FACTS

- Drafted during 2016-2017, with broad institutional and civil society involvement and with local and international expertise;
- Based on the 2014 Venice Commission Guidelines for Freedom of Association;
- Based on in-depth analysis of the implementation practice of current NGO law in Kosovo;
- Built on cross-sectoral consensus developed through multiple discussions;
- Adopted by the Government of Kosovo in December 2017;
- Adopted by the Assembly in the first reading in March 2018;
- Discussed at public hearing by the Parliamentary Committee on Public Administration in April 2018;
- Adopted on second reading on 7 November 2018, with 36 amendments;
- Returned by the President, upon request from KCSF and 76 other NGOs, on 23 November 2018.

KEY PROBLEMS RELATED TO THE CONTENT

- The non-profit principle is threatened by changing the grounds for distributing NGO assets after termination, enabling the distribution of NGO assets outside the non-governmental sector, including private sector (Article 41, Amendment 31)
  - “Institutions” (both public and private) have been added as potential recipients of NGO assets after their termination
  - The new provision is inconsistent with the non-profit principle of the NGO sector, enabling the distribution of the assets of terminated NGOs outside the non-governmental sector, including private sector;
  - The new provision is against the Judgment of the Constitutional Court KO 97/12 on the Law on Banks, regarding the initiative to allow transformation of Microfinance NGOs.
- Changed grounds for NGO termination from insolvent to inactive (Article 41, Amendment 30)
  - Non-solvency (insolvency) is the inability to pay, defined in the Law on Bankruptcy and has a financial character;
  - Non-activity (inactivity) is a non-financial concept; it is neither defined in Kosovo legislation nor in international practice;
  - Interpretation of inactivity as a basis for termination of NGOs opens way for direct and arbitrary decisions on termination of NGOs, and endangers the constitutional right of freedom of association;
  - International principles set the “court decision” as the only external basis for NGO termination.
- Increasing the minimum number of persons to establish associations, from 3 to 7 (Article 16, Amendment 5)
  - It is a setback for Kosovo, since 1999 only 3 founders were required;
  - International principles require only 2 founders;
  - Only two European countries (Germany with the Civil Code of 18961 and Turkey) require 7 founders;
  - There have been no reported problems with 3 founders since 1999.
- Increasing the minimum number of persons to establish foundations and institutes, from 1 to 3 (Article 17, Amendment 6 & Article 18, Amendment 7)
  - Foundation is a non-membership organization, based on capital (property or wealth), and there is no relation with the number of founders/members;
  - Institute is a non-membership-based organization based on knowledge and expertise, and there is no link with the number of founders/members;
  - There is no similar practice of establishing foundations and institutes with more than one founder;
  - Deforming the concept of foundations and institutes by linking them to the number of founders.
- Added request for verifying the founding act by the notary (Article 5, Amendment 8)
  - International principles require registration procedures to be simple, easy, fast and free, as well as not more burdensome, bureaucratic and longer than for business;
  - The registration practice shows that the founding act is returned several times by the NGO Department for technical issues and should therefore be verified by the notary several times;
  - It is a setback for Kosovo, since 1999 the establishment and registration were free of charge, recently even online;
  - There has been no problem reported with the founding acts since 1999.
- “Economic development” and “poverty eradication” have been removed as public interest activities (Article 37, Amendment 17 & Amendment 18 & Amendment 23)

1 http://www.koeblergerhard.de/Fontes/BGDR18961900.htm, Article 56;
Economic development and poverty eradication are national priorities for Kosovo;
The Law on NGOs is the only document that legally defines activities of public interest for civil society organizations;
Removal of the two activities from the list opens way for Microfinance NGOs not to be obliged to report to the NGO Department for their work for the public good;
Out of about 250 NGOs with Public Benefit Status, around one third of them fall into these two categories.

- The possibility of tax and fiscal benefits for NGOs with Public Benefit Status has been removed (Article 37, Amendment 21)
  - Since 1999, Kosovo has implemented Public Benefit Status, which is based on tax and fiscal benefits for organizations primarily engaged in advancing the public interest;
  - Without the possibility of tax and fiscal benefits, the Public Benefit Status remains only with additional obligations, consequently meaningless;

- Possibility of applying for Public Benefit Status (PBS) has been removed after the registration date (Article 37, Amendment 19)
  - NGOs are free to decide on internal affairs, including the area/scope of activities, throughout the lifespan of the organization;
  - The decision to apply for PBS is related to the proportion between the additional reporting obligations and benefits associated to this status, which vary over time;
  - PBS relates to the primary activity of the organization, which may also change even after the moment of registration;
  - Kosovo already has many organizations approaching 20 years of existence, and none of them was able, at the time of registration, to foresee in detail the development of the organization and the external context during this period to decide on PBS;

- The possibility of changing the legal form of existing associations and foundations into the new form of the institute during the transitional period has been removed (Article 47, Amendment 37)
  - The Institute is a new form of NGOs introduced in this law, as a reflection of modern international practices and internal needs in Kosovo;
  - Existing associations and foundations, which actually act as institutes, should be enabled to switch to this form to reflect their true form of organization, during a transitional period.

IN THE PROCESS

- The main principle of non-profit is threatened, creating legal uncertainty for all NGOs and their donors
  - Allowing transfer of NGO assets to other sectors (including private institutions) will prevent donors from the necessary legal safeguards that their donations are used for the non-profit purposes;

- The inter-sectoral consensus built over 2 years has not been taken into account
  - The version approved by the Government and in the first reading has been consensual and has found the balance in addressing the concerns of all stakeholders;

- Arguments provided by civil society were not taken into consideration during the review by Assembly
  - By participating in public hearings and through written contributions to the Assembly, civil society provided detailed arguments against amendments to the relevant provisions;

- The integrity of the law is damaged;
  - The amendments of certain provisions without reflection throughout the related provisions makes the Law inapplicable;

- Current law is against Republic of Kosovo official positions and adopted policies
  - Restrictions on the exercise of the freedom of association are contrary to international principles applicable also in Kosovo, Kosovo constitution and Kosovo public policies.

REQUEST FROM CIVIL SOCIETY

Approval in the third reading according to the requests of civil society, respectively with the amendments proposed by the President