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**OPINION ON THE COMPATIBILITY WITH EUROPEAN
STANDARDS OF RECENT AND PLANNED AMENDMENTS TO
THE GREEK LEGISLATION ON NGO REGISTRATION**

**Prepared by the Expert Council on NGO Law of the
Conference of INGOs of the Council of Europe**

The opinions expressed in this work are the responsibility of the author(s) and do not necessarily reflect the official policy of the Council of Europe.

INDEX

I. Introduction	4
II. Summary of the Legislative Provisions and Ministerial Decision	6
III. Compatibility of the Legislation with European Standards and Best Practices.....	10
i) In general	10
ii) The need for adequate public consultations on law reforms	11
iii) Requirements for NGOs to register.....	12
iv) Certification.....	15
v) Impact on civil society space - the ability of NGOs to carry out their activities.....	18
vi) Impact on access to funding	21
IV. Conclusion	23

I. Introduction

1. This opinion examines the compatibility with European standards and best practices of recently adopted and planned legislative provisions and ministerial decisions¹ on the registration and certification of Greek and foreign NGOs engaged in activities related to asylum, migration, and social inclusion.
2. In particular, it assesses their compliance with the requirements of Article 11 of the European Convention on Human Rights (the ECHR), Recommendation CM/Rec(2007)14 of the Council of Europe Committee of Ministers to member states on the legal status of non-governmental organisations in Europe (Recommendation CM/Rec(2007)14) and the Joint Guidelines on Freedom of Association of the European Commission for Democracy through Law (Venice Commission) and the OSCE Office for Democratic Institutions and Human Rights (the Joint Guidelines).
3. It also considers them in the light of the Guidelines on Protecting NGO Work in Support of Refugees and other Migrants, adopted by the Expert Council on NGO Law of the Conference of INGOs of the Council of Europe in May 2020 (Guidelines on NGO Work).
4. These various provisions and decisions have been justified as improving the transparency and accountability of NGOs working in the area of asylum, migration, and social inclusion. However, there is also a need to consider their impact on the ability of NGOs to fulfil their legitimate functions and ultimately on the humanitarian situations of vulnerable refugees and other migrants.²
5. The assessment of these reforms also needs to take account of wider challenges affecting the functioning of NGOs working to support refugees and other migrants in Greece.³ These include the criminalisation of certain aspects of their humanitarian work⁴ and the increase in hostility and violence directed against humanitarian workers, human rights defenders

¹ Article 66 of 4636/19 of 1 November 2019 (restricting access to specified zones where migrants are located to NGOs that are specially certified); Article 191 of Law no. 4662/2020 of 7 February 2020, Ministerial Decision 3063/2020 of 14 April 2020 and Article 58 of Law 4686/2020 of 8 May 2020 (all pertaining to the requirements for the registration and certification of NGOs in the areas of asylum, migration and social inclusion). Further planned legislation on the national registration of NGOs is scheduled to be introduced at end July 2020; Επιχειρήσιμη - τάξη στις ΜΚΟ με κατάθεση νομοσχεδίου, 7 June 2020 [<https://www.kathimerini.gr/1081693/article/epikairothta/politikh/epixeirhsh---ta3h-stis-mko-mekata8esh-Nomosxedioy>].

² EU Committee of Ministers, 'Guidelines on the protection of human rights in the context of accelerated asylum procedures', 1 July 2009. See also, UN Committee on Economic, Social and Cultural Rights, 'General Comment No. 14: The Right to the Highest Attainable Standard of Health (Article 12) (2000)', which provides at para. 34 that 'States are under the obligation to respect the right to health by, inter alia, refraining from denying or limiting equal access for all persons, including prisoners or detainees, minorities, asylum seekers and illegal immigrants.'

³ NGOs working in Greece have set out these concerns. See, e.g., HIAS, 'Some thoughts on the new Joint Ministerial Decision, regulating the registration of migration-related NGOs in Greece', 8 May 2020; RSA, 'Risk of Repression: New Rules on Civil Society Supporting Refugees and Migrants in Greece', May 2020.

⁴ See, the Expert Council on NGO Law's thematic study: 'Using Criminal Law to Restrict the Work of NGOs Supporting Refugees and Other Migrants in Council of Europe Member States'. CONF/EXP(2019)1, December 2019. The Greek Law on 'Immigration and Social Integration (the Migration Code) criminalises the facilitation of irregular entry into the Greek territory and that of transit and residence [Law No. 4251/2014]. Humanitarian assistance is only exempted from the purview of the criminal law in relation to the assistance to migrants in distress at sea; relief on land is not covered. See, Sergio Carrera, Lina Vosyliūtė, Stephanie Smialowski, Jennifer Allsopp and Gabriella Sanchez, 'Update Study "Fit for purpose?" The Facilitation Directive and the criminalisation of humanitarian assistance to irregular migrants', Study for the EP Petitions Committee (PETI), European Parliament, December 2018, 37, 41. For instance, the founder of the NGO Team Humanity, Salam Kamal-Aldeen, was arrested and boat and equipment confiscated, for the illegal transport of irregular migrants into Greek territory. Whilst he was eventually acquitted, he continued to face judicial harassment; he was subject to a further arrest for his work in 2019 which led to him being registered on a list of undesirable aliens, and he was deported from Greece at the end of 2019. Also, Greece has used organised crime legislation pertaining to money laundering and fraud to criminalise acts related to the receipt of donations of money and objects from private sources; For instance, the arrest and charge of staff members of the Emergency Response Centre International (ERCI) with people smuggling, espionage and membership in a criminal organisation, in August 2018.

and journalists, particularly against those working in the sensitive but highly important field of support to migrants and refugees.⁵

6. As was recognised by the UN Special Rapporteur on the Human Rights of Migrants, crackdowns on civil society organizations which are often combined with States scaling back their services, ‘has had a profound effect on the safety and rights of migrants, endangering their rights to life, to seek asylum, information and humanitarian assistance, to other basic services such as legal assistance, housing and education, and to enjoy protection from human traffickers and smugglers.’⁶
7. These reforms should also be considered in the light of other human rights violations suffered by migrants, including reported push-backs of asylum seekers and migrants on the Greek-Turkish border,⁷ as well as wider legislative reforms in the domain of migration which appear to be part of a move to restrict irregular migration and access to asylum and increase the resort to migrant detention.⁸
8. These broader challenges contribute to an overall chilling effect which severely impedes the crucial work of NGOs to contribute to ‘the development and realisation of democracy and human rights, in particular through the promotion of public awareness, participation in public life and securing the transparency and accountability of public authorities, and of the equally important contribution of NGOs to the cultural life and social well-being of democratic societies.’⁹
9. This opinion first provides an overview of the requirements that have already been introduced, together with an indication of those that are in preparation. It then considers the compatibility of these requirements with European standards, considering in particular the process leading to their introduction, registration and certification requirements, the impact on the ability for NGOs to carry out their activities and to access funding. The opinion was prepared by Dr Carla Ferstman.

⁵ CoE Commissioner for Human Rights, ‘Report of the Commissioner for Human Rights of the Council of Europe Dunja Mijatović following her Visit to Greece from 25 to 29 June 2018,’ CommDH(2018)24, 6 November 2018, para. 82: ‘The Commissioner is concerned about such persisting racist violence and about the emergence of new far right violent groups involved in attacks against migrants and threats against NGOs and defenders of migrants’ rights’ [para. 82]. See also, COE Commissioner for Human Rights, ‘Restrictions on defenders of migrants’ rights should stop’, 19 December 2012.

⁶ UN Human Rights Council, ‘Right to freedom of association of migrants and their defenders’, Report of the Special Rapporteur on the human rights of migrants, UN Doc. A/HRC/44/42, 13 May 2020, para. 83.

⁷ UN Special Rapporteur on the Human Rights of Migrants, Mr. Felipe González Morales, ‘Greece: Rights violations against asylum seekers at Turkey-Greece border must stop – UN Special Rapporteur’, 23 March 2020.

⁸ This includes the adoption on 1 November 2019 of Law no. 4636/2019 on international protection, which had the effect of narrowing the criteria for eligibility for refugee status and limiting asylum seekers’ access to protection, removing certain protections for vulnerable people, and reducing access to humanitarian support. It also introduced stringent procedural requirements and formalities which, according to UNHCR ‘may lead to a de facto denial of rights as a result of the impossibility to exercise these rights in practice’ [UNHCR, UNHCR Comments on the Law on “International Protection and other Provisions”, February 2020]. This general approach is also evidenced by the ratification by the Greek Parliament on 26 March 2020 of an Emergency Legislative Decree suspending asylum procedures on account of Covid-19 (Law No. 4681/2020). Law 4686/2020 of 12 May 2020, on the improvement of migration legislation continues in this same direction; for example, it removes vulnerable persons and manifestly well-founded cases from the scope of prioritised processing and restrict access to legal aid.

⁹ COE Committee of Ministers, ‘Recommendation CM/REC(2017)14 on the Legal Status of Non-Governmental Organizations in Europe’, 10 October 2007, para. 2 of the Preamble.

II. Summary of the Legislative Provisions and Ministerial Decision

10. This section summarises the recently adopted and planned legislative provisions and the Ministerial Decision 3063/2020 (the Ministerial Decision)¹⁰ on the registration and certification of Greek and foreign NGOs engaged in activities related to asylum, migration, and social inclusion. Section III will then examine the compatibility of these measures with EU standards.

Registration

11. NGO registries have been employed by different ministries in Greece for several years. Reportedly, these were introduced as part of anti-money laundering efforts to facilitate financial audits.¹¹ A general registry for Greek and foreign NGOs has been in place since 2018,¹² and in 2019, the first additional registration requirements for NGOs working in the areas of asylum, migration and social inclusion were adopted.
12. Thus, Article 66 of Law No. 4636/19 of 1 November 2019 provides that only NGOs certified by the Ministry of Citizen Protection can have access to reception and detention centres, transit zones or border crossings, including crossing zones, on external borders (subject to national security considerations).
13. In 2020, additional registration and certification requirements applicable to NGOs working in the field of asylum, migration and social inclusion were introduced by Law No. 4662/2020 of 7 February 2020 and Ministerial Decision 3063/2020 of 14 April 2020.
14. Law No. 4662/2020 of 7 February 2020 sets out the new general requirements for registration of NGOs working in the areas of asylum, migration, and social inclusion. Article 191 of this law makes clear that the NGO registry includes data on members as well as the employees and associates of the above organizations, operating in Greece.
15. In accordance with this law, the registration and certification of NGOs and related persons is a necessary precondition for both their activity within Greece and for their cooperation with public bodies.
16. Article 58 of Law 4686/2020 of 12 May 2020, on the improvement of migration legislation provides further details on the legal requirements for NGO registration, specifying that those who are not registered cannot undertake activities in the field of asylum, migration and social integration in Greece, and in particular in the provision of legal, psychosocial and medical services and in the provision of information and advice.

¹⁰ Article 66 of 4636/19 of 1 November 2019 (restricting access to specified zones where migrants are located to NGOs that are specially certified); Article 191 of Law no. 4662/2020 of 7 February 2020, Ministerial Decision 3063/2020 of 14 April 2020 and Article 58 of Law 4686/2020 of 8 May 2020 (all pertaining to the requirements for the registration and certification of NGOs in the areas of asylum, migration and social inclusion). Further planned legislation on the national registration of NGOs is scheduled to be introduced at end July 2020; *Επιχείρηση - τάξη στις ΜΚΟ με κατάθεση νομοσχεδίου*, 7 June 2020

[<https://www.kathimerini.gr/1081693/article/epikairothta/politikh/epixeirsh---ta3h-stis-mko-mekata8esh-Nomosxedioy>].

¹¹ See, 'Greece's Refugee, Migrant NGO's Face Ban Unless Registered', *The National Herald*, 27 November 2019, https://www.thenationalherald.com/archive_general_news_greece/arthro/greece_s_refugee_migrant_ngo_s_face_ban_unless_registered-51501/.

¹² Ministerial Decision 7586/18 discussed in Refugee Support Aegean, 'Risk of Repression: New Rules on Civil Society Supporting Refugees and Migrants in Greece', May 2020, 1.

17. The Ministerial Decision sets out additional conditions for the registration (and often re-registration for those who had already been registered under prior schemes) and certification of NGOs and their members, staff, and volunteers. As an Executive Act (as opposed to a law duly enacted), it should provide only explanation or clarification of laws already enacted, however the Ministerial Decision is quite extensive and arguably sets out new requirements.¹³
18. The Ministerial Decision makes clear that NGOs that had already been registered under prior schemes must re-register in accordance with the scheme set out in the Decision.
19. Thus, in accordance with the Ministerial Decision, non-profit legal entities and non-governmental organizations which are active in the field of international protection, immigration and social integration in Greece, are required to register in the “Register of Greek and Foreign Non-Governmental Organizations (NGOs)”, which has been established and operates within the Ministry of Immigration and Asylum. Furthermore, in accordance with Article 1 of the Ministerial Decision, registration is compulsory;¹⁴ and, as set out in Article 58 of Law 4686/2020 of 12 May 2020, those who are not registered will be barred from certain activities.
20. Moreover, in order to be registered the applicants must demonstrate that they comply with the formal requirements for registration.¹⁵ They are required to present an array of documentation and personal information, including: detailed financial data (financial statements dating back two years, and audit reports¹⁶; information on activities, including past projects and any past work in government structures (camps), services provided, including beneficiaries;¹⁷ translated and certified copies of foreign documents,¹⁸ etc.).
21. These various requirements are necessary for all NGOs who seek to work in the areas of asylum, migration and social inclusion (and not only, for instance, to the smaller subset of NGOs that work in controlled zones such as refugee camps).
22. Also, the Ministry of Migration and Asylum has a discretion to deny registration to NGOs and individual NGO Members, on grounds which are vague, arbitrary and with the potential to be abused.¹⁹ Article 3(4) of the Ministerial Decision refers to the possibility to reject an NGO application for registration:

The Special Secretary for the Coordination of Involved Bodies reserves the right in every case of verification of the submitted data with all competent state authorities as well as the right, in considering all of the above in conjunction with data concerning the activities of the entities involved at its discretion, to reject the applicant's registration application.

¹³ Refugee Support Aegean, ‘Risk of Repression: New Rules on Civil Society Supporting Refugees and Migrants in Greece’, May 2020, 1.

¹⁴ Art 1, Ministerial Decision 3063/2020.

¹⁵ Ibid, Art 2.

¹⁶ Art 58 of Law No. 4662/2020; Art 5 of Ministerial Decision 3063/2020.

¹⁷ Arts 2(1)(jj) and 5, Ministerial Decision 3063/2020.

¹⁸ Ibid, Art 3(1).

¹⁹ Ministerial Decision 3063/2020, Art 12(3): ‘the Special Secretary for Coordination of Involved Bodies reserves the right in all cases to verify the submitted data with all the competent state authorities as well as the right, with consideration of all the above, in combination with data concerning the personality and the actions of applicants for the registration of natural persons until that time and at his discretion, to reject the application for registration of the natural person.’ See also, Refugee Support Aegean, ‘Risk of Repression: New Rules on Civil Society Supporting Refugees and Migrants in Greece’, May 2020, 3.

Further, Article 12(3), regarding applicants who are natural persons, provides that

In addition to the above conditions and the required supporting documents submitted, the Special Secretary for the Coordination of Involved Bodies reserves in every case the right to verify the submitted data with all the competent state authorities as well as the right, taking into account all of the above, in conjunction with data that relates to the personality and conduct to-date of the applicants for registration of natural persons and at its sole discretion, to reject the application for registration of the natural person.

Certification

23. For those NGOs that wish to be “certified,” (which is only possible once the NGO is satisfactorily registered and is a requirement for those NGOs who wish to work in state-sponsored facilities or receive funding for reception projects or national funding for broader activities), the natural persons who are members, employees or associates (including volunteers) of the NGO and operate on their behalf in government structures (e.g., camps; shelters; transit zones...) must also be specifically registered.²⁰ Natural persons must supply an array of documents in order to comply with the requirements of registration, and these must be updated annually.²¹
24. Many of the criteria for certification are assessed on the basis of documents submitted in the registration process.
25. In addition, the Ministerial Decision specifies that all foreign documents must be certified and translated in accordance with Greek legislation. This may be particularly onerous, time-consuming and costly for foreign NGOs as well as foreign national volunteers. Depending on the size of the NGOs that may be seeking to assist, foreign national volunteers may be requested to supply their own certified and translated documents, which may limit their ability to join, particularly if they had wished to carry out activities for a short-time period.
26. Also, NGOs are required to indicate any change to the personal data of these natural persons ‘within twenty-four (24) hours of the event taking place.’²² The decision does not specify precisely what changes in personal data need to be notified, and therefore it is assumed that this requirement relates to all data that NGOs are required to supply in relation to natural persons working with them, such as: address in Greece; telephone number and email address; employment contract; confirmation of the absence of a criminal record.²³
27. The Ministerial Decision refers specially to the requirement to notify within 24 hours of the occurrence, when natural persons depart from Greece or from the field of action or in case of termination of their cooperation.²⁴ The failure to comply with the requirement to notify changes within 24 hours results in the NGO in question being automatically deleted from the Register of Greek and Foreign Non-Governmental Organizations (NGOs) and the natural person automatically being deleted from the Register of Members of Non-

²⁰ Art. 10, Ministerial Decision 3063/2020.

²¹ Ibid, Art 11.

²² Ibid.

²³ Ibid, Art. 11(1) and 11(2).

²⁴ Ibid, Art. 11(4).

Governmental Organizations (NGO), with the certification of both the body and its natural members, employees or associates revoked.²⁵

28. Those NGOs who wish to be certified must also be assessed in accordance with special evaluation criteria. Firstly, they must demonstrate the “effectiveness” of their activities. In order to do so, NGOs are required to provide a report on activities covering the previous two years, which would cover ‘at least’: work in government structures (e.g., camps, controlled zones, etc), number and type of beneficiaries, operating costs, services offered, actions implemented, partnerships with agencies, current interventions.²⁶
29. This requirement is quite detailed and suggests from the use of the phrase ‘at least’ that those NGOs with a two year or more track record and who can demonstrate prior experience in Greek government structures will have a greater chance of demonstrating ‘efficiency’. This is not altogether clear, however. The vagueness of the language of the requirements and how they are to be assessed may encourage arbitrariness in decision-making. The applicants will also need to demonstrate economic efficiency and stability, and further indicators of quality, such as professional certifications or assessment reports.²⁷
30. Secondly, applicants must demonstrate their organizational suitability, having regard to the number and specializations of staff and volunteers, material and technical infrastructure, total staff turnover, distribution of human resources and personnel number changes, an organizational chart and rules regarding the distribution of responsibilities between the Board of Directors and Management Team.²⁸ This requirement appears to privilege a particular type of NGO – large, service provider humanitarian organizations.
31. Thirdly, applicants for certification must demonstrate accountability, as evidenced by the operation of a website, on which at least the statute of the institution, the names of the members of the Board, of those in a position of responsibility, will be published, as well as the annual report balance sheet reviewed by certified auditors, the manner of communication with members, any subscribers and sponsors and annual activities reports.

Maintaining active certification

32. Certified NGOs are required to provide detailed reports annually on their activities,²⁹ and the certification must be renewed every three years.³⁰ Personnel changes are required to be reported upon immediately,³¹ and personal details of individual registrants must be updated within 24 hours of any change. As with the process for registration, any documents, including revisions to documents would need to comply with the general obligation to provide certified translations of foreign language documents.³²
33. Ministerial Decision 3063/2020 also stipulates the grounds by which individual and/or NGOs registrants can be struck from the respective registries, and the procedures to be

²⁵ Ibid, Art. 11(5).

²⁶ Ibid, Art. 5.

²⁷ Ibid, Art 5.

²⁸ Ibid.

²⁹ Art 7, Ministerial Decision 3063/2020.

³⁰ Ibid, Art 6(2).

³¹ Ibid, Art 2(4).

³² Ibid, Art 11(4).

followed in such cases.³³ It specifies, *inter alia* that NGOs and/or individual members can be removed if they are involved in illegal acts, as evidenced by: a final conviction or, a document of a competent public authority.³⁴

34. It is unclear what is meant by ‘a document of a competent public authority’. This overly broad provision has the potential for abuse, given the threats of arrest, actual arrests, and judicial harassment that certain NGOs have been subjected to.³⁵
35. Similarly, NGOs and/or individual members can be removed if ‘there was a flawed execution of the project undertaken, as evidenced by a relevant document of the competent administrative authority.’³⁶ Again, it is not clear how ‘flawed execution’ will be assessed, nor what may constitute a relevant document of the competent administrative authority.
36. According to news reports,³⁷ further planned legislation will provide additional guidance on the procedure for suspensions, which will stop NGOs’ access to state funding as well as their eligibility for the special tax regime that charitable organizations benefit from. If the NGO still does not comply with its obligations, the competent Directorate will apparently have the power to sanction the NGO by immediately deleting it from the special register, which should result in the cancellation of state funding, including the implementation of funded programs, as well as the final discontinuation of the provision of special benefits for NGOs, such as the special tax regime, tax exemption and exemption from any public, municipal, community or pro-third direct or indirect tax.

The absence of remedies against decision affecting registration or certification decisions

37. There is no clear remedy in place to challenge decisions, many of which are “automatic,”³⁸ affecting NGOs registration or certification, both when it comes to their explicit deletion from the registry in accordance with Articles 8 and 14 of the Ministerial Decision, and when it comes to their exclusion during the registration phase, in accordance with Articles 2(3) or 3(2) of the Ministerial Decision.

III. Compatibility of the Legislation with European Standards and Best Practices

i) In general

38. As the Guidelines on NGO Work make clear:

NGO activities in support of refugees, victims of human trafficking and other migrants are a manifestation of the right to freedom of association guaranteed by Article 11 of the European Convention on Human Rights and elaborated in Recommendation CM/Rec(2007)14 of the Council of Europe Committee of Ministers to member states on the legal status of non-governmental

³³ Ibid, Arts. 8; 14.

³⁴ Ibid, Arts. 8(1)(c); 14(1)(b).

³⁵ See, the Expert Council on NGO Law’s thematic study: ‘Using Criminal Law to Restrict the Work of NGOs Supporting Refugees and Other Migrants in Council of Europe Member States’. CONF/EXP(2019)1, December 2019, paras. 84, 106, 110.

³⁶ Ministerial Decision 3063/2020, Arts 8(1)(d); 14(1)(c).

³⁷ ‘Επιχείρηση - πάξη στις ΜΚΟ με κατάθεση νομοσχεδίου’, 7 June 2020

[<https://www.kathimerini.gr/1081693/article/epikairothta/politikh/epixeirhsh---ta3h-stis-mko-mekata8esh-Nomosxedioy>].

³⁸ See for instance, Articles 2(1)(b), 7(3), 11(5), and 14(2) of the Ministerial Decision 3063/2020.

organisations in Europe, and the Joint Guidelines on Freedom of Association of the European Commission for Democracy through Law (Venice Commission) and the OSCE Office for Democratic Institutions and Human Rights.³⁹

39. Furthermore, the regulation of NGO activities must comply with Member States' obligations under human rights law, and in particular, the obligations to respect, protect and fulfil freedom of association.⁴⁰
40. It should also be recalled that any interference with freedom of association must be narrowly construed; it must not impair the essence of the right,⁴¹ and must be consistent with other fundamental human rights principles, including the prohibition of discrimination. The interference must have a formal basis in law and be necessary in a democratic society in the interest of one of the permitted legitimate aims: national security or public safety, the prevention of disorder or crime, the protection of health or morals or the protection of the rights and freedoms of others.⁴²
41. Whether a particular measure is legitimate depends on whether it can be said that the legislation pursues a legitimate aim, as set out in the exhaustive list of grounds of limitation in the international standards: the maintenance of national security or public safety, the prevention of disorder or crime, the protection of health or morals or the protection of the rights and freedoms of others.⁴³ In addition, the legitimate aims must not be used as a pretext to control NGOs or to restrict their ability to carry out their legitimate work nor as a means to hinder persons from applying for asylum.⁴⁴
42. However, the measure must also be necessary and proportionate to the legitimate aim pursued. This requires that the reasons adduced by the national authorities to justify the legislation must be relevant and sufficient. States seeking to restrict the right to freedom of association must demonstrate a pressing social need for so doing.⁴⁵ When such a pressing social need arises, 'States have then to ensure that any restrictive measures fall within the limit of what is acceptable in a "democratic society"'. In that regard, longstanding jurisprudence asserts that democratic societies exist only where "pluralism, tolerance and broadmindedness" are in place.'⁴⁶

ii) The need for adequate public consultations on law reforms

43. Law reform will always benefit significantly from a participatory, inclusive process. This ensures that the decisions taken by government benefit from the inputs from stakeholders, particularly those with expertise and experience on the issues under consideration, and those whose interests or rights are affected.

³⁹ Expert Council on NGO Law, 'Guidelines on Protecting NGO Work in Support of Refugees and Other Migrants', CONF/EXP(2020)3, May 2020, para. 2.

⁴⁰ See, e.g., Art. 20, UDHR; Art. 22, ICCPR; Art. 11, ECHR; Art. 12, EU Charter.

⁴¹ UN Human Rights Council, 'Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai', UN Doc. A/HRC/20/27, 21 May 2012, para. 16.

⁴² Art. 11(2) ECHR. See also, Art. 22(2) ICCPR.

⁴³ Art. 11(2) ECHR. See also, Art. 22(2) ICCPR.

⁴⁴ CoE Venice Commission and OSCE ODIHR, 'Joint Opinion on the Provisions of the So-Called "Stop Soros" Draft Legislative Package which Directly Affect NGOs', [Hungary] CDL-AD(2018)013, Strasbourg, 25 June 2018, para. 80.

⁴⁵ UN Human Rights Council, 'Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai', UN Doc. A/HRC/20/27, 21 May 2012, para. 17.

⁴⁶ Ibid.

44. While there is evidence that certain NGOs and others have had opportunity to submit comments on some draft legislation relating to matters related to international protection, the timeline in which they have had to do so has been extremely limited (for instance Law 4868/2020 was published on 12 May 2020 after an online consultation between 10-24 April 2020), and the article in the draft legislation which concerned NGO requirements was not part of the draft which was put out for consultation (it was introduced after the consultations had completed). Furthermore, there is no indication that the Government has taken on board NGOs' concerns.
45. Additionally, there does not appear to have been any public consultation prior to the issuance of the Ministerial Decision, which contains the bulk of the operational provisions regarding the requirements for registration, at times re-registration, and certification of NGOs engaged in activities concerning asylum, migration and social integration.
46. Part of the reason for this appears to be that the Ministerial Decision (as an executive decision) did not follow the process for parliamentary scrutiny. However, given the substantive nature of the Decision and its direct impact on freedom of association, it should arguably have been introduced as a piece of legislation and, in this sense, it would have been clearly important for it to have undergone the usual parliamentary scrutiny.
47. Consequently, in addition to the questions about the legality of the Ministerial Decision for introducing into an executive decision matters which should have been introduced by law, there was insufficient public consultations regarding the reforms, notwithstanding that both Recommendation CM/Rec(2007)14⁴⁷ and the Joint Guidelines⁴⁸ underscore that any regulation interfering with freedom of association should be adopted through a democratic, participatory, and transparent process.
48. The Joint Guidelines also make clear that NGOs should receive adequate and timely notice about consultation processes, which should be meaningful and inclusive, and 'the authorities responsible for organizing consultations should also be required to respond to proposals made by stakeholders, in particular where the views of the latter are rejected' (para. 106), which was not done in this case.

iii) Requirements for NGOs to register

49. The requirement for NGOs to register is a common, and usually justifiable practice in most countries. States have a right to satisfy themselves that an association's aim and activities are in conformity with the rules laid down in legislation, though but they must do so in a manner compatible with their obligations; the exceptions set out in Article 11 ECHR are to

⁴⁷ Para. 77. The Explanatory Memorandum to the *Recommendation 2007(14)* further clarifies that: 'it is essential that NGOs not only be consulted about matters connected with their objectives but also on proposed changes to the law which have the potential to affect their ability to pursue those objectives. Such consultation is needed not only because such changes could directly affect their interests and the effectiveness of the important contribution that they are able to make to democratic societies but also because their operational experience is likely to give them useful insight into the feasibility of what is being proposed' (para. 139).

⁴⁸ Venice Commission and OSCE/ODIHR, *Joint Guidelines on Freedom of Association*, Study no. 706/2012 OSCE/ODIHR Legis-Nr: GDL-FOASS/263/2014, CDL-AD(2014)046, 17 December 2014, principle 9. See also Principle 8 and the Explanatory Note to the Joint Guidelines, para. 33, which provides that any legislation impacting on NGOs needs to be developed in a manner that is timely, free of political influence and transparent. The Joint Guidelines further clarifies that NGOs should be consulted in the process of introducing and implementing any regulations or practices that concern their operations (par. 106.). See also Venice Commission, *Opinion on the Law on nongovernmental organisations (Public Associations and Funds) as amended of the Republic of Azerbaijan*, CDL-AD (2014)043, 15 December 2014, para. 42.

be construed strictly; only convincing and compelling reasons can justify restrictions on freedom of association.⁴⁹

50. It should be underscored, however, that transparency and accountability per se are not legitimate grounds for interference with freedom of association but could only be invoked as a means to attain the legitimate goals set out in Article 11(2) of the ECHR: in the interests of 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.⁵⁰
51. The Ministerial Decision and associated legislation does not concern the registration of NGOs for establishment purposes but the requirement that NGOs working in particular domains and carrying out particular activities comply with additional measures in order to be registered (or re-registered), and in certain circumstances, certified, a procedure which is compulsory if they are to continue to carry out their work in the said domains.
52. Nevertheless, given the scope of the coverage of the Ministerial Decision and the legal requirement for registration in accordance with Article 58 of Law 4686/2020 of 12 May 2020, it is not open for the NGOs operating in these domains to avoid the activities requiring registration; the breadth of the Ministerial Decision goes to the core of NGOs' existence working in these domains; their ability to function properly without registration (sometimes amounting to re-registration), would have been impeded.⁵¹
53. Thus, it is not about whether they are allowed to do special work, the registration process is tantamount to being about their ability to exist. Consequently, a refusal to register an NGO onto the special registry for NGOs working in the field of asylum, migration and social inclusion is tantamount to a refusal to grant legal-entity status to an association with a mandate to carry out activities in these areas, severely restricting the ability to exercise their right to freedom of association.⁵²
54. A state has a right to stipulate requirements that NGOs must comply with. However, these must be reasonable and must comply with the necessity and proportionality requirements. The requirement for NGOs who had already been registered to effectively re-register will not satisfy proportionality requirements. This approach to re-registrations was taken by then Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, who explained that '[n]ewly adopted laws should not request all previously registered associations to re-register so that existing associations are protected against arbitrary rejection or time gaps in the conduct of their activities.'⁵³
55. Furthermore, the provisions must be prescribed by law, which 'does not only require that the impugned measure should have some basis in domestic law, but also refers to the quality of the law in question.'⁵⁴ The "quality" of the law concerns its reasonableness.

⁴⁹ *Sidiropoulos and Others v. Greece*, Applic. No. 26695/95, 10 July 1998, §40.

⁵⁰ Expert Council on NGO Law, *International Standards Relating to Reporting and Disclosure Requirements for NGOs*, CONF/EXP(2018)3, 27 November 2018, para. 45.

⁵¹ *Koretsky and Others v. Ukraine*, Applic. No. 40269/02, 3 April 2008 §40.

⁵² *Sidiropoulos and Others v. Greece*, §31.

⁵³ UN Human Rights Council, 'Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai', UN Doc. A/HRC/20/27, 21 May 2012, para 62

⁵⁴ *Koretsky and Others v. Ukraine*, §46.

56. The Joint Guidelines make clear that, unlike the Greek legislation requiring a specific category of NGOs to comply with more onerous requirements in order to carry out their activities, associations should not be treated differently as regards the exercise of their rights to freedom of association simply on account of their objectives;

Notably, associations should not be treated differently for reasons such as imparting information or ideas that contest the established order or advocate for a change of the constitution or legislation, for defending human rights or for promoting and defending the rights of persons belonging to national or ethnic, religious, linguistic and other minorities or groups.⁵⁵

57. The principle of equal treatment of NGOs does not preclude differential treatment of certain NGOs insofar as it is based on objective criteria, rather than subjective viewpoints and beliefs; ‘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.’⁵⁶ It is therefore incumbent on a Member State to demonstrate that any differential treatment of certain categories of NGOs is based on objective assessment, pursues a legitimate aim and is proportionate to that aim.

58. When, as in the case of the Ministerial Decision, registration requirements are made excessively cumbersome, costly or made inaccessible to certain groups, for instance smaller NGOs who have been operating for less than two years, NGOs who are not service providers but carry out monitoring of the human rights situation in places of confinement, or migrant-led community associations who operate often with very informal structures, this may make the legislation unreasonable and disproportionate to any objectives the requirements might otherwise serve, on account of constituting a de facto bar on legitimate NGO activity.

59. It is necessary for States to ensure that the frequency and mandatory content of reporting requirements as well as sanctions levied for the breach of those duties meet international standards, including the exhaustive legitimate grounds for interference, necessity and proportionality.⁵⁷ Furthermore, it is necessary to recall that ‘everyone has the rights to freedom of peaceful assembly and of association... This applies inter alia to ... non-nationals including stateless persons, refugees or migrants, as well as associations, including unregistered groups.’⁵⁸

60. The Joint Guidelines emphasise that there should be a presumption in favour of the lawful formation, objectives and activities of associations.⁵⁹ Further, they stipulate that legislation should make the process of registration as simple as possible in order for organisations to fully exercise their rights in a democratic society.⁶⁰

⁵⁵ Joint Guidelines, para. 127.

⁵⁶ Ibid, para. 94.

⁵⁷ Expert Council on NGO Law, *International Standards Relating to Reporting and Disclosure Requirements for NGOs*, CONF/EXP(2018)3, 27 November 2018, para. 133.

⁵⁸ UN Human Rights Council, ‘Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai’, UN Doc. A/HRC/20/27, 21 May 2012, para 13.

⁵⁹ Joint Guidelines, 68, 69.

⁶⁰ Ibid, paras. 155, 156. ‘In the OSCE and Council of Europe regions, many states require associations to undergo formal notification, registration or other similar procedures in order to acquire legal personality. However, in some states, this procedure is so cumbersome that it effectively prevents associations from being registered. Such barriers include: a lack of clarity regarding registration procedures; detailed

61. In addition, by stipulating extensive requirements for NGOs to provide personal information of national persons, the Ministerial Decision raises privacy concerns. The Joint Guidelines recognise that, ‘associations should not be under a general obligation to disclose the names and addresses of its members, since this would be incompatible with both their right to freedom of association and the right to respect for private life.’⁶¹ In this respect, the ECtHR case law holds that the duty of an association to report or otherwise disclose private data of its members is subject to double scrutiny, since it is protected by both freedom of association and right to privacy.⁶²
62. In addition, the inclusion of automatic suspensions and revocations of registrations and certifications without introducing in some cases adequate and in most cases, *any* procedures to allow affected NGOs to seek review of decisions goes against the most basic standards for due process.
63. For instance, Recommendation CM/Rec(2007)14 of the Council of Europe Committee of Ministers to member states on the legal status of non-governmental organisations in Europe, explains that ‘Acts or omissions by public authorities affecting an NGO should be subject to administrative review and be open to challenge by the NGO in an independent and impartial court with full jurisdiction.’⁶³
64. Similarly, the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association specified that:
- Any decision rejecting the submission or application must be clearly motivated and duly communicated in writing to the applicant. Associations whose submissions or applications have been rejected should have the opportunity to challenge the decision before an independent and impartial court.⁶⁴
65. Consequently, the procedures for registration and certification impede freedom of association in ways which do not satisfy the requirement for legality, reasonableness, or proportionality. The provisions are vague and overly broad, failing to satisfy the requirements for legal certainty and are prone to being applied arbitrarily. The requirements for registration appear to be designed to restrict entire classes of NGOs from being able to operate in the domains of asylum, migration, and social integration, thus failing to satisfy the requirements of proportionality.

iv) Certification

and complex documentation requirements; prohibitively high registration fees; overly broad discretion of the registration authority in registering associations or in conducting investigations or assessments of the intentions of the association as part of the registration process; and excessive delays in the registration process. Seemingly neutral registration requirements, such as nationality or residency requirements, may have a disproportionate effect on certain persons or groups, making it harder for them to form associations. These practices stifle and unduly restrict the right to freedom of association. Legislation should make the process of notification or registration as simple as possible and, in any case, not more cumbersome than the process created for other entities, such as businesses...’

⁶¹ Joint Guidelines, para. 165.

⁶² *National Association of Teachers in Further and Higher Education v. United Kingdom*, Applic. No. 28910/95, 16 April 1998. The same pertains to other persons affiliated with an association: volunteers, members of the board, donors, etc., see Expert Council on NGO Law, *International Standards Relating to Reporting and Disclosure Requirements for NGOs*, CONF/EXP(2018)3, 27 November 2018, paras. 100, 108-113.

⁶³ Para. 10.

⁶⁴ UN Human Rights Council, ‘Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai’, UN Doc. A/HRC/20/27, 21 May 2012, para 61.

66. As already indicated, certification is required for those NGOs that wish to work in state-sponsored facilities or to have access to types of funding. It is incumbent on them to firstly, to ensure that they take all steps to become fully registered, and for their members, employees or associates (including volunteers) that operate on their behalf in government structures (e.g., camps; shelters; transit zones...) to be specifically registered in the separate register for that purpose. They must then fulfil additional criteria for certification.⁶⁵

67. Like registration, the criteria for certification must afford a measure of legal protection against arbitrary interferences by public authorities with the rights guaranteed by Article 11 ECHR. The requirements for certification, as well as the basis upon which a decision can be taken to deny certification should be sufficiently precise, foreseeable, and transparent to satisfy the requirements of the principle of legality. In addition, the compatibility of legal norms 'with the rule of law [must] be ensured.'⁶⁶

68. Despite those standards, the evaluation of the applicant NGO's efficiency, quality and accountability require those carrying out the assessment - a three-member committee established by decision of the Special Secretary for Coordination of Involved Bodies of the Ministry of Immigration and Asylum and thereafter issued by the Special Secretary -,⁶⁷ to take into account not only formal criteria, but also to make value-judgments about the effectiveness, organizational suitability and accountability of the NGOs' work.⁶⁸ This creates legal uncertainty.

69. As NGOs have noted,

Through this provision, the Ministerial Decision empowers the political authorities developing migration policies in Greece to evaluate the work of independent organisations that monitor and defend the rights of refugees and migrants, often through legal action against those very policies. The institutional position of the responsible authority responsible for certifying NGOs thereby renders a neutral and impartial evaluation of civil society activities impossible.⁶⁹

70. Also, the vagueness of provisions risks authorities entering inappropriately into NGOs' internal management structures. Pursuant to the Ministerial Decision, the criteria to determine whether certification should be granted include verifying NGOs' internal operating procedures and management structures.⁷⁰

71. The Expert Council is concerned that this fails to comply with the Joint Guidelines, which indicate:

⁶⁵ Art. 10, Ministerial Decision 3063/2020.

⁶⁶ *Belge v Turkey*, Application nos. 50171/09, 6/12/2016, 6 December 2016, para. 28.

⁶⁷ *Ibid.*, Arts 1, 6.

⁶⁸ *Ibid.*

⁶⁹ Refugee Support Aegean, 'Risk of Repression: New Rules on Civil Society Supporting Refugees and Migrants in Greece', May 2020, 4. See also, HIAS, 'Some thoughts on the new Joint Ministerial Decision, regulating the registration of migration-related NGOs in Greece,' 8 May 2020.

⁷⁰ For instance, the criteria of 'organizational suitability,' has regard to the number and specializations of staff and volunteers, material and technical infrastructure, total staff turnover, distribution of human resources and personnel number changes, an organizational chart and rules regarding the distribution of responsibilities between the Board of Directors and Management Team. [See, Art 5, Ministerial Decision 3063/2020].

Inspections conducted with the primary purpose of verifying compliance with internal procedures of an association should not be permissible (for additional information on inspections and supervision, Moreover, under no circumstances should associations suffer sanctions on the sole ground that their activities breach their own internal regulations and procedures, so long as these activities are not otherwise unlawful.⁷¹

72. Restrictions must not be capable of arbitrary application,⁷² which is a significant risk with the Ministerial Decision, which affords a wide discretion to authorities to deny certification on grounds which are vague and unclear, and based on value judgments. In this respect, the evaluation of the applicant NGO's efficiency, organizational suitability and accountability consist of a list of documents that applicants must provide, though basis upon which decisions are taken is unclear.

73. The ECtHR has made clear that legislation:

must afford a measure of legal protection against arbitrary interferences by public authorities with the rights guaranteed by the Convention. In matters affecting fundamental rights it would be contrary to the rule of law, one of the basic principles of a democratic society enshrined in the Convention, for a legal discretion granted to the executive to be expressed in terms of an unfettered power. Consequently, the law must indicate with sufficient clarity the scope of any such discretion and the manner of its exercise.⁷³

74. Once certified, NGOs are required, to notify personnel changes immediately,⁷⁴ to submit annual activity reports and to engage with a certification renewal process every three years, at which point there is a requirement to provide new documentation, duly certified and translated.

75. The ease with which certifications can be suspended and revoked, often on the basis of requirements which are neither necessary or proportionate (such as the requirement to notify changes within 24 hours from the changes happening), automatically and without due process, fails to comply with standards related to freedom of association. Furthermore, the automatic removal of NGOs and/or individual members if they are involved in a flawed execution of a project is extremely broad and vague and likely to be abused, as is the provision for being removed if involved in illegal acts, as evidenced by: a final conviction or, a document of a competent public authority.⁷⁵

76. Revocation of certification can be considered a sanction or penalty, which should be an exceptional measure taken only after adequate and effective due process measures. Instead, the implementation of the relevant provisions may simply result in the suspension or revocation of certification, and potentially resulting in the cancellation of funding and charitable status.

⁷¹ Joint Guidelines, para. 178.

⁷² Venice Commission and OSCE/ODIHR, *Joint Guidelines on Freedom of Association*, Study no. 706/2012 OSCE/ODIHR Legis-Nr: GDL-FOASS/263/2014, CDL-AD(2014)046, 17 December 2014, para. 109.

⁷³ *Islam-Itihad Association and Others v. Azerbaijan*, Applic No. 5548/05, 13 November 2014, para. 44. See also, *Hasan and Chaush v. Bulgaria* (GC), Applic. No. 30985/96, 26 October 2000, §84; *Maestri v. Italy* (GC), Applic. No. 39748/98, 17 February 2004, §30. See also, *Koretskyy and Others v. Ukraine*, §48.

⁷⁴ *Ibid*, Art 2(4).

⁷⁵ *Ibid*, Arts. 8(1)(c); 14(1)(b).

77. The Joint Guidelines clearly provide that:

Sanctions amounting to the effective suspension of activities, or to the prohibition or dissolution of the association, are of an exceptional nature. They should only be applied in cases where the breach gives rise to a serious threat to the security of the state or of certain groups, or to fundamental democratic principles. In any case, these types of drastic sanctions should ultimately be imposed or reviewed by a judicial authority.⁷⁶

78. Consequently, the procedures for certification impede freedom of association in ways which do not satisfy the requirement for legality, reasonableness, or proportionality. The requirements for certification are vague and overly broad, failing to satisfy the requirements for legal certainty and are prone to being applied arbitrarily. The onerous requirements are not necessary or proportionate and will restrict unjustifiably particular types of civil society groups (such as human rights monitoring organisations, migrant self-organised community support groups and others from carrying out activities in certain government-controlled locations.

79. The ease with which certification can be suspended or revoked, and the wider consequences of such revocations do not satisfy the principle of legality given the absence of due process and are disproportionate.

v) Impact on civil society space - the ability of NGOs to carry out their activities

80. The Ministerial Decision and associated legislation have a direct impact on NGO activities in that both registration and certification operate as preconditions for NGOs to engage in certain activities. For instance, certification is required to operate in government structures (e.g., camps), housing units and other structures set up by the Ministry of Immigration and Asylum.⁷⁷ But even for NGOs who are not seeking to become certified to carry out that restricted work, the very onerous requirements to register may impede certain NGOs from working generally in the domains of asylum, migration and social inclusion.

81. Thus, according to Article 58 of Law 4686,

‘... Non-profit organizations, voluntary organizations and any respective Greek or international organization which are not registered, cannot undertake activities in the field of international protection, migration and social integration actions within the Greek Territory and in particular in the provision of legal, psychosocial and medical services..., in the provision of material conditions for reception ... and in the provision of information and briefing ...’.

82. Article 58 of Law 4686 captures virtually all organisations working in any capacity in the area of asylum, migration, and social inclusion, and thus by virtue of the provisions, registration becomes a *sine qua non* for work in this area.

⁷⁶ Joint Guidelines, para. 239.

⁷⁷ Art 5, 3063/2020.

83. According to civil society groups who have been in contact with the Expert Council on NGO Law, the new registration and certification requirements are having a chilling effect on NGO activities because of the onerous, costly and time-consuming procedures for both registration and certification. Reportedly, some NGOs stopped working in camps or decided against applying for certification because they were not able to comply with the requirements (whether, because of their complexity, their cost, e.g., to produce documentation such as financial audits, or their failure to meet the formal requirements) for certification. For others, many NGOs were simply unable to navigate the registration process and did not meet the deadline for registration.⁷⁸ According to other NGOs in touch with the Expert Council, the requirements are having a particularly negative impact on self-organising migrant-led associations, who typically operate with less formal structures but nevertheless, carry out crucial activities that could never be replicated by large, service-provider humanitarian organisations.
84. The failure to comply with the deadline to submit the necessary documents means that NGOs' work has been suspended pending any steps they are able to take to satisfy the requirements in accordance with the legislation.
85. The imposition of onerous reporting and disclosure requirements on NGOs is widely considered to be linked to efforts leading to the shrinking of space for civil society,⁷⁹ given the direct impact it has on creating a chilling effect for NGO's work. The Greek measures are likely to have a chilling effect on NGO's ability to carry out work in support of refugees and other migrants in several ways, among which include:
- Making it virtually impossible for NGOs who have operated for less than two years to register in order to engage in activities linked to asylum, migration and social inclusion;
 - Making it impossible for small organisations with smaller financial resources and staff turnover, who employ a lot of volunteers on short-term contracts, to satisfy the requirements for registration as well as certification (because of the cost and complexity of producing the documents and complying with ongoing reporting requirements);
 - Opening the space for the arbitrary rejection of both registration and certification requests by NGOs and individual members, on account of vague, highly discretionary and open-ended criteria decided upon by decision-makers who lack independence from government;
 - Encouraging NGOs and individual members to forfeit their applications for registration (and thereby end their activities in support of refugees and other migrants) on account of the cost, complexity and unpredictability, and on account of the privacy concerns associated with the need to supply personal information.
86. Thus, the measures conflict with the Expert Council's Guidelines on NGO Work, in particular, their specification that laws, policies, and practices should not:

⁷⁸ According to certain news sources, only eighteen of the forty NGOs that previously carried out activities in migrant accommodation facilities will continue to operate; the others having either not succeeded with or have given up on the process to certify. See: 'Only 18 NGOs granted right to enter migrant centers', <https://www.ekathimerini.com/>, 17 June 2020, <https://www.ekathimerini.com/253776/article/ekathimerini/news/only-18-ngos-granted-right-to-enter-migrant-centers>.

⁷⁹ Expert Council on NGO Law, *International Standards Relating to Reporting and Disclosure Requirements for NGOs*, CONF/EXP(2018)3, 27 November 2018, para. 9.

- a. Prohibit or prevent NGOs from helping refugees and other migrants in distress whether at sea or on land;
- b. Prohibit or prevent NGOs from monitoring the treatment of refugees and other migrants at border crossings, reception centres and wherever they are deprived of their liberty;
- c. Prohibit or prevent NGOs from providing refugees and other migrants with food, shelter, medical treatment, education and legal advice and assistance on these and other needs; ...
- g. Prohibit or prevent NGOs from campaigning to bring laws or practices concerning refugees and other migrants into line with international standards and best practices;
- h. Prohibit or prevent NGOs from submitting complaints or bringing proceedings under national and international procedures with respect to the rights and treatment of refugees and other migrants.⁸⁰

87. The positive obligation to fulfil freedom of association requires states to take steps to facilitate the enjoyment of freedom of association. Discharging such duties will require Council of Europe Member States to create an enabling environment for NGOs to carry out their work without undue interference by the state or third parties, and to remove any unnecessary, unlawful or arbitrary restrictions or impediments to civil society space.⁸¹

88. The Expert Council's Guidelines on NGO Work set out the importance for states to support NGO assistance to refugees and other migrants, including to:

- c. Permit NGOs to monitor the treatment of refugees and other migrants, including at border crossings and wherever they are deprived of their liberty;
- d. Facilitate the provision of legal advice and assistance by NGOs to refugees and other migrants, who are deprived of their liberty or are at risk of a violation to their human rights;
- e. Protect NGOs, their members and their staff from harassment, intimidation, physical attacks and threats of prosecution on account of them having helped refugees and other migrants in distress or having provided them with food, shelter, medical treatment and legal advice; and
- f. Encourage and facilitate the participation of NGOs helping refugees and other migrants in distress or providing them with food, shelter, medical treatment and

⁸⁰ Expert Council on NGO Law, 'Guidelines on Protecting NGO Work in Support of Refugees and Other Migrants', CONF/EXP(2020)3, May 2020, para. 5(a)-(c); (g); (h).

⁸¹ Recommendation CM/Rec(2007)14 on the legal status of nongovernmental organisations in Europe, and Recommendation CM/Rec(2018)11 on the need to strengthen the protection and promotion of civil society space in Europe.

legal advice in processes to reform any requirements relevant to these activities.⁸²

89. The Joint Guidelines recognise that fostering an enabling environment for civil society to operate may require ‘simplifying regulatory requirements, ensuring that those requirements are not unduly burdensome, facilitating access to resources and taking positive measures to overcome specific challenges confronting disadvantaged or vulnerable persons or groups.’⁸³
90. The Ministerial Decision and related legislation takes an opposite approach, creating barriers which are neither necessary or proportionate and which have the effect of impeding many NGOs including groups with less than a two year track record and informal migrant-led associations from being able to register (or re-register) so as to carry out activities related to asylum, migration and social inclusion, as well as making it virtually impossible for any NGO other than a large, well-established service-provider humanitarian organization to become specially certified.
91. The lack of transparency and significant potential for arbitrary decision-making coupled with an absence of effective recourse to review procedures further entrenches the violations of freedom of association engendered by these provisions.

vi) Impact on access to funding

92. In accordance with the Ministerial Decision, certification is a prerequisite to receive funding from national, EU or other resources to work on material reception conditions;⁸⁴ and to receive funding from the Ministry of Immigration and Asylum with funds coming from the State Budget for the implementation of Social and Humanitarian Actions, Social Inclusion, Immigration and International Protection.⁸⁵
93. Certification appears to be a clear pre-requisite to receive state funding. With respect to EU funding, however, the situation appears to be less clear.
94. For certain grant programmes, the arrangements are entered into between the EU and the state, with the state taking the decision about which local NGOs should benefit from grant allocations and overseeing the grant allocations. The Asylum, Migration & Integration Fund (AMIF), through which the EU provides a significant injection of funds to Greece for the purposes of ‘the effective management of migration flows and to the implementation and development of a common EU approach to asylum and migration’,⁸⁶ is disbursed to NGO “partners” by the Ministry of the Interior.
95. In other circumstances, however, the EU undertakes to support NGOs directly, and consequently, NGOs respond to its calls for proposals without the intermediary of the state. Whilst the EU has its own audit and quality control requirements relating to its grantees, it

⁸² Expert Council on NGO Law, ‘Guidelines on Protecting NGO Work in Support of Refugees and Other Migrants’, CONF/EXP(2020)3, May 2020, para. 6(c)-(f).

⁸³ Joint Guidelines, para. 27. See also, para 75.

⁸⁴ Art 6(2)(b) Ministerial Decision 3063/2020.

⁸⁵ Art 6(2)(c) Ministerial Decision 3063/2020.

⁸⁶ See, Rachel Westerby, ‘Follow the Money: III: Solidarity: The use of AMIF funds to incentivise resettlement and relocation in the EU’, ECRE and UNHCR, February 2020.

is unclear whether, and if so, how Greek internal certification requirements could impact on the ability of local NGOs to benefit from EU support, in this latter case.

96. Access to funding is crucial for NGOs to be able to pursue their objectives. It has been recognised that states positive obligations to create an enabling environment to foster civil society space requires states to ensure the necessary conditions so that associations can effectively operate, and facilitate access of associations to funding, including foreign funding, in order to achieve their aims.⁸⁷

97. In particular, the Expert Council's Guidelines on NGO indicate that in order to meet their obligations under Article 11 ECHR (freedom of association), states should not 'prohibit or prevent NGOs from raising funds to help refugees and other migrants in distress or provide refugees and other migrants with food, shelter, medical treatment and legal advice and assistance on these and other needs.'⁸⁸

98. Furthermore, the Joint Guidelines explain that:

... The right to freedom of association would be deprived of meaning if groups wanting to associate did not have the ability to access resources of different types, including financial, in-kind, material and human resources, and from different sources, including public or private, domestic, foreign or international. Therefore, the ability to seek, secure and use resources is essential to the existence and operation of any association.⁸⁹

99. Any restriction on the ability 'to have access to and to seek, secure and use resources may in certain cases be justified if prescribed by law, necessary in a democratic society and in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others. Restrictions on access to resources that reduce the ability of associations to pursue their goals and activities may constitute an interference with the right to freedom of association.'⁹⁰

100. Similarly, any restrictions on access to resources from abroad (or from foreign or international sources) must meet proportionality requirements.⁹¹

101. By linking access to certain types of funding to highly restrictive requirements for certification, the Ministerial Decision and associated legislation are arbitrary denying access to sources of funding to certain classes of NGOs – particularly those who are not large, well-established service providing humanitarian organizations.

102. This significantly impedes civil society space by reducing the ability for the widest possible spectrum of organizations to carry out activities. Furthermore, by potentially subjecting NGOs to arbitrary and unfair procedures regarding suspension and revocation of certification, the consequence of which may be to end charitable tax-free status and break

⁸⁷ Venice Commission, Report on Funding of Associations, CDL-AD(2019)002, 18 March 2019, para. 150.

⁸⁸ Expert Council on NGO Law, 'Guidelines on Protecting NGO Work in Support of Refugees and Other Migrants', CONF/EXP(2020)3, May 2020, para 5(d).

⁸⁹ Para 102.

⁹⁰ Para 103

⁹¹ Ibid, 220.

funding agreements, this may jeopardise the good functioning and viability of certain NGOs.

IV. Conclusion

Shortcomings with current provisions

103. The Ministerial Decision and related legislative amendments raise both procedural and substantive difficulties with respect to freedom of association and the protection of civil society space.
104. The absence of adequate and timely public consultation and discussion with NGOs on reforms that affect their interests is contrary to best practice regarding inclusive and participatory decision-making and limits the democratic legitimacy of the government's reform agenda.
105. The onerous, complex, time-consuming and costly requirements for NGO and individual member registration (including re-registration) and to maintain active membership in the registry give rise to problems of compliance with the rights in Articles 8 and 11 of the ECHR because of a lack of legitimacy and proportionality.
106. Similarly, the certification process breaches the requirements for legal certainty pursuant to Article 11 ECHR on account of the vague and overly broad criteria and the wide discretion accorded to decision-makers, as well as their lack of independence.
107. The provisions will have a significant chilling effect on the work of civil society on account of the significant number of NGOs who are likely not to complete the registration process either because they are ineligible for registration or certification on formal grounds, are rejected by decision-makers for having failed any number of the overly broad criteria for registration or certification, or because they exempt themselves from the registration process because it is judged to be too onerous, they do not wish to share personal data or they are unconvinced that there is a reasonable likelihood of registration or certification.
108. The reduction in civil society space in the areas of support to refugees and other migrants may produce a worrying humanitarian situation, given the significant needs of this very vulnerable population and already existing gaps in service provision by government and others, and the continued violence and judicial harassment such NGOs face, including criminalisation of aspects of their work.

Recommendation

109. The Ministerial Decision and related legislative provisions should be substantially revised so that they are brought into line with European standards. Furthermore, in revising the amended provisions, it would be appropriate to consult NGOs prior to adopting any further measures.