

**Policy Paper**

**Impact of the 2% Law on financial sustainability of the  
Civil Society Organizations**

Authors: Sorina MACRINICI, Ilie CHIRTOACĂ



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## Development of Percentage Designation Mechanism in the Republic of Moldova

The Civil Society Development Strategy for 2012-2015 (p. 2.1.1.) foresees the approval of a mechanism that allows redirecting 2% of the individuals' income tax to civil society organizations (CSOs).<sup>1</sup> According to Action Plan for Strategy Implementation, this mechanism was supposed to be approved in 2013 and enforced since January 1<sup>st</sup> of 2014.<sup>2</sup>

On 12 February 2013, with the participation of civil society representatives, an inter-ministerial working group was established,<sup>3</sup> empowered to present an analysis on the opportunity of granting the right to direct a part of income tax and time frame for its implementation.<sup>4</sup> The Ministry of Finance was appointed as responsible to check the fulfillment of this task. The working group developed a study on the opportunity of percentage designation mechanism implementation, a draft Law and a draft Government Decision for the implementation of percentage designation mechanism. However, in November 2013, the Ministry of Finance withdrew the developed draft regulatory acts from the Government's agenda.

On 23 December 2013, the Parliament approved the amendments to the Tax Code by introducing in Article 88 (7) of the Tax Code the right to redirect at most 2% of the income tax in order to support public benefit non-profit organizations and religious institutions.<sup>5</sup> This draft law was included by the Parliament in a draft law developed by Government,<sup>6</sup> when adopting it in the second reading. On 13 February 2014, the Constitutional Court declared Article 88 (7) of the Tax Code as being unconstitutional due to the fact that it was approved without the consent of the Government, in violation of the budgetary procedure stipulated in Article 131 of the Constitution, and without consulting the local authorities, contrary to the local autonomy principle stipulated in Article 109 of the Constitution.<sup>7</sup>

On 18 July 2014, the Parliament approved a new "2% Law",<sup>8</sup> which was included in a draft law, proposed by the Government, which was already approved in the first reading.<sup>9</sup> It is unclear whether the shortcomings found by the Constitutional Court and pointed out in its judgment of 13 February 2013 have been repaired.<sup>10</sup> The Government was supposed to approve the implementation mechanism within 3 months since the law entered into force, i.e. until 15 November 2014. By 15 April 2015, the implementation mechanism of the "2% Law" had not been adopted and the law was not enforced.

Government's Action Plan for 2015-2018 has as an objective "to promote and strengthen the financial sustainability of CSOs by approving enforcement procedures of the legal provisions on the redirection of a part of tax to public benefit organizations by individuals and legal entities".<sup>11</sup> The development

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<sup>1</sup>The Civil Society Development Strategy for 2012-2015, approved by Law No 205 of 28 September 2012, page 14.

<sup>2</sup>The Action Plan for the Implementation of Civil Society Development Strategy for 2012-2015, page 6.

<sup>3</sup>The civil society was represented, inter alia, by members of Council of NGOs and National Council for Participation.

<sup>4</sup> Government Order No 17-d of 12 February 2013.

<sup>5</sup>Law No 324 of 23 December 2013 on Amendments and Addenda to Some Legal Acts, Art. IX, p. 34.

<sup>6</sup> Draft law No 491 on the Amendments and Addenda to Some Legal Acts, available at <http://www.parlament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/2051/language/ro-RO/Default.aspx>.

<sup>7</sup>Constitutional Court, Judgment of 13 February 2014

<sup>8</sup>Law No 158 of 18 July 2014 on Amendments and Addenda to Some Legal Acts, which amended the Tax Code, Law on Civic Associations, Law on Freedom of Consciousness, Thought and Religion and Code of Administrative Offences.

<sup>9</sup> Draft Law No 163 on Amendments and Addenda to Some Legal Acts, available at <http://www.parlament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/2268/language/ro-RO/Default.aspx>.

<sup>10</sup>There are no evidences of Government's consent or of consultations with the local public authorities.

<sup>11</sup>Activity Program for 2015-2018 of the Government of the Republic of Moldova, pages 41-42, available at <http://www.parlament.md/LinkClick.aspx?fileticket=uskJCCIZKzg%3D&tabid=128&mid=506&language=ro-RO>.

partners of the Republic of Moldova recommended to the Government to implement the “2% law” as soon as possible.<sup>12</sup>

## Provisions of the “2% Law” - Problems and Solutions

The designation mechanism was approved with the aim to increase public awareness of the civil society sector, enhance communication skills of CSOs, developing a culture of philanthropy and contribute to enhance financial sustainability of CSOs. However, the provisions of the current package of laws could compromise this goal. These include unequal conditions for civil society organizations and religious institutions to access the mechanism, use the designations, report and sanction in case of improper use of sources. In addition, some provisions on the mechanism beneficiaries, manner to perform the designations, use of accumulated sums, as well as the control and sanctions for improper use could affect negatively the existence of percentage designation mechanism, and implicitly, the financial sustainability of civil society organizations. These problems could be solved by approving Government decision in order to enforce the implementation mechanism, while other problems require amendment of the package of laws that constitute the “2% Law”.

Further, we will describe the problematic provisions of the “2% Law” and indicate policy options.

### 1. Unequal Conditions for Civil Society Organizations and Religious Institutions

CSOs and religious institutions are the direct beneficiaries of the “2% Law” and respectively, competitors in attracting designations. At the same time, they are in unequal conditions in terms of accessing the percentage designation mechanism, reporting and financial control on use of designations, as well as sanctioning in case of improper use of funds obtained as a result of percentage designation. This means a different treatment without a reasonable justification, which could constitute discrimination.

#### 1.1. Eligibility

CSOs have to obtain the public benefit in order to be able to receive percentage designations, unlike the religious cults and their components, which must be only registered at the Ministry of Justice.<sup>13</sup> The public benefit status is conferred to civic associations that have been operating for one year at least and perform activities for public benefit. In addition, the organization must comply cumulatively with certain criteria on its statute, organizational structure, submitting annual reports and no debts to the National Public Budget.<sup>14</sup> The Public Benefit Certificate is provided for a 3-year term.<sup>15</sup> Therefore, civil society organizations must obtain it every 3 years in order to participate in the 2% mechanism, unlike religious institutions that do not have such a condition. According to the information provided by the Ministry of Justice in 2013, out of about 9,500 CSOs registered, less than 1,000 hold public utility status.<sup>16</sup> For example, in Hungary the CSOs can receive the public benefit status, but it is not a precondition to receive the percentage designations, being enough to prove that the organization is registered for at least 2 years and carries out public benefit activity.

Eligibility conditions must be equal for both civic associations and religious institutions. We believe that it would be fair for CSOs to prove public benefit activity as a precondition to be eligible for the designation mechanism. In this way, we will assure that public money is spent for public benefit.

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<sup>12</sup>Informative notices submitted by the Moldova’s development partners, January 2015, page 36, available at [http://gov.md/sites/default/files/document/attachments/briefing\\_book\\_rom.pdf](http://gov.md/sites/default/files/document/attachments/briefing_book_rom.pdf).

<sup>13</sup>Article 8(1)(d) of the Tax Code.

<sup>14</sup>Article 30<sup>1</sup> of Law No 837 on Civic Associations of 17 May 1996.

<sup>15</sup>Article 32<sup>2</sup> (2) of Law No 837 on Civic Associations of 17 May 1996.

<sup>16</sup> ECNL, Comments on the designation mechanism in Republic of Moldova, October 2014, page. 2 (unpublished)

Policy option: Replacing the eligibility condition for public associations to benefit from the "2% Law" from holding public utility status to proving in carrying public utility activities.

## 1.2. Liability

The "2% Law" foresees that both CSOs<sup>17</sup> and religious institutions<sup>18</sup> must report financial data on the use of amounts received as a result of percentage designations. The liability for improper use of amounts obtained as a result of percentage designation for civil society organizations consist in paying a fine and withdrawal of status of public benefit for a 3-year period.<sup>19</sup> In addition to the loss of benefits provided by the public benefit status, it also included the failure to access the designation mechanism during 3 years. For the same actions, the religious institutions will fine the persons in positions of accountability, and they will continue to participate in 2% mechanism.<sup>20</sup>

Policy option: Introduce equal rules and sanctions for CSOs and religious institutions the improper use of designations – (1) fines (2) return of misused sums and (3) exclusion from the designation mechanism for a certain period of time.<sup>21</sup>

## 2. Failure to Ensure Financial Sustainability of Civil Society Organizations

The current version of the "2% Law" includes some provisions that could affect negatively the existence and development of percentage designation mechanism and as a result the financial sustainability of civil society organizations. Specifically, it refers to the beneficiaries of the mechanism, making of designations, use of accumulated amounts, as well as control of the use of amounts and sanctions for illegal use of percentage designations.

### 2.1. Beneficiaries

#### **Competition between Civil Society Organizations and Religious Institutions**

Both CSOs and religious institutions are beneficiaries of the same percentage designation mechanism. Inevitably, it will lead to competition between these organizations. This competition will not be equal, considering the different conditions of accessing, reporting and imposing of sanctions, but also the great confidence in churches and a quite modest confidence in CSOs. According to Public Opinion Barometer of April 2015, 81% of persons from the Republic of Moldova trust churches, and only 24% trust NGOs.<sup>22</sup> These figures have not changed a lot during the past years.<sup>23</sup>

The "2% Law" does not provide for the possibility to divide those 2% between a civil society organization and a religious institution. Therefore, the designation could be made to a civil society organization, or to a religious institution. Considering the unequal conditions of access and reporting, on one hand, and general mistrust of people in civil society from the Republic of Moldova, on another hand, the 2% mechanism might rather become a financial support mechanism for religious institutions. This does not contribute to the financial sustainability of civil society organizations.

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<sup>17</sup>Article 32<sup>5</sup> (e<sup>1</sup>) of Law No 837 on Civic Associations of 17 May 1996.

<sup>18</sup>Article 43<sup>1</sup> (3) of Law on Freedom of Consciousness, Thought and Religion No 125 of 11 May 2007.

<sup>19</sup>Article 33<sup>4</sup> of the Law on Civil Associations No 837 and Article 298 (4<sup>1</sup>) of the Code of Administrative Offences.

<sup>20</sup>Article 43<sup>2</sup> of the Law on Freedom of Consciousness, Thought and Religion No 125 and Article 298 (4<sup>1</sup>) of the Code of Administrative Offences.

<sup>21</sup> See p. 2.4 of the document for more details on the penalties for the misused funds from the designation mechanism.

<sup>22</sup>Institute for Public Policy, Barometer of Public Opinion, April 2015, page 37, available at [http://ipp.md/public/files/Barometru/BOP\\_04.2015\\_prima\\_parte\\_finale.pdf](http://ipp.md/public/files/Barometru/BOP_04.2015_prima_parte_finale.pdf).

<sup>23</sup>According to the Barometer of Public Opinion, November 2014, 80% of persons trust churches, and only 26% trust NGOs, page 42, [http://ipp.md/public/files/Barometru/Brosura\\_BOP\\_11.2014\\_prima\\_parte-r.pdf](http://ipp.md/public/files/Barometru/Brosura_BOP_11.2014_prima_parte-r.pdf). In November 2013, about 84% of persons trusted the church, and only 22% - NGOs, page

41, [http://ipp.md/public/files/Barometru/BOP\\_11.2013\\_prima\\_parte\\_finale.pdf](http://ipp.md/public/files/Barometru/BOP_11.2013_prima_parte_finale.pdf).

Both CSOs and religious institutions contribute to the development of community and should benefit of a mechanism that will ensure and increase their financial sustainability. However, it is important to ensure equal chances for all the participants involved in the process. For example, in Hungary, people might designate 1% to CSOs and another 1% to churches. Thus, CSOs and churches are not forced to compete with each other, but with organizations of the same category.

Policy options: Eliminate the competition between civil society organizations and religious institutions by:

- 1) Designating 1% to civil society organizations and another 1% to religious institutions, or
- 2) Introducing a new designation option, providing for the possibility to divide the 2% in two parts: for a CSO and a religious institution.

### **List of Beneficiaries**

The amendments introduced by the “2% Law” foresee that the list of beneficiaries of the 2% mechanism shall be adopted annually by the Government.<sup>24</sup> This process could be quite bureaucratic and slow, considering the legislative technique that could lead to delays in the preparation of the list, and respectively, to the inefficiency of mechanism. In addition, the “2% Law” provides that all the CSOs with public benefit status and all registered religious institutions automatically participate in the 2% mechanism. However, there could be situations when certain organizations would not want to receive the percentage designations. Due to this reason, the organization needs to register in this program in advance and on a voluntary basis. This would increase the interest of organizations in this mechanism, it would make them more active, and respectively, it will enhance the mechanism’s efficiency.

Considering that the Ministry of Justice is involved directly in the registration of religious cults and their components and provides assistance to the Certification Commission that issues public benefit certificates, we believe that the Ministry of Justice has all the necessary resources to draw up annually the list of “2%” Law beneficiaries. For instance, in Hungary the central tax authority checks the compliance with eligibility conditions and draws up a list of beneficiary organizations annually.

Policy option: Introduce a preliminary registration procedure to be able to benefit from the 2% mechanism. The Ministry of Justice should be the authority that establishes annually the list of beneficiaries of the percentage designation mechanism.

## **2.2. Making the Percentage Designations**

### **Methods to direct the 2%**

The Tax Code stipulates three options by which the amounts designated to beneficiaries could be directed:

- a) with the submission of the income tax return;
- b) by wire transfer;
- c) by the employer.<sup>25</sup>

The existence of several ways to transfer percentage designations is welcomed, offering flexibility to both employers and employees. At the same time at least two of these three methods could create difficulties and confusion for the authorities responsible for the transfer and control of funds. The Tax Code does not define the exact frequency of percentage designations. The employers must withhold and pay taxes to the budget of all monthly payments to employees.<sup>26</sup> Therefore, now it is possible to direct 2% monthly, considering that the employers pay the income tax to the budget each month. The gross nominal average salary for the Republic of Moldova in January 2015 amounted to about MDL 4,260.<sup>27</sup> Resulting from these figures, the monthly percentage designation would consist about MDL

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<sup>24</sup>Article 15<sup>2</sup> (3) of the Tax Code.

<sup>25</sup>Article 15<sup>2</sup> (1) of the Tax Code.

<sup>26</sup>The tax withheld according to Article 88-91 of the Tax Code shall be paid to the budget by the person who withdrew it by the date of 25 of the month following the month in which the payments were made.

<sup>27</sup>National Bureau of Statistics <http://www.statistica.md/newsview.php?l=ro&idc=168&id=4686>.

6.7. In this case, the administrative costs for monthly processing of the transfers and control could exceed significantly the designated resources and the administrative burden would make the mechanism unattractive for tax authorities and employers.

Policy option: Limit the possibilities to allocate the percentage designations to a sole transfer mode of 2% from the income tax upon submission of the return, once a year.

### **Income Tax Return**

Currently, the “CET08” standard form by which the individual submits the income tax return<sup>28</sup> does not include any section that would indicate the right to direct 2% from the income tax. In order to be able to make designations, in addition to the implementation mechanism, amendments are needed to the Government Decision which sets out the income tax declaration form.<sup>29</sup> Currently, there is a draft law that foresees the standard form “CET08” amendment. It provides, *inter alia*, a column for directing a fixed amount of money which must be up to 2% of income tax, and not specifically a fixed percentage for designation to the CSOs.<sup>30</sup>

Another problem could be lack of individuals’ knowledge about the right to make percentage designations. If the “CET08” standard form included information about these options, the taxpayer would find out about this right and would be able to use it. However, when the person has one job and one source of income, the employer fills in the tax return. There is no obligation for employers to inform their employees about the right to direct 2% of their income tax to CSOs or religious institutions. This means that there aren’t any guarantees that employers will inform their staff about this possibility. Considering that the percentage designation is a new tool that requires certain efforts from employers, there is a risk that they will not inform their employees about this option and there will be few designations made by beneficiaries with one source of income. Moreover, completing the tax declaration form by the employer pose a risk to ensure confidentiality when making designations. This issue is addressed in the following sections.

### Policy options:

- 1) Include in “CET08” standard form a section that would allow the taxpayer to exercise his/her right to direct 2% of the income tax;
- 2) Oblige employers to inform, under signature, about the employees’ right to direct 2% of the income tax to eligible CSOs or religious institutions

### **Amount of Percentage Designation**

The taxpayer must indicate expressly the exact amount of money that shall be redirected to beneficiaries. If the amount of percentage designation exceeds 2% of the annual income tax, the person will be sanctioned with a fine<sup>31</sup> according to the same rule as in the case of a taxpayer who did not pay the income tax<sup>32</sup>, and the amounts will remain on the account of the indicated beneficiary. We believe that it is too burdensome for the taxpayer to calculate by themselves the amount of percentage designation, and the sanction for the inaccuracy is too severe and could discourage taxpayers to direct 2% of their income tax. Due to the severe sanctions, individuals will be reluctant to make designation in the future this could compromise the entire mechanism.

An optimal solution for this could be to consider the Hungarian model, which states that the taxpayer indicates only the tax identification number of the eligible organization, and the tax authority will accrue and subsequently transfer the amount of percentage designation.

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<sup>28</sup>Annex 1 to Government Decision No 1398 of 8 December 2008 approving the form for individuals’ income tax return and method of filling it in.

<sup>29</sup>Government Decision No 1398 of 8 December 2008 approving the form for individuals’ income tax return and method of filling it in

<sup>30</sup> Draft project prepared by the State Fiscal Authority in august 2014, Available here:

<http://particip.gov.md/proiectview.php?l=ro&idd=1818>

<sup>31</sup>Article 15<sup>2</sup> (4) of the Tax Code.

<sup>32</sup>Article 228 of the Tax Code.

Policy option: Indicate in the designation form only the percentage designation, with amounts calculated subsequently by the tax bodies.

### **Confidentiality of Designations**

Currently, there is no procedure that would ensure the confidentiality of designations that have been made by employer. Neither the proposed changes to the declaration form on income tax<sup>33</sup> are not ensuring the anonymity of the designations. The beneficiary's fiscal code is shown directly in the statement. Therefore, the taxpayers are exposed to a potential risk. Since the procedure is not confidential, the employer could use its position in an abusive manner. Labor relations are characterized most often by hierarchical relations of subordination. The employer, using his/her position, is able to exert pressure on employees for them to direct the percentage designations to an organization selected by the employer. Such actions can result in an undesired behavior in respect to the employee who does not conform to such indications. Moreover, this is contradictory to the designation mechanism's philosophy, which is the expression of participatory democracy in which people decide to direct 2% based on their own believes.

Side effects could also occur when the employee directs 2% to an organization that deals with protection of rights and freedoms of a certain group, organization and/or institution that the employer does not agree with (e.g. ethnic minority group, religious group, LGBT persons etc.). This can lead to violation of the right to privacy and the risk of unintended consequences for the employee, manifested by discriminatory actions.

These scenarios can be avoided by the development of separate forms, which would indicate the beneficiaries of percentage designations, ensuring the confidentiality of percentage designations allocated by the employees as well as by keeping records of designations by the employers.

#### Policy options:

- 1) Develop a separate form to indicate the beneficiaries of the 2% mechanism;
- 2) Assure that Employees have the possibility to fill in the designation form in a confidential manner and give it to the employer in a sealed envelope;
- 3) Make sure that the employer keeps records of percentage designations, by keeping of an internal register of employees who made percentage designations. The employers shall send the sealed envelopes and a copy of the register to the territorial tax office.

### **Exception to Confidentiality**

When the CSOs do not know the profile of taxpayers who direct 2% of their income tax, it is difficult for them to build a trust-based relation with them. In Poland and since 2014 in Hungary there is the option to disclose the identity of the taxpayer. This is done by the taxpayer voluntarily and helps organizations build more effective fundraising strategies.

Policy option: Include the option of revealing the taxpayer's identity

## **2.3. Use of Percentage Designations**

### **Administrative costs**

The funds obtained as a result of directing 2% of the income tax are generally used for both performance of activities related to the mission of the organizations, and for expenditures that are not covered by donors. One of the main advantages of the percentage mechanism is that it provides greater flexibility in covering the institutional costs.<sup>34</sup> However, the "2% Law" limits the possibility of using the resources accumulated from the mechanism for certain categories and services. Currently,

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<sup>33</sup> See reference no. 30 from above

<sup>34</sup>ECNL, Comments on the designation mechanism in Republic of Moldova, October 2014, (unpublished)

CSOs of public benefit can use maximum of 5% of the directed amounts to cover the administrative costs.<sup>35</sup>

In addition to development of philanthropic spirit and strengthening of civil society' constituents, the goal of the "2% Law" is to contribute to the development of financial sustainability of CSOs and its institutional capacities. The experience of other countries shows that the designed amounts, especially during the first years after the implementation of percentage designation mechanism, are not too high. Due to this reason, it is necessary to increase percentage interest of expenditures designed for administrative costs. For example, in Hungary between 1996 and 2014, the beneficiary organizations could spend up to 50% of the directed amounts for administrative expenditures. Since 2014, this rate is 25% or maximum 25 million HUF (approx. 89,500 USD).

In addition, there is no clarification of what "administrative costs" mean. This could lead to a misinterpretation of this budget category and, respectively, improper use of designation, which may have as a consequence the sanctioning of civil society organizations, withdrawal of public benefit status and impossibility to benefit of the mechanism during 3 years.

#### Policy options:

- 1) Increase the percentage share for administrative expenses from 5% to 50%
- 2) Define in detail the category of "administrative costs"

#### **Advertising Costs**

The amounts resulted from percentage designation must be used only for purpose of public benefit activities, which are stated expressly in the law.<sup>36</sup> In order to ensure the viability of the mechanism from the very beginning, it is necessary to allow CSOs to have "advertising costs". This will give them the chance to improve their image, to increase their visibility and to communicate with constituents. The quota for these expenditures could be of at least 10% (Hungarian model) of the funds resulting from designations.

Policy option: Assign a category of expenditures from the percentage designation for advertising costs.

#### **Timeframe for the Use of Designations**

Currently, the beneficiaries of the 2% mechanism must use the amounts received during a period not exceeding the tax period following the tax period when the designation was made, that means no later than one year after the year of designation.<sup>37</sup> One year term could be insufficient if the beneficiaries have no capacity to absorb the funds resulted from percentage designation or, if for instance, activities budgeted from these funds are designed for achievement of an ongoing objective, planned for several years (for example, the monitoring activity; special funds to purchase expensive items, such as nursing home beds or vehicles equipped with mechanisms for accommodating people with disabilities etc).

An optimal solution in this respect would be the possibility to submit a request to extend by at least one year in order to use the remaining funds. In Hungary, the organizations have to inform the tax authority about the goal and amount of the reserve that they can create for an additional year. In Moldova, the appropriate authority would be the Ministry of Justice or State Tax Inspectorate.

Policy option: Provide the possibility to extend by another year, on request, the period for the use of sources obtained as a percentage designation and explain the purpose for the extension request.

#### **Public Benefit Status**

According to Law on Civic Association, the Certification Commission assigns the public benefit status to the CSOs for a 3-year term. This could lead to several practical problems with the implementation

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<sup>35</sup>Article 33<sup>3</sup> (2)(b) of Law on the Civil Associations No 837 of 17 May 1996.

<sup>36</sup> Article 30 of Law on Civil Associations No 837 of 17 May 1996.

Article 33<sup>3</sup> (2)(a) of Law on the Civic Associations No 837 of 17 May 1996.<sup>37</sup>

of the 2% mechanism. For example, the status of public benefit could expire before the organization receives funds on the account or before the deadline for funds' use expires. The solution would be to exclude the condition of having public benefit status and focus more on checking the organizations' activities or to provide the status for an indefinite period of time. Also, as mentioned above, another solution that would ensure equal opportunities and access to the designation mechanism would be waiving the requirement to obtain public benefit status and replace it with the requirement to prove public benefit activities.

Policy options:

1. Exclude the status of public benefit from the eligibility criteria for the participation in the 2% mechanism; or
2. Provide the status of public benefit for an indefinite period of time; or
3. Introducing a requirement of eligibility for CSOs to carry out public benefit activities.

## 2.4. Control and Sanctions

### Financial Control

The use of funds obtained as a result of percentage designation shall be monitored by the Certification Commission.<sup>38</sup> This Commission does not have enough capacities to carry out such a procedure, which falls under the tax authorities' competence. Lack of an appropriate financial control from the very beginning of mechanism implementation could lead to improper use of funds. As a result, this could generate distrust in this mechanism and individuals' reluctance to make designations.

Policy option: The control of the use of funds obtained in the result of percentage designation for both CSOs and religious institutions must be performed by the Tax Inspectorate.

### Sanctions

The liability of CSOs for illegal use of funds obtained as a result of percentage designation consists in the withdrawal of public benefit status for a 3 years term.<sup>39</sup> Thus, organizations will have no access to the 2% mechanism and other benefits resulting from the status of public benefit. The sanction set for CSOs is not proportional to benefits resulting from the percentage designation mechanism. This sanction should be linked to the designation mechanism. In Hungary, the sanction consist in the inability to access percentage designation funds during the upcoming designation year and inclusion in a list of excluded beneficiaries that can be accessed on the tax authority's website.

Policy option: CSOs that use illegally the funds obtained as a result of percentage designation must be sanctioned with: (1) fines (2) return of misused sums and (3) exclusion from the designation mechanism for a certain period of time (1-2 years) and from the list of beneficiary organizations.

## 2.5. Institutional Capacity

### Capacity of the Certification Commission

The Certification Commission is supposed to publish the list of civic associations with public benefit status until 20 December of each year.<sup>40</sup> As of 15 April 2015, the list for 2014 was not yet posted on the website of the Ministry of Justice. The last available list dates back to 2010. In these circumstances, many CSOs that comply with eligibility conditions will not participate in the two percent mechanism, for reasons not depending on their will.

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<sup>38</sup>Article 33<sup>3</sup> (3) of Law on Civil Associations No 837 of 17 May 1996 and Article 43<sup>1</sup> (3) of Law on Freedom of Consciousness, Thought and Religion No 125 of 11 May 2007.

<sup>39</sup>Article 33<sup>4</sup> (3) of Law on Civil Associations No 837 of 17 May 1996.

<sup>40</sup> Article 31 (11<sup>1</sup>) of Law on Civil Associations No 837 of 17 May 1996.

In addition, the „2% Law” brings new competences to the Certification Commission, engaging the commission to verify the use of the designation mechanism funds by both civil society organizations and the religious institutions.

According to the conclusions of the CSOs National Conference on state funding in 2011, the Certification Commission has limited capacity to perform its tasks.<sup>41</sup> Since the "2% Law" brings new responsibilities, it needs to empower the Certification Commission while implementing the mechanism of appointing percent.

Policy option: Enhance the capacity of the Certification Commission

## Recommendations

**Table:** *Matrix of the Proposed Legal Amendments*

Proposed amendments	Regulatory act to be adopted / amended
<b>Ensure equal treatment of civil society organizations and religious institutions</b>	
Introduce the eligibility condition for public associations to carrying public benefit activities instead of acquiring public benefit status	<ol style="list-style-type: none"> <li>1. Tax Code</li> <li>2. Law on Freedom of Consciousness, Thought and Religion</li> </ol>
Introduce the same rules for civil society organizations and religious institutions on the accountability for the illegal use of designations	<ol style="list-style-type: none"> <li>1. Tax Code</li> <li>2. Law on Civic Associations / Law on Freedom of Consciousness, Thought and Religion</li> </ol>
<b>Ensure financial sustainability of civil society organizations</b>	
<b>Beneficiaries</b>	
Eliminate the competition between civil society organizations and religious institutions by: <ol style="list-style-type: none"> <li>a. Designating 1% to civil society organizations and another 1% to religious institutions, or</li> <li>b. Introducing a new designation option, providing for the possibility to divide the 2% in two parts: for a civil society organization and a religious institution.</li> </ol>	<ol style="list-style-type: none"> <li>1. Tax Code</li> <li>2. Law on Civic Associations</li> <li>3. Law on Freedom of Consciousness, Thought and Religion</li> </ol>
Introduce a preliminary registration procedure to be able to benefit of the 2% mechanism. The Ministry of Justice is the authority that establishes annually the list of beneficiaries of the 2% mechanism.	<ol style="list-style-type: none"> <li>1. Tax Code</li> <li>2. Government Decision (Regulation)</li> </ol>
<b>Performance of Designations</b>	
Limit the possibilities to allocate the percentage designations to a sole transfer mode of 2% from the income tax upon submission of the return, once a year	<ol style="list-style-type: none"> <li>1. Tax Code</li> <li>2. Government Decision (Regulation)</li> </ol>

<sup>41</sup> Conclusions and recommendations. International conference on state funding of civil society organizations 26-27, September 2011, p. 3-7, available here: [http://www.fhi360.md/docs/2012/21.02.2012/Concluzii\\_si\\_Recomandari\\_de\\_la\\_Conferinta\\_Internationala\\_privind\\_Finant\\_area\\_de\\_Stat\\_a\\_Organizatiilor\\_Societatii\\_Civile.pdf](http://www.fhi360.md/docs/2012/21.02.2012/Concluzii_si_Recomandari_de_la_Conferinta_Internationala_privind_Finant_area_de_Stat_a_Organizatiilor_Societatii_Civile.pdf) (Romanian)

<b>Proposed amendments</b>	<b>Regulatory act to be adopted / amended</b>
Include in "CET08" standard form a section that would allow the taxpayer to exercise his/her right to direct 2% of the income tax	Government Decision (Regulation)
Oblige employers to inform, under signature, about the employees' right to direct 2% of the income tax to eligible civil society organizations or religious institutions	Government Decision (Regulation)
Indicate in the designation form only the % designated to the beneficiary entity, and the amounts will be calculated subsequently by the tax bodies	<ol style="list-style-type: none"> <li>1. Tax Code</li> <li>2. Government Decision (Regulation)</li> </ol>
Ensure confidentiality of designations by: <ol style="list-style-type: none"> <li>1) Develop a separate form to indicate the beneficiaries of the 2% mechanism;</li> <li>2) Employees must have the possibility to fill in the designation form in a confidential manner and send it to the employer in a sealed envelope;</li> <li>3) Make sure that the employer keeps records of percentage designations, by keeping of an internal register of employees who made percentage designations. The employers shall send the sealed envelopes and a copy of the register to the territorial tax office.</li> </ol>	Government Decision (Regulation)
Include the option of revealing the taxpayer's identity	Government Decision (Regulation)
<b><i>Use of Designations</i></b>	
Increase the percentage share for administrative expenses up to 50%	<ol style="list-style-type: none"> <li>1. Tax Code</li> <li>2. Government Decision (Regulation)</li> <li>3. Law on Civic Associations</li> </ol>
Define in details the category of "administrative costs"	Government Decision (Regulation)
The possibility to use the percentage designations for "advertising costs" category	<ol style="list-style-type: none"> <li>1. Tax Code</li> <li>2. Government Decision (Regulation)</li> <li>3. Law on Civic Associations</li> </ol>
Provide the possibility to extend by another year, on request, the period for the use of sources obtained as a percentage designation	<ol style="list-style-type: none"> <li>1. Tax Code</li> <li>2. Government Decision (Regulation)</li> <li>3. Law on Civic Associations</li> </ol>
<ol style="list-style-type: none"> <li>1. Exclude the status of public benefit from the eligibility criteria for the participation in the 2% mechanism; or</li> <li>2. Provide the status of public benefit for an indefinite period of time.</li> <li>3. Introduce the requirement of eligibility for civil society organizations to carry out public benefit activities.</li> </ol>	<ol style="list-style-type: none"> <li>1. Law on Civic Associations</li> <li>2. Government Decision (Regulation)</li> </ol>
<b><i>Control and Sanctions</i></b>	
The control of the use of funds obtained in the result of percentage designation for both civil society organizations and religious institutions must be performed by the Tax Inspectorate	<ol style="list-style-type: none"> <li>1. Government Decision (Regulation)</li> <li>2. Law on Civic Associations</li> <li>3. Law on Freedom of Consciousness, Thought and Religion</li> </ol>

<b>Proposed amendments</b>	<b>Regulatory act to be adopted / amended</b>
<p><u>Policy options:</u></p> <ol style="list-style-type: none"> <li>Sanctions for the illegally use of the funds obtained as a result of percentage designation (1) fines (2) return of misused sums and (3) exclusion from the designation mechanism for a certain period of time (1-2 years), including the exclusion from the list of beneficiary organizations.</li> </ol>	<ol style="list-style-type: none"> <li>Government Decision (Regulation)</li> <li>Law on Civic Associations</li> <li>Law on Freedom of Consciousness, Thought and Religion</li> </ol>
<b><i>Institutional Capacity</i></b>	
<p>Enhance the capacity of the Certification Commission</p>	<ol style="list-style-type: none"> <li>Law on Civic Associations</li> <li>Government Decision No 266 of 12 April 2011 approving the Regulation on the Organization and Operation of the Certification Commission and Sample of Public Benefit Certificate</li> </ol>