

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

Romania 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. Law no. 227/2015 on the Fiscal Code (<i>Legea nr. 227/2015 privind Codul Fiscal</i>) ¹	C. Freedom of association	<p>Article 25 of the new Fiscal Code, adopted in 2015, is increasing the ceiling of the deductible amount for sponsorships offered by companies to NGOs, from 0.3 % to 0.5 % of their turnover (but not more than 20 % of their profit, a criteria that remains unchanged).</p> <p>Amendments to Article 30, enacted in February 2017, are increasing the ceiling of the micro-enterprise category of companies to € 500,000. The micro-enterprises pay tax on revenues and cannot deduct expenses with sponsorships. Representatives of the umbrella organisation Association for Community Relations, quoted by media,² are saying that the measure will include up to 440.000 companies, which will be less likely to donate to NGOs. It will</p>

¹ Law no. 227/2015 on the Fiscal Code (*Legea nr. 227/2015 privind Codul Fiscal*), published in the Official Gazette no. 668 of 10 September 2015, with later changes; herein and after the Fiscal Code. Available at: legislatie.just.ro/Public/DetaliiDocument/171282. All hyperlinks were accessed on 21 February 2017, unless otherwise stated.

² ONG-uri lăsate fără sponsorizări (NGOs left without sponsorships) available at: www.digi24.ro/stiri/economie/ong-uri-lasate-fara-sponsorizari-658591.

		affect the organisations from small and medium localities, which were receiving small sponsorships from local businesses.
2. Government Ordinance no. 26/2000 on associations and foundations (<i>Ordonanța Guvernului nr. 26/2000 privind asociațiile și fundațiile</i>) ³	C. Freedom of association	Amendments to Article 6, introduced in 2016, decreased the required initial deposit to fund an association from the equivalent of the minimum wage (RON 1,050, approx. € 230, at that time) to RON 200 (approx. € 45), making it easier to establish a new organisation.
3. Law no. 544/2001 on free access to public interest information (<i>Legea nr. 544/2001 privind liberal accesul la informații de interes public</i>) ⁴	A. Freedom of expression	In June 2016, the Government updated the methodological norms of the Law 544/2001, for the first time since 2001. The update was focused on using preponderantly electronic means of communication and open formats when providing the requested information. Article 2 of the Law, defining its scope, was amended in July 2016, and it is now explicitly including state owned companies, regulating authorities, public utilities

³ Government Ordinance no. 26/2000 on associations and foundations (*Ordonanța Guvernului nr. 26/2000 privind asociațiile și fundațiile*), published in the Official Gazette no. 27 of 30 January 2000, with later changes. Available at: <http://legislatie.just.ro/Public/DetaliiDocument/20740>.

⁴ Law no. 544/2001 on free access to public interest information (*Legea nr. 544/2001 privind liberal accesul la informații de interes public*), published in the Official Gazette no. 27 of 30 January 2000, with later changes. Available at: <http://legislatie.just.ro/Public/DetaliiDocument/31413>.

		<p>companies, political parties, non-governmental organisations certified as of public utility, and sport federations, if they receive public funding.</p> <p>In September 2016, an NGO noted that no political party is respecting the legal provisions on pro-actively publishing a set of information, including the budget.⁵ The organisation sent requests for public information under the Law to 54 political parties, asking for their annual budget: only 9 replied, and only 4 offered the requested information.</p> <p>The changes, although positive, do not address the recurrent issue of public institutions refusing to release sensitive information. Human rights organisations are particularly affected because they ask for sensitive information. For example, the Association for the Defence of Human Rights in Romania-the Helsinki Committee (<i>Asociația pentru Apărarea Drepturilor Omului în România – Comitetul Helsinki</i>) announced in February 2016 that it had</p>
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⁵ Center fo Public Innovation (*Centrul pentru Inovare Publică*), full report available at: www.inovarepublica.ro/partidele-politice-refuza-sa-publice-bugetele/.

		<p>to sue the Police⁶ and the General Prosecutor Office⁷ to obtain information related to the procedure applied when escorting citizens to the police stations, and the strategy for fighting the abuses of the Police, respectively.</p> <p>A recent report analyses the decisions of the Courts of Appeal in cases in which the Law 544/2001 was applied between 2011-2013.⁸ The report shows that the average length of a case, in all stages, is two years, and that the decisions in similar cases may differ from one Court to another.</p>
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2 EU Member State government funding for non-governmental organisations – trends and developments 2011-2016

2.1 Overall amount of government funding

⁶ www.apador.org/blog/seful-politiei-si-igpr-amendati-de-instanta-cu-350-de-leizi-pentru-refuzul-de-a-comunica-informatii-publice/.

⁷ www.apador.org/blog/parchetul-general-obligat-de-instanta-sa-arate-strategia-de-combatere-a-abuzurilor-politiei-cu-care-s-a-laudat-la-consiliul-europei/.

⁸ Bucur, A., Public information obtained in Court (*Informații de interes public obținute în instanță*), available at: www.inovarepublica.ro/informatii-de-interes-public-castigate-instanta/.

A report⁹ of the Ministry for Public Consultation and Civic Dialogue (*Ministerul pentru Consultare Publică și Dialog Civic*¹⁰ - MCPDC) from October 2016 identifies sources of government funding for NGOs in 2013-2016. It is the first report of its kind. The following sources were identified:

- Grants from the state budget: the total amount increased from RON 41,274,294 (approx. € 9,172,065) in 2013, to a maximum of RON 224,837,100 (approx. € 49,963,800) in 2014, and then slowly decreased to RON 222,251,910 (approx. € 49,389,313) in 2015, and RON 189,878,827 (approx. € 42,195,294) in 2016¹¹.
- Grants from European Funds: according to the data published by the Ministry of European Funds (*Ministerul Fondurilor Europene*)¹², at the end of 2016, the total amount in contracts where the main beneficiary is an NGO was RON 2,779,003,396 (approx. €617,556,288), for the entire budgetary period 2007-2013. It is not possible to calculate the actual expenditure, yearly, using the available data. For the budgetary period, the MCDPP report estimates the total amount that can be accessed by NGOs to € 732,025,000¹³.
- State subventions for NGOs social service provision. The yearly amount decreased from RON 28,549,973 (approx. € 6,344,438) in 2013, to RON 18,306,310 (approx. € 4,068,068) in 2016¹⁴.

⁹ Romania, Ministry for Public Consultation and Civic Dialogue, Financing of Non-Governmental Organizations by the Romanian State (*Finanțarea organizațiilor neguvernamentale de către statul român*), available at: dialogcivic.gov.ro/wp-content/uploads/2016/10/Evaluare-MCPDC_Raport_Finantarea-organizatiilor-neguvernamentale-de-catr....pdf.

¹⁰ The name of the institution was changed to Ministry for Civic Participation and Social Dialog (*Ministerul pentru Participare Civică și Dialog Social*) starting with January 2017.

¹¹ Calculation of the authors based on the figures in Annex 1 of the report.

¹² The amount for the budgetary period 2007-2013 are calculations of the author based on the dataset of contracts published on the governmental open data portal, at: data.gov.ro/dataset/transparentizare_smis.

¹³ Romania, Ministry for Public Consultation and Civic Dialogue, Financing of Non-Governmental Organizations by the Romanian State (*Finanțarea organizațiilor neguvernamentale de către statul român*), available at: dialogcivic.gov.ro/wp-content/uploads/2016/10/Evaluare-MCPDC_Raport_Finantarea-organizatiilor-neguvernamentale-de-catr....pdf, p. 7.

¹⁴ Romania, Ministry for Public Consultation and Civic Dialogue, Financing of Non-Governmental Organizations by the Romanian State (*Finanțarea organizațiilor neguvernamentale de către statul român*), available at: dialogcivic.gov.ro/wp-content/uploads/2016/10/Evaluare-MCPDC_Raport_Finantarea-organizatiilor-neguvernamentale-de-catr....pdf, p. 19.

- Financing from the income tax: the taxpayers may redirect a fraction of their income tax to NGOs, to a ceiling of 2 % of the yearly tax for citizens, and 20 % of the yearly tax but no more than 0.5% of the yearly turnover for companies. The total amount redirected by citizens (the 2 % mechanism) increased from approx. RON 115,000,000 (approx. € 2,560,000) in 2011 to approx. RON 143,000,000 (approx. € 31,780,800) in 2015.¹⁵ The businesses (20 % mechanism) redirected in 2015 a total amount of approx. RON 553,800,000 (approx. € 123,070,000).

USAID's Civil Society Sustainability Index, 2015 edition, mentions, in addition to the above funding sources, that the civil society organisations have the possibility to access funds offered as grants or subventions by the local public authorities¹⁶. The practice is not standardized and there is no reliable data on the total amounts, according to the same report.

None of these sources distinguish between NGOs working on fundamental rights and other types of organisations. NGOs working on fundamental rights may compete in grants competitions (both national and European funds) and receive financing from the income tax (both the 2 % and 20 % mechanisms) but the available data is not segregated on the scope of the receiving organisation. Usually, NGOs working on fundamental rights do not receive subventions, unless they are also delivering social services; in this case, they may receive subventions only for the services component.

One notable example is the phasing-out of the Open Society Foundations Romania (*Fundația pentru o Societate Deschisă România*), one of the most active private donors in the human rights field. According to a press release of the Foundation,¹⁷ the grant-making activities ceased in 2012, and the organisation changed its name and focus in January 2017. Romanian NGOs may still apply for funds to the global Open Society Foundations offices.

¹⁵ Source of data in this paragraph: Ministry for Public Consultation and Civic Dialogue, data available at: dialogcivic.gov.ro/rezultate-redirectionare-2.

¹⁶ Civil Society Development Foundation and USAID, 2015 Civil Society Organization (CSO) Sustainability Index for Romania (*Indexul sustenabilității organizațiilor societății civile pentru România, 2015*), p. 6, available at: www.fdsc.ro/library/files/indexusaidromania_2015+.pdf.

¹⁷ www.altreilesector.ro/soros-se-retrage-din-romania-dupa-investitii-de-200-de-milioane-de-dolari/.

2.2 Distribution of government funding

The evolution of financing from state grants by sector is the following:

Year	Arts and Culture	Youth	Development Aid	Ethnic minorities	Environment	Total
2016	3,865,000	139,198,827	13,350,000	3,500,000	30,000,000	189,913,827
2015	6,700,000	161,145,079	20,126,610	4,387,000	30,000,000	222,358,689
2014	10,200,000	173,500,000	12,473,000	3,900,000	25,000,000	225,073,000
2013	13,920,000	4,049,281	11,430,000	1,900,000	10,000,000	41,299,281

(amounts in RON¹⁸)

The subventions for provision of services are focused on the social sector.

The MCPDC report mentions that the type of activities financed from both grants and subventions remains unchanged in the last few years¹⁹.

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

USAID's Civil Society Sustainability Index, 2015 edition, mentions the gradual withdrawal of private donors from Romania in the last few years, which is partially compensated by the NGOs diversifying their offer of

¹⁸ Romania, Ministry for Public Consultation and Civic Dialogue, Financing of Non-Governmental Organizations by the Romanian State (*Finanțarea organizațiilor neguvernamentale de către statul român*), available at: dialogcivic.gov.ro/wp-content/uploads/2016/10/Evaluare-MCPDC_Raport_Finantarea-organizațiilor-neguvernamentale-de-catr....pdf, accessed on 13 February 2017, calculations of the author based on the figures in Annex 1.

¹⁹ Romania, Ministry for Public Consultation and Civic Dialogue, Financing of Non-Governmental Organizations by the Romanian State (*Finanțarea organizațiilor neguvernamentale de către statul român*), available at: dialogcivic.gov.ro/wp-content/uploads/2016/10/Evaluare-MCPDC_Raport_Finantarea-organizațiilor-neguvernamentale-de-catr....pdf, accessed on 13 February 2017, p. 28.

services and a slight increase of Corporate Social Responsibility programs by businesses.²⁰ The report also underlines that NGOs working in the social, educational and health sector attract funds much easier than the watchdog, human rights and democracy NGOs.

A recent study shows that the total revenues of the NGO sector doubled between 2010 and 2015, from € 1,260,000 to € 2,500,000²¹ (approximate numbers, see the table below for details). The study is using official data from the National Institute of Statistics. The average revenue per organisation raised from € 48,000 to € 59,000. The number of active organisations increased, in the same period, from around 26,000 to over 42,000 but a limited number of NGOs have a significant economic activity. The study shows that, in 2015, only 15 % of the NGO had revenues higher than € 50,000, and 20 % had revenues between € 10,000 and € 50,000. In 2015, 7.9 % of the NGOs (3.381 organisations) accounted for 82 % of the total sector revenues.

[RON]	2010	2011	2012	2013	2014	2015
Total sector revenues	5.674.974	7.025.410	7.742.043	9.021.471	9.402.044	11.291.064
Average revenue	215.729	236.897	236.897	229.939	230.228	264.384
[EUR]	2010	2011	2012	2013	2014	2015
Total revenues ONG sector	1.261.105	1.561.202	1.720.454	2.004.771	2.089.343	2.509.125
Average revenue	47.940	52.644	52.644	51.098	51.162	58.752

the amount in EUR is calculated using an average exchange rate EUR/RON of 4.5

²⁰ Civil Society Development Foundation and USAID, 2015 Civil Society Organization (CSO) Sustainability Index for Romania (*Indexul sustenabilității organizațiilor societății civile pentru România, 2015*), p. 6, available at: www.fdsc.ro/library/files/indexusaidromania_2015+.pdf.

²¹ Kivu, M. (coord), Romania 2017. The nongovernmental sector: profile, tendencies, challenges (*România 2017. Sectorul neguvernamental: profil, tendințe, provocări*), p. 41-42, available at: fondong.fdsc.ro/upload/Stiri%20generale/Romania%202017.pdf, accessed on 14 May 2017.

Analyzing the data from the Ministry of Finance, the same study calculates the structure of revenues of the sector: 69.64 % - non-profit activities (grants, donations, sponsorships, contributions of members); 28.66 % for-profit activities (services provided); and 1.70 % special revenues established by law (e.g. special taxes that finance the arts and culture sector)²². Only a limited number of organisations (5.302 or 12.44 %) have declared revenues from for-profit activities. Only half of these managed to obtain profit from their activities.²³

Starting from these numbers, the study argues that the majority of NGOs have low and very low revenues,²⁴ and are unable to diversify their income sources to achieve long term sustainability.²⁵ The study does not differentiate between human-rights NGOs and other types of organisations, because the raw data does not allow it.

²² Kivu, M. (coord), Romania 2017. The nongovernmental sector: profile, tendencies, challenges (*România 2017. Sectorul neguvernamental: profil, tendințe, provocări*), p. 84, available at: <http://fondong.fdsc.ro/upload/Stiri%20generale/Romania%202017.pdf>, accessed on 14 May 2017.

²³ Kivu, M. (coord), Romania 2017. The nongovernmental sector: profile, tendencies, challenges (*România 2017. Sectorul neguvernamental: profil, tendințe, provocări*), p. 100-101, available at: <http://fondong.fdsc.ro/upload/Stiri%20generale/Romania%202017.pdf>, accessed on 14 May 2017.

²⁴ Kivu, M. (coord), Romania 2017. The nongovernmental sector: profile, tendencies, challenges (*România 2017. Sectorul neguvernamental: profil, tendințe, provocări*), p. 43, available at: <http://fondong.fdsc.ro/upload/Stiri%20generale/Romania%202017.pdf>, accessed on 14 May 2017.

²⁵ Kivu, M. (coord), Romania 2017. The nongovernmental sector: profile, tendencies, challenges (*România 2017. Sectorul neguvernamental: profil, tendințe, provocări*), p. 102, available at: <http://fondong.fdsc.ro/upload/Stiri%20generale/Romania%202017.pdf>, accessed on 14 May 2017.

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)
Law on transparency in decision making	Law no. 352/2013 on amending the law 52/2003 on transparency in decision making ²⁶ (<i>Legea nr. 352/2013 pentru amendarea Legii nr. 52/2003 privind transparența decizională</i>)	<p>The amendments to the Law on transparency in decision making introduced in 2013 clarified the compulsory component of public consultation when an executive agency is proposing new legislation or regulations. The Law stipulates a period of minimum 10 days for the consultation, regulates how the written comments are received and answered to, and what are the formal rules of the public debates, when organised.</p> <p>An independent report²⁷ shows that, in 2014, only a limited number of legislative proposals was actually observing the legislation: 18.2 % of the bills initiated by local councils; 8 % of those proposed by county councils; and 18.5 % of the bills initiated by Ministries.</p>
Transparency Register	National Anti-corruption Strategy 2016-2020 ²⁸	The National Anti-corruption Strategy 2016-2020, adopted in July 2016, introduced the Unique Interest Groups'

²⁶ Law no. 352/2013 on amending the law 52/2003 on transparency in decision making (*Legea nr. 352/2013 pentru amendarea Legii nr. 52/2003 privind transparența decizională*), available at: legislatie.just.ro/Public/DetaliiDocumentAfis/152367.

²⁷ Dragomirescu, C, Study on the implementation of L52/2003, modified in 2013, on transparency in decision-making by public authorities in Romania (*Studiu privind implementarea L52/2003, modificată în 2013, privind transparența decizională a autorităților publice din România*), available at: www.romaniacurata.ro/wp-content/uploads/2016/02/Studiu_SAR_AA_aplicare-L52-transparenta-decizionala.pdf, p. 7.

²⁸ National Anti-corruption Strategy 2016-2020 (*Strategia Națională Anti-Corupție 2016-2020*), available at: www.just.ro/wp-content/uploads/2015/09/SNA-2016-2020.docx.

	<p>(<i>Strategia Națională Anti-Corupție 2016-2020</i>)</p>	<p>Transparency Register²⁹ (<i>Registrul Unic al Transparenței Intereselor - RUTI</i>). The operationalization of RUTI was made in October 2016, through a Memorandum adopted by the Government.³⁰</p> <p>According to the Memorandum, „RUTI aims at increasing the quality of a more participatory public policy decision making process, by creating the framework and shaping the principles based on which interactions of the top policy makers with specialised groups will take place with regards to an already issued policy that the groups want to amend or to a new policy idea arising from outside the public administration which the Government might endorse.”</p> <p>Until the end of 2016, the participation to RUTI was volunteer. A decision to make the Registry compulsory for decision-makers of the central government is expected in 2017, assuming that the new government, installed after the December 2016 elections, will continue the same policy. In November 2016, the last full month of the previous government, the number of declared meetings amounted to</p>
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²⁹ ruti.gov.ro.

³⁰ Romania, Memorandum on Operationalization of the Unique Interest Groups' Transparency Register (*Memorandum privind instituirea Registrului Unic al Transparenței Intereselor*), available at: ruti.gov.ro/wp-content/uploads/2016/10/Memorandum-privind-instituirea-RUTI.pdf.

		<p>241. It dropped to 60 in December, and to 32 in January, but in February (until 22 February 2017), the number of meetings was 71. An announcement on the official Facebook page of MCPDC,³¹ on 21 February mentioned that the team of the Ministry was still working on creating accounts for the new dignitaries.</p>
Open Government Partnership	<p>Open Government Partnership National Action Plan 2016-2018³² (<i>Planul Național de Acțiune Parteneriatul pentru o Guvernare Deschisă 2016-2018</i>), adopted through Government Memorandum on 20 July 2016.</p>	<p>Romania joined Open Government Partnership (OGP) in November 2011. The country adopted its first National Action Plan (NAP) in April 2012. It is now implementing its third NAP, adopted in July 2016.³³</p> <p>The content of the NAPs evolved from one iteration to another:</p> <ul style="list-style-type: none"> - The 1st NAP included only commitments related to open data and e-government. - The 2nd NAP added access to information to open data, but it no longer included e-government (which is the subject of different governmental strategies).

³¹

www.facebook.com/mcpds1/photos/a.1523061788007482.1073741828.1521983548115306/1737432213237104/?type=3.

³² Partnership National Action Plan 2016-2018³² (*Planul Național de Acțiune Parteneriatul pentru o Guvernare Deschisă 2016-2018*), adopted through Government Memorandum on 20 July 2016, available at: ogp.gov.ro/wp-content/uploads/2016/11/NAP_2016-2018-EN.docx, accessed on 30 March 2017.

³³ The content of this section is based on the documentation made by the author in preparation of the report *Developing a model for open government in the EU*, available at: www.demsoc.org/wp-content/uploads/2016/12/Demsoc.OSEPI_EUOpenGovModel.pdf, accessed on 30 March 2017. The Annex *Country Report Romania* was not yet published but it can be made available at request.

		<ul style="list-style-type: none"> - The 3rd NAP, under implementation, is again expanding the scope of OGP in Romania, adding commitments on participation. However, the pillar of accountability remains poorly represented. <p>The progress on the implementation of the NAP is limited, mostly because of the political instability before and after the general elections in December 2016.</p> <p>One remarkable achievement is the launch of the platform consultare.gov.ro, where all ministries should publish the draft legislation for public debate. However, the platform is not used consistently. One important reason is that the Government Memorandum is non-binding, thus most ministries see it as a recommendation.</p>
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4 Further information

In the last several months, starting with the electoral year 2016, and continuing during the massive street protests in early 2017, civil society organisations become the target of increasingly virulent nationalists attacks. NGOs, and in particular human rights and watchdog NGOs, are accused of „serving foreign interests” and acting against national interest. The name of American philanthropist George Soros is mentioned in contexts similar with the other countries in the region, as being the master-mind behind an international conspiracy, of which NGOs are willing agents. On January 31, the National Audio-Visual Council (*Consiliul Național al Audiovizualului*), the arbitrator of the television and radio markets, decided to fine the RomaniaTV news channel with RON 100,000 (appox. € 23,000) for repeatedly disseminating such allegations against George Soros and Romanian NGOs. RomaniaTV is the news channel with

the highest rating in Romania. The decision of the Council³⁴ is listing over 30 instances only in the month of December. The decision also shows that representatives of the governing party actively participated in all mentioned programs.

There are black lists of NGO leaders circulating in nationalist media outlets.³⁵ Politicians from both radical and mainstream parties, including high level ministers or members of the Parliament,³⁶ had a similar discourse. Although there are no concrete legislative or administrative measures planned against NGOs, civil society leaders are concerned that the recurrent hate speech is affecting the image and credibility of the organisations, with long term negative impact.

³⁴ http://www.cna.ro/IMG/pdf/Dec37-RTV-am_100000_Lege_si_Cod_AD.pdf.

³⁵ For example, this list including the names of many human rights organizations and their leaders is widely circulated: <http://www.evz.ro/reteaua-soros-bani-pentru-organizatiile-civice-1.html>.

³⁶ Such as Liviu Dragnea, the Speaker of the Chamber of the Deputies and President of the Social Democrat Party information available at: www.antena3.ro/politica/liviu-dragnea-eu-am-ceva-cu-domnul-soros-acest-om-fundatiile-si-structurile-sale-au-finantat-raul-397053.html). Also Călin Popescu Țăriceanu, the Speaker of the Senate and co-President of the Liberal Alliance party, available at: <http://www.mediafax.ro/social/tariceanu-despre-cazul-remes-este-un-semn-prost-in-legatura-cu-modul-in-care-functioneaza-justitia-16008652>). The two parties are forming the current majority in the Parliament.