…) freedom of association."* See also OSCE, *Istanbul Document 1999*, para. 27, where OSCE participating States committed to "*enhance the ability of NGOs to make their full contribution to the further development of civil society and respect for human rights and fundamental freedoms*".

15 For Article 22 (2) of the ICCPR, these are national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. For Article 8 (2) of the ECHR on the right to respect for private and family life, these are "*national security, public safety or the economic well-being of the country, 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*" while Article 11 (2) of the ECHR lists 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.

16 See ODIHR and Venice Commission, *Joint Guidelines on Freedom of Association* (2015), Principle 10 and para. 113.

17 *Protocol No. 12 to the ECHR* contains a general prohibition of discrimination in the enjoyment of any rights.

Corruption (hereinafter "the UNCAC"), mandates such measures but with respect to public officials, calling upon States Parties to "*establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials*".

13. Soft law instruments or decisions made by human rights bodies relating to the right to freedom of association similarly do not specifically address this issue. At the same time, in their 2024 Joint Declaration on Protecting the right to freedom of association in light of "Foreign Agents"/ "Foreign Influence" Laws, ODIHR and the UN Special Rapporteur on the rights of freedom of peaceful assembly and of association, along with other regional Special Mandate-Holders, called upon states to ensure that "*legislative initiatives seeking to impose declarations of assets and other resources, of membership or relationships or similar requirements, targeting civil society and other non- for-profit organizations are based on a proper thorough and transparent risk assessment relevant to civil society work, demonstrating the necessity of the legislation, identifying the genuine, real, present, and sufficiently serious threat linked to the work of civil society that the law is seeking to address, considering existing legislative framework, and exploring alternative less intrusive measures*".[18]

14. Some provisions concerning conflicts of interest within NGOs also exist in a number of self-regulatory instruments adopted by the non-governmental sector, which are being regularly upgraded, and call upon the adoption of internal measures to prevent and manage, or prohibit, conflicts of interest by board members, employees and/or volunteers.[19]

15. Lobbying-related legislation and international standards, which may allow for the requirement of statements and asset declarations for the purpose of increasing transparency of lobbying activities and actors, should not apply to mere public advocacy by NGOs. The 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 ("Recommendation CM/Rec(2017)2")[20] and the OECD's revised

18 UN Special Rapporteur on the rights of freedom of peaceful assembly and of association, the Special Rapporteur on Freedom of Expression of the InterAmerican Commission on Human Rights (IACHR), the Commissioner Rapporteur for Human Rights Defenders of the IACHR, the Special Rapporteur on Human Rights Defenders and focal point on reprisals in Africa of the African Commission on Human and Peoples' Rights (ACHPR), the Representative of Indonesia to the ASEAN Intergovernmental Commission on Human Rights (AICHR), and the OSCE/ODIHR (hereinafter collectively referred to as "International Special Mandate-Holders"), *2024 Joint Declaration on Protecting the right to freedom of association in light of "Foreign Agents"/ "Foreign Influence" Laws*, para. 27.

19 These include the Global Standard for CSO Accountability (2017) (committing to "*ensure strict financial controls to reduce the risk of corruption, bribery, misuse of funds, and conflicts of interest, report openly and transparently about who provides our resources and how they are managed*"), InterAction's NGO Standards (December 2018) (which requires the Board to "*adopt a policy that prohibits direct and indirect conflicts of interest by members of the Board, employees, and volunteers*", para. 2.4), the Australian Council for International Development (ACFID) Code of Conduct (October 2023) and its Quality Assurance Framework (2024) (indicator 7.4.3 elaborates on management of conflicts of interest within the organization, with responsible people, staff, volunteers and third parties relating to all activities undertaken by the organization), the Core Humanitarian Standard on Quality and Accountability (2024 edition) (Commitment 9: "*People and communities can expect that resources are managed ethically and responsibly*" and Requirement 9.5: "*Identify, prevent and manage risks at all levels of the organisation, including corruption, fraud, misuse of resources and conflicts of interest, and take appropriate action if these are identified*"), etc. See, also e.g., the Accountability Charter by International Non-governmental Organisations (revised version, 2021) (requiring "*Effective systems and practices to prohibit, prevent, detect and report on corruption, bribery and conflict of interest by staff or other persons working for or on behalf of the organisation*"; the *Commonwealth Foundation, Non-Governmental Organisations: Guidelines for Good Policy and Practice* (2013) (Guidelines 5: "*ensuring that the organisation remains true to its mission and objectives and that its identity, integrity, methods and activities are not distorted, subverted, taken over or corrupted by external or internal personal or organisational self–interest*" (<http://www.3sektorius.lt/docs/NGOGuidelinesforGoodPolicyandPractice_2013-01-17_15_21_00.pdf>); and Transparency International, Guidance on developing a code of conduct for NGOs (2009), noting that "*it is particularly important to layout a framework for removing or making transparent conflicts of interest and reducing opportunities for misconduct*".

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20 See Council of Europe, Committee of Ministers, Recommendation CM/Rec(2017)2 and Explanatory Memorandum, Legal Regulation Of Lobbying Activities In The Context Of Public Decision Making.

Recommendation of the Council on Transparency and Integrity in Lobbying and Influence ("the OECD Lobbying Recommendation")[21] are important guidelines with respect to lobbying regulation. ODIHR has also underlined that "*any legislation regulating lobbying should strictly define the meaning of lobbying, ensuring that it primarily targets those who receive compensation for carrying out lobbying activities and that it does not cover all advocacy activities by civil society organizations or participation in public consultations*".[22] The ODIHR *Guidelines on Democratic Lawmaking for Better Laws* further note that *"[s]pecial interest groups, informal or formal, may seek to influence the legislative process, including in an organized manner via professional lobbyists […] Lobbying is understood as the promotion of specific interests by communicating with a public official as part of a structured and organized action aimed at influencing public decision-making. It is a legitimate act of political participation, an important means of fostering pluralism and a tool, ultimately, to contribute to better decision-making in the public domain*."[23] As for the regulation of lobbying, the *ODIHR Guidelines on Democratic Lawmaking* provide that "…*lobbying activities may be regulated in the interests of transparency and accountability, as an essential component of good public governance applicable to the public sector and to ensure that financially or politically powerful groups do not unduly influence or capture state policies. However, regulation of lobbying activities should not be unduly burdensome and should seek to balance the need for transparency with safeguards for the rights of individuals and associations, including the rights to freedom of expression and opinion, freedom of association and the right to participate in public affairs. Individuals and associations have the right to express their opinions and petition public officials, bodies and institutions, whether individually or collectively, and to participate in public affairs by campaigning for political, legislative or constitutional change*."[24]

16. Not all contacts between civil society and politicians or political institutions should be considered lobbying, nor should forms of advocacy by civil society organizations be characterized as lobbying.[25] It is worth noting that specific recommendations on preventing money laundering and terrorism financing have been developed at the international and EU levels, in particular by the Financial Action Task Force (FATF), in its Recommendations last amended in 2025,[26] and the European Union's (hereinafter "EU") anti-money laundering package adopted in May 2024.[27] It is also worth referring

21 See OECD, Recommendation of the Council on Transparency and Integrity in Lobbying and Influence, OECD/LEGAL/0379 (revised in 2024).

22 See ODIHR, *Urgent Opinion on the Law of the Slovak Republic Amending Act No. 213/1997 Coll. on Non-profit Organizations providing Public Benefit Services and Amending Other Acts (print 245, adopted on 16 April 2025),* Annex. See also ODIHR, Guidelines on Democratic Lawmaking for Better Laws, 2024, paras. 75 and 91: "*regulation of lobbying activities should not be unduly burdensome and should seek to balance the need for transparency with safeguards for the rights of individuals and associations, including the rights to freedom of expression and opinion, freedom of association and the right to participate in public affairs. Individuals and associations have the right to express their opinions and petition public officials, bodies and institutions, whether individually or collectively, and to participate in public affairs by campaigning for political, legislative or constitutional change.100 While some civil society organizations may be involved in lobbying, not all contacts between civil society and politicians or political institutions, nor forms of advocacy by civil society organizations should be characterized as lobbying*". See also ODIHR, Urgent Opinion on Draft Rules Governing the Activity of Representation of Interests, 2021, para. 21, which underlines that lobbying legislation should be carefully drafted to ensure that not all advocacy and awareness-raising done by civil society organizations in the public domain is qualified as "indirect lobbying", while also ensuring that it does not stifle the very engagement with societal and social issues that are at the core of most civil society organizations' work.

23 ODIHR, Guidelines on Democratic Lawmaking for Better Laws, 2024, p. 58.

24 ODIHR, Guidelines on Democratic Lawmaking for Better Laws, 2024, p. 58.

25 ODIHR, Guidelines on Democratic Lawmaking for Better Laws, 2024, para. 91.

26 The Financial Action Task Force (FATF) 'International standards on combating money laundering and the financing of terrorism and proliferation: The FATF Recommendations' (last updated June 2025), particularly Recommendation 8 on Non-Profit Organizations.

27 In particular, *EU Regulation 2024/1624 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing*, adopted on 31 May 2024, which entered into force on 9 July 2024, applicable from 10 July 2027; and *Directive (EU) 2024/1640 on the mechanisms to be put in place by Member States for the prevention of the use of the financial system for the purposes*

to the FATF Recommendation 8, as amended in November 2023, which aims to ensure that non-profit organizations (NPOs) are not misused by terrorist organizations, and which specifically requires countries to carry out periodic risk assessments of terrorist financing (TF) abuse of NPOs and apply focused, proportionate and risk-based measures to address the identified risks.[28] Recommendation 8 only applies to those NPOs whose activities and characteristics put them at risk of terrorist financing abuse, rather than on the mere fact that they are operating on a non-profit basis or that they may receive funding or other assistance from abroad. In using the term non-profit organization, the FATF Recommendation 8 is referring only to "*a legal person or arrangement or organisation that primarily engages in raising or disbursing funds for purposes such as charitable, religious, cultural, educational, social or fraternal purposes*", or for the carrying out of other types of "good works" and so its definition does not cover the entire universe of NPOs[29] and certainly not all associations, NGOs and CSOs.[30]

2. DEFINITIONS

17. For the purpose of this Note, regardless of the meaning of the term in individual national provisions, an "association" is understood as "*an organized, independent, not-for-profit body based on the voluntary grouping of persons with a common interest, activity or purpose. An association does not have to have legal personality, but does need some institutional form or structure*".[31] "Board members" and "directors" of NGOs are, irrespective of the terminology used in the national legislation, the persons holding top managerial positions in the NGO with the board members overseeing the operations of the organization and being in charge of all major decision-making, while the directors generally focus on the day-to-day management of the NGO and staff.

18. A "declaration of assets" is treated, for the purposes of this Note, as a statement whereby individuals reveal information on their possessions and potentially those of certain of their family members, i.e., immoveable, moveable and incorporeal property[32] as opposed to a particular item amongst such possessions, that might be relevant for an association before adopting a particular decision, for instance where an NGO is deciding upon renting or purchasing a specific good or service, or contracting a specific company, and which may be required to be made to a state.

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of money laundering or terrorist financing (also known as the Sixth Anti-Money Laundering Directive (AMLD6)), adopted on 31 May 2024, and which must be transposed into national law by 10 July 2027, will replace the EU Directive 2015/849 of the European Parliament and the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council (AMLD4).

28 According to the Interpretative Note to FATF Recommendation 8, the objective of FATF Recommendation 8 is to ensure that non-profit organisations (NPOs) are not misused by terrorist organisations: (i) to pose as legitimate entities; (ii) to exploit legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset freezing measures; or (iii) to conceal or obscure the clandestine diversion of funds intended for legitimate purposes, but diverted for terrorist purposes. For NPOs that are assessed as presenting a risk higher than "low-risk", it is recommended to adopt an approach ensuring, among others, effective information gathering and investigation, and with respect to NPOs suspected of either being exploited by, or actively supporting, terrorist activity or terrorist organisations, when investigation is initiated, countries should ensure that access to relevant information on the administration and management of a particular NPO (including financial and programmatic) (see paragraph 7(c)(iii) of the Interpretative Note to FATF Recommendation 8, as amended in October 2023).

29 Ibid., Paragraph 1 of the Interpretative Note to FATF Recommendation 8.

30 See CoE Council of Experts on NGO Law, Non-governmental Organisations and the Implementation of Measures against Money Laundering and Terrorist Financing, 17 May 2022, for problems with the way the Recommendation is actually being implemented by States. See also FATF, High-Level Synopsis of the Stocktake of the Unintended Consequences of the FATF Standards (October 2021).

31 See ODIHR-Venice Commission, Guidelines on Freedom of Association (2015), paras. 7, 38 and 63, and shall thus include non-governmental organizations (NGOs) which are membership-based and have more than one founder.

32 Incorporeal property includes proprietary rights over immaterial things (e.g., patents, copyrights, trademarks) as well as encumbrances over material or immaterial things (e.g., leases, mortgages, servitudes, rights to a debt).

19. A "conflict of interest" involves a conflict between the private interests of board members/directors, and their duties arising from their role on the board or as a director, whether to the association or more widely, particularly where the private interests are such as to improperly influence, or appear to influence, the impartial and objective performance of the respective person's duties.

3. BACKGROUND

20. At the initial stages of the development of this Note, and while some of these laws are likely to have been amended since, a comparative review of national practices across the OSCE region[33] showed that there were only a few countries requiring board members or directors of associations to declare their assets, although such provisions are gradually becoming more common.[34] Often, the assets declaration requirement applies to limited instances, e.g., where associations are major recipient of state support or classified as public utility status entity or working in a specific field such as anti-corruption, or carrying certain forms of public functions. Generally, this requirement is being justified as a way to protect public funds, prevent bribery and corruption, and promote "transparency" of the use of public resources or of the civil society sector, for example by preventing awarding contracts to a company in which a NGO director has a financial or other interest.[35]

21. A more recent example is the Draft Law on "Transparency in Public Life" of Hungary introduced in May 2025. Among many controversial provisions, the Draft Law includes provisions requiring individuals involved in directing, managing, or supervising organizations that are listed as "using foreign support to influence public life" to make annual asset declarations and subject their personal finances to stringent financial sector screening.[36] Following the new convocation of the Parliament, this draft law is likely to be withdrawn.

22. Where the state requires information on the assets of directors and/or board members of associations, issues may arise as to the compatibility of such obligation with the rights to freedom of association and to respect for their private and family life (see Sub-Section 3 *infra*).

23. In addition, in some of the countries reviewed, rules prohibit board members/directors of certain forms of association from being involved in any decisions where they may have

33 This overview is based upon information gathered concerning Albania, Belarus, Bulgaria, Canada, Cyprus, Denmark, Georgia, Hungary, Ireland, the Republic of Moldova, Russia, Serbia, Sweden, North Macedonia, Turkey, Ukraine, the United Kingdom and the United States of America; the Legal Framework for Not-for-Profit Organizations in Central and Eastern Europe (ICNL, 2009), by D. Rutzen, M. Durham and D. Moore; and the ECNL Study on Recent Public and Self-regulatory Initiatives Improving Transparency and Accountability of Non-profit Organisations in the European Union (2009).

34 For instance, in **Ukraine**, the requirement to make a declaration of assets, introduced in 2017 and declared unconstitutional in 2019, used to apply to board members/directors of associations who received funds or assets as part of the implementation of programmes of technical or other assistance in the sphere of preventing and combating corruption, whether directly or through third parties (see Law 1975-VIII of 23 March 2017) – any failure to submit such declarations or submission of false declarations used to entail criminal liability, with the possibility of imprisonment for up to two years. In **Montenegro**, the broad definition of "public officials" in the Law on Prevention of Corruption, which includes any "person whose election, appointment or assignment to a post is subject to consent by an authority, regardless of the duration of the office and remuneration", thereby also encompassing representatives of NGOs that may be appointed to working groups in charge of developing or examining draft laws, subject them to the obligation to submit a Report on Income and Assets during two years after terminating their membership in the working group (see Articles 3 and 23 of the Law on Prevention of Corruption of Montenegro; see also ODIHR, *Comprehensive Assessment Report on the Lawmaking Process in Montenegro* (2024), para. 129).

35 See in this respect guidance on conflict of interests' both within charities and businesses: position about charities in the UK and to companies in Germany and Spain, as well as to the Code of Conduct of the Council of Europe's Conference on International Non-Governmental Organizations which deals with conflicts of interest (paras. 5-1).

36 See: Hungary's Bill on the Transparency of Public Life: a significant threat for the legitimate functioning of civil society organisations, says CINGO's Expert Council on NGO Law - Conference of INGOs. See also: Expert Council on NGO Law of the Conference of INGOs of the Council of Europe, Opinion on The Bill On The Transparency Of Public Life Submitted To The National Assembly Of Hungary On 13 May 2025, 5 June 2025.

some interest – variously defined[37] – in the matter to be decided.[38] In some states, this manifests through obliging associations to address this in their statutes and internal rules,[39] while other states include this requirement in relevant legislation.[40] In yet other countries, the requirement to declare a conflict of interest is not regulated by law but is voluntarily included in associations' statutes or internal rules,[41] or is reflected in self-regulatory codes of governance that have been adopted by, or with the involvement of, various associations.[42] In some countries, a specific legal requirement for board members/directors to declare a conflict of interest applies not only for associations having public benefit status but for all corporate entities.[43] In many countries, certain associations may acquire a special status that exempts them from taxation and/or grants them some right of access to public funding or other public resources. Such associations are generally designated as charities, public benefit organizations or organizations with public utility status and such a status generally carries additional legal requirements.

24. The rationale for these requirements from the perspective of the NGOs – in whatever form they appear – generally arises from the desire to protect the interests of the respective associations and members. In the case of associations with public benefit status, the aim is generally to ensure proper spending of any public funds and other public resources which they may have received. At the same time, the rationale for states to impose such requirements may be for reasons that relate to subjecting associations to expanded state oversight.

25. The question of whether it is compliant with international law to require board members/directors of NGOs to declare their assets and/or possible conflicts of interest remains therefore pertinent and will be addressed both from the perspective of primary legislation, and from the perspective of the statute and internal rules of the association concerned. Another factor that will be looked at in this context is the nature of the body to whom such a declaration shall be submitted, in particular whether this is an internal requirement of a given association, or whether such declarations need to be made to some regulatory or other public body, as well as whether the information may then be disclosed to the public, or published. Other aspects that should be considered are whether the body receiving the said declarations provide adequate data protection safeguards and is obliged to comply with international personal data protection standards, whether the right to a fair procedure is guaranteed and which types of sanctions are imposed.

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37 Such as where there is a "significant interest" contrary to that of the association concerned, where the decision concerns a relative or other entity of which the board member/director is a member (the latter is sometimes referred to as a "conflict of loyalty"), the existence of some form of economic interest or of other personal benefit that could accrue from a decision.

38 e.g., Albania (non-profit organizations), Bulgaria (not-for-profit associations but in the case of foundations there is only a requirement that the relevant decision be supported by a two-thirds majority of the board), Cyprus (non-profit companies), Denmark (foundations), Hungary (foundations public benefit organizations), Poland (non-profit organizations), the Republic of Moldova (associations of public utility and foundations), the Russian Federation (non-commercial organizations) and Serbia (endowments and foundations).

39 In certain countries, there is a legal requirement for any conflict of interest issue to be addressed in the statute and/or rules of these forms of association (e.g., Albania, Poland and the Republic of Moldova). In **Hungary**, NGOs with public benefit status having a decision-making body consisting of several members are required to regulate conflicts of interest in their charter; in addition, the CLXXV of 2011 Law on the right of association, the legal status of public benefit, and the operation and support of civil organizations, as last amended in 2025, specifies when a person may not take part in the decision-making of the decision-making body or the executive body of a public benefit NGO i.e., when hat person, or a close relative, a) is relieved from an obligation or responsibility, or b) receives any other advantage or has an interest in the legal transaction to be concluded, as a result of the decision

40 In certain countries, there is a specific legal requirement to make a declaration about the existence of any conflict of interests to the board of an association (e.g., Cyprus and the Russian Federation).

41 See e.g., in Estonia, Georgia, Ireland, the Netherlands, Serbia (for associations as opposed to foundations and endowments, i.e., a legal person without members to whom a founder has designated certain property with a view to accomplish general or private interests allowed by the legislation), the United States of America (see, e.g. the Code of Ethics of the Charles Stewart Mott Foundation (https://www.mott.org/about/values/) although it is possible that there may be a requirement under some state laws).

42 See e.g., in Estonia, Ireland and the Netherlands.

43 Canada and the United Kingdom.

26. The impact of declaration of assets and of possible conflicts of interest is two-fold: it has both consequences on the individual rights of board members/directors of NGOs, particularly their rights to freedom of association and to respect for private and family life, but also on the organizational rights themselves.

27. For the purpose of this Note, the most relevant considerations to be derived from the above-mentioned international human rights standards and recommendations are in particular: the self-governing nature of associations;[44] the principle of non-discrimination;[45] the importance of developing an enabling environment for associations;[46] the admissibility of restrictions to prevent criminal offences[47] and to protect public resources;[48] and the need for restrictions to comply with the strict requirements of legality, legitimacy, necessity and proportionality.[49]

44 Principle 4 of the ODIHR-Venice Commission Guidelines on Freedom of Association (2015) ("*Freedom to determine objectives and activities, including the scope of operations […] [para.] 29. … In pursuing their objectives and in conducting their activities, associations shall be free from interference with their internal management, organization and affairs […] [para.] 174. Public authorities should not interfere with an association's choice of its management or representatives, except where the persons concerned are disqualified from holding such positions by law, and this law is compliant with international standards. Those responsible for decision-making in a non-governmental organization can, however, be required by public authorities to be clearly identified*"); see also CoE Recommendation CM/Rec(2007)14, paras. 47-48 ("*NGOs should ensure that their management and decision-making bodies are in accordance with their statutes but they are otherwise free to determine the arrangements for pursuing their objectives. In particular, NGOs should not need any authorization from a public authority in order to change their internal structure or rules*" and *"[t]he appointment, election or replacement of officers, and, subject to paragraphs 22 and 23 above, the admission or exclusion of members should be a matter for the NGOs concerned. Persons may, however, be disqualified from acting as an officer of an NGO following conviction for an offence that has demonstrated that they are unfit for such responsibilities. Such a disqualification should be proportionate in scope and duration*").

45 Principle 5 of the ODIHR-Venice Commission Guidelines on Freedom of Association (2015) ("*Equal treatment and non-discrimination […] [para.] 94. […] Moreover, the principle of non-discrimination also means that legislation and state authorities should treat associations equally as regards regulations concerning their establishment, registration (where applicable) and activities. The differential treatment of different associations is discriminatory if it has no objective and reasonable justification, that is, if it does not pursue a legitimate aim or if there is no reasonable relationship of proportionality between the means employed and the intended aim*"); see also ibid., CoE Recommendation CM/Rec(2007)14, para. 7 ("*NGOs with legal personality should have the same capacities as are generally enjoyed by other legal persons and should be subject to the administrative, civil and criminal law obligations and sanctions generally applicable to those legal persons*").

46 Principle 2 of the ODIHR-Venice Commission Guidelines on Freedom of Association (2015) ("*The state's duty to respect, protect and facilitate the exercise of the right to freedom of association 27. … The state shall also facilitate the exercise of freedom of association by creating an enabling environment in which associations can operate. This may include simplifying regulatory requirements, ensuring that those requirements are not unduly burdensome …*") and CoE Recommendation CM/Rec(2007)14, para. 8 ("*The legal and fiscal framework applicable to NGOs should encourage their establishment and continued operation*").

47 Principle 7 of the ODIHR-Venice Commission Guidelines on Freedom of Association (2015) ("*Freedom to seek, receive and use resources 32. … This freedom shall be subject only to the requirements in laws that are generally applicable to customs, foreign exchange, the prevention of money laundering and terrorism, as well as those concerning transparency and the funding of elections and political parties, to the extent that these requirements are themselves consistent with international human rights standards*") and CoE Recommendation CM/Rec(2007)14, para. 50 ("*NGOs should be free to solicit and receive funding – cash or in-kind donations – not only from public bodies in their own state but also from institutional or individual donors, another state or multilateral agencies, subject only to the laws generally applicable to customs, foreign exchange and money laundering and those on the funding of elections and political parties*").

48 Principle 7 of ODIHR-Venice Commission Guidelines on Freedom of Association (2015) ("*Freedom to seek, receive and use resources 104. The resources received by associations may legitimately be subjected to reporting and transparency requirements. However, such requirements shall not be unnecessarily burdensome, and shall be proportionate to the size of the association and the scope of its activities, taking into consideration the value of its assets and income*") and CoE Recommendation CM/Rec(2007)14, paras. 53 and 62 ("*NGOs with legal personality can be required to act on independent advice when selling or acquiring any land, premises or other major assets where they receive any form of public support" and "NGOs which have been granted any form of public support can be required each year to submit reports on their accounts and an overview of their activities to a designated supervising body*").

49 Principle 9 of the ODIHR-Venice Commission Guidelines on Freedom of Association (2015) ("*Legality and legitimacy of restrictions 34. … The only legitimate aims recognized by international standards for restrictions are national security or public safety, public order (ordre public), the protection of public health or morals and the protection of the rights and freedoms of others. The scope of these legitimate aims shall be narrowly interpreted*" and Principle 10 of the Guidelines ("*Proportionality of restrictions 35. Any restriction on the right to freedom of association and on the rights of associations, including sanctions, must be necessary in a democratic society and, thus, proportional to their legitimate aim. The principle of necessity in a democratic society requires that there be a fair balance between the interests of persons exercising the right to freedom of association, associations themselves and the interests of society as a whole. The need for restrictions shall be carefully weighed, therefore, and shall be based on compelling evidence*").

4. Required Declarations of Assets from Board Members/Directors of NGOs and Compliance with International Standards

28. The obligation for directors or board members of associations to declare their assets to the state or public bodies *prima facie* constitutes a limitation to the right to freedom of association. Indeed, such obligations generally establish new, at times burdensome, declaratory or disclosure requirements for the decision-making bodies of associations, and potentially for the associations should they face the consequences of an individual failing to comply with the legal requirements. As a restriction to the right to freedom of association, the requirement to submit asset declarations to state authorities or other public bodies, and their potential disclosure, must comply with the above-mentioned strict test of legality, legitimacy, necessity and proportionality as well as non-discrimination provided under international instruments (see para. 11 *supra*).

29. Moreover, a requirement to declare one's assets, as opposed to a willingness to do so, constitutes a restriction to the right to respect private life of the person concerned, and potentially of her/his family members, protected under Article 17 of the ICCPR and Article 8 of the ECHR (see Sub-Section 4.3. *infra*). As it involves the collection, processing and storage of personal data, it should, for CoE member States, also comply with personal data protection standards, particularly the CoE Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data and the Modernized Convention.[50] The right to respect private and family life and for confidentiality is however not absolute and should not be an obstacle to the investigation of criminal offences.[51]

4.1. Prescribed by Law

30. Any obligation to submit a declaration of assets must be "prescribed by law". This means that the legislation must be accessible and sufficiently clear to allow individuals to ensure that their conduct complies with the legislation.[52] It must also be drafted in such a manner as to avoid arbitrary application by state authorities.[53] While self-regulatory instruments do not need a basis in the law, any **legislation obliging associations to submit declarations of assets should be clear as to the scope and applicability of such obligations as well as conditions, procedures and modalities for declaring such assets.**

4.2. Legitimate Aim

31. Any restriction must be in conformity with the specific permissible grounds of limitations set out in the relevant international standards. This means that it needs to be justified by reasons of national security or public safety, public order (*ordre public* or the prevention of disorder or crime in Article 11 (2) of the ECHR), the protection of public health or morals or the protection of the rights and freedoms of others (Articles 22 (2) of the ICCPR

50 See CoE, Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS 108), Strasbourg, 28 January 1981 and the Council of Europe, Protocol amending the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (CETS No. 223). Modernized Convention 108 provides binding commitments in the field of data protection and is of global dimension and has a horizontal scope of application, thus applying to both public and private sector data processing. For EU Member States, they should also comply with the EU *Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data*, and repealing Directive 95/46/EC (General Data Protection Regulation, "GDPR").

51 See Explanatory Memorandum to CoE Recommendation CM/Rec(2007)14, para. 116.

52 See ECtHR, *Maestri v. Italy* [GC], no. 39748/98, 17 February 2004, para. 30.

53 See ECtHR, Hasan and Chausch v. Bulgaria [GC], no. 30985/96, 26 October 2000, para. 84, <http://hudoc.echr.coe.int/eng?i=001-58921>; and Aliyev and other v. Azerbaijan, no. 28736/05, 18 December 2008, para. 35, <http://hudoc.echr.coe.int/eng?i=001-90340>.

and 11 (2) of the ECHR). As underlined in the Joint Guidelines on Freedom of Association, this means that only convincing and compelling reasons for introducing such limitations are acceptable and only indisputable imperatives can interfere with the enjoyment of the right to freedom of association.[54]

32. Various justifications are generally invoked to introduce the above-mentioned requirement for asset declarations by directors or board members of associations, including the fact that they are needed in the name of transparency or as a measure to prevent corruption or conflict of interest.

33. However, in the context of individuals acting as board members/directors of an association, it is more difficult to see how knowledge of the assets of those performing this role could be relevant to the question of whether the associations concerned are complying with rules relating to corruption prevention, anti-money laundering, or countering terrorism financing, customs, foreign exchange,[55] as well as those concerning any commercial activities. Should there be any reasonable suspicion of violation of these rules by the leadership of an association, and only in such cases, this could be adequately addressed through targeted investigative measures.

34. While under specific circumstances associations generating or seeking income may be subject to the requirements in laws that are generally applicable to customs, foreign exchange, prevention of money laundering and terrorism,[56] this is quite different from requiring their board members/directors to declare their personal assets regardless of whether such assets have in any way contributed to the implementation of the associations' activities. The mere fact that board members/directors may have assets at their disposal, even significant ones, does not necessarily mean that their contribution to the activities of the associations concerned is anything more than the voluntary or paid time given for the purposes of managing such associations. This fact alone does not indicate misuse of authority, and thus does not establish a genuine public interest in general declarations or disclosure of such information. In addition, while certain obligations may legitimately be imposed on the legal entity itself, the rationale for extending such obligations by default to its representatives or leadership is weak. Indeed, in principle, the very notion of legal personality implies that an association exists as a separate entity from its leaders or representatives, although the latter should remain personally liable for their individual wrongdoing.

35. As for the alleged aim to ensure the transparency of the civil society sector, as underlined in the Joint Guidelines on Freedom of Association, *"[t]he need for transparency in the internal functioning of associations is not specifically established in international and regional treaties owing to the right of associations to be free from interference of the state in their internal affairs*".[57] Enhancing transparency does not by itself constitute a "legitimate aim" for restricting the right to freedom of association as exhaustively listed in international instruments,[58] although there may be circumstances where this may be a means in the pursuit of one or more of the legitimate aims recognized as allowing restrictions on this right, such as public order or the prevention of crimes such as

54 ODIHR-Venice Commission, Guidelines on Freedom of Association (2015), para. 111.

55 ODIHR-Venice Commission, Guidelines on Freedom of Association (2015), para. 32.

56 ODIHR-Venice Commission, Guidelines on Freedom of Association (2015), para. 192.

57 ODIHR-Venice Commission, Guidelines on Freedom of Association (2015), para. 224.

58 See e.g., ODIHR and Venice Commission, Joint Opinion on the Draft Law of Republika Srpska on the Special Registry and Publicity of the Work of Non Profit Organisations, 12 June 2023, para. 25; ODIHR, Urgent Interim Opinion on the Draft Law on Non-Profit Non-Governmental Organisations and Draft Amendments on "Foreign Representatives" of the Kyrgyz Republic (12 December 2022), para. 107; and Venice Commission, Report on Funding of Associations, CDL-AD(2019)002, paras. 61 and 80.

corruption, embezzlement, money-laundering or terrorism financing.[59] While openness and transparency are important for fostering accountability and public trust in associations and the civic sector in general, these should be encouraged and facilitated by the public authorities rather than imposed as mandatory legal requirements.[60]

36. The Joint Guidelines on Freedom of Association also emphasize that "*only convincing and compelling reasons*" for imposing such limitations are acceptable. As the Guidelines state, "*only indisputable imperatives can interfere with the enjoyment of the right to freedom of association*".[61]

37. Generally speaking, enhancing transparency and accountability is an essential component of good *public* governance applicable to the public sector.[62] Declarations of assets and disclosure of interests by *public* officials is recognized and widely used as one of the effective tools to prevent and fight corruption, and to enhance the transparency and accountability of the public sector as principles of good *public* governance.[63] At the same time, there is no uniform standard regarding what circle of "public officials" should be obligated to submit asset declarations and countries should carefully debate and weigh the costs and benefits related to broader (and more burdensome and costly) or narrower coverage.[64] As specifically noted by the Organisation for Economic Co-operation and Development (OECD) the obligation to disclose assets does not have to be formally linked to the rank of an official, but rather to the extent of decision-making authority and managerial powers of officials, and the related risks of conflict of interest and abuses of office.[65] This obligation may thus also cover private entities and individuals up to the extent to which they are outsourced to provide public services (e.g., as part of procurement or other process where they are generally familiar with the preconditions of the contract and agree to them).[66] This situation should be clearly distinguished from cases where regulation generally imposes additional disclosure obligations on NGOs as part of their reporting rules.

38. In specific cases, transparency requirements may be applied to private, not-for-profit organizations or associations, for example when they are funded from public sources[67] or performing essential democratic functions, such as political parties, which may justify the imposition of specific reporting or disclosure requirements as underlined in the Joint Guidelines on Freedom of Association and in the Council of Europe's Committee of Ministers' *Recommendation CM/Rec(2007)14 of the Committee of Ministers to member*

59 Ibid.

60 ODIHR-Venice Commission, Guidelines on Freedom of Association (2015), para. 224.

61 ODIHR-Venice Commission, Guidelines on Freedom of Association (2015), para. 111.

62 ODIHR, *Note on Legislative Initiatives on Transparency and Regulation of Associations Funded from Abroad or So-called "Foreign Agents Laws" and Similar Legislation and their Compliance with International Human Rights Standards*, 25 July 2023, para. 54, currently being updated. See also ODIHR, Opinion on the Draft Act on the Registration of Foreign Agents (as of 11 November 2024) in Bulgaria, para. 32; and ODIHR and Venice Commission, *Joint Opinion on the Draft Law of Republika Srpska on the Special Registry and Publicity of the Work of Non-Profit Organisations*, 12 June 2023, para. 26.

63 In this respect, Article 8 (5) of the UN Convention against Corruption (hereinafter "UNCAC") requires State Parties, where appropriate and in accordance with the fundamental principles of its domestic law, "to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials"

64 See e.g., Organisation for Economic Co-operation and Development (OECD), Asset Declarations for Public Officials: A Tool to Prevent Corruption (2011), OECD Publishing, page 14.

65 ibid. page 14 (2011 OECD's Publication on Asset Declarations for Public Officials).

66 ibid. page 14 (2011 OECD's Publication on Asset Declarations for Public Officials).

67 The ODIHR-Venice Commission Guidelines on Freedom of Association (2015) acknowledge that the receipt of public support may justify the imposition of reporting requirements, though they should not be too burdensome and, at the very least, should be proportionate to the level of public support received (see para. 214).

states on the legal status of non-governmental organisations in Europe ("CoE Recommendation CM/Rec(2007)14").[68]

39. However, in general, enhancing transparency, while important, does not in itself constitute a legitimate aim sufficient to justify restrictions on the right to freedom of association and the right to privacy of associations, their members, founders, donors and beneficiaries.

40. There may be circumstances where the objective to ensure more transparency may be a means in the pursuit of one or more of the legitimate aims recognized as allowing restrictions on this right, such as public order or the prevention of crimes such as corruption, embezzlement, money-laundering or terrorism financing.[69] For example, with respect to legislative initiatives relating to transparency and funding of NGOs, the ECtHR has acknowledged in principle, that the objective of increasing transparency with regard to the *funding* of CSOs may correspond to the legitimate aim of the protection of public order.[70] As noted in the Joint Guidelines "[*a]ssociations may also receive funding for their activities from private and other non-state sources, including foreign and international funding. States should recognize that allowing for a diversity of sources will better secure the independence of associations*".[71] At the same time, the Court also specifically referred to the receipt of "substantial foreign funding" in connection with identified risks of foreign involvement in some "*sensitive areas – such as elections or funding of political movements*" and to the objective of preventing money laundering and terrorism financing.[72]

41. With respect to NGOs that receive some form of public support, the CoE Recommendation CM/Rec(2007)14 envisages the possibility of certain reporting and public disclosure requirements, namely, as regards submitting accounts and an overview of their activities every year, making known the proportion of their funds used for fundraising and administration and having their accounts audited by an institution or person independent of their management.[73] Yet, these obligations should not be too burdensome and, at the very least, should be proportionate to the level of direct public funding received[74] (see also Sub-Section 4.3 *infra*).

42. As to the aim of preventing corruption, the Joint Guidelines specifically mention that *"[c]ombating corruption, terrorist financing, money-laundering or other types of trafficking are generally considered legitimate aims and may qualify as being in the interests of national security, public safety or public order"*.[75] However, even in such cases, the Guidelines further specify that limitations imposed on these grounds must still *"be proportionate to the state's objective of protecting such interests, and must be the least intrusive means to achieve the desired objective"*[76] (see also Sub-Sections 3.1.3 *infra*).

68 ODIHR-Venice Commission, Guidelines on Freedom of Association (2015), paras. 225-226. See also CoE Recommendation CM/Rec(2007)14 on the legal status of non-governmental organisations in Europe, adopted on 10 October 2007, paras. 62-65.

69 Ibid.

70 European Court of Human Rights, Ecodefence and Others v. Russia, no. 9988/13, 14 June 2022, para. 122.

71 ODIHR-Venice Commission, Guidelines on Freedom of Association (2015), para. 281.

72 European Court of Human Rights, Ecodefence and Others v. Russia, no. 9988/13, 14 June 2022, paras. 139 and 165.

73 Paragraphs 62, 63 and 65.

74 ODIHR-Venice Commission, Guidelines on Freedom of Association (2015), para. 214.

75 ODIHR-Venice Commission, Guidelines on Freedom of Association (2015), para. 220. See also Venice Commission, Report on Funding of Associations, CDL-AD(2019)002, para. 35.

76 ODIHR-Venice Commission, Guidelines on Freedom of Association (2015), para. 220; and Venice Commission, Report on Funding of Associations, CDL-AD(2019)002, para 35.

43. In light of the foregoing, in principle, as private entities, associations (and their representatives) should not be subject to the same information declaration or disclosure laws that apply to public officials or public entities, and the same would *a fortiori* apply to the directors or board members of associations. For associations receiving public funding or other public resources, some limited reporting requirements by the associations may be justified providing that they do not create an undue and costly burden on them and that they are proportional to the amount of public funding/resources received. Expanding these obligations too broadly, including by imposing asset declarations and conflict of interest disclosure obligations on their representatives, however appears unjustified and risks being ineffective and unnecessarily invasive. This is notwithstanding the possibility to envisage declaratory and/or disclosure requirements as part of tender or grant application processes for associations carrying out certain public functions triggering risks of conflict of interest and abuses of office as long as they are limited to the criteria and scope of the application. In any case, the mere participation of associations in policy- or law-making processes, which is inherently part of their legitimate activities, should not be sufficient, on its own, to justify the obligation for the association's representatives to declare their assets, although disclosure of potential conflicts of interest could be justified.

44. As to the aim of preventing conflict of interests, this is also not expressly mentioned as a legitimate aim under international standards. An association may itself voluntarily decide to adopt conflict of interest provisions and require directors and/or board members to declare potential conflicts of interest as an important component of its *internal* integrity management system, which should therefore be free from interference from the state and other external actors.[77] Such provisions constitute useful tools to effectively address corruption risks and ensure that directors or board members of associations do not take advantage of their positions for their personal benefits (e.g., when the association purchases goods or services). The introduction of internal measures to prevent and manage conflicts of interest is often recommended in the above-mentioned self-regulatory instruments of the NGO sector.[78] As such, measures to prevent conflicts of interest are usually matters of *internal* governance and do not warrant state interference, unless laws are breached (see also Sub-Section 4 *infra*). At the same time, misuse of association assets or embezzlement by the directors or board members should be and usually is subject to liability under the relevant national legislation. However, systematically imposing disclosure requirements on directors or board members of associations to prevent such conduct appears to be disproportionate (see also Sub-Section 4.3 *infra*).

45. Finaly, any restriction must be necessary to avert a real, tangible danger – not merely a hypothetical one.[79] Hence, when invoking a legitimate aim, a State Party must prove the existence of a real threat. Abstract "public concern" and "suspicions" about the legality and honesty of financing of NGO sector, without pointing to a substantiated concrete risk analysis concerning any specific involvement of the NGO sector in the commission of crimes, such as corruption or money-laundering cannot constitute a legitimate aim justifying restrictions to this right.[80] Similar observations can be applied where declarations of assets/conflicts of interest are required from directors and board members of NGOs. As specifically noted by the UN Special Rapporteur on the Rights to Freedom

77 ODIHR-Venice Commission, Guidelines on Freedom of Association (2015), para. 29.

78 See *op. cit.* footnote **Error! Bookmark not defined.**.

79 ODIHR and Venice Commission, Joint Opinion on the Draft Law of Republika Srpska on the Special Registry and Publicity of the Work of Non-Profit Organisations, 12 June 2023, para. 25.

of Peaceful Assembly and of Association, *"[r]estrictions on the right to freedom of association must be based on individualized and identifiable suspicion, not upon pre-emptive suspicion of an entire sector"*.[81] The UN Human Right Committee further stated that "*the mere existence of reasonable and objective justifications for limiting the right to freedom of association is not sufficient*" and the State parties must further demonstrate that the restriction "*is necessary to avert a real and not only hypothetical danger to national security or democratic order, and that less intrusive measures would be insufficient to achieve the same purpose*".[82] The law-makers should carry out an in-depth assessment and provide substantiated reasons justifying the introduction of new declaration or disclosure requirements for directors or board members of associations. In particular, there should be ample evidence to demonstrate that the existing and real problems within the civil society sector require a legislative measure introducing the said restriction, also showing that no less restrictive measures could address such issues (see Sub-Section 4.3 *infr*a).

46. In light of the above, *prima facie*, **there does not seem to be a legitimate aim justifying a general obligation for board members/directors of associations to declare their assets**.

4.3. Necessity and Proportionality

47. It is not sufficient to simply pursue a legitimate interest that is prescribed by law. Limitations also need to be "necessary in a democratic society". In this regard, limitations must be necessary and proportionate to the protected interest and must be the least intrusive means to achieve the desired objective.[83]

48. First and foremost, as stated in the Joint Guidelines on Freedom of Association, all restrictions must be based on the particular circumstances of the case, and no blanket restrictions (i.e., applicable in all instances) should be applied.[84] Even matters such as a country's national interest and the fight against corruption would not justify imposing a blanket requirement for NGOs and other associations (and *a fortiori* their directors or board members) to be systematically subjected to the above-mentioned declaratory obligations without a risk-based assessment demonstrating a concrete threat for the public and/or the constitutional order or any concrete indication of individual illegal activity. Certain obligations or additional requirements, such as reporting on the use of public resources, may be imposed on certain NGOs (and *a fortiori* their directors or board members), which benefit from some form of state support.[85] But it seems excessive to require that all such NGOs, and their board members and directors, would have to comply with new declaratory requirements. As specifically recommended by the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, States should also take positive measures to protect and facilitate the right to freedom of

81 UNGA, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, A/70/266, 4 August 2015, para. 53.

82 U.N. Human Rights Committee, Mr. Jeong-Eun Lee v. Republic of Korea, Communication No. 1119/2002, U.N. Doc. CCPR/C/84/D/1119/2002 (2005), para. 7.2.

83 ODIHR-Venice Commission, Guidelines on Freedom of Association (2015), paras. 35 and 113. See also Venice Commission, Report on Funding of Associations, CDL-AD(2019)002, para. 35.

84 ODIHR-Venice Commission, Guidelines on Freedom of Association (2015), para. 115.

85 ODIHR-Venice Commission, Guidelines on Freedom of Association (2015), paras. 225-226. See also CoE Recommendation CM/Rec(2007)14, para. 62, which clearly states that "*NGOs which have been granted any form of public support can be required each year to submit reports on their accounts and an overview of their activities to a designated supervising body*". See also 2002 CoE Fundamental Principles on the Status of Non-governmental Organisations in Europe, para. 60.

association, including by reducing accounting and oversight burdens for smaller associations.[86]

49. Second, the legal drafters should also consider whether the new declaratory obligations imposed on directors or board members of associations do not actually duplicate or overlap with other already existing reporting obligations (e.g., financial reporting rules, tax declarations or reporting requirements imposed on the NGO itself), which would in turn question the need for such new and additional reporting requirements. Indeed**, if the existing legal framework appears to already provide necessary and proportionate reporting and/or declaratory requirements on the organization to satisfy a legitimate interest, then requiring board members and directors of associations to declare their private assets would appear to be a superfluous and disproportionate measure** that would not serve to enhance the fight against corruption or prevent the commission of other crimes, among others. Criminal conduct, such as embezzlement or bribery, is generally already punishable under national law. Instruments such as banking laws or financial surveillance mechanisms to prevent and combat money laundering as well as criminal laws, including specific anti-terrorism financing legislation, would generally already exist. Any new regulatory initiative must be subject to a thorough and transparent risk assessment relevant to civil society work, demonstrating the necessity of the legislation, and identifying a genuine, real, present, and sufficiently serious threat linked to the work of specific civil society organizations that the law is seeking to address.

50. Third, the modalities of making any declaration requirement should not be overly burdensome or costly. While resources received by associations may be subjected to reporting and transparency requirements, the Joint Guidelines on Freedom of Association also state that "*such requirements shall not be unnecessarily burdensome, and shall be proportionate to the size of the association and the scope of its activities, taking into consideration the value of its assets and income*".[87] The Guidelines further elaborate that *"[a]ny control imposed by the state on an association receiving foreign resources should not be unreasonable, overly intrusive or disruptive of lawful activities*".[88] This means that reporting requirements should not create an undue and costly burden on individual associations, and should be proportional to the amount of funding received.[89] For example, disclosure to other members of the board or a supervisory body – as part of the internal integrity framework of an association – rather than to the state or the public at large could be considered.

51. Mandating that the declaration of assets be publicly disclosed would likely to be considered disproportionate. First, obliging board members and directors to make their declarations of assets public, would risk violating their rights to private and family life since they may involve sharing sensitive personal data about personal and family assets, protected by the right to privacy under both the ICCPR and ECHR. Such a measure may additionally create a chilling effect on the exercise of the right of freedom of association by board members/directors who may prefer to disengage and not retain their functions

86 UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Report on the Enabling Environments for Associations and Businesses, A/70/266, 4 August 2015, para 109 (b), <http://freeassembly.net/wp-content/uploads/2015/09/A_70_266_ENG.pdf>.

87 ODIHR-Venice Commission, Guidelines on Freedom of Association (2015), para. 104.

88 ODIHR-Venice Commission, Guidelines on Freedom of Association (2015), para. 221.See also OSCE/ODIHR and Venice Commission, "Joint Interim Opinion on the Draft Law Amending the Law on Non-Commercial Organisations and Other Legislative Acts of Acts of the Kyrgyz Republic", CDL-AD(2013)030, 16 October 2013, para 66. <http://www.legislationline.org/download/action/download/id/4857/file/239_FOASS_KYR_16%20Octt%202013_en.pdf>.

89 ODIHR-Venice Commission, Guidelines on Freedom of Association (2015), paras. 221 and 226; and OSCE/ODIHR and Venice Commission, "Joint Interim Opinion on the Draft Law Amending the Law on Non-Commercial Organisations and Other Legislative Acts of Acts of the Kyrgyz Republic", CDL-AD(2013)030, 16 October 2013, para 69.

(or for potential candidates to not take over such functions) rather than submitting themselves to the asset declaration or disclosure regime. This could also compound the restrictive effect that such requirements may have on these persons' ability to exercise their right to freedom of association (see Sub-Section 4.5. *infra*). As noted in the CoE Recommendations (2007)14, *"[a]ll reporting should be subject to a duty to respect the rights of donors, beneficiaries and staff, as well as the right to protect legitimate business confidentiality*". This principle should apply *mutatis mutandis* to directors or board members of associations.

52. In its 2021 *Report on the Unintended Consequences of the FATF Recommendations*, the FATF noted the misuse of FATF Recommendation 8 as a justification for introducing undue restrictions on freedom of association, essentially due to a poor or negligent implementation of the FATF's risks-based approach.[90] It must be noted that the need for asset declaration or conflict of interest declarations is not mentioned in FATF Recommendation No. 8.[91] As mentioned above, even if there were indications of terrorism-financing activities on the side of certain individual associations and/or their leaderships, the correct approach to this would be risk-based proportionate targeted responses, as required by FATF, and not new blanket registration, reporting and/or additional disclosure requirements affecting numerous other organizations engaging in entirely legitimate activities, targeted due to the fact that they are NPOs and/or to the foreign origin of their sources of funding.

53. In any case, these individual instances do not provide a legal basis for introducing reporting and transparency rules on NGOs as such, and *a fortiori* on their directors or board members. On the contrary, the above instruments advocate for a risk-based approach involving focused measures to deal with identified threats concerning certain non-profit organizations.[92] This requires states to first undertake a risk assessment of the NGO sector in order to identify which NGOs are at risk of being misused for terrorist financing or money laundering. Once some NGOs have been identified in this way, states may apply focused and proportionate measures that only target those NGOs identified as being at risk.

54. In light of the foregoing, it is important that legal provisions avoid unnecessary and disproportionate administrative or financial burdens on representatives of associations, **and if such requirements are imposed, their scope should be strictly circumscribed, for instance by being applicable only where public funding above a certain level is received and being specifically linked to its use rather than to all associations in receipt of public funding**. Further, if an obligation to declare their assets is indeed introduced for board members/directors of certain associations receiving public funding or carrying out public functions, as part of grant or tender application processes, it should be as simple to follow as possible and its modalities should not be unnecessarily burdensome or costly on directors or board members of associations; and it should be conducted in a way to respect their right to privacy and data protection rules. In this respect, public disclosure of asset declarations are unlikely to be considered a necessary and proportionate measures.

90 FATF, "High-Level Synopsis of the Stocktake of the Unintended Consequences of the FATF Standards" (2021).

91 FATF Recommendation 8 on Non-Profit Organisations.

92 See Interpretative Note to FATF Recommendation 8 (Non-profit organizations), paras 4 (a) and 6 (b) (FATF Recommendations).

4.4. Non-Discrimination

55. Article 26 of the ICCPR and Article 14 of the ECHR (and Protocol 12 to the ECHR where it has been ratified) prohibit all forms of direct and indirect discrimination understood as a differential treatment without objective and reasonable justification, meaning those that lack a legitimate aim, necessity and proportionality.[93] Without further justification for introducing such a difference in treatment, this would appear contrary to the prohibition on discrimination enshrined in international instruments.[94]

56. Associations (and their representatives) should not be required to submit more reports and information than other legal entities, such as businesses, and equality between different sectors should be exercised.[95] Imposing greater obligations on associations and their representatives without sound justification would violate principles of equality, although some special requirements may be permissible if required in exchange for certain benefits, provided it is within the discretion of the association to decide whether to comply with such requirements or forgo them and forsake any related special benefits, where applicable.[96]

57. CoE Recommendation CM/Rec(2007)14 specifically states that "*NGOs with legal personality […] should be subject to the administrative, civil and criminal law obligations and sanctions generally applicable to [other] legal persons*" (para. 7). As also noted by the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, States should ensure that associations and businesses are treated equitably by laws and practices regulating, *inter alia*, auditing and reporting and access to resources.[97] The UN Special Rapporteur further emphasized that there is no basis in international human rights law for imposing more burdensome reporting requirements on NGOs than upon businesses or other entities and that professed justifications such as ensuring aid effectiveness or protecting State sovereignty are not legitimate bases under the international human rights instruments.[98]

58. Hence, **imposing a declaration of assets of directors or board members of associations that does not exist for directors or board members of private businesses**

93 See e.g., *ODIHR Note on the Anti-Discrimination Legislation and Good Practices in the OSCE Region* (2019), para. 56. See also e.g., European Court of Human Rights, *Zhdanov and Others v. Russia*, no. 12200/08, 16 July 2019, para. 178, on different treatment of and refusal to register associations, where the Court has considered that a difference of treatment of persons in relevantly similar situations "*is discriminatory if it has no objective and reasonable justification; in other words, if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised*". See also CJEU, *Commission v. Hungary*, Case C-78/18, where the CJEU considered that the "*differences in treatment depending on the national or 'foreign' origin of the financial support in question, and therefore on the place where the residence or registered office of the natural or legal persons granting the support is established, constitute indirect discrimination on the basis of nationality […] inasmuch as they establish differences in treatment which do not correspond to objective differences in situations*" and concluded that "*Hungary has introduced discriminatory, unjustified and unnecessary restrictions on foreign donations to civil society organisations*". See also e.g., Venice Commission, *Hungary - Opinion on Draft Law on the Transparency of Organisations Receiving Support from Abroad*, CDL-AD(2017)015, paras. 33-34.

94 See ODIHR and Venice Commission, *Joint Interim Opinion on the Draft Law Amending the Law on Non-Commercial Organisations and Other Legislative Acts of the Kyrgyz Republic*, CDL-AD(2013)030, Section 3. In this respect, as the Joint Guidelines note, "*while the foreign funding of non-governmental organisations may give rise to some legitimate concerns, regulations should seek to address these concerns through means other than a blanket ban or other overly restrictive measures*"; see ODIHR-Venice Commission, Guidelines on Freedom of Association (2015), para. 219.

95 ODIHR-Venice Commission, Guidelines on Freedom of Association (2015), para. 225. For example, in the case of proposed amendments to Ukraine legislation, to assess the proportionality of the proposed measures, ODIHR and the Venice Commission specifically assessed to what extent new requirements, such as reporting and other administrative, civil and criminal law obligations and sanctions, imposed on associations would be more demanding or more severe than those applicable to other legal entities, such as businesses; see ODIHR and Venice Commission, CDL-AD(2018)006-e, Ukraine - Joint Opinion, para. 43.

96 ODIHR-Venice Commission, Guidelines on Freedom of Association (2015), para. 225.

97 UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Report on the Enabling Environments for Associations and Businesses, A/70/266, 4 August 2015, para. 109 (a).

98 UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Report on the Enabling Environments for Associations and Businesses, A/70/266, 4 August 2015, para. 53.

would thus weigh negatively on the compatibility of such a requirement with international anti-discrimination standards.

4.5. Compliance with the Right to Respect for Family and Private Life

59. The declaration of assets by directors or board members of associations would generally require the provision of information about these persons' properties, assets, and other interests, including potential data regarding other family members, to a regulatory or other public body.

60. This would have a direct impact on the right to respect for private and family life of the directors or board members in their respective capacity but also as private individuals, which is protected by Article 17 of the ICCPR[99] and Article 8 of the ECHR, which also protects information about individuals, including their income and liability to pay tax.[100]

61. According to the Guidelines on Freedom of Association, "*the right to privacy applies to an association*" and "*[l]egislation should contain safeguards to ensure the respect of the right to privacy of the clients, members and founders of the associations, as well as provide redress for any violation in this respect*".[101] Similar comments should apply to directors and board members of associations. The UN Special Rapporteur also noted that "*Public disclosure requirements may include confidential and human rights sensitive information, unduly impinging on fundamental privacy rights, in violation of applicable privacy laws, and may expose individuals to serious risks of reprisals*."[102] Hence, obligations to report should be tempered by other obligations relating to the right to security of beneficiaries and to respect for their private lives and confidentiality; any interference with respect for private life and confidentiality should observe the principles of legitimacy, necessity and proportionality.[103]

62. Private information about the directors or board members may conceivably be requested and justified in the context of potential investigations in specific circumstances, for instance in cases of alleged misuse of association assets or embezzlement by the directors or board members, to disclose the proceeds of crime,[104] to comply with tax liabilities[105] or to ensure that public officials are not bribed or otherwise corrupted.[106] Outside of such situations, this would constitute an unjustified intrusion into the private life of the person concerned and could hardly be regarded as serving any legitimate interest of the association or indeed anyone else. In any case, even in the context of potential investigations, such requests should be based on the suspicion of a serious contravention of the legislation, and only for the purpose of confirming or discarding such suspicion[107]

99 Article 17 of the ICCPR states: "1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. 2. Everyone has the right to the protection of the law against such interference or attacks."

100 Article 8 of the ECHR reads: "1. Everyone has the right to respect for his private and family life, his home and his correspondence. 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, 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." See, also e.g., ECtHR, Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland [GC], no. 931/13, 27 June 2017, <https://hudoc.echr.coe.int/eng#{"itemid":["001-175121"]}>.

101 ODIHR-Venice Commission, Guidelines on Freedom of Association (2015), paras. 228 and 231.

102 See UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Letter OL RUS 16/2022 dated 30 November 2022 addressed to the Russian Federation relating to the Federal Law No. 121-FZ dated 20 July 2012 and subsequent amendments, p. 3.

103 Explanatory Memorandum to the Recommendation CM/Rec(2007)14 on the legal status of non-governmental organisations in Europe, para. 116.

104 See, e.g. ECtHR, *Grayson and Barnham v. United Kingdom*, no. 19955/05, 23 September 2008.

105 See, e.g., ECtHR, *Jussila v. Finland* [GC], no. 73053/01, 23 November 2006 .

106 See, e.g., ECtHR, *Gogitidze and Others v. Georgia*, no. 36862/05, 12 May 2015.

107 ODIHR-Venice Commission, Guidelines on Freedom of Association (2015), para. 231.

(see also para. 32 *supra*). In such circumstances, the legislation should define an exhaustive list of grounds for such inspections.[108] In the absence of clear and genuine concerns about the possibility of criminal conduct of the board members/directors concerned, a general requirement for them to hand over information about their assets could lead to circumstances in which the compulsion to make a declaration could result in a violation of the prohibition on self-incrimination.[109]

63. Should the legislator propose to make such declaration of assets public, for instance in the name of transparency, this would further compound the potential impact of such measures on the rights to private and family life of the directors and board members.

64. As stated in Article 8 (2) ECHR, such a measure could be justifiable if prescribed by law and "*necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, 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*". When assessing whether a measure has the potential to violate a person's right to private and family life, the ECtHR reviews the scope and level of details of required information on a person's financial situation, and the degree to which that person's and family's financial standing is open to public scrutiny.[110]

65. The Court also looks at whether the personal information on officials' financial situation is collected and stored by the authorities, the scope of the information and whether there is a minimum (and not excessive) threshold beyond which declaration is compulsory, thus excluding minor possessions or properties. The treatment of the information contained in the declaration is also relevant, for instance whether it is publicly available on the Internet. The latter is justifiable when the general public has a legitimate interest in ascertaining that local politics and public affairs more generally are transparent; Internet access to the declarations greatly facilitates public access to such information.[111] These considerations should be kept in mind when assessing the necessity and proportionality of disclosure requirements, also in cases involving persons who are not public officials (e.g., representatives of NGOs).

5. Internal Requirements for Declarations of Conflicts of Interest by Board Members/Directors and Compliance with International Standards

66. As mentioned above, an association may decide to adopt conflict of interest provisions as an important component of its *internal* integrity management system. If associations, whether through their statute or other internal rules, require their board members/directors to declare possible or actual conflicts of interest to their management bodies (or to the public, e.g., through minutes of meetings or annual reports that are shared publicly), and, as a consequence, not to take part in any decisions relating to such interests, then it is unlikely that this will be considered incompatible with the right to freedom of association.[112] In this regard, there may be a need to define the scope of what is to be characterised as a "conflict of interest" as the determination of it may also extend to

108 *Ibid.* para. 231.

109 See, e.g., ECtHR, *Funke v. France*, no. 10828/84 25 February 1993; and *Marttinen v. Finland*, no. 19235/03, 21 April 2009.

110 See ECtHR, *Wypych v. Poland*, no. 2428/05, decision of 25 October 2005>.

111 *Ibid.* (ECtHR, Wypych v. Poland).

112 The issue of a possible violation of the right could only arise if the requirement was backed in some way by national law – such as the upholding by a court of the exclusion of the board member/director from taking the respective decision – since otherwise there would be no act or omission by the State that could be claimed to have affected the freedom of association of the excluded individual.

circumstances where outside relationships or financial assets appear to interfere with their functions, even if it does not in reality.

67. Such a requirement to disclose conflict of interests to the board would fall within the right of an association to regulate its own affairs, to protect both the interests of the association and of its funders/members, and will not significantly affect the overall ability of the board members/director to participate in the affairs of the association. Moreover, the mere requirement to declare that there is a conflict of interest would only require a limited disclosure of personal information, which would also appear to be proportionate to the interests of the individual board members/directors. The abovementioned tripartite test also applies to the internal requirements pertaining to conflict of interest.

68. Similarly, a requirement imposed by law for associations to regulate this matter in their statutes may also constitute a proportionate restriction based on a legitimate objective, which is to protect the property and other interests of both the association and anyone else who might be adversely affected.

69. The obligation for board members and directors to disclose conflict of interest to a regulatory or other public body would also appear to be justified and proportionate where this is restricted to associations with public benefit status and where the information that is disclosed is limited to the respective potential or actual conflict of interest (such as membership in another body or the interest of a relative in certain relevant activities). Requiring declarations of conflict of interest outside of these situations, and/or requiring that they be published, on the contrary, appears to be disproportionate (see paragraph 78 below).

6. PERSONAL DATA PROTECTION SAFEGUARDS

70. Should such declaration or disclosure requirements be put in place, adequate safeguards should be in place to ensure that the personal data that may be collected, processed and stored during that process are protected against misuse and abuse in line with international standards, particularly the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data and the Modernized Convention.[113]

71. In the case C-184/20 which concerned the (now repealed) requirement under Lithuanian law for heads of establishments receiving public funds (and certain public officials) to submit a *declaration of private interests*, some parts of which must be published online on the website of the Chief Ethics Commission, the CJEU was called to address two questions, namely whether it is compatible with EU law to require that personal data contained in declarations of private interests be published online and whether it is compatible to require publication of "special" or particularly sensitive personal data (e.g. data revealing political views, family relations, etc.) in such declarations. The CJEU held that publication online of declarations of private interests can be appropriate and useful to prevent conflicts of interest and enhance accountability. However, the national law must ensure that the interference is strictly necessary, i.e. that the same objectives could not reasonably be achieved by less intrusive means. The Court expressed concern that the Lithuanian law's requirement to publish *all* data (or many data points) may go beyond what is strictly necessary, especially for data about spouses, acquaintances, or

113 See Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS 108), Strasbourg, 28 January 1981 and the Council of Europe, Protocol amending the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (CETS No. 223) – which apply to both public and private sector data processing.

transactions above a certain value, or especially sensitive information. It noted that requiring the online publication of declarations of private interests, which could indirectly reveal a person's sexual orientation, constitutes processing of "special categories of personal data" under the GDPR. The Court found this processing to be permissible for the objective of preventing conflicts of interest and corruption, provided it is necessary, proportionate, and respects fundamental rights, such as the right to privacy.[114]

72. Generally, under international law, the following key principles regarding the protection of personal data should be respected:[115] (i) the principle of lawful processing;[116] (ii) the principle of purpose specification and limitation;[117] (iii) the principles of data quality, including data relevance,[118] data accuracy,[119] and the limited retention of data, particularly that retention shall be limited in time;[120] (iv) the fair processing principle;[121] and (v) the principle of accountability.[122] Relevant domestic legislation should specify how data should be kept, who should be allowed access and the conditions for transferring data to other services. Moreover, it should outline how data subjects may exercise their data protection rights and how control by an independent authority should be exercised. Any type of arbitrary use of the data should be forbidden by law and the state body concerned should provide adequate protection safeguards.

7. SANCTIONS FOR VIOLATIONS OF DISCLOSURE OBLIGATIONS

73. In cases of sanctions imposed for the violation of such new obligations to declare assets and disclose conflict of interest, it is worth reiterating that, as mentioned in the Guidelines, *"[s]anctions should, if circumstances so allow, be preceded by a warning with information as to how a violation may be rectified" and "the association should be given ample time to rectify the violation or omission*".[123] Further, such sanctions always need to be consistent with the principle of proportionality, i.e., they must be the least intrusive means to achieve the desired objective.[124] In any case, since non-compliance with these obligations would be attributable to the board members or directors, it is questionable if sanctions should be imposed on the associations at all. Indeed, as underlined in the Joint Guidelines on Freedom of Association, "*the individual wrongdoing of founders or members of an association, when not acting on behalf of the*

114 Court of Justice of the European Union, Case C-184/20, Request for a preliminary ruling under Article 267 TFEU from the Vilniaus apygardos administracinis teismas (Regional Administrative Court, Vilnius, Lithuania), made by decision of 31 March 2020, 1 August 2022.

115 See e.g., Section III of the EU Fundamental Rights Agency (FRA), Handbook on European Data Protection Law (2018 updated edition)

116 i.e., in accordance with the law, pursuing a legitimate purpose, and necessary in a democratic society in order to achieve the legitimate purpose.

117 i.e., the purpose of processing must be explicitly defined by law, meaning that processing for undefined purposes is not compliant with data protection principles; further use of data for another purpose (including transfer to third parties) requires an additional legal basis.

118 i.e., that only such data shall be processed as are "adequate, relevant and not excessive in relation to the purpose for which they are collected and/or further processed" (Article 5 of the CoE Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data).

119 This means that a controller holding personal information shall not use that information without taking steps to ensure with reasonable certainty that the data are accurate and up to date (see op. cit. footnote 159, Section 3.3.2 (2014 EU FRA Handbook on European Data Protection Law).

120 i.e., the retention of data to be proportionate in relation to the purpose of collection and limited in time, particularly in the police sector (see e.g., the ECtHR case of S. and Marper v. the United Kingdom, nos. 30562/04 and 30566/04, 4 December 2008.

121 i.e., transparency of processing, especially vis-a-vis data subjects; unless specifically permitted by law, there must be no secret and covert processing of personal data (see op. cit. footnote 159, Section 3.4 (2018 EU FRA Handbook on European Data Protection Law).

122 This means that the data controllers shall ensure the active implementation of measures to promote and safeguard data protection in their processing activities (see op. cit. footnote 159, Section 3.5 (2018 EU FRA Handbook on European Data Protection Law).

123 ODIHR-Venice Commission, Guidelines on Freedom of Association (2015),, para. 235. See also ECtHR, *Özbek and Others v. Turkey*, no. 35570/02, 6 October 2009, para. 37.

124 ODIHR-Venice Commission, Guidelines on Freedom of Association (2015), para. 237.

association, should lead only to their personal liability for such acts, and not to the prohibition or dissolution of the whole association".[125]

74. Generally, excessive sanctions will be considered to violate the right to freedom of association on that basis alone.[126] The proportionality of sanctions should be assessed in light of penalties that are imposed for similar offences committed by other persons or legal entities.[127] Penalties automatically entailing imprisonment would undoubtedly be regarded as disproportionate and thus incompatible with the right to freedom of association.

8. ADDITIONAL CONCERNS RELATED TO THE LEGISLATIVE PROCESS

75. OSCE participating States have committed to ensure that legislation will be "*adopted at the end of a public procedure, and [that] regulations will be published, that being the condition for their applicability*" (1990 Copenhagen Document, para. 5.8).[128] Moreover, key commitments specify that *"[l]egislation will be formulated and adopted as the result of an open process reflecting the will of the people, either directly or through their elected representatives"* (1991 Moscow Document, para. 18.1).[129] The ODIHR Guidelines on Democratic Lawmaking for Better Laws (2024) underline the importance of evidence-based, open, transparent, participatory and inclusive lawmaking process, offering meaningful opportunities to all interested stakeholders to provide input throughout the lawmaking process.[130]

76. Public consultations constitute a means of open and democratic governance as they lead to higher transparency and accountability of public institutions, and help ensure that potential controversies are identified before a law is adopted.[131] Consultations on draft legislation and policies, in order to be effective, need to be inclusive and to provide relevant stakeholders with sufficient time to prepare and submit recommendations on draft legislation; the State should also provide for an adequate and timely feedback mechanism whereby public authorities should acknowledge and respond to contributions.[132] To guarantee effective participation, consultation mechanisms should allow for input at an early stage, from the initial policymaking phase *and throughout the process*,[133] meaning not only when the draft is being prepared but also when it is discussed before Parliament, be it during public hearings or during the meetings of the parliamentary committees. It is fundamental that all voices are heard, even those that may be critical of the proposed initiatives with a view to address the issues being raised and achieve broad political consensus and public support within the country about such a reform. Ultimately, this tends to improve the implementation of laws once adopted, and enhance public trust in public institutions in general.

125 ODIHR-Venice Commission, Guidelines on Freedom of Association (2015), para. 254.

126 See, e.g., Marchenko v. Ukraine, no. 4063/04, 19 February 2009 and Gün and Others v. Turkey, no. 8029/07, 18 June 2013.

127 ODIHR-Venice Commission, Guidelines on Freedom of Association (2015), para. 237.

128 Available at <http://www.osce.org/fr/odihr/elections/14304http://www.osce.org/fr/odihr/elections/14304>.

129 Available at <http://www.osce.org/fr/odihr/elections/14310http://www.osce.org/fr/odihr/elections/14310>.

130 See ODIHR, Guidelines on Democratic Lawmaking for Better Laws (January 2024), in particular Principles 5, 6, 7 and 12. See also Venice Commission, Rule of Law Checklist, CDL-AD(2016)007, Part II.A.5.

131 See Recommendations on Enhancing the Participation of Associations in Public Decision-Making Processes (from the participants to the Civil Society Forum organized by ODIHR on the margins of the 2015 Supplementary Human Dimension Meeting on Freedoms of Peaceful Assembly and Association), Vienna 15-16 April 2015.

132 See ODIHR, Guidelines on Democratic Lawmaking for Better Laws (2024), Principle 7.

133 See ODIHR, Guidelines on Democratic Lawmaking for Better Laws (2024), Principle 7.

77. In principle, laws and public decision-making should be prepared, discussed and adopted on the basis of well-founded arguments, scientific evidence and data, including information deriving from impact assessments and consultations with the public and other stakeholders.[134]

78. The Guidelines on Freedom of Association specifically recommend that associations always be consulted about proposals to amend laws and other rules that concern their status, financing and operation.[135] In particular, legislation potentially affecting human rights and fundamental freedoms, as is the case here, should be adopted through a broad, inclusive and participatory process, which should also and in particular involve civil society organizations – including those representing marginalized persons or groups – and the general public.

79. Before preparing legislation imposing additional declaratory or disclosure requirements on board members or directors of associations, governments must show that any new declaratory or disclosure requirements are necessary to counter a real, not hypothetical, threat. A proper, thorough and transparent risk assessment of the civic sector should be carried out, in addition to an in-depth regulatory impact assessment, also examining whether less intrusive alternatives exist and avoid duplicating existing obligations, such as financial or tax reporting already in place for associations, and analysing the potential undue impact that such legislation may have on the exercise of human rights and fundamental freedoms. On this basis, the drafters should attach an Explanatory Statement to the legislative initiative, which should detail the reasons justifying the contemplated reform, including the research and impact assessment on which these findings are based. In particular, evidence should be presented to demonstrate that existing problems within the civil society sector in the said country require a legislative reform of this scale that could not be addressed adequately by other means, e.g., by ensuring better implementation of the existing laws. The Explanatory Statement should also outline whether and to which extent the benefits of the measures chosen by the authors of the legislative initiative outweigh their costs, including the potentially negative impact that they will have on the right to freedom of association. It must be reiterated that, as explicitly stated in the Joint Guidelines on Freedom of Association, states shall also facilitate the exercise of freedom of association by creating an enabling environment in which associations can operate.[136] It is thus essential that such legislative initiative be preceded by an in-depth regulatory impact assessment, complete with a proper problem analysis using evidence-based techniques to identify the best efficient and effective regulatory option (including the "no regulation" option).[137]

134 See ODIHR Guidelines on Democratic Lawmaking for Better Laws (January 2024), Principle 5, Evidenced-based lawmaking.

135 ODIHR-Venice Commission, Guidelines on Freedom of Association (2015), para. 186.

136 ODIHR-Venice Commission, Guidelines on Freedom of Association (2015), paras. 27 and 74.

137 See e.g., OSCE/ODIHR, Report on the Assessment of the Assessment of the Legislative Process in the Republic of Armenia (October 2014), pars 47-48, <http://www.legislationline.org/documents/id/19365>.