



## HELLENIC REPUBLIC

### Ministry of Migration & Asylum

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### BRIEFING NOTE

#### **National legislation regarding NGOs participating in the implementation of actions in the field of international protection, migration and social integration.**

Over the last five years, as is known worldwide, the refugee / migration situation has become a major issue in Greece, with refugee and migration flows constantly being on the rise and the Greek State being called upon to manage it, bearing all the burden of a situation that concerns Europe as a whole. In this context, and adding to the extent and difficulty of continually trying to handle this strain, the Greek State was faced with the following problem:

Along with many NGOs, which rallied to provide vital assistance, and thus becoming helpful and invaluable allies in the considerable effort undertaken by the Greek State to address the situation, there has also been a large number of official and unofficial "organizations" and/or ordinary groups of people, self-proclaimed as NGOs, which, by claiming to provide assistance to refugees and migrants, acted without control, taking advantage of the situation for other reasons, inciting the residents of the accommodation facilities and triggering havoc, to the detriment of both refugees / migrants and Greek citizens and residents of these areas, resulting in preventing the Greek State from doing what needed to be done.

Some such groups have recently even come to the point of questioning Greek sovereignty over areas of the Greek islands where accommodation facilities are located. In addition, it was observed that the uncontrolled entry into accommodation facilities by groups of people or individuals self-proclaimed as "NGOs" or "members of NGOs", (with no data to check the validity of their claim), resulted in further concerns regarding the very safety of migrants / refugees and, in particular, of vulnerable groups, namely women and children, including the unaccompanied minors.

In this framework, and in full agreement and compliance with the relevant legislation, constitutional requirements, principles of the rule of law and European legislation - and always in the light of a continuous effort for improvement -, the necessary conditions and requirements were set for Greek and foreign NGOs active in our country in the field of international protection, migration and social integration to be registered in the Registry of Greek and foreign NGOs.

All the above-mentioned conditions and requirements of registration in the said Registry have become absolutely necessary in order for the Greek State,

a) to be able to ensure both that these NGOs actually provide the services they claim to provide for the safety of refugees and migrants and that their human rights are actually guaranteed;

but also

b) to be, at the same time, fully informed, as it should be, about the exact number and the legality of the actions of these NGOs - as is the case for any other legal or natural person operating within the Greek territory.

In full accordance with the above, 267 Greek and foreign NGOs have already submitted applications for registration and have created relevant registration accounts. Of course, the newly established conditions and requirements for achieving transparency and legality in this registration may not be to the liking of all organizations and understandably so - but this does not make the procedure "incompatible with the protection of NGO rights", nor conflicting to the principles of legality and proportionality. On the contrary, the very principles of democracy and the constitutional requirements dictate that the operation and actions of any legal entity should be transparent and lawful, even more so when taking place in the sensitive field of refugees.

**The purpose of establishing the above-mentioned Registry of NGOs is the need to register all NGOs active in our country on issues of international protection, migration and social integration, in order to ensure transparency in their modus operandi and, through that, optimize their provided services. It is also essential to safeguard the human rights of refugees and migrants as well as to take into consideration reasons of public interest.**

The same arguments apply to the creation of the Registry of NGO Members. More specifically, registering is necessary for all members of NGOs who, in order to perform their work, come in contact with refugees and migrants, especially women, children and unaccompanied minors, particularly for those who have free access and are active in accommodation facilities. The purpose is to be able to bar the access and direct contact with refugees and migrants for persons of criminal conduct, convicted of heinous criminal offenses, such as, for example, sexual abuse, pedophilia, pandering, drug trafficking, actual bodily harm etc. , but also to prevent and protect people from incidents of exploitation, smuggling and/or human trafficking, so that the human rights of refugees and migrants, and above all their very life, safety, physical integrity and mental health, can be guaranteed, as required by national law and international conventions. Furthermore, reported relevant incidents that have been observed, involving unaccompanied minors, can be limited or avoided.

In addition, **reasons of public interest** dictate the necessity to register these individuals, because of incidents of exploitation and incitement of the above-mentioned vulnerable groups to violent mass protests, which may serve vested interests, facilitate terrorist acts and challenge national sovereignty.

It is therefore understood that not only have the relevant principles of law not been circumvented but, on the contrary, they have been fully adopted.

The Greek State functions on rule of law, fully respecting the constitutional requirements, the fundamental principles of democracy and international conventions. All legal procedures are followed, and in case a breach occurs, the right to appeal at court is inalienable, as in all situations. It is emphasized once again that for reasons of public interest, as explained above, as well as for ensuring the human rights of a particularly vulnerable group of people, the

conditions and requirements set by the law and the JMD 10616/2020 for the registration of Greek and foreign NGOs and the Registration of Members of Greek and foreign NGOs, are not only justified, but also absolutely necessary.

In view of all the above-mentioned points, we would like to underline the following:

As is the case for many, if not all, natural and legal persons operating in the Greek territory, a necessary requirement for their activity to be legal is their registration in official Registries under the respective terms and conditions set by the Greek legislation (see, for example, General Commercial Registry, Courts of First Instance, Registries of Professional and Scientific Associations, etc.).

The new measures and obligations introduced by the current legislation were therefore not only proportionate to the particular circumstances prevailing in the field of action of the NGOs and the sensitive areas of the Greek islands, but also absolutely necessary.

Regarding the "restriction of the right of freedom of association" which is repeatedly mentioned by some NGOs, the following should be noted:

First of all, it should be clarified that **the right and freedom of association does not mean that it is exercised unconditionally or that no additional conditions and requirements can be set by a Member State for its exercise, provided that they are appropriate and proportionate towards achieving a goal.** In any case, the obligation to provide some supporting documents and the assessment of essential factors for the registration of an NGO in the Registry does not and could not hinder the activity of any NGO. Most of the documents required are supporting documents that, as legal entities, they are obliged to have and already have. It should be emphasized that there is absolutely no "fee" for registration and that the issuance and submission of all the requested documents and supporting documents under the current legislation, as can be observed by reading the relevant JMD, is done at no cost, with the sole exception of the chartered accountant's report and the ISO certification.

What is particularly striking is the fact that **many of the provisions of the contested Ministerial Decision**, which are continuously opposed to by some organizations for making the conditions and requirements of the registration particularly stringent, even to the extent of restricting the right and freedom of association, **set the same prerequisites for registration that were also necessary in 2018<sup>i</sup> registration procedures**, at least in terms of the data that must be disclosed to the Service, according to MD 7586/2018 (Government Gazette B '4794), including the requirement for providing a two-year financial audit in order to register.

Therefore, by merely reading and comparing the relevant conditions, requirements and procedures of the above Ministerial Decision, one could notice that any claim of "stringency" and "disproportional restriction" of the relevant rights of action by the organizations is completely unfounded. As far as the requirement for a two-year financial audit is concerned, although its necessity for registering in the old Registry never became an issue, it is now repeatedly outlined as a newly set condition.

Furthermore, in the Joint Statement concerns are voiced about the new measures and the fact that they introduce further financial reporting requirements, including the submission of a two-year audit, which the national rapporteurs claim is both costly and exclusive of newly-founded organizations, as well as organizations that do not have their headquarters or a subsidiary in Greece. They also characterize certain requirements as stringent, such as the requirement to provide the contracts of all paid and voluntary staff. It is noteworthy that these organizations associate their registration exclusively with issues of their activities or at least so it is said.

The fact that **the registration is directly linked to issues of funding rights of these organizations is purposely omitted, although this is the reason that fully justifies the submission of financial data.** Specifically, as explicitly mentioned in both the law and article 6 par. 2 of the relevant JMD:

“2. The registration of the organizations in the Registry of Greek and foreign Non-Governmental Organizations (NGOs) which is at the same time their certification, is a necessary requirement so that they:

a. can be involved in the field of international protection, migration and social integration within the Greek territory

b. can receive funding from national or EU resources in order to provide material reception conditions

and

c. can receive funding from the Ministry of Migration and Asylum with funds derived from the State Budget or the Public Investment Program for the Implementation of Actions of Civilian and Humanitarian Character, Social Integration, Migration and International Protection.”

**More specifically about the provision of financial statements dating back two years, it is evident that this presupposes the establishment and operation of the registered organization for a period longer than two years; otherwise the relevant financial data that are submitted cover a shorter period of time and the relevant judgment is made based on them.** It should be noted that a large number of NGOs have already been registered without the slightest difficulty in the submission of relevant documents. As for the organizations that have been rejected, it is pointed out that they submitted incomplete documents and no financial data, despite the fact that they were not newly established and, in any case, were active for more than two years in Greece.

Therefore, regardless of all that has already been mentioned in this note, since entering in the Registry gives the above organizations direct right of funding from the Greek State -the amount of which is not at all negligible and in many cases it is quite high-, it is absolutely reasonable and necessary, as in any law-abiding State, to request financial data and a report by chartered accountants, in order to ensure that the registered entity is a legal entity, operates lawfully and has a minimum of financial stability. Otherwise, there is a risk that the Greek state will be financing sham legal entities or even criminal organizations that, under the guise of "Non-Governmental Organizations that assist in migration situation in Greece", take advantage of the sensitive and particularly vulnerable group of asylum seekers and refugees and will be giving them the freedom to operate undisturbed in the Greek territory, with free access to accommodation facilities.

Specifically about the **requirement for the two-year financial audit**, in addition to and regardless of what has already been stated, it should be noted that there was an additional, important reason, for which it was set and maintained. This reason was the **need to ensure that the respective organization would fulfill the obligations of the programs it would undertake in the field of migration.** It had been observed that some NGOs undertook, within the framework of programs in the field of migration, actions and obligations which they left unfinished or financially pending. Considering this fact, it stands to reason why adopting and maintaining certain requirements that, combined with other criteria, would ensure the financial stability, status and constant presence of the organization active in the field of migration for a reasonable amount of time, became imperative.

Regarding the issues of personal data protection that are raised concerning the disclosure of the contracts of the members of the NGOs, the following should be mentioned:

According to the provisions of article 5 of law 4624/2019 (Government Gazette A' 137/29.8.2019) "Authority of Personal Data Protection, measures implementing Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and the transposition into the national law of the Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 and other provisions", "State authorities are allowed to process personal data, when the processing is necessary to perform a duty carried out in the public interest or in the exercise of official authority vested in the controller"

Furthermore, Article 35 of the same law, concerning the right to object, states that: "the right to object, according to Art. 21, para 1 of GDPR is not exercised against a public authority, if there is a vested public interest for the processing of data which takes precedence over the interests of an individual or if a provision of law requires the processing to take place".

The issue in question, in addition to the explicit wording of the relevant provisions, has been extensively covered in the bibliography and it has been accepted that, on the one hand "the public authority enjoys a special exemption from the obligation of a person's consent for the processing of personal data" (E. Papakonstantinou, "IT Law" 2010, par. 9.2.4) and on the other the "Processing is legitimate if it is necessary for the performance of a duty exercised in the public interest" (V. Sotiropoulos 2019 "Data Protection Officer").

From all that has been explained and covered in detail above, there is no room for doubt about the existence of compelling reasons of public interest that make it absolutely necessary and absolutely legal and permissible to provide the relevant supporting documents / data required for registration of a person in the Registry for Members of NGOs. We reiterate that these data and supporting documents are the absolutely necessary but also expected ones to be required, taking into account all the factors analyzed above (Article 11 MD)<sup>ii</sup>.

It should be noted that **these data are not requested for all members, volunteers, employees, associates, etc. of an NGO but, strictly, for those who are actively employed in the field on behalf of the respective NGO**, namely for those who come in contact with asylum seekers, refugees and migrants, having at the same time direct and unimpeded access to the accommodation facilities. Therefore, anyone who does not meet the above conditions or does not wish to submit such information to the NGO Members Registry, can certainly provide their work to these NGOs, but not actively in the field, i.e he/she cannot come in contact with vulnerable groups, such as asylum seekers, refugees and migrants, including unaccompanied minors, nor, of course, have access to accommodation units while operating inside and outside these units in the Greek territory. The need to control the protection and safeguarding of the human rights and freedoms of asylum seekers and refugees, as well as reasons of national security and overriding public interest, not only make the disclosure of the above information justified but also absolutely necessary.

Especially with regard to the allegation of "unfavorable treatment" of the previously registered NGOs as opposed to the new ones, which is vaguely cited without justification or further analysis, it should be pointed out that it is also completely unfounded and probably made in order to create false impressions.

**On the contrary, for the already registered organizations there are transitional provisions which differentiate them from the non-registered ones, recognizing their registration and maintaining this status until the final inspection of the data submitted by them is made by the Service (article 9 of JMD 10616/2020)<sup>iii</sup>.**

Finally, it should be emphasized that in case of a rejection decision on the application for registration and certification of any organization, taken for all the reasons that are always extensively analyzed in both the Proposal made by the Service and the Evaluation of the Committee and are incorporated in the decision of the Special Secretary for the Coordination of Stakeholders, the rejected organization always reserves the right to resubmit the relevant application even on the same day it would be notified about the rejection decision. In other words, no one is deprived of the right to properly re-submit his application and to have it accepted, despite its initial rejection, without even being restricted from re-submitting it. This can occur, of course, concurrently with and independently of the legal and inalienable right of each organization to appeal before a court.

It is therefore understood that the relevant conditions and requirements of the current legislation, not only do not contradict the Human Rights legislation but, on the contrary, contribute to its integration and safeguarding.

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## NOTES

### <sup>i</sup> Article 1

In the Registry of Greek and Foreign Non-Governmental Organizations operating in the Department of Organization of Procedures, of the Directorate of Human Resources and Administrative Support, of the General Directorate of Administrative and Financial Services, the stakeholders that fall into the following categories can be registered:

Non-Profit Legal Entities under Private Law and Non-Governmental Organizations, such as:

- Associations and Clubs,
- Specially recognized bodies (with special legislation),
- Public Benefit Institutions,
- Non-Profit Civil Companies,
- Subsidiaries of foreign Non-Governmental Organizations

### Article 2

Registration requirements

The stakeholders of article 1, are obliged when applying for registration in the Registry:

A. To have legal personality, which is proved by a legally published statute. Their statutes must provide for the implementation of activities of a Civilian and Humanitarian Nature, International Protection, Immigration or Social Integration.

B. The following information must be declared:

- Details or Identity of the stakeholder (name, VAT number, Tax Office, registered office, statute, geographical scope of activity)
- Details of a legal representative in Greece, where a relevant statement is required, that he/she has not been convicted by an irrevocable court decision for an offense mentioned in circumstance 1 of paragraph a of par. 2 of article 6 of p.d. 118/2007 and in article 43 par. 1 of p.d. 60/2007
- Registration of the stakeholder in the Court of First Instance or in the General Commercial Registry (G.E.M.I.)
- Services provided (Beneficiaries / target groups / areas of activity, etc.)
- Number and specializations of paid staff and number and specializations of voluntary service personnel with the necessary voluntary service contracts
- Financial data (resources and sources of funding - account / balance sheet data - budget of the last two years, etc.)

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- Tax and insurance information where required
  - Logistical infrastructure
  - Actions of the stakeholder (project report of two previous years, which will refer to at least: operation of structures / type / name / number of served / operating costs, provision services through structures, actions implemented by the organization in the previous two years, number of actions implemented per action category / titles of these actions, beneficiaries, collaborations with actors, current interventions).

The stakeholders under registration will be excluded from the Registry, when they do not meet, within a reasonable period of time, their obligations regarding the administrative procedure of their registration in the above Registry.

This registry will be updated for any changes at regular intervals. Greek and foreign NGOs are obliged to immediately inform about relevant changes / changes, especially the cessation of operation or the departure from the Greek territory or from the field of action.

### **Article 3**

Conditions for deletion / removal

The stakeholders of the above Registry are deleted / removed when:

1. they cease to meet the requirements of Article 2 of this Decision;
2. they are involved in illegal acts, which has either:
  - a) been proven by a final court decision or
  - b) has been demonstrated by a document of a competent public authority;
3. an inadequate execution of the work undertaken is ascertained, which is proved by a relevant document of the competent administrative authority, as the case may be.

In cases (2b) and (3), a prior hearing of the representative of the NGO concerned is required by a competent Hearing Committee.

The competent Committee is composed of:

- a) the Head of the Internal Audit Department of the General Secretariat of the Ministry of Migration Policy,
- (b) a representative of the Asylum Service; and
- c) a representative of the Reception and Identification Service.

The Head of the Department responsible for keeping the Registry is appointed as rapporteur to the competent Committee.

Each decision of the competent Committee is binding on the Department responsible for keeping the Registry, regarding the deletion / removal.

### **Article 4**

Registration process

The categories of stakeholders wishing to join the Registry hereby, must submit an electronic application for registration via the relevant web application of the Ministry mko@ypes.gr, completing all fields of application and submitting electronically the data referred to in Article 2.

For the registration and attribution of a registration number as well as for deletion / removal from the registry, a relevant decision is issued by the authorized Head of the Ministry of Migration Policy.

The registration of the stakeholders in the Registry will be a necessary requirement, both for their operation and for their consequent certification and their wider cooperation with the services of the Ministry of Migration Policy.

Foreign documents are required to be certified and translated in accordance with current legislation.

ii Specifically, according to the provisions of article 11 of the ministerial decision, **the following information is requested:**

- “1... .αα. Identity or passport details, TIN, AMKA, Tax Office,  
bb. Professional activity, headquarters,  
cc. Address of permanent residence in Greece,  
dd. Telephone number,  
ee. E-mail address. ”

**and the following supporting documents:**

- «2. The necessary supporting documents are the following:  
a. copy of identity card or passport,

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- b. a copy of a criminal record (issued up to three months before submission),
  - c. a solemn declaration by the natural person that he has not been convicted by a final conviction of any criminal offense (except those of the Traffic Code, disorderly conduct, beggary and anything that does not indicate a particularly serious criminal conduct, like participation in criminal organization, bribery, fraud, terrorist crimes or crimes related to terrorist activities, terrorist crimes or crimes related to terrorist activities, money laundering or terrorist financing and child labor and other forms of trafficking in human beings, drug trafficking, pedophilia, sexual abuse, life-threatening crimes , crimes against personal liberty, crimes against sexual freedom and crimes against property,
  - d) CV,
  - (e) an employment contract or a voluntary service contract. "

<sup>iii</sup> More specifically, in **article 9 of JMD 10616/2020** entitled "*Transitional provisions for the operation of the Registry of Greek and Foreign Non-Governmental Organizations (NGOs)*" state the following:

*«1. The stakeholders that have submitted a registration application and its inspection is pending or stakeholders that have already been registered in the Registry of Greek and Foreign Non-Governmental Organizations (NGOs) according to the provisions of Ministerial Decision 3063/2020 (B`1382) are not obliged to take any further action of re-submission of a relevant application or re-registration, but, within forty (40) days from the publication of this, they are obliged to submit any additional document required herein. In the event that this deadline elapses without action or the submitted supporting documents do not meet the conditions hereof, any relevant registration applications under consideration will be rejected and the registration of any already registered stakeholders will be invalid after a prior hearing of the legal representative of the stakeholder concerned by a competent Hearing Committee in accordance with the provisions of Article 8 hereof.*

**2. Specifically, regarding the stakeholders of the cases of the transitional provisions of article 9 par. 2 of joint ministerial decision 3063/2020 (B`1382), if the application for registration had been submitted within the exclusive deadline of article 9 of joint ministerial decision 3063/2020, these stakeholders continue their activity, entitled to funding, until the issuance of the relevant decision by the Special Secretary for the Coordination of Stakeholders of the Ministry of Migration and Asylum.**

**3. In any case and regardless of any provision hereof to the contrary, stakeholders that at the time of the publication hereof implement current programs or actions of international protection, migration and social integration within the Greek Territory, and in particular programs having to do with the provision of legal, psychosocial and medical services of par. 5, article 47, the provision of material reception conditions of par. 1, article 55 and the provision of information and briefing of articles 66 and 69 of law 4636/2019 (A`169), can receive the provided in the above programs or actions funding by national or EU resources. The above applies to current programs and actions that are in the process of implementation at the time of publication. In case of extension of programs or actions implemented according to the above, which is agreed after the publication hereof, the prior registration of the stakeholders in the "Registry of Greek and Foreign Non-Governmental Organizations (NGOs)" is required "**

And in article 9 par. 2 of JMD 3063/2020 (Government Gazette 1382 / 14-4-2020), which was repealed by article 18 of the above and now in force, JMD 10616/2020, the following were provided:

*“2. The stakeholders that have been included in the Registry of Greek and Foreign Non-Governmental Organizations (NGOs) according to the provisions of the ministerial decision 7586/2018 (B` 4794), a ministerial decision on the “Operation of the Registry of Greek and Foreign Non-Governmental Organizations (NGOs) active in the field of international protection, migration and social integration” should re-apply for registration and certification, in accordance with the provisions hereof within an exclusive period of two (2) months from its publication. In case the above deadline is expired without taking action, the above stakeholders will be deleted from the Register of Greek and Foreign Non-Governmental Organizations (NGOs) by decision of the Special Secretary for the Coordination of Stakeholders. If the application for their registration and certification is submitted within the deadline of the first subparagraph of this paragraph, the stakeholders that have been included in the Registry of Greek and Foreign Non-Governmental Organizations (NGOs) according to the provisions of ministerial decision 7586/2018 ( B` 4794), continue their activity until the issuance of the relevant decision of the Special Secretary for the Coordination of Stakeholders of the Ministry of Migration and Asylum as provided in paragraph 3 of article 6 hereof. ”*