

Annex to OSCE/ODIHR Opinion on the Draft Act of Poland on the National Freedom Institute - Centre for the Development of Civil Society

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of 2017

on the National Freedom Institute – Centre for the Development of Civil Society¹⁾

Grassroots activities of citizens who voluntarily become involved in organised actions for the common good, who provide assistance and support to those who need it and who shape the foundations for national and local cultures with their organic work hark back to the illustrious heritage of Polish freedom and reflect the ideals of civil society.

Civil society is a common space for practicing civic virtues such as responsibility for the nation and for local communities, solidarity and involvement in the building of grassroots civic institutions. Without the ability to recognise and increase the common good, the civic ties that underpin social capital will be missing.

The Polish state supports the ideals of its citizens and local communities, which are inspired by their commitment to freedom and Christianity and encompass the traditions of the Polish intelligentsia and also of the independence, national, religious, socialist and peasant movement traditions, recognising in them the continuation of centuries-old traditions of the Republic of Poland and thus protecting the rich heritage of its community of free citizens.

The Polish state strives to achieve the sustainable development of civil society in both territorial and thematic terms, extending special protection to small organisations that foster community attitudes and nurture local heritage. To this end, contributing to the fulfilment of

¹⁾ This Act amends the following Acts: the Act of 6 April 1984 on Foundations, the Act of 4 September 1997 on Government Administration Branches, the Act of 24 April 2003 on Public Benefit Activity and Volunteer Work and the Act of 18 October 2006 on the Disclosure of Information about State Security Authorities' Documents from the 1944–1990 Period and their Contents.

the ideals of freedom that underpin actions for the benefit of the community and attitudes that strengthen the state, and also to the development of mature patriotism, the Polish state shall actively work to increase the involvement of its citizens and civic organisations in public life, increase the number of grassroots and local initiatives and improving the institutional capacity of civil society organisations to carry out their missions.

Chapter 1

General Provisions

Article 1. 1. The Act sets forth the tasks and organisation of the National Freedom Institute – Centre for the Development of Civil Society, hereinafter referred to as the “National Institute”.

2. The National Institute shall be competent in matters of supporting the development of civil society and also of public benefit activity and volunteer work within the scope set forth in the Act of 24 April 2003 on Public Benefit Activity and Volunteer Work (Journal of Laws [Dz. U.] of 2016 items 1817 and 1948 and of 2017 items 60 and 573).

Article 2. 1. The National Institute is an executive agency within the meaning of the Act of 27 August 2009 on Public Finance (Journal of Laws [Dz. U.] of 2016 item 1870 as amended²), which is appointed to carry out tasks within the scope indicated in Article 1, para. 2.

2. The seat of the National Institute shall be the capital city of Warsaw.

3. The Chair of the Committee for Public Benefit Activity shall determine, by way of a regulation, the National Institute’s Charter, which shall set forth:

- 1) the detailed responsibilities and working procedures of the National Institute’s governing bodies;
- 2) the organisation of the National Institute;
- 3) the value of assets, which shall not exceed PLN 200,000, above which the Director of the National Institute shall require the consent of the Board of the National Institute in order to dispose of them

² Amendments to the consolidated text of the Act concerned were published in Journal of Laws [Dz. U.] of 2016 items 1948, 1984 and 2260 and of 2017 items 60, 191, 659, 933, 935 and 1089.

– taking into account the efficient and effective management of funds and performance of tasks.

Article 3. 1. Supervision over the National Institute shall be exercised by the Chair of the Committee for Public Benefit Activity referred to in Article 34a, para. 1, point 1 of the Act of 24 April 2003 on Public Benefit and Voluntary Activities, hereinafter referred to as “the Chair of the Committee”.

Chapter 2

Governing Bodies and Organisation of the National Institute

Article 4. Governing bodies of the National Institute shall include:

- 1) the Director of the National Institute, hereinafter referred to as the “Director”;
- 2) the Board of the National Institute, hereinafter referred to as the „Board”.

Article 5. 1. The Director shall be appointed by the Chair of the Committee for a five-year term of office from among persons who:

- 1) are Polish citizens;
- 2) enjoy full civic rights;
- 3) hold a master’s degree or equivalent;
- 4) have appropriate knowledge in the field of public benefit activities and volunteer work as well as associations and foundations in the Republic of Poland and have at least five years of experience in non-governmental organisations or other organised forms of civil society;
- 5) have not been finally convicted of intentional offences or intentional fiscal offences;
- 6) have an untarnished reputation and provide a guarantee of proper performance of the tasks entrusted to them;
- 7) have a command of the English language sufficient to communicate freely with respect to the activities of the National Institute;
- 8) have experience in managing employee teams and managerial competences.

2. The Director shall discharge his or her duties until the date on which his or her successor is appointed.

Article 6. 1. The Chair of the Committee shall dismiss the Director before his or her term of office expires exclusively in cases where:

- 1) he or she no longer meets any of the requirements set forth in Article 5, para. 1, points 1, 2 and 5;
- 2) he or she has resigned from office;
- 3) he or she is no longer capable of discharging the duties entrusted to him or her owing to a prolonged illness lasting more than six months;
- 4) he or she has submitted an untrue lustration declaration, which has been determined by a final court judgment.

2. The Chair of the Committee may dismiss the Director before his or her term of office expires in cases where:

- 1) the annual report on the National Institute's activities has not been approved or has not been submitted within the time limit set forth in Article 8, para. 7;
- 2) the National Institutes's annual financial statements have not been approved or are not produced within the time limit set forth in Article 52, para. 1 of the Accounting Act of 29 September 1994 (Journal of Laws [Dz. U.] of 2016 item 1047 as amended³);
- 3) he or she has acted in a manner that breaches the law, the principles of reliability, economy and expediency.

3. The Director's term of office shall expire upon his or her death or dismissal.

4. In the event of expiration of the Director's term of office, until the appointment of a new Director his or her duties shall be performed by the Deputy Director indicated by the Chair of the Committee.

Article 7. 1. Deputy Directors, who shall number no more than two, shall be appointed by the Chair of the Committee upon the Director's request. A person who meets the requirements stipulated in Article 5, para. 1 may be Deputy Director.

2. The Chair of the Committee shall dismiss Deputy Directors upon the Director's request, including without limitation in the cases set forth in Article 6, para. 1.

3. The Director shall determine the scope of the Deputy Director's (Deputy Directors') responsibilities.

Article 8. 1. The Director shall direct the activities of the National Institute, and shall, without limitation, make decisions on all matters not reserved for the Board.

³ Amendments to the consolidated text of the Act concerned were published in Journal of Laws [Dz. U.] of 2016 item 2255 and of 2017 items 61, 245, 791 and 1089.

2. The Director shall be authorised to independently enter into legal transactions on behalf of the National Institute and shall represent it vis-à-vis third parties.

3. The Director shall be responsible for the National Institute's financial management and for managing the National Institute's assets and disposing of them.

4. The Director shall prepare:

- 1) the draft annual financial plan for the National Institute;
- 2) the draft annual plan of activities for the National Institute;
- 3) the annual report on the National Institute's activities;
- 4) the annual financial statements of the National Institute;
- 5) the final report on the implementation of programmes for the development of civil society referred to in Article 23, para. 1.

5. The Director, having obtained the Board's opinion, shall submit to the Chair of the Committee for approval the draft annual financial plan for the Institute and the draft financial plan based on performance budgeting principles for the budget year in question and for the two subsequent years, taking into account the time limits set by the minister responsible for public finances for the submission of materials for a draft Budget Act.

6. By 30 September of each year, the Director shall submit to the Chair of the Committee for approval, having obtained the Board's opinion, the draft annual plan of activities for the National Institute for the next year.

7. By 30 June of each year, the Director shall submit to the Chair of the Committee for approval, having obtained the Board's opinion, the annual report on the National Institute's activities for the previous year, which shall include, without limitation, information on the progress status of the National Institute's individual tasks and the utilisation of the funds allocated to their financing.

8. The Director, having obtained the Board's opinion, shall submit to the Chair of the Committee for approval the annual financial statements of the National Institute prepared in accordance with the provisions of the Accounting Act of 29 September 1994, together with the audit report drawn up by the audit firm referred to in Article 36, para. 1.

9. The Chair of the Committee shall, by way of a regulation, determine the template for, and essential elements of, the annual report on the National Institute's activities so that it allows the verification of the information presented in the report and of its transparency.

Article 9. 1. The Board shall include:

- 1) a member appointed and dismissed by the President of the Republic of Poland;
- 2) three members appointed and dismissed by the Chair of the Committee;
- 3) a member appointed and dismissed by the minister responsible for public finance;
- 4) five members representing non-governmental organisations and the entities referred to in Article 3, para. 3 of the Act of 24 April 2003 on Public Benefit Activity and Volunteer Work, selected from among candidates each of whom is supported by at least 20 non-governmental organisations or entities referred to in Article 3, para. 3 of the Act of 24 April 2003 on Public Benefit Activity and Volunteer Work;
- 5) a member representing local government units.

2. Board members shall:

- 1) enjoy full civic rights;
- 2) have an untarnished reputation;
- 3) have not been finally convicted of intentional offences or intentional fiscal offences;
- 4) have knowledge and at least 5 years of professional experience with respect to the functioning of the civil society, public benefit activities and volunteer work and hold a master's degree or equivalent.

Article 10. 1. The Members of the Board referred to in Article 9, para. 1, point 4 shall be appointed and dismissed by the Chair of the Committee upon the request of the organisations they represent.

2. The Member of the Board referred to in Article 9, para. 1, point 5 shall be appointed and dismissed by the Chair of the Committee upon the request of the Joint Central Government and Local Government Committee.

3. The term of office of the Board shall be three years.

4. The term of office of a Board member shall expire at the end of his or her term of office, upon his or her death or upon his or her dismissal before the end of his or her term of office.

5. A member of the Board shall be dismissed before the end of his or her term of office if:

- 1) he or she has resigned;

- 2) upon his or her no longer being capable of performing the duties entrusted to him or her owing to a long-term illness of at least six months in duration;
- 3) he or she refuses to perform his or her duties or improperly performs his or her duties related to his or her membership of the Board;
- 4) upon his or her no longer meeting any of the requirements set forth in Article 9, para. 2, points 1 and 3;
- 5) he or she has submitted an untrue lustration declaration, which has been determined by a final court judgment.

6. A member of the Board referred to in Article 9, para. 1, points 1–3 may also be dismissed before the end of his or her term of office by the authority that has appointed him or her, on its own initiative.

7. Upon the dismissal or death of a member of the Board, the authority that has appointed him or her shall immediately appoint another person in his or her place. The provisions of paras. 1–5 shall be applicable *mutatis mutandis*.

8. The person appointed according to the procedure set forth in para. 7 shall hold office until the end of the term of office of the Board.

Article 11. 1. Activities of the Board shall be directed by its Chair who shall be elected by the Chair of the Committee from among members of the Board.

2. The Chair shall convene meetings of the Board as required but at least once every quarter.

3. The Chair shall convene meetings on his or her initiative, upon the request by the Director or upon the request of at least four members of the Board, within at most two weeks of the date of receipt of the request.

4. Minutes of meetings of the Board shall be recorded, which shall include the list of meeting participants and information on the course of the proceedings. The Chair shall submit a copy of the approved minutes to the Chair of the Committee within two weeks from the date of the meeting.

5. The Board shall decide on matters and deliver opinions by way of resolutions adopted by an absolute majority of votes cast in the presence of at least six Board members. In the event of a tie, the Chair of the Board shall have the casting vote.

6. Detailed procedures related to Board activities shall be set forth in the rules established by the Board.

7. A member of the Board shall be entitled to reimbursement of the accommodation and

travel expenses incurred in connection with his or her participation in the meetings of the Board in the amount and on the terms set forth in the provisions issued pursuant to Article 77⁵, para. 2 of the Act of 26 June 1974 – Labour Code (Journal of Laws [Dz. U.] of 2016 items 1666, 2138 and 2255 and of 2017 items 60 and 962).

8. A Member of the Board shall not receive remuneration for participation in its work.

Article 12. 1. The Board shall deliver opinions concerning the following matters:

- 1) the draft annual financial plan for the National Institute referred to in Article 8, para. 4, point 1;
- 2) the draft annual plan of activities for the National Institute referred to in Article 8, para. 4, point 2;
- 3) the annual report on the National Institute's activities referred to in Article 8, para. 4, point 3;
- 4) the annual financial statements of the National Institute referred to in Article 8, para. 4, point 4;
- 5) the draft programmes for the development of civil society referred to in Article 23, para. 1;
- 6) the final report on the implementation of programmes for the development of civil society referred to in Article 27;
- 7) the selection of the audit firm referred to in Article 36.

2. In order to perform its tasks, the Board shall have the right to review the National Institute's documents and may request the information required from the Director and from his or her deputies.

Article 13. 1. The Director and Deputy Directors shall receive remuneration pursuant to the rules set forth in the provisions of the Act of 3 March 2000 on the Remuneration of Persons Directing Certain Legal Entities (Journal of Laws [Dz. U.] of 2015 item 2099 and of 2016 items 1202 and 2260).

2. The rules of remunerating, and granting awards to, employees of the National Institute shall be set forth in the remuneration rules determined by the Director with the approval of the Chair of the Committee.

Article 14. 1. An open and competitive recruitment procedure shall be followed when hiring employees of the National Institute, including the heads of organisational units and their deputies.

2. The announcement concerning recruitment shall be published on the National Institute's website within the Public Information Bulletin referred to in the Act of 6 September 2001 on Access to Public Information (Journal of Laws [Dz. U.] of 2016 item 1764 and of 2017 item 933) and in a location accessible to the public at the National Institute's seat.

3. The announcement concerning recruitment shall include at least:

- 1) the name and address of the National Institute;
- 2) the specification of the position;
- 3) the requirements related to the position;
- 4) the job description for the position;
- 5) the indication of required documents;
- 6) the deadline and place for submitting documents;
- 7) information on recruitment methods and techniques.

Article 15. Information on applicants who take part in the recruitment process shall be public information within the scope included in the requirements set forth in the recruitment announcement.

Article 16. The time limit for submitting documents set forth in the recruitment announcement shall not be shorter than 14 days of the date on which the announcement is published on the National Institute's website within the Public Information Bulletin.

Article 17. 1. Following the expiration of the time limit referred to in Article 16, the list of applicants who meet the formal requirements set forth in the recruitment announcement shall be immediately published in the manner referred to in Article 14, para. 2.

2. The list referred to in para. 1 shall include the applicant's first name and family name and his or her place of residence within the meaning of provisions of the Act of 23 April 1964 – Civil Code (Journal of Laws of 2017 items 459, 933 and 1132).

Article 18. 1. A report shall be drawn up concerning the completed recruitment of applicants for vacant National Institute positions.

2. The report shall include without limitation:

- 1) the specification of the position for which recruitment was conducted;
- 2) the number of applicants;

- 3) the first names, family names and addresses of no more than five best applicants ranked according to the degree to which they meet the requirements set forth in the recruitment announcement;
- 4) information on the recruitment methods and techniques used;
- 5) the justification for the selection made.

Article 19. 1. Information on recruitment results shall be published within 14 days of the date on which the selected applicant is employed or on which recruitment is finished where no applicant is employed.

2. The information referred to in para. 1 shall include:

- 1) the specification of the position for which recruitment was conducted;
- 2) the name of the applicant selected and his or her address referred to in Article 17, para. 2 or information that no applicant was employed;
- 3) the justification for the selection made.

3. The information referred to in para. 1 shall be published in the manner referred to in Article 14, para. 2.

Article 20 If the employment relationship of a person selected by way of recruitment is terminated within three months of the date on which the employment relationship commenced, the next person from among the applicants referred to in Article 18, para. 2, point 3 may be employed in the same position. Information on the employment of this person shall be published pursuant to the provisions of Article 19.

Article 21. No spouses, relatives of the first and second degrees or relatives by affinity of the first degree or persons who are in adoption, custodial or guardianship relationships may be employed in the same reporting line at the National Institute.

Article 22. 1. The manner in which the National Institute operates shall be set forth in the rules determined by the Director.

2. The Act of 26 June 1974 – Labour Code shall apply to employees of the National Institute.

Chapter 3

National Institute's Tasks

Article 23. 1. The National Institute shall manage programmes for the development of civil society, performing the tasks referred to in Article 24.

2. The Council of Ministers shall adopt, by way of resolutions, programmes for the development of civil society.

Article 24. 1. Tasks of the National Institute shall include efforts aimed at supporting the development of the civic community and of the civil society in the Republic of Poland, in particular by increasing the institutional efficiency of non-governmental organisations and other organised forms of civil society and their independence and promoting professionalism while maintaining their civic nature.

2. The National Institute shall also strengthen the capacities of non-governmental organisations and other organised forms of civil society by, *inter alia*, supporting the raising of non-budgetary funds for their activities aimed at promoting the development of civil society and the development of human resources, with particular emphasis on volunteers.

3. The National Institute's tasks shall also include:

- 1) promoting the involvement of citizens, non-governmental organisations and other organised forms of civil society in public life, shaping public policies and decision-making processes;
- 2) promoting civic control over public institutions and institutions of public trust, increasing their transparency and compliance with good governance rules;
- 3) promoting grassroots civic activities, fostering the citizens' community attitudes, supporting and promoting volunteer work;
- 4) upholding and disseminating culture and the national and local traditions that are rooted in Christian heritage, nurturing Polishness and developing national, civic and cultural awareness as well as social solidarity and sensitivity;
- 5) promoting the respect for, and protection of, human and civil rights;
- 6) civic education, shaping civic attitudes and promoting the involvement of citizens and civil society organisations in the performance of formal and informal education tasks;
- 7) supporting environmental protection and animal rights;
- 8) participating in the implementation of international civil society development programmes, including programmes co-financed from foreign sources;
- 9) conducting and supporting research programmes relating to the civil society;
- 10) disseminating information on planned and announced competitions among non-governmental organisations and other organised forms of civil society;

- 11) disseminating information on the effects of completed tasks and maintaining a repository of model projects, good practices, results and products developed within the framework of civil society development programmes;
- 12) performing other tasks commissioned by the Chair of the Committee while ensuring the funds referred to in Article 32, para. 1, point 4 for their performance.

4. In the performance of the tasks referred to in paras. 1–3, the National Institute may cooperate with foreign and domestic entities, including without limitation as a partner in joint venture agreements.

5. The National Institute shall perform tasks independently or shall commission the performance of the tasks referred to in paras. 1–3 to non-governmental organisations and the entities listed in Article 3, para. 3 of the Act of 24 April 2003 on Public Benefit Activity and Volunteer Work selected by way of an open tender.

6. The National Institute may participate in the implementation of the operational programmes referred to in the Act of 11 July 2014 on the Rules of Implementing Programmes in the Field of Cohesion Policy Funded in the 2014–2020 Financial Perspective (Journal of Laws [Dz. U.] of 2016 items 217, 1579 and 1948) and joint programmes or projects co-financed from the funds referred to in Article 5, para. 1, point 2 of the Act of 27 August 2009 on Public Finance.

Article 25. 1. The National Institute shall carry out the evaluation of programmes for the development of civil society during their lifetime, including without limitation in order to determine whether the implementation of these programmes leads to the attainment of their goals and whether it is in line with state policy objectives in the area of supporting the development of civil society.

2. After the implementation of a programme for the development of civil society has been completed, it shall be evaluated, including without limitation in order to assess the degree to which its goals have been attained or to identify the reasons for its failure to attain them.

3. The evaluation referred to in paras. 1 and 2 shall be carried out in accordance with the timetable provided for in the programmes in question.

4. By 30 June of each year, the Director shall submit to the Board information about the results of evaluation carried out in the previous year.

5. The National Institute may commission the evaluation to external entities selected in an open competition.

Article 26. Within the scope of supervision, the Chair of the Committee shall:

- 1) exercise control over the activities of the National Institute in terms of its legality, economy, expediency and reliability on the terms and according to the procedure set forth in the provisions on control within government administration;
- 2) approve:
 - a) the draft annual financial plan for the National Institute;
 - b) the draft annual plan of activities for the National Institute;
 - c) the annual report on the National Institute's activities;
 - d) the annual financial statements of the National Institute.

Article 27. 1. The Director, having obtained the Board's opinion, shall submit to the Chair of the Committee for approval the final report on the implementation of programmes for the development of civil society together with information on the evaluation referred to in Article 25, para. 2.

2. The Council of Ministers shall decide on continuing the funding of programmes for the development of civil society.

Chapter 4

Procedure for the Performance of the National Institute's Tasks

Article 28. Provisions of the Act of 24 April 2003 on Public Benefit Activity and Volunteer Work shall apply to the performance of the National Institute's tasks referred to in Article 24, paras. 1–3 unless the following provisions provide otherwise.

Article 29. With respect to the performance of the National Institute's tasks, the Director shall be the public administration authority within the meaning of the Act of 24 April 2003 on Public Benefit Activity and Volunteer Work.

Article 30. 1. The National Institute shall implement the programmes referred to in Article 23, para. 1 independently or by way of an open tender pursuant to Title II, Chapter 2 of the Act of 24 April 2003 on Public Benefit Activity and Volunteer Work.

2. The Director shall determine the rules of the tender, which shall be approved by the Board.

3. The rules of the tender shall, without limitation, lay down:

- 1) the subject matter of the tender and its duration, including the type of task eligible for funding under the project;
- 2) the entities eligible to participate in the tender;

- 3) the deadline and place for submitting bids to perform the task and their form;
- 4) the template of the bid to perform the task;
- 5) the template of the agreement on the performance of the task;
- 6) the amount allocated to the performance of the task in the tender;
- 7) rules for awarding grants in the tender and the maximum allowable level of application financing or the maximum allowable amount of application financing;
- 8) the manner of publication of tender results;
- 9) the form and manner of providing clarifications to applicants in matters related to the tender;
- 10) the rules of accounting for grants;
- 11) general rules for drawing up the task performance report.

4. When evaluating the applications submitted for the tender, the following criteria shall be taken into account:

- 1) the adequacy of the bid in relation to programme objectives, and the objectives and needs of its participants and of the organisations involved in its implementation;
- 2) the quality of the action plan included in the bid and its implementation;
- 3) the potential impact of the actions included in the bid on participants, the organisations involved in bid implementation and other entities that are stakeholders in those actions as well as the durability of the results of the actions and the quality of the measures aimed at disseminating the results;
- 4) the feasibility of implementing the bid in a partnership, taking into account the experience of its members;
- 5) justification for the costs planned with respect to the objective, results and the scope of the actions covered by the bid.

Article 31. Within the framework of the programmes for the development of civil society referred to in Article 23, para. 1, the National Institute may subsidise the institutional development of non-governmental organisations and of the entities referred to in Article 3, para. 3 of the Act of 24 April 2003 on Public Benefit Activity and Volunteer Work, including the organisational and administrative costs of their activities.

Chapter 5

Financial Management of the National Institute

Article 32. 1. Revenue of the National Institute shall include:

- 1) a targeted subsidy for the implementation of programmes for the development of civil society referred to in Article 23, para. 1 and for the performance of the tasks referred to in Article 24, paras. 1 and 2, and in para. 3, points 1–11;
- 2) an earmarked subsidy to cover ongoing costs of managing the programmes implemented and tasks performed by the National Institute referred to in point 1, including the costs of remunerating the members of the competition board for delivering opinions on the proposals submitted;
- 3) a targeted subsidy for the financing or co-financing of investment costs related to the performance of the tasks referred to in point 1.
- 4) a targeted subsidy for the performance of the tasks referred to in Article 24, para. 3, point 12.

2. The National Institute's revenue may include funds from other sources, including without limitation:

- 1) the European Union budget;
- 2) programmes financed with non-repayable funds from the assistance provided by member states of the European Free Trade Association (EFTA) or other non-repayable funds from foreign sources;
- 3) interest on available funds deposited pursuant to provisions on public finances;
- 4) bequests and donations.

3. The funds referred to in para. 1 that have not been used in the budget year in question shall be returned to the state budget pursuant to the provisions of the Act of 27 August 2009 on Public Finance.

4. The funds referred to in paras. 1 and 2 shall be spent by the National Institute pursuant to the provisions of the Act of 27 August 2009 on Public Finance.

5. The grants referred to in para. 1 shall be transferred by the President of the Council of Ministers upon the Director's request.

Article 33. 1. The National Institute shall manage its finances on the basis of an annual financial plan determined pursuant to the provisions of the Act of 27 August 2009 on Public Finance for a period of one financial year. The financial year shall be the budget year.

2. The basis for the National Institute's financial management from 1 January until the date on which the Chair of the Committee approves the annual financial plan for the National Institute shall be the draft plan drawn up on the Director.

3. Amendments to the financial plan for the National Institute shall be introduced in accordance with the procedure and the rules set forth in the Act of 27 August 2009 on Public Finance.

Article 34. Expenses under individual titles shall be implemented within the limits of the amounts set forth in the financial plan.

Article 35. 1. The National Institute shall establish the following funds:

- 1) a statutory fund;
- 2) a reserve fund;
- 3) a social benefit fund;
- 4) a bonus fund.

2. The National Institute's statutory fund shall represent the equivalent of the net value of fixed assets, intangible assets and other assets held by the National Institute as at the date on which it commences its activities.

3. The reserve fund:

- 1) shall be increased by the amount of net profit of the National Institute;
- 2) shall be reduced by the amount of net loss of the National Institute.

4. The bonus fund shall correspond to 8.5% of payroll.

Article 36. 1. The annual financial statements of the National Institute shall be subject to audit by an audit firm in accordance with the audit requirements set forth in the Accounting Act of 29 September 1994 and in the Act of 11 May 2017 on Statutory Auditors, Audit Firms and on Public Supervision (Journal of Laws [Dz. U.] item 1089).

2. The Chair of the Committee, having consulted the Board, shall select the audit firm referred to in para. 1 pursuant to the provisions of the Public Procurement Act of 29 January 2004 (Journal of Laws [Dz. U.] of 2015 item 2164 as amended⁴).

⁴ Amendments to the consolidated text of the Act concerned were published in Journal of Laws [Dz. U.] of 2016 items 831, 996, 1020, 1250, 1256, 1579, 1920 and 2260 and of 2017 item 993.

Chapter 6

Amendments to Existing Provisions

Article 37. Article 12, para. 2a of the Act of 6 April 1984 on Foundations (Journal of Laws [Dz. U.] of 2016 item 40) shall be replaced by the following:

“2a. The provision of para. 2 shall not apply to foundations with the status of public benefit organisations that have published on the website of the National Freedom Institute – Centre for the Development of Civil Society within the Public Information Bulletin a technical report on their activities and financial statements in accordance with the provisions of the Act of 24 April 2003 on Public Benefit Activity and Volunteer Work (Journal of Laws [Dz. U.] of 2016 items 1817 and 1948 and of 2017 items 60 and 573)”.

Article 38. In the Act of 4 September 1997 on Branches of Government Administration (Journal of Laws [Dz. U.] of 2017 items 888 and 1086), Article 31, para. 1, points 9 and 10 shall be repealed.

Article 39. The Act of 24 April 2003 on Public Benefit Activity and Volunteer Work (Journal of Laws [Dz. U.] of 2016 items 1817 and 1948 and of 2017 items 60 and 573) shall be amended as follows:

1) after Article 1, Article 1a shall be added, which shall read as follows:

“Article 1a. 1. The Committee for Public Benefit Activity shall be established, hereinafter referred to as “the Committee”.

2. The Committee shall be a government authority competent in matters of public benefit activity and volunteer work, including the programming, coordination and organisation of collaboration between public administration authorities and entities engaging in public benefit activity.”;

2) in Article 2, point 7, the full stop shall be replaced by a semicolon and the following points 8 and 9 shall be inserted:

“8) the National Institute – this shall be construed as the National Freedom Institute – Centre for the Development of Civil Society referred to in Article 1 of the Act of 2017 on the National Freedom Institute – Centre for the Development of Civil Society (Journal of Laws [Dz. U.] item ...);

9) the Director of the National Institute – this shall be construed as the Director referred to in Article 4, point 1 of the Act of 2017 on the National Freedom Institute – Centre for the Development of Civil Society.”;

3) Article 5c shall be replaced by the following:

“Article 5c. The Minister, after consulting the Public Benefit Activity Council, hereinafter referred to as “the Council”, may – within the scope of his or her competence – develop ministerial programmes supporting the development of non-governmental organisations and of the entities referred to in Article 3, para. 3, and support these programmes financially, including without limitation in accordance with the procedure referred to in Article 11.”;

4) the phrase “in consultation with the minister responsible for social security” used in Article 10a, para. 6 and in the introduction to the enumeration in Article 23, para. 5 shall be replaced by “in consultation with the Chair of the Committee”;

5) the phrase “the minister responsible for social security” used in the introduction to the enumeration in Article 19, in Article 19a, para. 7d, in Article 23, para. 8, in Article 27ab, para. 6, in Article 27c, para. 3, in Article 28, para. 1, in Article 29, paras. 1, 2 and 4, in Article 33, para. 1, in Article 33b, in Article 35, para. 1, in Article 36, paras. 2 and 3, in Article 37, in Article 40 and in Article 40a shall be replaced by “the Chair of the Committee”;

6) the phrase “the minister responsible for social security” used in Article 22, para. 6, para. 7, point 1, paras. 8 and 9, in Article 22a, para. 1, point 2, letter a), in Article 27, para. 2a, in Article 27a, paras. 2, 6 and 7, in Article 27aa, paras. 4 and 5, in Article 27ab, para. 2, in Article 33, paras. 2 and 3, in the introduction to the enumeration in Article 33a, para. 1, in paras. 3 and 4 and in Article 33aa shall be replaced by “the Director of the National Institute”;

7) the phrase “the website of the office providing clerical support to the minister responsible for social security” used in Article 23, paras. 2c, 6–6c, in Article 27a, para. 3, point 1 and in Article 33a, para. 1, point 1 shall be replaced by “the website of the National Institute within the Public Information Bulletin”;

8) Article 27, para. 4 shall be replaced by the following:

“4. The Director of the National Institute shall by 31 December of each year publish on the website of the National Institute within the Public Information Bulletin

information, drawn up on the basis of the reports referred to in Article 23, paras. 1–2 and 2b, concerning, without limitation, the spending by public benefit organisations of the funds obtained from the 1% of personal income tax donated in the previous year.”;

9) in Article 27a:

a) para. 1 shall read as follows:

“1. The Director of the National Institute shall maintain in electronic form a list of organisations having the status of public benefit organisations as at 30 November of the fiscal year to which a taxpayer of personal income tax may donate 1% of personal income tax indicated on the tax returns filed for the tax year in question, and shall publish this list on the website of the National Institute within the Public Information Bulletin no later than on 15 December of the fiscal year.”;

b) para. 10 shall be replaced by the following:

“10. The Chair of the Committee, in consultation with the minister responsible for public finance and the Minister of Justice, shall determine, by way of a regulation, the procedures, time limits and the format and structure of the data for the exchange of information concerning the public benefit organisations referred to in paras. 4 and 5 between the Director of the National Institute on the one hand and the Minister of Justice and the minister responsible for public finance on the other hand, bearing in mind the need to ensure the efficient performance of the tasks related to the drawing up and maintaining the list referred to in para. 1, and to the transfer to public benefit organisations of funds from the 1% of personal income tax donated.”;

10) Article 29, para. 3 shall be replaced by the following:

“3. The Chair of the Committee may entrust the audit to:

- 2) the governor of the province in question;
- 3) the Director of the National Institute.”;

11) in Title II, after Chapter 4, Chapter 4a shall be inserted, which shall read as follows:

“Chapter 4a

Organisation and Procedures of the Committee

Article 34a. 1. The Committee shall include:

- 1) the Chair of the Committee;
- 2) Deputy Chair – Secretary of State in the Chancellery of the President of the Council

of Ministers appointed and dismissed by the President of the Council of Ministers at the request of the Chair of the Committee;

3) members:

a) ministers whose detailed competences are determined by the provisions of Article 33, paras. 1 and 1a of the Act of 8 August 1996 on the Council of Ministers (Journal of Laws [Dz. U.] of 2012 item 392 and of 2015 item 1064), who shall be represented by the relevant Secretaries of State, subject to para. 3;

b) the Director of the National Institute.

2. The Chair of the Committee shall be a member of the Council of Ministers.

3. Ministers may participate in the work of the Committee at any time.

4. Committee meetings may be attended by representatives of government authorities invited by the Chair of the Committee and by other persons invited by the Chair of the Committee.

5. Persons who have relevant knowledge or experience in the area of responsibilities of the Committee and who have been invited by the Chair of the Committee on his or her own initiative or at the request of individual members of the Committee may also participate in meetings of the Committee in an advisory capacity.

Article 34b. 1. The Committee shall be responsible for:

1) coordinating and monitoring collaboration between government authorities and the sector of non-governmental institutions and other organised forms of civil society;

2) preparing and consulting with non-governmental organisations and with the entities listed in Article 3, para. 3 the programmes for the development of civil society, and monitoring their implementation;

3) drawing up, and delivering opinions on, draft legislation related to the development of civil society.

2. The Committee shall also be responsible for:

1) collaboration in matters related to the development of civil society with other states, organisations and international and foreign institutions;

2) collaboration in the preparation of reports on the implementation of international agreements concerning the development of civil society binding on the Republic of Poland;

3) delivering opinions on the possibility of the Republic of Poland acceding to international agreements concerning the development of civil society.

Article 34c. 1. The work of the Committee shall be directed by the Chair of the Committee.

2. The Chair of the Committee may, on his or her own initiative or at the request of a member of the Committee, set up working groups, specifying their composition, scopes of responsibilities and the procedure and timetable for their work.

Article 34d. 1. The Committee shall make decisions by way of resolutions adopted at its meetings.

2. Resolutions of the Committee shall be adopted in an open vote, by a simple majority of the votes cast, in the presence of at least half of members of the Committee, including the Chair of the Committee. In the event of a tie, the Chair of the Committee shall have the casting vote.

3. Resolutions on behalf of the Committee shall be signed by the Chair of the Committee.

4. Draft resolutions of the Committee may also be put to the vote by circulation.

5. The persons invited to attend a Committee meeting who are referred to in Article 34a, para. 4 and 5 shall not have the right to vote on resolutions.

Article 34e. The detailed organisation and procedures of the Committee shall be stipulated in the rules adopted by the Committee at its first meeting.

Article 34f. The Committee shall adopt the working plan of the Committee and submit it to the Council of Ministers for approval.

Article 34g. 1. Clerical support to the Committee and to the Chair of the Committee shall be provided by the Chancellery of the President of the Council of Ministers.

2. Committee meetings shall be held at the Chancellery of the President of the Council of Ministers.

3. In justified cases, meetings of the Committee may be held at another location indicated by the Chair of the Committee.

4. The costs of the clerical support referred to in para. 1 shall be covered from the state budget, from the section at the disposal of the Chancellery of the President of the Council of Ministers.

Article 34h. By 30 June of each year, the Chair of the Committee shall submit to the Council of Ministers a report for the previous calendar year containing information on his or her activities in the area of supporting the development of civil society and on the performance of the plan referred to in Article 34f.”;

12) the phrase “from the budget section at the disposal of the minister responsible for social security” in Article 39, paras. 1 and 3 shall be replaced by “from the budget section at the disposal of the Chancellery of the President of the Council of Ministers”;

13) Article 41 shall read as follows:

“Article 41. Administrative and clerical support to the Council shall be provided by the Chancellery of the President of the Council of Ministers.”;

14) in Title II, Chapter 7 shall be inserted, which shall read as follows:

“Chapter 7

Governor’s plenipotentiary for civil society

Article 41k. A provincial governor may appoint a provincial governor’s plenipotentiary for civil society. The provision of Article 18, para. 1 of the Act of 23 January 2009 on the Provincial Governor and Government Administration in the Province (Journal of Laws [Dz. U.] of 2015 items 525 and 1960, of 2016 items 1948 and 2260, and of 2017 items 935 and 976) shall not apply.

Article 41l. 1. Tasks of the governor’s plenipotentiary for civil society shall include:

1) monitoring the implementation of programmes for the development of civil society and of the programmes referred to in Article 5b, para. 1;

3) coordinating the collaboration between government administration authorities in the province in question with those non-governmental organisations that promote the development of civil society in accordance with the scope of their statutory tasks.”.

Article 40. The Act of 18 October 2006 on the Disclosure of Information about State Security Authorities’ Documents from the 1944–1990 Period and their Contents (Journal of Laws [Dz. U.] of 2016 items 1721, 1948, 2260 and 2261) shall be amended as follows:

1) in Article 4, point 59, the full stop shall be replaced by a semicolon and the following point 60 shall be inserted:

“60) the Director of the National Freedom Institute – Centre for the Development of Civil Society and his or her deputies, members of the Board of the National Freedom Institute – Centre for the Development of Civil Society.”;

2) in Article 8, point 55, the full stop shall be replaced by a semicolon and the following point 56 shall be inserted:

“56) point 60 – the Chair of the Committee for Public Benefit Activity.”;

3) in Article 21a, para. 2b shall be replaced by the following:

2b. When issuing a decision stating that an untrue lustration declaration has been submitted, the court shall prohibit the person in question from serving in the public office referred to in Article 4, points 2–57 and 60 for a period from three to ten years.”;

4) in Article 21e, para. 1 shall be replaced by the following:

“1. A final court decision stating that an untrue lustration declaration has been submitted by the person subject to lustration shall be deemed obligatory grounds for depriving the person in question of the public office held by him or her referred to in Article 4, points 2 to 54, 56, 57 and 60, subject to Article 21f.”.

Chapter 7

Transitional, Adjusting and Final Provisions

Article 41. 1. Proceedings initiated and not completed by a final decision or final court decision, within the scope indicated in Article 22, para. 9, Article 27, para. 2a, Article 27aa, para. 4, Article 33, para. 3, Article 33a, para. 1 of the Act as amended in Article 39, in their wording before the date of entry into force of this Act, shall be conducted on the basis of previous regulations by the authority that has assumed the relevant tasks and competences pursuant to the provisions of this Act.

2. The receivables and liabilities of the minister responsible for social security related to the exercise of his or her powers arising from Title II, Chapters 3 and 4 of the Act amended in Article 39 shall become receivables and liabilities of the National Institute as of the date of entry into force of this Act.

3. The National Institute shall become party to the contracts and agreements entered into in the exercise of the powers of the minister responsible for social security arising from Title II, Chapters 3 and 4 of the Act amended in Article 39.

Article 42. 1. The Civic Initiative Fund 2014–2020 Programme annexed to Resolution No. 209/2013 of the Council of Ministers of 27 November 2013 on adopting the Civic Initiative Fund 2014–2020 Programme shall become a programme for the development of civil society within the meaning of Article 23, para. 1 of this Act.

2. The receivables and liabilities of the minister responsible for social security arising from the implementation of the resolution referred to in para. 1 shall become receivables and liabilities of the National Institute as of the date of entry into force of this Act.

3. The National Institute shall become party to contracts and agreements entered into as a result of the implementation of the resolution referred to in para. 1 as of the date of entry into force of this Act.

4. In the case of administrative proceedings concerning the return of grants awarded under the Civic Initiative Fund 2009–2013 Operational Programme annexed to Resolution No. 238/2008 of the Council of Ministers of 4 November 2008 on the adoption of the National Civic Initiative Fund 2009–2013 Operational Programme and in connection with the implementation of the resolution referred to in para. 1, the Director shall be deemed to be authority that awarded the grant within the meaning of Article 169, para. 6 of the Act of 27 August 2009 on Public Finances.

5. The Director shall by operation of law take the place of the minister responsible for social security in the following proceedings that continue as at the date of entry into force of this Act:

- 1) enforcement proceedings concerning the grants referred to in para. 4, as creditor;
- 2) proceedings before administrative courts concerning the grants referred to in para. 4, as authority.

Article 43. Previous secondary regulations shall continue to apply to the list of organisations with the status of public benefit organisation, which is referred to in Article 27a, para. 1 of the Act amended in Article 39 (as at 30 November 2016), to which organisations a taxpayer of personal income tax may transfer 1% of the tax indicated in his or her returns for the tax year, and also to the activities related to the drawing up and maintenance of this list, with the proviso that the powers granted by these regulations to the minister responsible for social security shall be exercised by the Director.

Article 44. 1. As of the date of entry into force of this Act, members of the civil service corps who are employed at the office that provides clerical support to the minister responsible for social security and who performed until that date the tasks assigned by this Act to the Chancellery of the President of the Council of Ministers or to the National Institute, shall become members of the civil service corps employed at the Chancellery of the President of the Council of Ministers. 2. The current employer shall be obliged, within 14 days of the date on which this Act is promulgated, to notify in writing the persons referred to in para. 1 about

the changes that are to occur with respect to their employment relationships. The provision of Article 23¹, para. 4 of the Act of 26 June 1974 – Labour Code shall apply *mutatis mutandis*.

3. The second sentence of the provision of para. 2 shall not apply to those civil servants to whom provisions of the Act of 21 November 2008 on the Civil Service (Journal of Laws [Dz. U.] of 2016 items 1345, 1605, 1807, 1948 and 2260) apply.

Article 45. 1. The ceiling on spending from the state budget for the years 2017–2026 resulting from financing the Act shall amount to PLN 35,660,000, with the proviso that limits for individual years shall be:

- 1) 2017 – PLN 1,580,000;
- 2) 2018 – PLN 3,600,000;
- 3) 2019 – PLN 3,700,000;
- 4) 2020 – PLN 3,820,000;
- 5) 2021 – PLN 3,850,000;
- 6) 2022 – PLN 3,760,000;
- 7) 2023 – PLN 3,780,000;
- 8) 2024 – PLN 3,800,000;
- 9) 2025 – PLN 3,930,000;
- 10) 2026 – PLN 3,840,000.

2. If there is a threat that the spending limits referred to in para. 1 for the budget year in question may be breached, an adjustment mechanism shall be triggered, which shall reduce the material costs incurred by the National Institute.

3. The authority competent to implement the adjustment mechanism referred to in para. 2 shall be the President of the Council of Ministers.

4. The authority competent to monitor the utilisation of the spending limits referred to in para. 1 shall be the President of the Council of Ministers.

Article 46. Previous secondary regulations issued pursuant to Article 10a, para. 6, Article 19, Article 19a, para. 7d, Article 23, paras. 5 and 8, Article 27a, para. 10, Article 27ab, para. 6, Article 27c, para. 3, Article 33b and Article 40 of the Act amended in Article 39 shall remain in force until the entry into force of the secondary regulations issued under Article 10a, para. 6, Article 19, Article 19a, para. 7d, Article 23, paras. 5 and 8, Article 27a, para. 10, Article 27ab, para. 6, Article 27c, para. 3, Article 33b and Article 40 of the Act amended in

Article 39 as amended by this Act, but not longer than 12 months from the date of entry into force of this Act.

Article 47. The term of office of the members of the Public Benefit Activity Council referred to in Article 36, para. 1 of the Act amended in Article 39 who were appointed pursuant to the previous regulations shall last until the end of the period for which they were appointed.

Article 48. Members of the Board of the National Institute in its first term of office shall be appointed within three months from the date of entry into force of this Act.

Article 49. In order to implement the provisions of the Act, the President of the Council of Ministers shall, by way of a regulation, transfer the planned budget expenditure, including remuneration, between the sections, headings and chapters of the state budget, maintaining the purpose of public funds arising from the Budget Act.

Article 50. 1. The National Institute is established.

2. The Director shall be authorised to undertake all preparatory and organisational activities required for the establishment of the National Institute.

3. The Director, within 30 days of appointment, shall submit to the Chair of the Committee the first financial plan for the National Institute for the period from the date of its establishment until the end of the financial year.

4. The provisions of Article 8, para. 5 and of Article 12, para. 1, point 1 shall not apply to the first financial plan for the National Institute.

Article 51. The President of the Council of Ministers shall determine the property and non-property assets that are included in the assets of the National Institute by a decision issued no later than one month after the date of entry into force of this Act.

2. The decision referred to in para. 1 shall form the basis for the entry into land and mortgage registers and other registers of the legal title of the National Institute to the property and non-property assets stipulated in that decision.

3. The National Institute shall use the assets referred to in para. 1 to set up a statutory fund.

Article 52. 1. Previous regulations shall continue to apply to the government programmes adopted prior to the date of entry into force of this Act that are referred to in Article 5c of the Act amended in Article 39, in the wording in force before the date of entry into force of this Act, which concern support for the development of non-governmental organisations and of the entities listed in Article 3, para. 3 of the Act amended in Article 39.

2. The provision of para. 1 shall not apply to the programme referred to in Article 42, para. 1.

Article 53. This Act shall come into force 14 days from the date of its promulgation.