

Standing and operational space of non-governmental organisations (NGOs) in contributing to respecting and promoting fundamental rights in EU Member States

Estonia 2017

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1 Regulatory environment for the work of non-governmental organisations

Title of legislation and reference	Topic (please make reference to categories A-F see guidelines)	Effect on civil society (positive or negative) Please include reference to source of information
1. Guidelines for Funding Organisations ¹ [unofficial translation]	C	<p>Positive.</p> <p>In 2013, a compilation of the guidelines was funded by the Ministry of the Interior (<i>Siseministeerium</i>). The guidelines, together with the 'Concept for Providing Order in State Funding of Civil Society Organisations'² [unofficial translation] from 2009, provide the principles and guidelines for the organisation of the funding process – from setting up the goals to the performance evaluation.</p> <p>However, the Network of Estonian Nonprofit Organizations (NENO) has reported in its shadow report analysing compliance with the guidelines that between 2013 and 2015 funding practices among ministries</p>

¹ Estonia, Matt, J., Uus, M., Hinsberg, H., Kaarna, R., Aps, J. (2013), *Ühenduste rahastamise juhtmaterjal*, Tallinn, Poliitikauuringute Keskus PRAXIS, available at: www.siseministeerium.ee/sites/default/files/dokumendid/yhenduste_rahastamise_juhendmaterjal_parandatud.pdf.

² Estonia, Bobkov, M. (2009), *Kodanikeühenduste riigieelarvelise rahastamise korrastamise kontseptsioon*, Tallinn, Estonian Ministry of the Interior (*Siseministeerium*), available at: www.siseministeerium.ee/sites/default/files/dokumendid/rahkon_260309.pdf.

		and other funders varied to a great extent: only six ministries out of eleven had adopted the guidelines. ³ However, financial transparency also improved in those few years, for example some ministries involved NGOs in designing the funding process and made funding information more relevant and visible for NGOs. In addition, the arrangement of project grants was more thought through and the Ministry of the Interior (<i>Siseministeerium</i>) developed a form of strategic partnership with NGOs to ensure that the provision of some community services could not be provided through outsourcing. – Problems with setting and communicating goals and a lack of assessment of the results of financing – remained the biggest issues for NGO funding in 2015. ⁴
2. Act Amending the Income Tax Act, Social Tax Act and the	C and D	Positive and negative. As of 1 January 2015, the adopted changes in § 11

³ Estonia, Luring, M., Jemmer, H., Mätlik, M., Tuisk, S., Hinno, R. (2015), *Variraport vabaühenduste riigieelarvest rahastamise juhendi järgimisest 2013-2015*, Tallinn, Network of Estonian Nonprofit Organizations (*Vabaühenduste Liit EMSL*), available at: www.heakodanik.ee/sites/default/files/files/variraport.pdf.

⁴ Estonia, Luring, M., Jemmer, H., Mätlik, M., Tuisk, S., Hinno, R. (2015), *Variraport vabaühenduste riigieelarvest rahastamise juhendi järgimisest 2013-2015*, Tallinn, Network of Estonian Nonprofit Organizations (*Vabaühenduste Liit EMSL*), available at: www.heakodanik.ee/sites/default/files/files/variraport.pdf.

<p>Cultural Endowment of Estonia Act⁵</p>		<p>of the Income Tax Act⁶ made the application for the income tax incentive⁷ for NGOs clearer, faster, and less bureaucratic. The act also clarified several other previous grey areas regarding the status of NGOs (e.g. giving another legal person assets while conducting objectives specified in the articles of association is now more clearly exempt from tax).⁸</p> <p>The government also further reduced the upper limit of private persons' taxable income (from € 1,920 to € 1,200), which also includes (in addition to donations to NGOs) housing loan interests, tuitions as well as gifts. Therefore, as only very limited amounts can be donated to NGOs annually without paying the income tax (20 %), the Estonian Human Rights Centre (<i>Inimõiguste Keskus</i>) has</p>
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⁵ Estonia, Act Amending the Income Tax Act, Social Tax Act and the Cultural Endowment of Estonia Act [unofficial translation] (*Tulumaksuseaduse, sotsiaalmaksuseaduse ja Eesti Kultuurkapitali seaduse muutmise seadus*), 1 July 2014, available at: www.riigiteataja.ee/akt/111072014005.

⁶ Estonia, Income Tax Act (*Tulumaksuseadus*), 1 January 2000, available in English at: www.riigiteataja.ee/en/eli/ee/Riigikogu/act/516012017002/consolide.

⁷ Estonia, List of Non-Profit Organisations and Foundations with Income Tax Concession [unofficial translation] (*Tulumaksusoodustusega mittetulundusühingute ja sihtasutuste nimekiri*), 8 February 2000, available at: www.riigiteataja.ee/akt/13199273.

⁸ Estonia, Rammo, A. (2015), 'Freedom of assembly and association' in: Rünne, E., Käsper, K. (eds.), *Human Rights in Estonia 2014 – 2015*, Tallinn, Estonian Human Rights Centre, pp. 57–66, available at: https://vana.humanrights.ee/wp-content/uploads/2016/02/EIKaruanne2014.veebi_eng_pdf.

		given the opinion that the incentive for natural persons to make donations to NGOs has thus been brought to a minimum with the tax policy. ⁹
3. Law Enforcement Act ¹⁰	B	<p>Positive.</p> <p>The changes made to the Law Enforcement Act (LEA) in 2014 brought about two minor changes regarding the freedom of assembly. First, the list of persons who may be organisers of a public meeting was widened to include EU citizens. Furthermore, when designated by a legal person to bear the rights and obligations of an organiser of the meeting, since 1 July 2014, any person with active legal capacity can be an organiser of a meeting.</p> <p>Secondly, a new definition was included in the act – a spontaneously assembled meeting – which replaces the assembly with two-hour notice and does not require giving prior notice to the police (§ 67). As section 4 of § 67 of the LEA preserves the right to organise a meeting urgently with a prior</p>

⁹ Estonia, Rammo, A. (2015), 'Freedom of assembly and association' in: Rünne, E., Käsper, K. (eds.), Human Rights in Estonia 2014–2015, Tallinn, Estonian Human Rights Centre, pp. 57–66.

¹⁰ Estonia, Law Enforcement Act (*Korralduseseadus*), 1 July 2014, available in English at: www.riigiteataja.ee/en/eli/507122016001/consolide.

		notice given less than four days in advance, the adopted changes expand the possibilities for NGOs and natural persons to respond quickly to problems that arise in society.
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Involving NGOs in designing the funding process

According to the shadow report,¹¹ analysing compliance with the Guidelines for Funding Organisations,¹² seven out of ten ministries that were included in the study involved NGOs in some way when designing the funding process, either through satisfaction surveys, information days or reports. For example, the Ministry of Education and Research (*Haridus- ja Teadusministeerium*) has established good cooperation between with the Estonian National Youth Council (*Eesti Noorteühenduste Liit*). The ministry's work plan is public and NGOs are able to comment on it. NGOs believe that their proposals are considered and applicants are given meaningful feedback.¹³

Other ministries that have involved NGOs in some way in designing the funding process are as follows:

- 1) Ministry of Culture (*Kultuuriministeerium*) – tested new application forms with some NGOs;
- 2) Ministry of Foreign Affairs (*Välisministeerium*) – collected feedback through reports and has changed some aspects of funding based on the feedback;
- 3) Ministry of the Environment (*Keskkonnaministeerium*) – collected feedback from information days and through satisfaction surveys;
- 4) Ministry of Defence (*Kaitseministeerium*) – negotiated with long-term partners when developing financing regulations; there are regular

¹¹ Estonia, Lauring, M., Jemmer, H., Mätlik, M., Tuisk, S., Hinno, R. (2015), *Variraport vabaühenduste riigieelarvest rahastamise juhendi järgimisest 2013-2015*, Tallinn, Network of Estonian Nonprofit Organizations (*Vabaühenduste Liit EMSL*), available at: www.heakodanik.ee/sites/default/files/files/variraport.pdf.

¹² Estonia, Matt, J., Uus, M., Hinsberg, H., Kaarna, R., Aps, J. (2013), *Ühenduste rahastamise juhtmaterjal*, Tallinn, Poliitikauuringute Keskus PRAXIS, available at: www.siseministeerium.ee/sites/default/files/dokumendid/yhenduste_rahastamise_juhendmaterjal_p_arandatud.pdf.

¹³ Estonia, Lauring, M., Jemmer, H., Mätlik, M., Tuisk, S., Hinno, R. (2015), *Variraport vabaühenduste riigieelarvest rahastamise juhendi järgimisest 2013-2015*, Tallinn, Network of Estonian Nonprofit Organizations (*Vabaühenduste Liit EMSL*), available at: www.heakodanik.ee/sites/default/files/files/variraport.pdf.

meetings with several beneficiaries; before NGOs file their funding applications, the ministry holds meetings to identify opportunities and priorities for cooperation;

- 5) Ministry of Finance (*Rahandusministeerium*) – the applicants can assess the conditions and procedures, reporting, application forms and provide recommendations for improving the financing in the local initiative programme (the ministry does not collect feedback in other programmes);
- 6) Ministry of Social Affairs (*Sotsiaalministeerium*) – included NGOs in the development stage of the development plan; however, the involvement practices vary greatly within the ministry, depending on the people who are responsible for financing in a certain area.

The shadow report itself brings out the strategic partnership agreements with the Ministry of the Interior as a good example. By the end of 2015, the ministry had established a total of seven strategic partnership agreements. The main difference between operating grant agreements and strategic partnership agreements is that the focus is not on the development of the organisation but rather on the activities that are necessary for the development of a particular area, or the state in general. The basic principle is that if the objectives of the cooperation are met, the NGOs can make management decisions by themselves and notify the ministry about the activities that they are carrying out to achieve the goals of the cooperation. The benefits of strategic partnership include the possibility to set long-term goals; for roof organisations to find funds to represent members or member organisations; the possibility to create long-lasting cooperation networks; and it gives the organisations more freedom, such as allowing organisations to set their own goals etc.¹⁴

2 EU Member State government funding for non-governmental organisations – trends and developments 2011-2016

2.1 Overall amount of government funding

There are not any recent estimates concerning public funding of NGOs (non-profit associations and foundations) in Estonia, as such data is often not publicly available and has not been collected by anyone in the recent

¹⁴ Estonia, Luring, M., Jemmer, H., Mätlik, M., Tuisk, S., Hinno, R. (2015), *Variraport vabaühenduste riigieelarvest rahastamise juhendi järgimisest 2013-2015*, Tallinn, Network of Estonian Nonprofit Organizations (*Vabaühenduste Liit EMSL*), available at: www.heakodanik.ee/sites/default/files/files/variraport.pdf.

years.¹⁵ The Network of Estonian Nonprofit Organizations (*Vabaühenduste liit EMSL*, NENO), in cooperation with the Centre for Applied Social Sciences (*Sotsiaalteaduslike rakendusuringute keskus RAKE*, CASS) is currently (as of February 2017) developing methodology on how and from where to collect data on government funding of NGOs. This project is ordered and financed by the Estonian Ministry of the Interior (*Siseministeerium*).¹⁶

The last comprehensive study concerning public financing of NGOs in Estonia was published in 2008, focusing on the years 2006–2007. The state support in this report is estimated at € 33.7 million and € 44.3 million respectively for these two years.¹⁷ In 2012, the financial support from the state budget to NGOs was € 109.9 million, resulting in an increase of more than 50 % in five years.¹⁸ However, the estimate also includes funding to NGOs and foundations owned or partly owned by the state or local governments.¹⁹

To analyse the changes in government funding to NGOs and foundations working specifically in the field of fundamental rights, separate research was carried out based on the financial year reports from 2011–2015 of these organisations. The organisations that were included in this research were selected based on participation in the human rights roundtable meetings which have been organised since 2011 by the Estonian Human Rights Institute (*Inimõiguste Instituut*). The final list included 17 organisations (non-profit associations and foundations) that had been represented in at least one roundtable since 2013 (based on meeting protocols). Three of these organisations had not made their annual financial reports available and two had only published the reports for only one year. Based on the financial information provided by 12 organisations, the public funding for organisations working in the field of fundamental

¹⁵ Estonia, Network of Estonian Nonprofit Organizations (*Vabaühenduste liit EMSL*) (2017), email correspondence, 23 February 2017.

¹⁶ Estonia, Network of Estonian Nonprofit Organizations (*Vabaühenduste liit EMSL*) (2017), email correspondence, 23 February 2017.

¹⁷ Estonia, Poliitikauuringute Keskus PRAXIS, Kodanikeühiskonna Uurimis- ja Arenduskeskus (TLÜ RASI) (2008), *Kodanikuühenduste riigieelarvelise rahastamise analüüs (2006-2007)*, Tallinn, Poliitikauuringute Keskus PRAXIS, available at: https://www.siseministeerium.ee/sites/default/files/dokumendid/k_rerahastamise_2006-2007_anal_siraport.pdf.

¹⁸ Estonia, Poliitikauuringute Keskus PRAXIS (2013), 'Vabaühendustele raha jagamist on vaja korraldada läbipaistvalt', Press release, 13 March 2013, available at: www.praxis.ee/2013/03/vabauhendustele-rahajagamist-on-vaja-korraldada-labipaistvalt-13032013/.

¹⁹ Estonia, Kübar, U., Rammo, A. (2014), *23 küsimust Eesti vabakonna kohta ja vastused, nii hästi, kui neid leida oskasime*, Tallinn, Network of Estonian Nonprofit Organizations (*Vabaühenduste liit EMSL*), available at: <http://heakodanik.ee/sites/default/files/files/2015-1%20almanahh.pdf>.

rights in Estonia has increased from around € 1.7 million in 2011 to just over € 3 million in 2015. In 2012, the total was € 2.1 million, and in 2013 and 2014 the totals were € 2.3 million and € 2.9 million respectively. These amounts, however, also include (membership) fees and donations (from individuals and the private sector) which could amount to up to 1–2 % of the total estimate. Income from entrepreneurship was excluded.

2.2 Distribution of government funding

Data on the distribution of government funding for NGOs across different types of activities is not currently (as of February 2017) available.²⁰ The Network of Nonprofit Organisations (*Vabaühenduste Liit EMSL*, NENO) and the Ministry of the Interior (*Siseministeerium*) are currently working out the classification structure to allow analysing government funding decisions across different types of activities.²¹ It is expected that obtaining data concerning government funding of NGOs in Estonia that also indicates the purpose or type of activity for which it was meant, will be made available for the first time in the second half of 2017.²² Still, it is expected that the preliminary statistics will not be completely accurate as collecting and entering data into a specific (SAP) software is still ongoing.²³

An analysis carried out by the Centre for the Study and Development of Civil Society at Tallinn University (*Kodanikeühiskonna uurimis- ja arenduskeskus*) in 2015, showed that there were no significant changes in the main fields of activity of NGOs in general between 2009/2010 and 2014.²⁴ Furthermore, the results showed that the most common additional operating areas (up to two other areas in addition to the main field of activity) reported by the NGOs were the same in 2009 and 2014.²⁵ However, the researchers also found that the fields of activity were

²⁰ Estonia, Network of Estonian Nonprofit Organizations (*Vabaühenduste liit EMSL*) (2017), email correspondence, 23 February 2017.

²¹ Estonia, Network of Estonian Nonprofit Organizations (*Vabaühenduste liit EMSL*) (2017), email correspondence, 23 February 2017.

²² Estonia, Network of Estonian Nonprofit Organizations (*Vabaühenduste liit EMSL*) (2017), email correspondence, 23 February 2017.

²³ Estonia, Network of Estonian Nonprofit Organizations (*Vabaühenduste liit EMSL*) (2017), email correspondence, 23 February 2017.

²⁴ Estonia, Rikmann, E., Keedus, L., Lindemann, K., Roosmaa, E.-L., Sõmer, M., Joorik, A., Aidnik, M. (2015), *Kodanikualgatuse institutsionaliseerumine Eestis 2014*, Tallinn, Center for the Study and Development of Civil Society at Tallinn University (*Kodanikeühiskonna uurimis- ja arenduskeskus*), available at: <http://www.kysk.ee/failid/Upload/files/KUAK%2014%20raport.pdf>.

²⁵ Estonia, Rikmann, E., Keedus, L., Lindemann, K., Roosmaa, E.-L., Sõmer, M., Joorik, A., Aidnik, M. (2015), *Kodanikualgatuse institutsionaliseerumine Eestis 2014*, Tallinn, Center for the Study and Development of Civil Society at Tallinn University.

associated with the time of the establishment of the NGO. One reason for this could be that the establishment and sustainability of NGOs during different time periods is affected by the funding programmes.²⁶

A study on the delegation of services to NGOs confirmed that between 2009 and 2013/14 the service delegation rate of local municipalities had not changed significantly. In both 2009 and 2014, around 60 % of local governments had contractually delegated public services to NGOs or financially supported the provision of public services by NGOs.²⁷ However, there is no available information concerning service provision at the state level (delegation and financial support from the central government) or whether funding for service provision and the scope of service provision had increased or remained the same in that time period.

The Estonian Human Rights Centre (*Eesti Inimõiguste Keskus*) has explained that since NGO funding decisions in ministries are made annually at the end of each year, advocacy organisations feel pressurised not to criticise what needs to be criticised in the first three quarters of the year.²⁸ Until 2013, the Human Rights Centre received operational support without any competition from the Ministry of Culture (*Kultuuriministeerium*).²⁹ Due to re-organisation, the allocation of money was seized in 2013 and since then the organisation has only relied on project grants, private donations, and revenue from entrepreneurship.³⁰ The centre explained that if the state gives money to NGOs in a non-transparent way or with political expectations, then they will not be able to serve their role as a watchdog.³¹

The Estonian state has previously funded litigation and advocacy projects: for example, in 2014 in its third round of applications, the Open Estonia Foundation (*Avatud Eesti Fond*) funded six projects aimed at increasing the

²⁶ Estonia, Rikmann, E., Keedus, L., Lindemann, K., Roosmaa, E.-L., Sõmer, M., Joorik, A., Aidnik, M. (2015), *Kodanikualgatuse institutsionaliseerumine Eestis 2014*, Tallinn, Center for the Study and Development of Civil Society at Tallinn University.

²⁷ Estonia, Uus, M., Tatar, M., Vinni, R. (2014), *Avalike teenuste delegeerimine vabaühendustele 2014*, Tallinn, Poliitikauuringute Keskus PRAXIS, available at: www.praxis.ee/wp-content/uploads/2014/12/teenuste-delegeerimine.pdf.

²⁸ Estonia, Öö Sarv, M. (2014), 'Ühenduste riikliku rahastamise ideaal ja tegelikkus', in Öö Sarv, M., Kübar, U., Rammo, A. (eds.), *Kingitus kõige nõrgemale: Räägime rahast*, Hea Kodanik, No. 2 (60), Spring 2014.

²⁹ Estonia, Estonian Human Rights Centre (*Eesti Inimõiguste Keskus*) (2017), email correspondence, 29 March 2017.

³⁰ Estonia, Estonian Human Rights Centre (*Eesti Inimõiguste Keskus*) (2017), email correspondence, 29 March 2017.

³¹ Estonia, Öö Sarv, M. (2014), 'Ühenduste riikliku rahastamise ideaal ja tegelikkus', in Öö Sarv, M., Kübar, U., Rammo, A. (eds.), *Kingitus kõige nõrgemale: Räägime rahast*, Hea Kodanik, No. 2 (60), Spring 2014.

advocacy capacity of NGOs.³² Since October 2016, 25 NGOs are currently participating in a two-year programme 'Advocacy Laboratory' [unofficial translation] (*Huvikaitselabor*), which aims to support NGOs in setting targets and implementing advocacy activities.³³ However, there is no data available to assess the accessibility to funding for advocacy or any other types of activities as there is no information about the projects that were not funded and the reasons why they were rejected (e.g. due to technical requirements or aim or type of the project, etc.).

The Estonian Cultural Endowment (*Eesti Kultuurkapital*) – a funder for projects in art, folk culture, and sport – has analysed its weaknesses as a funder (e.g. no guarantee of future funding, weight of personal relationships and conflicts of interest in decisions, superficial explanation of denying an application, etc.).³⁴ This can be attributed to other funders as well. The shadow report on compliance with the funding guidelines³⁵ (by NENO, also discussed in Table 1 of part 1 of the report) explains that it is often not specified who has the authority to make the funding decisions or what criteria are considered while making a choice between the applications, or why some specific organisations receive operational support. As stated in part 4 of this report, it is not rare that government funding comes from unanticipated sources, for unexpected reasons and/or under strange names.³⁶ For NGOs, it is also confusing when ministries reply to funding proposals that there are no funds available, but when an organisation complains about it the money is then found.³⁷ Therefore, sometimes access to funding also depends on the persistency of the NGOs.

³² Estonia, Open Estonia Foundation (2017), '*Projektid vabaühenduste huvikaitsevõimekuse suurendamiseks*', information provided on the website, available at: <https://oef.org.ee/teoksil/norra/toetatud-projektid/3-taotlusvoor/projektid-vabauhenduste-huvikaitsevõimekuse-suurendamiseks/>.

³³ Estonia, Poliitikauuringute Keskus PRAXIS (2016), '*Ootame vabaühendusi kandideerima huvikaitselaborisse*', Press release, 13 September 2016, available at: www.praxis.ee/2016/09/ootame-vabauhendusi-kandideerima-huvikaitselaborisse/.

³⁴ Estonia, The Cultural Endowment of Estonia (*Eesti Kultuurkapital*) (2017), 'Developments of the Cultural Endowment of Estonia in 2016–2020', information provided on the website, available in English at: www.kulka.ee/about-us/developments.

³⁵ Estonia, Luring, M., Jemmer, H., Mätlik, M., Tuisk, S., Hinno, R. (2015), *Variraport vabaühenduste riigieelarvest rahastamise juhendi järgimisest 2013-2015*, Tallinn, Network of Estonian Nonprofit Organizations (*Vabaühenduste Liit EMSL*).

³⁶ Estonia, Öö Sarv, M. (2014), '*Ühenduste riikliku rahastamise ideaal ja tegelikkus*', in Öö Sarv, M., Kübar, U., Rammo, A. (eds.), *Kingitus kõige nõrgemale: Räägime rahast*, Hea Kodanik, No. 2 (60), Spring 2014, available at: https://issuu.com/emsl/docs/hea_kodanik_2-2014.

³⁷ Estonia, Öö Sarv, M. (2014), '*Ühenduste riikliku rahastamise ideaal ja tegelikkus*', in Öö Sarv, M., Kübar, U., Rammo, A. (eds.), *Kingitus kõige nõrgemale: Räägime rahast*, Hea Kodanik, No. 2 (60), Spring 2014, available at: https://issuu.com/emsl/docs/hea_kodanik_2-2014.

2.3 Restrictions (or other changes) on NGO funding from other sources

According to § 1 of the Non-profit Associations Act³⁸ (*Mittetulundusühingute seadus*), the objective or main activity of non-profit associations (NPAs) cannot be the earning of income from economic activity. This, however, does not mean that NPAs in Estonia could not earn income from economic activities. Making a profit is permitted but the profit must be used to achieve the objectives of the organisation and it cannot be divided among the members or the organisation.³⁹ The Non-profit Associations Act has been amended on seven occasions between 2011 and 2017.⁴⁰ However, none of the adopted changes concern NPA funding from other sources.

Similarly, § 2 of the Foundations Act⁴¹ (*Sihtasutuste seadus*) stipulates that a foundation may use its income only to achieve the objectives specified in its articles of association. The same paragraph also stipulates that a foundation shall not grant loans to or secure the loans of founders or (supervisory) board members and that restrictions on the economic activities of foundations may be provided by the law.⁴² However, currently there is no information on any restrictions imposed specifically on foundations by law. There are of course limits to operating in certain fields and a licence may be required for operating in other areas but those limits result from the Commercial Code⁴³ (*Äriseadustik*) and apply to all entrepreneurs.

³⁸ Estonia, Non-profit Associations Act (*Mittetulundusühingute seadus*), 1 October 1996, available in English at: www.riigiteataja.ee/en/eli/504022016003/consolide.

³⁹ Estonia, MAKIS Online Counsellor for Civil Society Organisation [unofficial translation] (*MAKIS Kodanikuühenduste Nõuandja Veebis*) (2017), 'Mittetulundusühenduste rahastamine', information provided on the information portal, available at: <http://mty.arenduskeskused.ee/FLEXIcontent/Kodanikuuhenduse-juhtimine/rahastamine.html>.

⁴⁰ Estonia, Non-profit Associations Act (*Mittetulundusühingute seadus*), 1 October 1996, available in English at: www.riigiteataja.ee/en/eli/504022016003/consolide.

⁴¹ Estonia, Foundations Act (*Sihtasutuste seadus*), 1 October 1996, available in English at: www.riigiteataja.ee/en/eli/504022016004/consolide.

⁴² Estonia, Foundations Act (*Sihtasutuste seadus*), 1 October 1996, available in English at: www.riigiteataja.ee/en/eli/504022016004/consolide.

⁴³ Estonia, Commercial Code (*Äriseadustik*), 1 September 1995, available in English at: www.riigiteataja.ee/en/eli/ee/513072016002/consolide/current.

Earning an income from entrepreneurship allows NGOs in Estonia to achieve financial independence from the funders. In 2009 and 2013, nearly one third (28 % each year) of NGOs reported that they earned income from entrepreneurship.⁴⁴ In addition to funding from the state and local governments, the main sources of income for NGOs in Estonia include donations from businesses and private persons, revenue from entrepreneurship and fees from members.⁴⁵ Fees may also be asked, for example, for conducting trainings, counselling, provision of public services and selling merchandise (e.g. promotional items with the logo and/or slogan of the organisation). Unless the funder sets any specific restrictions, training fees may also be collected from the participants even when the organisation has received funding for carrying out the training.⁴⁶

Changes in tax laws affecting NGO funding from other sources between 2011 and 2016 are related to the adopted changes in § 11 of the Income Tax Act⁴⁷ (*Tulumaksuseadus*) (effective as of 1 January 2015) that were also discussed in Table 1 of the report. Previously, the procedure for granting tax incentives to NGOs was unnecessarily complex, and the boundaries of the decision makers were blurred.⁴⁸ Combined with the NGOs' poor ability to meet the formal requirements, only one third to a half of the applicants qualified for the tax incentive each year.⁴⁹ The

⁴⁴ Estonia, Rikmann, E., Keedus, L., Lindemann, K., Roosmaa, E.-L., Sõmer, M., Joorik, A., Aidnik, M. (2015), *Kodanikualgatuse institutsionaliseerumine Eestis 2014*, Tallinn, Centre for the Study and Development of Civil Society at Tallinn University.

⁴⁵ Estonia, Rikmann, E., Keedus, L., Lindemann, K., Roosmaa, E.-L., Sõmer, M., Joorik, A., Aidnik, M. (2015), *Kodanikualgatuse institutsionaliseerumine Eestis 2014*, Tallinn, Centre for the Study and Development of Civil Society at Tallinn University.

⁴⁶ Estonia, MAKIS Online Counselor for Civil Society Organisation [unofficial translation] (*MAKIS Kodanikuühenduste Nõuandja Veebis*) (2017), 'Omatulu teenimine mittetulundusühenduses', information provided on the information portal, available at: <http://mtv.arenduskeskused.ee/FLEXIcontent/Kodanikuühenduse-juhtimine/omatulu-teenimine.html>.

⁴⁷ Estonia, Income Tax Act (*Tulumaksuseadus*), 1 January 2000, available in English at: www.riigiteataja.ee/en/eli/ee/Riigikogu/act/516012017002/consolide.

⁴⁸ Estonia, Rammo, A. (2013), *Vabaühenduste maksusoodustused poliitikas, õiguses ja praktikas*, Tallinn, Tallinn University of Technology, Master's Thesis, available at: <http://heakodanik.ee/sites/default/files/files/Vaba%C3%BChenduste%20maksusoodustused%20poliitikas,%20%C3%B5iguses%20ja%20praktikas%20Alari%20Rammo,%20magistrit%C3%B6%C3%B6%2013.pdf>.

⁴⁹ Estonia, Rammo, A. (2013), *Vabaühenduste maksusoodustused poliitikas, õiguses ja praktikas*, Tallinn, Tallinn University of Technology, Master's Thesis.

changes in § 11 of the Income Tax Act⁵⁰ made the application for income tax incentive⁵¹ for NGOs clearer, faster and less bureaucratic.⁵²

According to § 11, only organisations operating in the public interest and for charitable purposes are entered on the list.⁵³ However, neither of these terms ('public interest' and 'charitable') has a legal definition under the Estonian law.⁵⁴ In May 2015, the Administrative Law Chamber of the Supreme Court made the first substantive judgment on interpreting the meaning of notions 'public interest' and 'charitable'.⁵⁵ The judgment provided a wider interpretation on those notions than the Tax and Customs Board (*Maksu- ja Tolliamet*) had used while granting or denying entry to the list of NGOs granted the tax incentive and annulled the deletion of *Arstide Täienduskoolituse Fond* (fund for doctors' in-service training) from the list. Thus, the decision of the Supreme Court also opened the way to tax incentives to other organisations that may have been previously perceived as commercial (not charitable and/or working in the public interest) organisations by the tax authorities.

The second important change in tax law (also explained in more detail in Table 1) follows from the adopted changes in § 11 of the Income Tax Act⁵⁶ (effective as of 1 January 2015) and is related to further reducing the upper limit of private persons' taxable income (from € 1,920 to € 1,200). The Estonian Human Rights Centre (*Inimõiguste Keskus*) has commented in its biennial review that due to the adopted changes in tax policy, the

⁵⁰ Estonia, Income Tax Act (*Tulumaksuseadus*), 1 January 2000, available in English at: www.riigiteataja.ee/en/eli/ee/Riigikogu/act/516012017002/consolide.

⁵¹ Estonia, List of Non-Profit Organisations and Foundations with Income Tax Concession [unofficial translation] (*Tulumaksusoodustusega mittetulundusühingute ja sihtasutuste nimekiri*), 8 February 2000, available at: www.riigiteataja.ee/akt/13199273.

⁵² Estonia, Rammo, A. (2015), 'Freedom of assembly and association' in: Rünne, E., Käsper, K. (eds.), *Human Rights in Estonia 2014–2015*, Tallinn, Estonian Human Rights Centre, pp. 57–66.

⁵³ Estonia, Income Tax Act (*Tulumaksuseadus*), 1 January 2000, available in English at: www.riigiteataja.ee/en/eli/ee/Riigikogu/act/516012017002/consolide.

⁵⁴ Estonia, Rammo, A. (2013), *Vabaühenduste maksusoodustused poliitikas, õiguses ja praktikas*, Tallinn, Tallinn University of Technology, Master's Thesis.

⁵⁵ Estonia, Administrative Law Chamber of the Supreme Court (*Riigikohtu Halduskolleegium*) (2015), Case No. 3-3-1-10-15, available at: www.riigikohus.ee/?id=11&tekst=RK/3-3-1-10-15.

⁵⁶ Estonia, Income Tax Act (*Tulumaksuseadus*), 1 January 2000, available in English at: www.riigiteataja.ee/en/eli/ee/Riigikogu/act/516012017002/consolide.

incentive for natural persons to make donations to NGOs was brought to a minimum with this change.⁵⁷

3 Access to the decision-making process for non-governmental organisations working on fundamental rights

Title of legislation/policy	Reference	Short summary (max 500 characters)
Good Practice of Involvement ⁵⁸ (GPI)	https://riigikantselei.ee/en/supporting-government/engagement-practices	'Good Practice of Involvement' (GPI) is a partnership and cooperation document that requires ministries and other administrative agencies to involve stakeholders (interest groups affected by the planned change) in the preparation of strategic documents (e.g. drafts of laws, regulations and directives, decrees, EU legislation, conventions and international agreements, etc.). For interest groups to be engaged, consultations with interest groups and the public should occur in the earliest possible stage of proceeding and

⁵⁷ Estonia, Rammo, A. (2015), 'Freedom of assembly and association' in: Rünne, E., Käsper, K. (eds.), *Human Rights in Estonia 2014–2015*, Tallinn, Estonian Human Rights Centre, pp. 57–66.

⁵⁸ Estonia, Government Office of the Republic of Estonia (*Riigikantselei*) (2012), *Good Practice of Involvement*, available in English at: <https://riigikantselei.ee/en/supporting-government/engagement-practices>.

		<p>feedback should be provided to interest groups after the consultation, etc. The GPI is a set of guidelines approved by the government in December 2011⁵⁹ that does not have any legal force on its own, but following the instructions set out in the document is made mandatory with the government regulation 'Rules for Good Legislative Practice and Legislative Drafting', described below.</p>
<p>Rules for Good Legislative Practice and Legislative Drafting⁶⁰ (RGL)</p>	<p>www.riigiteataja.ee/en/eli/508012015003/consolide</p>	<p>'Rules for Good Legislative Practice and Legislative Drafting' (RGL) includes the recognised principles of good legislation and requirements for legislative techniques. The main goal is to raise the quality of draft laws and regulations and to harmonise the legislative technique rules for the government and parliament. The RGL is a government</p>

⁵⁹ Estonia, Government of the Republic of Estonia (*Vabariigi Valitsus*) (2011), '*Valitsus kinnitas kaasamise hea tava*', Press release, 29 December 2011, available at: <https://valitsus.ee/et/uudised/valitsus-kinnitas-kaasamise-hea-tava>.

⁶⁰ Estonia, Rules for Good Legislative Practice and Legislative Drafting (*Hea õigusloome ja normitehnika eeskiri*), 22 December 2011, available in English at www.riigiteataja.ee/en/eli/508012015003/consolide.

		regulation that includes the requirement to follow the GPI: involve stakeholders, provide clarity and effectiveness of legislation, etc. The regulation entered into force on 1 January 2012 with a transition period to be fully implemented in 2014.
Response to Memoranda and Requests for Explanations and Submission of Collective Addresses Act ⁶¹ (RMREA)	www.riigiteataja.ee/en/eli/501112016001/consolide	In March 2014, changes were made to the RMREA, which made it obligatory for the parliament to hear collective applications with at least 1,000 signatures that meet necessary requirements (entered into force in April 2014). This has been used on a few occasions over the following 1.5 years, partly due to the absence of a convenient digital signature system as one of the obstacles. ⁶² This issue, however, was resolved in September 2015 with

⁶¹ Estonia, Response to Memoranda and Requests for Explanations and Submission of Collective Addresses Act (*Märgukirjale ja selgitustaotlusele vastamise ning kollektiivse pöördumise esitamise seadus*), 10 December 2004, available in English at: www.riigiteataja.ee/en/eli/501112016001/consolide.

⁶² Estonia, Rammo, A. (2015), 'Freedom of assembly and association' in: Rünne, E., Käsper, K. (eds.), *Human Rights in Estonia 2014–2015*, Tallinn, Estonian Human Rights Centre, pp. 57–66.

		the launch of Citizen OS portal – an e-decision-making platform for communities that enables participative discussion and voting for groups. ⁶³
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Estonia joined the Open Government Partnership (OGP) in 2012. However, as of 2017 there is still no state agency responsible for the OGP and no institution has been placed in the leadership role for the renewal and development of open government and democracy.⁶⁴ The 2014–2015 progress report⁶⁵ compiled by an independent expert in Estonia brings out that although civic engagement in the OGP process has increased, the circle of involved non-governmental actors remained small. And although most commitments for the 2014–2016 period were completed, changes in government practice were mostly minor. Also, the Estonian action plan did not contain any OGP specific (so-called starred) commitments that are measurable, clearly relevant to OGP values as written, etc.⁶⁶

4 Further information

According to the 'Guidelines for Funding Organisations'⁶⁷ [unofficial translation], the public sector provides funds to NGOs under three different categories: 1) operating grants – to support an organisation's activities and development in general to maintain or increase its capabilities; 2) project funding – for solving a particular problem or carrying out an

⁶³ Estonia, Network of Estonian Nonprofit Organizations (*Vabaühenduste Liit EMSL*) (2015), 'Kogukondlik e-otsustamise platvorm: Citizen OS', Press release, 28 September 2015, available at: <http://heakodanik.ee/uudised/kogukondlik-e-otsustamise-platvorm-citizen-os/>.

⁶⁴ Estonia, Hinsberg, H. (2014), *Sõltumatu hindamisaruanne: Eesti avatud valitsemise partnerluse tegevuskava täitmine 2012-2013*, Washington, Open Government Partnership, available at: www.opengovpartnership.org/sites/default/files/Estonia_Final_2012.pdf.

⁶⁵ Estonia, Tõnnisson, K. (2016), *Sõltumatu hindamismehhanism: Eesti eduaruanne 2014-2015*, Washington, Open Government Partnership, available at: www.opengovpartnership.org/sites/default/files/Estonia14-15_IRM_Final.pdf.

⁶⁶ Estonia, Tõnnisson, K. (2016), *Sõltumatu hindamismehhanism: Eesti eduaruanne 2014-2015*, Washington, Open Government Partnership.

⁶⁷ Estonia, Matt, J., Uus, M., Hinsberg, H., Kaarna, R., Aps, J. (2013), *Ühenduste rahastamise juhtmaterjal*, Tallinn, Poliitikauuringute Keskus PRAXIS, available at: www.siseministeerium.ee/sites/default/files/dokumentid/yhenduste_rahastamise_juhendmaterjal_p_arandatud.pdf.

activity through a one-time competition; 3) delegation of public services – an association or private enterprise offers a public service but the public sector retains control over the provision of the service. In reality, it is common that operating grants are obtained through project competitions or from the ‘roof money’ (see below) allocated by the parliament.⁶⁸ So it has been criticised that the flow of government funds is unpredictable as the funding comes from unanticipated sources, for unexpected reasons and/or under strange names.⁶⁹

One of the most problematic areas in NGO funding in Estonia is the allocation of the so-called roof money (*katuseraha*). The ‘roof money’ is a line in the state budget that holds approximately € 6 million annually. The money is allocated to NGOs, private enterprises, and government agencies by the fractions (i.e. unions or so-called parliamentary clubs of the members of parliament) of the parliament between the second and third reading of the state budget without any project competitions or review of development or action plans. The allocation of ‘roof money’ has been criticised on numerous occasions by experts in the third sector as the process is not transparent and is prone to corruption.⁷⁰ In December 2016, the Network of Estonian Nonprofit Organisations (*Vabaühenduste Liit EMSL*, NENO) recalled that the allocation ‘roof money’ is not compatible with the funding guidelines and that, if possible, NGOs should decline the money offered to them.⁷¹ The Estonian Human Rights Centre (*Inimõiguste Keskus*) has publicly declared that they do not ask for nor accept public money that is not transparent and/or is politically biased, which is why

⁶⁸ Estonia, Öö Sarv, M. (2014), ‘Ühenduste riikliku rahastamise ideaal ja tegelikkus’, in Öö Sarv, M., Kübar, U., Rammo, A. (eds.), *Kingitus kõige nõrgemale: Räägime rahast*, Hea Kodanik, No. 2 (60), Spring 2014.

⁶⁹ Estonia, Öö Sarv, M. (2014), ‘Ühenduste riikliku rahastamise ideaal ja tegelikkus’, in Öö Sarv, M., Kübar, U., Rammo, A. (eds.), *Kingitus kõige nõrgemale: Räägime rahast*, Hea Kodanik, No. 2 (60), Spring 2014, available at: https://issuu.com/emsl/docs/hea_kodanik_2-2014.

⁷⁰ Estonia, Luring, M., Jemmer, H., Mätlik, M., Tuisk, S., Hinno, R. (2015), *Variraport vabaühenduste riigieelarvest rahastamise juhendi järgimisest 2013-2015*, Tallinn, Network of Estonian Nonprofit Organizations (*Vabaühenduste Liit EMSL*), available at: www.heakodanik.ee/sites/default/files/files/variraport.pdf; Estonia, Ibrus, K. (2015), ‘Katuseraha saajad soovivad ise, et selle jagamine lõpeks’, EPL Delfi, 20 January 2015, available at: <http://epl.delfi.ee/news/eesti/katuseraha-saajad-soovivad-ise-et-selle-jagamine-lopeks?id=70597691>.

⁷¹ Estonia, Network of Estonian Nonprofit Organisations (*Vabaühenduste Liit EMSL*) (2016), ‘Vabaühenduste liit EMSL hoiatab katuseraha pakkuvate rahvasaadikute eest’, Press release, 5 December 2016, available at: <http://heakodanik.ee/uudised/vabauhenduste-liit-emsl-hoiatab-katuseraha-pakkuvate-rahvasaadikute-est/>.

they have declined the 'roof money' even when it has been offered.⁷² Despite the criticism from experts⁷³ and some members and fractions of the parliament,⁷⁴ the allocation of 'roof money' is expected to continue in the future.

Between 2011 and 2015, one organisation working in the field of fundamental rights – Estonian Institute of Human Rights (*Inimõiguste Instituut*) – received approximately € 250,000 each year from the ministries without any public competitions, even though there are several competing organisations working in the field.⁷⁵ In 2014, the Estonian Human Rights Centre (*Inimõiguste Keskus*) – another organisation operating in the field of human rights – submitted several inquiries as to why the Institute of Human Rights was funded from the Ministry of Social Affairs (*Sotsiaalministeerium*) each year. Following this, in 2015, the ministry allocating the money changed to the Ministry of Justice (*Justiitsministeerium*).⁷⁶ The Institute of Human Rights explained that the reason for the change in the funding ministry was that the topic of human rights did not really fit under the administration of social matters and that these allocations were earmarked funds. The institute did not consider organising a public tender reasonable as the institute has always reached its goals and has been carrying out the same activity for years.⁷⁷

⁷² Estonia, Estonian Human Rights Centre (*Inimõiguste Keskus*) (2016), 'Finantsinfo', Information provided on the website, available at: <https://humanrights.ee/tegevus/keskus/strateegia-eik2020/>.

⁷³ Estonia, Ibrus, K. (2015), 'Riigikogu katusepakkujad ei taha kriitikat kuidagi kuulda võtta', EPL Delfi, 6 January 2015, available at: <http://epl.delfi.ee/news/eesti/riigikogu-katusepakkujad-ei-taha-kriitikat-kuidagi-kuulda-votta?id=70496433>.

⁷⁴ Estonia, Meesak, M. (2017), 'Märt Meesak: katuseraha meenutab altkäemaksu', EPL Delfi, 10 February 2017, available at: <http://epl.delfi.ee/news/arvamus/mart-meesak-katuseraha-meenutab-altkaemaksu?id=77184446>.

⁷⁵ Estonia, Eylandt, O. (2016), 'Eesti inimõiguslaste vahel hõõgub rahastamistüli', EPL Delfi, 2 March 2016, available at: http://epl.delfi.ee/news/eesti/eesti-inimoiguslaste-vahel-hoogub-rahastamistuli?id=73824599&utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+delfiuudised+%28DELFI+%3E+K%C3%B5ik+uudised%29.

⁷⁶ Estonia, News Portal Pealinn (2016), 'Riigi toetus Inimõiguste Instituudile tekitab konkurentides pahameelt', Pealinn.ee, 2 March 2016, available at: www.pealinn.ee/poliitika/riigi-toetus-inimoiguste-instituudile-tekitab-konkurentides-pahameelt-n163988.

⁷⁷ Estonia, News Portal Pealinn (2016), 'Riigi toetus Inimõiguste Instituudile tekitab konkurentides pahameelt', Pealinn.ee, 2 March 2016.