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# CONCEPT FOR CREATION OF A PUBLIC BENEFIT STATUS IN THE TURKISH CYPRIOT COMMUNITY

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# Concept for Creation of a Public Benefit Status in the northern part of Cyprus

The present concept is based on a review of the legislation for public benefit status in Bulgaria, Croatia, Estonia, Kosovo, Moldova, Montenegro, North Macedonia, and Slovenia, as well as research of comparative materials. It aims to propose how the public benefit status could be regulated in the northern part of Cyprus.

The concept was developed under the Civic Space project<sup>1</sup> under a Terms of Reference to provide expertise, knowledge, and support on international and EU standards and good practices on enabling environment for CSOs.

## The current situation in the northern part of Cyprus

The legal text on charities introduces the possibility of registering as a separate legal entity - “charity”, if the organization has an educational, literary, scientific, or public purpose. The certification is made by the ‘council of ministers’. The procedure for obtaining the status is not clearly regulated and the practice varies. Moreover, practice shows that this procedure is not really working, as in the last 20 years, less than 20 organizations have been registered as charities. It is unclear why there is a need for this separate type of legal entity, how it differs structurally from associations and foundations and why the decision to establish it has been left to the highest political body.

At the same time, the ‘tax’ legal framework provides different benefits for different types of civil society organizations (CSOs). The categories of organizations or the types of activities for which benefits are provided differ in the laws, which may create confusion. For example, there are certain benefits for sports clubs, foundations, and charities but not for associations in the ‘income tax law’. On the other hand, there are no benefits for donations to organizations with social purposes in the ‘income tax law’, but there are benefits for donations to social purposes in the ‘corporate tax law’.

## Proposed future mechanism

This proposal aims to suggest a mechanism to simplify and streamline the current system and ensure that the process for obtaining tax and other benefits for civil society organizations is transparent.

We propose establishing a public benefit status that should replace the existing charity legal text. The public benefit status will be given to associations and foundations by the ‘tax authorities/ministry of finance’ after a simple application process. As it will primarily deal with various ‘tax’ benefits, the ‘ministry of

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finance' will also be the institution in charge of monitoring the use of the provided benefits.

## **What is public benefit status?**

Based on the experience of other countries that have introduced it, public benefit status aims to promote public benefit activities. The public benefit status is given to a segment of nonprofit organizations that allows them to use special incentives. It is a voluntary status – organizations choose to apply for it and receive it.

Organizations can work in the respective public benefit areas without a public benefit status.

The public benefit status tries to regulate who gets benefits and establish a clear procedure of how benefits could be received. It aims to:

- Encourage public benefit activities;
- Encourage the flow of private resources to public benefit activities (e.g., by providing incentives for donors to public benefit organizations).

The public benefit status is regulated in the CSO law (Bulgaria, Moldova, North Macedonia, Slovenia), in a special law (Poland), or the tax law (Estonia). In the case of Croatia and Montenegro, there is no special status, but there is regulation of public benefit activities in the CSO law and several other laws.

The procedure for obtaining public benefit status is usually centralized in one institution, although in the case of Slovenia, the respective ministry that oversees the NGO's activities has the authority to grant it. In the countries where there is a single authority responsible for granting public benefit status, it is the registration authority (Bulgaria, Kosovo), a special commission (Moldova), the Government at the advice of a special commission (North Macedonia), or tax authorities at the advice of an expert committee consisting of CSOs (Estonia).

## **Proposed set up**

Below we list the main elements of the proposed mechanism. In brief, we propose the following:

- The public benefit status will be regulated in one of the tax legal frameworks, e.g., 'corporate tax law' and other 'tax laws' will refer to it when providing benefits for public benefit organizations;
- The legal text on charities will be abolished, and existing charities will have 2 years to choose one of the existing legal forms (association or foundation);
- The authority granting and overseeing the status will be the 'ministry of finance';
- The existing benefits in the different 'tax' legal text will also be provided to public benefit organizations, and the reference to charities will be removed.

## *Responsible Authority and Procedure for Acquiring the Status*

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The ‘ministry of finance’ will certify CSOs that have acquired public benefit status. The status will be provided based on a voluntary application by a registered organization (association or foundation). The application should list the public benefit objective that the organization aims to fulfill (see the list below). To obtain the status, the organization has to show the following:

- It has operated for at least six months before the time of submission of the application and has submitted an annual report for this period.
- It does not have ‘tax’ obligations for which a payment schedule has not been arranged.

Certain types of CSOs will be excluded from the possibility of getting public benefit status. The exclusions will cover organizations that engage in political activities or have the support of business as a primary objective, or are professional associations. The specific categories include organizations that:

- Engage in supporting business or mainly in support of the representatives of some profession or if it is a trade union.
- Provide financial or organizational support to the work of a ‘political party’ or election candidate.

The applicant should submit to the ‘ministry of finance’ an application for acquiring public benefit status, a copy of its statute, proof of prior existence (e.g., a copy of the registration certificate and a copy of the submitted financial report for the last complete financial year) and a declaration that they will comply with all the requirements of the legal text. The ‘ministry’ can refuse registration only if:

- the applying organization has not provided any of the required documents;
- its primary activity is not among the public benefit activities listed.

There should be a possibility for appeal of any decision of the ‘ministry of finance’. The timeline for making the decision should be fixed, e.g., 14 days. In case missing documents are requested, the organization should be given sufficient time to produce those e.g., 7 days.

We also suggest that to support the ‘ministry of finance’ a consultative expert council is created with representatives of civil society organizations which could oversee the process, give guidance and advice on specific cases, review any future regulations and procedures related to public benefit, etc.

## *List of Public Benefit Activities*

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There are two approaches to determining which are the public benefit areas – to provide a list of activities that are public benefit or to define what is public benefit in general. Sometimes countries use a combination of the two approaches – they provide both a list of activities and an additional definition of public benefit. We

propose a list of public benefit areas in the northern part of Cyprus based on one of the most recently adopted laws in our region (Kosovo). A CSO may apply for a public benefit status if the CSO is organized and acts to undertake one or more activities as primary activities, such as:

- humanitarian aid and support
- support for persons with disabilities
- charitable activities
- education
- health
- culture
- environmental protection and promotion
- reconstruction and economic development
- protection and promotion of human rights
- support for democratic practices and civil society
- promotion of voluntary work
- consumer protection
- refugee assistance and support
- poverty eradication
- protection or care for injured and vulnerable animals
- social welfare
- protection against discrimination
- protection of cultural heritage
- any other activity that serves the public interest.

We also propose the following additional limitation to ensure that the listed activities are public benefit – they have to benefit the public at large or support socially or economically vulnerable groups.

#### *Certain Special Requirements for Public Benefit Organizations*

The legal framework should provide additional **requirements for public benefit organizations** such as:

- Leaders of ‘political parties’ or high-level ‘government officials’ (or their closest relatives – spouses, children, parents, etc.) cannot be in the management of a public benefit organization.
- Prohibition of the conflict of interests – a member of the Board of a PBO cannot take part in decisions that affect them or their closest relatives.

Organizations that obtain public benefit status in the northern part of Cyprus should have certain **limitations on the use of property**:

- The PBO does not distribute its assets or income or grant monetarily appraisable benefits to its founders, members, members of the management or controlling body, or persons who have made a donation during the last

twelve months (or to the members of the management or controlling body of such person or to the persons associated with such persons) – except when the PBO is engaged in social welfare or where the beneficiary belongs to the target group and does not receive additional benefits as compared with other members of the target group. This limitation does not cover the remuneration payment to the organization's employees.

- The organization can engage in economic activity but uses at least 50 % of the revenue received from the economic activity for public benefit purposes.
- If the PBO enters into a financial transaction with a related person or a legal entity in which that person can control the decisions, such a transaction has to be in obvious benefit of the organization or below market value.
- If the PBO is terminated, its property will be provided to another PBO.

If the organization loses its public benefit status, it has to return any financial benefits it has received from the Government in the last 2 years.

### *Monitoring and Reporting*

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Public benefit organizations are subject to stricter monitoring and reporting requirements in exchange for the benefits they receive. As a first step, they must prepare both narrative and annual financial reports and submit them to the 'authorities'. In many cases, they also have to **make those reports public**. The monitoring institution can also make audits of the organization and whether it follows the legal framework requirements. This usually happens by requesting additional information about how the organization follows the legal requirements.

The public benefit organization can lose its status if it does not provide/publish its annual reports regularly (e.g., more than 2 consecutive years) or violates the requirements for public benefit status (see the proposed requirements above). Even in case of violation, the procedure should allow rectification of the violation first, before a more serious measure is undertaken. The sanctions applied for violations should be proportional and should start in the following order – notification/reminder, fine, and only after all previous sanctions have not worked – removal of status.

### *Types of Benefits for PBOs*

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Public benefit organizations may be provided special benefits in exchange for their work for the public benefit. These benefits include some or all of the below:

- **Targeted state funding for projects of PBOs** – this may be provided by the respective administrations in charge of the specific public benefit areas.
- **Use of 'state/municipal' property** – this may include a lease to PBOs without a competition of property or even the provision for the use of state/municipality property for free, provided that they cover the operating and maintenance costs.

- **‘Tax’ benefits for PBOs** – the exemption from payment of corporate/income ‘tax; for the income from their nonprofit activities are usually applicable to all CSOs. However, there may be additional exemptions for CSOs from ‘taxes’ such as ‘inheritance tax’, ‘administrative taxes’, profit from economic activity, etc.
- **‘Tax’ benefits for donors of PBOs** – this includes benefits for both individuals and corporate entities.
- **Other benefits** – for example, in North Macedonia, donations are exempt from property tax in the following five years, after the year the property was donated.

Based on the above, we propose that:

- **The existing benefits in the different ‘tax’ legal framework will also be provided to public benefit organizations**, and the reference to charities will be removed.
- **PBOs are exempt from ‘tax’ on the income from economic activities** when such income is used to further their goals (including income from charitable lotteries).
- **PBOs are exempted from the requirements in the legal framework about collecting aid on the streets and from door to door** and do not need a permit to organize public collections.