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Strasbourg, 17 March 1998
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**Legal Cooperation of the Council of Europe
for the development and consolidation of democratic stability**

DEMO-DROIT PROGRAMME

**THE LEGAL STATUS OF NON-GOVERNMENTAL ORGANISATIONS AND
THEIR ROLE IN A PLURALISTIC DEMOCRACY**

Multilateral meeting
organised by the Council of Europe
in cooperation with the Japan Foundation

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Strasbourg, Palais de l'Europe

23 - 25 March 1998

Room 1

Answer to the questionnaire

GERMANY

Ministry of Justice

1. What legislation is applicable to NGOs in your country?

The German Constitution (Grundgesetz) guarantees that all Germans have the right to form associations, partnerships and corporations (art. 9 par. 1). This provision is complemented by art. 11 of the European Convention of Human Rights which forms part of the German Law. It is a freedom, but also a principle enabling the free formation of social groups which is a constituent of democracy and the rule of law. "The social system of a society having as its basis the Grundgesetz should not take shape as an order of classes and corporations that have been significant for older forms of social order, neither in a planned formation and organisation created by the state according to standards of a system of values dictated by a ruling group which is significant for totalitarian states of present time", as the Federal Constitutional Court says.

Illegal are only associations whose purpose or activities are against criminal law, the constitutional order or the idea of agreement between nations.

NGOs in Germany can have the legal status of a registered association or a foundation having legal capacity. The legal capacity does not depend on the non-profit making character which is only a notion of German tax law. The recognition as a non-profit making entity lies with the finance offices and gives tax privileges for the most important forms of taxes.

2. What improvements should be made concerning (i) the text of this legislation and (ii) its practical application ?

In Germany, there is no discussion on these issues.

3. What relations exist between NGOs and the following authorities: (i) ministries, notably the ministries of Justice, Interior, Finance and Foreign Affairs; (ii) local authorities?

The Rules and Regulations of the Federal Government provide for involving NGOs in legislation. In preparing drafts, the government can inform interested experts and associations, ask for seconds or material, and give the opportunity to comments. In general they are very useful to ameliorate legislation.

There is a list published annually by the President of the Parliament (Deutscher Bundestag) for registration of associations which attend to interests vis-à-vis the Parliament or the Government. A public hearing by the Parliament is only held with registered associations.

There are also consultations with NGOs in specific areas, e.g. protection of Human Rights.

Local authorities are free to act in a similar manner.

4. What measures would be necessary in your country to reinforce civil society (e.g. with regard to freedom of association and expression, simplifying procedures, fiscal advantages, access to information etc.)?

Fundamental rights apply not only to individuals, but also to domestic legal persons to the extent that the nature of such rights permits (art. 19 par. 3 Grundgesetz). The decisive point is whether the activities protected by the Constitution are apt to be carried on by legal persons, and

the formation and activity of an association is the expression of self-fulfilment of the persons which are members of the association.

If there should be lacks in practical implementation, they are dealt with by the courts, eventually the Federal Constitution Court or the Strasbourg organs.

In general, a NGO can only sue if her own rights are allegedly violated. Legal actions instituted by an association are only admissible in specific areas (e.g. cartels law, general terms and conditions); there is a discussion on introducing such actions in the areas of nature and environmental protection).

5. Has your country thought of acceding to the European Convention on the recognition of the legal personality of International Non-Governmental Organisations (ETS 124)? If not, what are the obstacles?

In Germany, an association or foundation having legal capacity abroad is recognised as such without any further procedure according to German International Private Law if the association has acquired its legal personality and capacity in the state where it has actually its office. The principle of the Convention to recognise the legal personality and capacity acquired in the state where it has its statutory office would be against that well established legal practice and case law.

