Study on Recent Public and Self-Regulatory Initiatives Improving Transparency and Accountability of Non-Profit Organisations in the European Union

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The opinions expressed in this document represent the authors' points of view which are not necessarily shared by the European Commission.

LIST OF KEY ACRONYMS AND ABBREVIATIONS

CBF	Central Bureau on Fundraising, Netherlands
CEE	Central and Eastern Europe
CSO	Civil Society Organisation
CTMs	Counter-terrorism measures
DG JFS	Directorate-General of Justice, Freedom and Security
DÓCHAS	The Irish Association of Non-Governmental Development Organizations
EC	European Commission
ECNL	European Center for Not-for-Profit Law www.ecnl.org.hu
EFC	European Foundation Centre
EU	European Union
EU COM (2005) 620	Commission Communication to the Council, the European Parliament and the European Economic and Social Committee: "The Prevention of and Fight against Terrorist Financing through enhanced national level coordination and greater transparency of the non-profit sector"
FATF	Financial Action Task Force
FATF Best Practices	Financial Action Task Force (FATF) 2002. "Combating the Abuse of Non-Profit Organisations: International Best Practices"
FATF SR VIII.	Financial Action Task Force (FATF). 2004. "Special Recommendations on Terrorist Financing"
FATF IN SR VIII.	Financial Action Task Force (FATF). 2006. Interpretative Note to Special Recommendation VIII Non-profit Organisations
FIN	Association of Foundations, the Netherlands
HAP	Human Accountability Partnership
ICFO	International Committee on Fundraising Organizations
ICNL	International Center for Not-for-Profit Law
MS	Member State
NENO	Network of Estonian Nonprofit Organizations
NGO	Non-Governmental Organisation
NPO	Non-Profit Organisation
PBO	Public Benefit Organisation
PQASSO	Practical Quality Assurance System for Small Organisations
SORP	Statement of Recommended Practice
UK	United Kingdom
UN	United Nations
UNCTC	United Nations Counter-Terrorism Committee
US	United States
USAID	United States Agency for International Development
UST	United States Treasury

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EXECUTIVE SUMMARY

This Report presents the results from the *"Study on recent public and self-regulatory initiatives improving transparency and accountability of non-profit organisations in the European Union"* commissioned by the Directorate-General of Justice, Freedom and Security of the European Commission.

The Report's key goal is to map and assess the recent and most important public and self-regulatory initiatives enhancing non-profit organisations (NPO) transparency and accountability in the 27 EU member states. The Report also identifies and helps to develop best practice, and makes recommendations for possible common EU-level actions. The Report seeks to support increased knowledge and improved dialogue in these issue areas, while improved NPO transparency and accountability will lead to enhanced and well-balanced protection against the abuse of NPOs for terrorist and financial criminal purposes.

The reference point for the research is the Commission Communication to the Council, the European Parliament and the European Economic and Social Committee: *"The Prevention of and Fight against Terrorist Financing through enhanced national level coordination and greater transparency of the non-profit sector"* COM (2005) 620 final. In identifying and analysing key initiatives, the Report uses information from experts in most of the EU member states, as well as extensive desk research. Research of this scale has not been conducted before. While findings have been limited by language and time constraints, and the cases analysed here are not representative of the breadth of ongoing initiatives in Europe, the information presented in the Report and its Annexes are intended to serve as a useful reference tool for policy makers, regulators and NPOs alike.

The Report shows that there is a great deal of interest in accountability and transparency in the EU (the Report identified 140 initiatives): this arises primarily because of the increasing scale and impact of the NPO sector. The timing may coincide with the years after 9/11 but little evidence suggests that concerns about terrorist financing have been a primary factor for reforms apart from the fact that Special Recommendation 8 of the FATF which focuses on NPOs was created in October 2001. The most common trends identified in the initiatives are the promotion of accountability and transparency, developing comprehensive frameworks for NPOs, making registration data more accessible, focusing on those NPOs that provide public benefit, tightening the regulation of fundraising, improving NPO governance through self-regulation, and strengthening supervision and investigation powers.

The cases show that accountability and transparency can be achieved in a number of ways – and so, it is not practical to look at a single system or initiative as a model to be duplicated in other cases. Instead, a contextual analysis is needed, which will be determined by a number of key factors; among others, the legal system and the level of development of regulation and the NPO sector. In this, it is important to note that accountability does not have a single – or even a generally agreed – definition. Following the lead of EC COM (2005) 620, the starting point for the Report is upward accountability (to Government, donors and the public at large), but it is also important to bear in mind the wider (and increasing) interest in downward accountability (to partners and beneficiaries). The Report also concludes that there are important roles for both public regulation and self-regulation, which should be considered as complementary tools in achieving an optimal state of accountability and transparency through a model of co-regulation.

In analysing the extent to which current initiatives reflect the recommendations set out in the key FATF and EC reference documents for this study, the Report demonstrates that public regulatory and self-regulatory initiatives in member states assist to a large extent with a view to countering the financing of

terrorism. Initiatives reflecting FATF and EC recommendations most closely include public databases, oversight, reporting and monitoring of NPOs. The only FATF and EC recommendations which are scarcely covered are the "know your beneficiary" and "know your donor" rules: this constitutes a significant gap. Furthermore, public and self regulation initiatives are addressing a range of important areas that go partly beyond the three documents, including issues related to the public benefit status; NPO accounting and bookkeeping; internal governance; fundraising; and transparency of public funding.

The disconnect between the areas covered by ongoing public and self regulation initiatives and the FATF and EC recommendations may signal difficulties MS face in implementing recommendations in their national contexts (especially the "know your beneficiary" and "know your donor" rules). It also points to the need for adopting a broader understanding of NPO accountability and transparency in the policy implementation. Among others, the EC could consider widening its remit of defining accountability so as to be able to capitalise on initiatives that are key to increasing accountability and transparency of NPOs but are currently not seen as directly relevant to minimizing risk of abuse in the NPO sector. E.g., NPOs that develop accountability frameworks focusing on beneficiaries may be of assistance in developing feasible methods to implement the "know your beneficiaries" principle.

In all cases, the success of the initiatives depends to a large extent on the buy-in of NPOs. The most successful public regulatory initiatives identified during research rely on consultation with – and in some cases joint design by – the sector. Therefore, in implementing initiatives to tackle the risk of misuse for terrorist financing, it appears that the principles agreed upon by the Justice and Home Affairs Council on 1 and 2 December, 2005 are crucial. Amongst others they emphasise the consultation and partnership approach needed with the NPO sector, and the need for the exchange of knowledge and for a proportionate approach.

The impact of accountability and transparency initiatives and of the debates around them depends upon an enhanced flow of information. There is a need for ongoing information-sharing and research to identify needs, best practice and practical tools. It is important to have a more in-depth understanding of the NPO sector and how it works, the way accountability and transparency fits into this, and the specific challenges of humanitarian response. From this, it will be possible to build the capacity of member states to address NPO accountability and transparency issues through training and peer-learning. It will also be possible to refine the aspects of policy described above. Here, the process in decision-making is as crucial as the outcomes. Stakeholders include NPO regulators, financial sector regulators, NPOs (individual and umbrella groups), donors and academics.

At an EU level, this Report identifies the need for proactive facilitation and recommends considering the creation of a "Centre of Excellence". This could take several forms (and include a *forum of dialogue*) to promote accountability and transparency and serve as an ongoing resource for information and exchange. Underlying this is the need for solutions to be designed through consultation with the NPO sector to ensure that the initiatives are as rich and complete as possible.

At a national level, member states should support and supplement the EU-level process described above for information-sharing and research. More specifically, they should consider creating a centralised database for certain categories of NPOs, develop NPO specific accounting frameworks, support the NPO sector and involve it in effective consultations. Their implementation of initiatives to counter the risk of terrorist financing should be congruent with other European obligations.

Likewise, NPO self-regulatory initiatives should seek synergies with other self-regulatory initiatives, and Government and EU-level processes.

I. INTRODUCTION

This report presents the results from the *"Study on recent public and self-regulatory initiatives improving transparency and accountability of non-profit organisations in the European Union"* commissioned by the Directorate-General of Justice, Freedom and Security of the European Commission. The goal of the research study is to identify and explore the volume and depth of existing government and NPO initiatives which aim to improve NPO accountability and transparency, in the 27 EU Member States and on the EU level. It aims to assess the strategies undertaken and share their learning points and best practices, to explore the need for action and potential for success in initiatives by the EU, the national governments and NPOs relating to these issues.

Following the terms of reference, the study considers measures to improve NPO transparency and accountability in the overall context of international and European initiatives to address the risk of NPOs being used as a conduit for terrorist financing. It analyses the response of EU countries to the requirements of FATF SRVIII as elaborated in three papers: the Commission Communication on the Prevention of and Fight against Terrorist Financing through enhanced national level coordination and greater transparency of the NPO Sector (EC COM (2005) 620); the Interpretative Note to FATF SRVIII; and the Best Practices Paper on FATF SRVIII. The analysis of the selected cases reflects whether and how far these trends are in line with the recommendations set out in these existing documents. It also addresses broader accountability and transparency issues which exist in the EU countries and are considered as best practice.

The report was developed by an international research team comprised of experts on the issues subject to analysis. The research was largely desk-based, consisting of a literature review and interviews with over 130 government officials and policymakers, NPO lawyers and practitioners, self-regulatory bodies and accreditation organisations, consultancy firms and research centres from most of the EU's 27 member states. The first stage of the project comprised of a snapshot assessment of the recent and most important initiatives. Key criteria were developed to select the initiatives which are described in the report. The criteria included: whether the initiative is within the last 5 years (however, longer standing but important initiatives were also included); whether it is conducted through an on-going and focused process with active participation by government and/or NPOs; the level of interaction and involvement; what was the drive behind the initiative; whether there are already some learning points from the process or implementation; the impact or potential impact for accountability and transparency. A further mix of criteria was used to select the initiatives and ensure diversity and broader representation (such as, whether it is scaleable and transferable, characteristics of Member States and NPO sector, who is taking the lead).

Based on feedback from local respondents in the surveyed countries, two charts with over 140 identified self-regulation and public regulation initiatives were compiled. These charts are non-exhaustive and other initiatives may exist in the field. Nevertheless, they are included as part of the study in order to contribute to a better understanding of the type and scope of initiatives which have been undertaken to address NPO accountability and transparency.

Finally, there were a number of limitations that influenced the development of this study. Those include (1) *language* (most of key documents are in local languages so they were not immediately accessible to the research team); (2) *access to respondents* (difficulties were encountered in reaching out to relevant experts and stakeholders in some countries); (3) *access to information* (especially access to local initiatives which are not always publicized, and access to verifiable information as to why certain

initiatives have not produced desired results) and (4) *timeframe* (limited time allocated for undertaking a comprehensive study).

I.1. Overview of Project Goals and Expected Results

The specific objectives of the study are to:

- Analyse the regulatory framework in which NPOs are fulfilling their activities in Member States of the EU;
- Map and assess the recent and most important public and self-regulatory initiatives aiming at enhancing NPO transparency and accountability in the 27 EU Member States;
- Conduct an in-depth analysis of the selected initiatives including reflection on the driving force behind them and, where possible an assessment of their impact;
- Single out common trends in these initiatives, identify what practices have been proven to be effective, with a view to identifying and creating best practice;
- Identify any shortcomings, key issues that are not being addressed by the current initiatives, but which could to a large extent contribute to an enhanced level of NPO transparency and accountability;
- Set out recommendations with regards to possible common EU level actions.

The research report did not intend to detail every public and self-regulatory initiative relating to NPO transparency and accountability, but instead to identify those that are most relevant, are transferable and could be of interest to experts, legislators, government officials and NPOs in the European Union.

The research aims to accomplish the following outcomes:

(1) The most important and recent public and self-regulatory initiatives relating to NPO transparency and accountability identified.
(2) The process of developing initiatives, as it reflects partnership between Government and NPO sectors, analysed and evaluated, and common trends identified.
(3) Substantive content of initiatives relating to NPO transparency and accountability and compliance of recent initiatives with international best practices analysed and evaluated.
(4) Increased awareness about best practices in the field.
(5) Shortcomings and key issues not being addressed in the initiatives identified and analyzed.
(6) Assessment of recent initiatives and recommendations regarding possible common EU level actions developed and made available.
(7) Access to international, EU and cross-border expertise strengthened.

Ultimately, the research and the results presented in the study desire to contribute towards following longer term results (impact):

(1) Increased common knowledge at EU level of the current important initiatives and regulatory measures.
(2) Improved dialogue between public policy makers and NPOs through exchange of best practices and the cooperative pursuit of a shared goal.
(3) Improved NPO transparency and accountability throughout the 27 EU Member States.
(4) Enhanced and well-balanced protection against the abuse of NPOs for terrorist and financial criminal purposes.

I.2. Scope of Research and Definitions

Substantive scope: The research focused on programmatic and financial accountability and transparency, bearing in mind the origins of the Tender and the definitions of NPOs, accountability and transparency detailed below. This suggested a focus on public accountability to Government, and accountability to donors or the general public,[1] by analysing (1) laws and regulations on Government and Parliament level (i.e. public regulation), and (2) initiatives addressing NPO accountability and transparency that originate from NPOs and other non-governmental actors (i.e. self-regulation). The research did not look to address, e.g., municipal regulation, or regulation addressing a specific field or issue (such as energy, environment etc.) as it relates to NPOs.[2] The report has at its primary focus the issues of registration, public benefit status, governance and reporting, supervision, fundraising, public funding on the side of public regulations; and focuses on databases, codes of conduct, accreditation and certification systems on the side of self-regulation. The report seeks to shed light on innovative approaches as well as explore the success factors of some of the well-functioning "traditional" solutions of public and self-regulation. See Annex 1 for a detailed description of issues subject to the analysis.

Geographic scope: The report covers initiatives on the EU level and in the 27 Member States. The research focussed on initiatives on a transnational (across EU) and national (country) level, as well as sectoral (affecting all NPOs) and sub-sectoral (affecting a specific group of NPOs) levels. In recognition to the fact that such initiatives are increasingly global, the report includes initiatives which have a direct significance to a range of stakeholders in the EU but are more international in nature (e.g., the Montreux Initiative). In addition, some initiatives from Switzerland, member states of the European Economic Area (EEA)[3] and EU Candidate Countries are presented in the charts (see Annex 6. and 7.), in order to illustrate some trends in this area that go beyond the borders of the EU.

Definitions: A clear definition of accountability and transparency is critical for developing a coherent research product. While these concepts do not have generally accepted definitions, specific definitions were developed for the purposes of this study. As a starting point, the study consulted the EC COM (2005) 620, FATF SRVIII and its Interpretative Note and Best Practices.[4] In addition, a variety of "good practice" materials and sourcebooks, including *"A Handbook of NGO Governance"*[5] published by ECNL, and *"Guidelines for Laws affecting Civic Organizations"*[6] prepared by the ICNL for the Open Society Institute have been considered.

Non-Profit Organisations (NPOs): In this report, the term "NPO" refers an association, society, foundation, charity, non-profit corporation, or other type of legal entity that is not regarded under the particular legal system as part of the state sector and that is not operated for profit (i.e., if any profits are earned, they are not and cannot be distributed as such). It does not include trade unions, political parties, cooperatives, or religious organizations devoted primarily to religious worship.

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[1] This is a narrow understanding of accountability, sometimes referred to as "upward" accountability. See Annex 2.

[2] E.g., there could be a regulatory or self-regulatory initiative relating to accountability and transparency of all educational providers in a country, which could include, but not focus on, NPO providers.

[3] Iceland, Liechtenstein and Norway.

[4] For discussion on definitions of accountability and transparency in these documents see section III. "Overall Assessment of the Extent to Which NPO-Related FATF and EC COM Recommendations are Reflected in the Identified Initiatives in this Study".

[5] http://www.ecnl.org.hu/dindocuments/18_Governance%20Handbook.pdf.

[6] http://www.icnl.org/KNOWLEDGE/pubs/Guidelines.pdf

Accountability: Accountability is generally understood as an obligation or willingness by the NPO to accept responsibility or to account for its actions.[7] Accountability means that the NPO holds itself accountable towards its multiple stakeholders and ensures that it meets the various stakeholder needs and interests (including beneficiaries, donors, government, policy makers, volunteers etc., as well as the public at large). For the purposes of the report, the research will be primarily concerned with accountability toward the government and the public at large ("upward accountability"). This includes the following key elements:

- compliance with legal obligations;
- demonstrating how resources are spent and how these respond to the mission and obligations taken towards stakeholders;
- good governance;
- prudent financial management;
- demonstrating goodwill or an intent to meet certain professional and management standards;
- demonstrating regularly that it uses its resources wisely and does not take advantage of its special privileges (e.g., tax exemptions) to pursue activities contrary to its nonprofit status.

Transparency: In this report, the term "transparency" is understood as an obligation or willingness of NPOs to publish and make available basic data about their operations, including organizational, financial and programmatic data as well. An NPO is transparent if it readily opens and makes available its accounts and records to public scrutiny by funders, beneficiaries, and others.[8]

Organizational transparency means availability of the basic data regarding the establishment and registration of the NPO that allows third parties to identify the NPO and seek out its responsible officers for further information (e.g. name, seat address, decision-making body). *Programmatic transparency* includes basic data on activities and services which allows the government and the public at large to assess the effectiveness or efficiency of the NPO. *Financial transparency* is related to publishing financial reports about incomes, expenses and general financial health that are required by the legal frameworks of the given country. Further, the *entirety of data and information* presented by the NPO should provide third parties with an overall understanding as to the nature of operations of the organization.

Accountability and transparency play important, complementary roles. Transparency ensures that data is available, while accountability suggests that stakeholders' interests are being met through the action and in a way that they are involved in the decision or at least have an opportunity for redress. Both are important and neither is sufficient on its own.

I.3. General issues to consider in the assessment of accountability and transparency of NPOs, and their potential for transferability

a.) Treatment of NPOs in the two major legal systems and the scope of NPOs covered by regulation

In the EU the clearest divide in the legal framework for NPOs is between the common law system used in the UK[9] and the Republic of Ireland, and the civil law system which is used in all other states.[10]

[7] It is important to note that there is no single definition of accountability, and a wide variety of initiatives exists because of the different premises and conclusions and outcomes of those. It is not necessary for this report to resolve this debate – nor is this possible, given the larger policy issues involved.
[8] ECNL, 2004
[9] The UK has three separate legal jurisdictions, in England and Wales, Scotland and Northern Ireland.

The treatment of NPOs in common law is distinguished by the legal concept of charity, which focuses on activity rather than legal form. This concept has developed over centuries through case-law, and the role and operating space of charity is well established within the legal system and society as a whole. The concept of charity and charitable activity implies that the organisation serves public benefit purposes. Charities need to register to be recognised and become eligible to receive tax exemptions. In the UK registration applies to charities over a certain income threshold, while in Ireland the expected outcome of ongoing reform is that all charities will need to register. However, charities are not the only form of NPOs (also referred to as "voluntary organisations") in the UK or Ireland; in fact charities constitute about a half of about 865,000 NPOs in the UK.

In contrast to the common law system, **civil law treatment of NPOs is based not upon activity but upon the legal forms** of – primarily - association and foundation. A number of countries recognize other forms of NPOs as well (e.g. some form of a nonprofit company exists in Germany, Hungary, Czech Republic and Slovakia). The purpose of registration is to obtain legal personality and basic tax exemptions (such as exemptions on donations and membership fees) and these are generally given to all organizations registered under these legal forms. Sometimes, legal form defines the level of tax exemptions available (e.g. both foundations and associations will receive an exemption from income tax; in addition foundations, but not associations, may receive customs duty exemptions). A more common trend however, in civil law countries is that (additional) tax exemptions (such as exemptions on economic activities, or tax deductions for donations) are provided for a select category of NPOs, regulated in tax laws or in separate laws, that serve publicly beneficial purposes.[11] These organizations will be referred to as charity or "public benefit organisations" (PBOs) in this report.

This distinction is important to be noted from the outset because as a result of the difference in regulatory approach, there is sometimes confusion in the use of terminology as regards the **scope of organisations to be covered by regulation**. When talking about the "sector" in the common law systems of Europe reference is usually being made to the "charity sector" - essentially public benefit organizations, which all fall under basically the same treatment in terms of registration, reporting and tax treatment; whereas in civil law systems mention of the "sector" usually refers to the broader "NPO sector": a breadth of organizational forms and mandates (not necessarily for public benefit purposes), which are usually regulated under separate laws and entail a range of registration and reporting requirements and tax benefits. The use of the word "registration" has different meanings as well: in the common law systems registration (of charities) refers to an act of state acknowledgement of eligibility for public support (most prominently, through tax privileges and public fundraising); whereas in civil law systems registration (of NPOs) refers to the act of acquiring legal personality, quite independent from any eligibility for tax benefits.[12]

It is also worth noting, that registration and regulation systems based on the "charity" concept in European common law jurisdictions actually "miss out" on a large part of the broader NPO sector, since, as noted above, charities only represent around half of the sector;[13] while in some civil law countries the proportion of NPOs regulated more tightly through "public benefit" legislation may be comparable to that of the common law countries. E.g., in Hungary, the total number of NPOs in 2006

[10] Cyprus has elements of both common law and civil law, although most active NPO Law is based upon civil law.
[11] In the UK, "public benefit" is but one test to be a charity.
[12] In addition, not all civil law countries require registration of NPOs to establish legal personality, e.g. in the Netherlands associations and foundations are established by notarial deed and then have full legal capacities.
[13] Which does not mean, however, that all other NPOs (voluntary organizations) are left without supervision : many non-charitable NPOs fall under different oversight, e.g. the Industrial and Provident Societies.

was 58,000, out of which over 30,000 – i.e. over 52% - was a registered public benefit organization.[14] In other countries, of course, the proportion of PBOs is much lower (e.g., in Poland – 10% or Bulgaria – 20%), while all registered NPOs receive some level of tax benefits and are allowed to raise funds from the public.

Although not straightforward, it can be seen from the wording of EC COM (2005) 620 and FATF SRVIII that the more stringent requirements relating to accountability and transparency should apply first and foremost to NPOs "wishing to take advantage of preferential tax treatment, the right to collect funds from the public and the access to public grants."[15]

However, such category of NPOs cannot be easily established based on current regulatory practices in civil law countries. In the civil law system, the charity or public benefit concept does not exist in all countries. Where it does not exist, different laws provide tax or state benefits to different types and purposes of NPOs (e.g., tax laws, public funding regulations) and they apply different accountability criteria. Where the concept exists, tax benefits and corresponding accountability requirements are not always applied in a harmonized way.[16]

It may therefore seem that **implementation of the requirements of EC COM and FATF SRVIII, which seem to treat the "NPO sector" as a more homogenous entity, would be more easily enforceable in the common law systems** (through the charity concept) than in the civil law systems. Nevertheless, there are some interesting examples of registration and regulatory oversight from the civil law systems that can be considered as an important step towards achieving the overall goal of a unified national treatment of certain types of NPOs. These examples (including e.g., Central Registry for PBOs of Bulgaria, the Money Collection Act from Finland, the bi-agency model for monitoring PBOs of Poland) are featured in this Report.

Regardless of the legal system, however, and as evidenced from the identified trends and initiatives (see below), the tendency of a greater number of NPOs coming under tighter regulatory control can be clearly observed across Europe.

b) Factors to consider in adapting regulatory and self-regulatory initiatives

It is important to indicate upfront the relevance of a range of macro-level factors that play a role in the success of any regulatory approach regarding NPOs in Europe. The cases described in this Report as well as the range of initiatives included in the Charts need to be examined through the lenses of these factors before the level of their transferability can be determined. Once deemed transferable, further examination on the issues for adaptation is needed, where several of these factors will come into play again. Some of the key factors include:

- Common law and civil law. As elaborated above, the legal system in which NPOs operate present policy-makers with a threshold issue of transferability of the initiatives. Although the common law and civil law systems are fundamentally different and this places limits on the transferability of regulatory practices from one system to the other, **certain principles and**

[14] Table 73, Nonprofit Organisations in Hungary - Central Statistical Office, 2008

[15] As described in Section 2.1., and also in Footnote 24 of EC COM (2005) 620. See also paragraph 3 of FATF SRVIII: "it would best aid authorities to protect non-profit organisations that engage in raising or disbursing funds for charitable, religious, cultural, educational, social or fraternal purposes or for the carrying out of other types of 'good works'".

[16] For example, in Hungary all NPOs can claim tax exemptions, whereas PBOs may qualify for additional tax benefits (e.g., tax deductions). However, higher accountability standards only apply to PBOs.

solutions may well be followed by regulators and NPOs in both types of jurisdictions. This is why several good practice examples from the UK and Ireland are included in the Report, including the Charity Commission as a unique model for a regulatory agency for charities/public benefit NPOs.

- Application of fundamental freedoms in national legislation. NGOs are an important way for individuals to fulfil their rights of association and expression, preserved in the European Convention on Human Rights and Fundamental Freedoms and elsewhere. This is an essential underlying momentum across the European Union; however legal and cultural expressions of how specific aspects of these freedoms are realized in national legislation may vary from country to country (e.g., in the contents of legitimate constraints to these freedoms). For example, the extent of protection of privacy rights in national legislation may have a direct effect on NPO accountability regulations in relation to fundraising.

Depending on how the given country legislates the content of privacy rights, regulation affecting NPO accountability may differ, e.g. in what NPOs are required to do when raising funds from the public. In one country (such as Italy) they may need to obtain the written consent of persons whose data was published in telephone directories to receive mail soliciting donations, while in other countries (e.g. in Hungary) they may purchase data from official registries and will comply with data protection rules simply by indicating in the solicitation letter where the personal data of the recipient came from.

- Contribution to social and economic development. The European Commission has recognized that NPOs contribute to social innovation, social capital, good governance etc in many ways.[17] Their contribution varies greatly according to the prevailing models of social welfare (e.g. mixed welfare economy in the UK, the Nordic socialistic welfare state or the Southern rudimentary welfare model). Thus their relevance as a sector in economic size and welfare policies differ largely, although their contribution to social capital is highly valued independently of this. Some states (e.g., in Scandinavia) may not have found it worthy to invest in an all-encompassing regulatory and oversight mechanism for the NPOs given their less direct role in the social and economic policies of the country.
- Third sector models and relationships between the government and NPOs. Strongly linked to the previous factor, there are at least four distinct models of relationships that can be drawn based on the different developmental models in Europe: the anglo-saxon/liberal, the socio-democratic/Nordic, the corporatist/continental and the emerging/Mediterranean models.[18] All of these indicate very different roles for NPOs as perceived by the state and the public; and consequently different relationships between the government as regulator, funder and enabler on the one hand, and the NPOs as independent civic initiatives, funding recipients and social service providers on the other hand.
- Historical context and overall development of regulation. In the UK the concept of charity has been developing for centuries through the precedent-based regulatory practice of common law. In Germany, the subsidiarity principle governing relationships between the state and community-based service providers goes back to the 19th century.[19] At the same time, a comprehensive regulatory approach towards the newly formed NPO sectors is just being developed in many of the new member states. Discussion on issues of accountability and transparency will be informed by different levels of understanding in each of these settings.

[17] See the European Commission's report *Thematic Programme for the Promotion of Democracy and Human Rights Worldwide*, COM (2006) 23 and the 2006 UNDP report *Governance for the Future* on www.undp.org/governance/docs/Policy-Pub-LDCReport.pdf.
[18] See Salamon, L. et al: Global Civil Society (2003) and Bullain, N: Civil Vision (2005)
[19] See Bullain, N., Toftisova, R.: European Policies and Practices in Government – NGO relations (2005)

Furthermore, the capacities of both the government and NPO sectors to implement regulatory solutions will be different as well.

Quite naturally, accountability requirements desirable and acceptable for the various players will be linked to their historical, cultural and economic contexts. The practice by which permits for money collection are granted by the police is seen as appropriate in Finland but may entail apprehension in some of the new member states where the police are still generally perceived by the public as a means of state control rather than state protection. Similarly, it can be observed that in countries where there is greater involvement of the general public in the activities of NPOs (whether through fundraising support or volunteering), there is greater incentive for self-regulation than in those where the public is less interested in NPO activity. Some of the self-regulation initiatives aiming to introduce Europe-wide standards are indeed struggling with this diversity (see for example the cases of Guidestar or ICFO).

As a conclusion it can be said that transferability and adaptation of the various public and self-regulatory solutions presented in this report from one country to another will depend on a range of contextual elements detailed above. However, the need to overcome the basic differences between the two major legal systems in addition to the varying cultural and historical factors may make any attempt at a pan-European regulatory or self-regulatory initiative particularly challenging.

c) The issue of small organizations

Another challenge regulators and self-regulation initiatives have encountered in all countries has been the need for differentiation between larger and smaller NPOs. Both FATF and EC address the need to differentiate among NPOs on the basis of size and/or income level.[20]

Regulatory initiatives usually address this through some **expression of the principle of proportionality**, e.g. not requiring registration or reporting under a certain size, asking for less detailed information in the reports, and/or imposing higher standards on bigger organisations etc. E.g., in the UK it is not compulsory to register for charities with an income under 5,000 GBP and charities with an income under 10,000 GBP are subject to simplified registration and reporting process. In France, recent amendments to various laws increasing accountability and transparency (e.g. the requirement to publish executive compensation) concentrated on associations with annual budgets of over 150,000 Euros.

In the case of self-regulation systems, **certification and accreditation schemes are usually geared towards larger organisations.** For example the members of ICFO in European countries provide certification to a few hundred NPOs only,[21] which, however are among the most visible organisations generating the highest levels of income from public fundraising (e.g., in the Netherlands, seal-holding NPOs account for 80% of the entire amount fundraised by NPOs). These are therefore especially helpful in implementing the requirement for supervision and monitoring of the NPO sector in line with the FATF requirement which states: "In practice, countries should be able to demonstrate that the following standards apply to NPOs which account for (1) a significant portion of the financial resources under control of the sector; and (2) a substantial share of the sector's international activities."[22] At the same time, **codes of conduct aim to include a wide range of NPOs**. During the development of the

[20] See e.g., FATF Best Practices paper: "*small organisations that do not raise significant amounts of money from public sources, and locally based associations (…) may not necessarily require enhanced government oversight*." (Section 5. Principles)

[21] The CBF (Netherlands) seal is held by about 270 NPOs, which account for a total of 1 billion euros in donations; DZI (Germany) also provides around 300 certifications, while ZEWO (Switzerland) issues a seal to over 470 NPOs. (Based on data provided by the seal holders.)

[22] FATF SRVIII, Interpretative Note Section 6.b.

Statement of Guiding Principles for Fundraising in Ireland, great care was taken to include the viewpoints and needs of smaller organisations.[23] Similarly, the Code of Ethics in Estonia contains basic principles which can be easily implemented by all NPOs.

"Small" is of course a relative term. E.g., 44% of registered NPOs in Hungary have an annual income of less than £1,680 and 82% of registered NPOs have annual incomes under £16,800 – i.e. most of them would barely reach the income threshold for charity registration in England and Wales.[24] Therefore, when the Practical Quality Assurance System for Small Organisations (PQASSO) was recently adapted in Hungary, some of the largest Hungarian NPOs found even the first level of the standards difficult to implement. Similarly, in Poland the average annual budget of NPOs does not exceed 3,000 EUR.

At the same time there is an interesting example from Hungary that specifically involved small organisations called the Trademark of Trust. Its first draft was developed by a group of local organisations of a Hungarian town and one of its key experts is the leader of an NPO that provides legal and accounting advice to small local organisations in one of the regions. This case can be a useful model for self-regulation among those NPOs which are "small" by the standards of tools developed by more mature NPO sectors but represent significant incomes by the standards of the given country.

d) The balance and interplay of public regulation and self-regulation

Public and self-regulation play important, complementary roles. There is no blueprint to determine which areas of regulation would be better addressed by one or the other. Also, their role and significance cannot be determined as a zero-sum game (i.e. the more there is public regulation, the less self-regulation is needed, or vice-versa). Rather, they should be considered as complementary tools in achieving an optimal state of accountability and transparency through a model of co-regulation.

As indicated above, differences are noted in the cases presented in this report, which reflect the different legal systems, traditions, recent histories, legal context and overall development of the sector. In UK and Ireland, the development of public regulation and self-regulation has been parallel and the role of both is equally important. In most of the "old" EU member states with a civil law system (e.g., France, Germany, Scandinavia) public regulation plays a slightly bigger role than self-regulation, but self-regulation mechanisms are more advanced than in CEE countries ("new member states"). These latter have less developed NPO sectors and the role of public regulation is more substantial than the role of self-regulation.

An interesting trend can be observed in the more mature regulatory environments whereby the **formal regulatory burden of government has lessened, as expectation and demands on individual NPOs for greater accountability and transparency have increased.** For example, in the UK both regulation and the sector are well developed, so that regulation, whilst comprehensive, is increasingly based upon principles of best practice. NPOs themselves are given increased responsibility for meeting the standards implied by these principles. New legislation in Ireland will introduce a similar approach.

There are numerous examples of a **changing balance between public regulation and self-regulation in England and Wales**, where legal limits on trustees' rights to pay themselves for additional services, purchase trustee indemnity insurance, sell property, invest charity funds or spend endowments have been removed. They have been replaced with a responsibility to clearly demonstrate that they have acted

[23] "Codes of Practice should be linked to organisational capacity and should acknowledge the reality that 6 out of 10 charities have fundraised incomes of less than 21,000 GBP." p.6. Regulation of Fundraising by charities through legislation and codes of practice, Irish Charities Tax Research Limited

[24] Table 33, Nonprofit Organisations in Hungary - Central Statistical Office, 2008

in line with the Charity Commission's policy and guidance, and that fundamentally they have acted in the best interests of the charity.

Another noteworthy case is the **co-regulatory model of fundraising in Ireland**, which is currently being developed as part of the Charities Bill. Under this co-regulatory model, the permits for fundraising will be issued by the Garda Siochana (Irish police force); fundraising administration and operation will be regulated by Codes of Good Practice developed by the charity sector and approved by government.

In the new member states of CEE, by contrast, the sector is not as strong or mature, and **public regulation has therefore taken the lead in addressing issues of accountability**. The change of the political and legal system in these states required them to develop an entirely new role and operating space for NPOs both within the law and within society. In many of these countries it has simply been too early to develop effective self-regulatory mechanisms as the sector's identity and cohesion is still in formation; however, as the cases presented here reveal, there is a clearly increasing demand towards these by the NPOs themselves.

In the other Western European states the role and operating space of civil society has developed over many years and a consensus has been reached on the relationship between NPOs and the law. The nature of these relations varies widely from state to state, with more liberal regimes in countries such as Netherlands and Denmark, and more tightly regulated systems in France and Belgium. Regardless of the current rigour of public regulation, however, **self-regulation initiatives are gaining momentum**[25] in these countries, especially in the more exposed sectors of international development NPOs, foundations, and major fundraising organisations.

Cooperation between self-regulation and public regulation can also be observed in the fact that government agencies, whether central or local, increasingly rely on self-regulatory bodies for information and affirmation in case of granting public funds or issuing fundraising permits. For example, CBF in the Netherlands is affiliated with nearly all local municipalities, which rely on their assessments as a guideline for issuing collection permits.[26] Mention can also be made here of the Amadora City Council in Portugal, which aims to introduce a quality management system for the NPOs providing social services in its territory, in a context where a widely acknowledged certification scheme such as CBF does not exist. Most recently, in Estonia, every organization applying for funding from the National Foundation has to explain how it follows the principles of the Code of Ethics of Estonian Non-Profit Organizations.

Recognising that all initiatives are context specific, some level of generalisation could still be made as regards the areas best practiced by self-regulation or public regulation. It can be seen, for example, that internal governance of NPOs is usually more efficiently guided by self-regulation (due to the diversity of organisational structures and procedures consensus is easier built among peers);[27] while the framework for financial accountability is more effectively set by public regulation (due, among others, to the clear indicators offered by the accounting regulations). Fundraising is an area where motives for self-regulation are most easily found (i.e. increase in resources for NPOs), therefore NPOs are taking the lead in developing standards for fundraisers and fundraising organisations across Europe.

The balance and complementary roles of public and self-regulation can be well illustrated through an example of financial accountability, namely the issue of the proportion of administrative costs. (i.e., what percentage of the funds raised go toward the stated purpose of the NPO and what percentage is used for administration and fundraising by the NPO). While this issue has been at the centre of public

[25] For an overview of self-regulatory initiatives see Annex 4.
[26] Section2.2. Objective and Tasks, Central Bureau on Fundraising (2007)
[27] It follows that the more homogenous the group of NPOs engaged in the self-regulation exercise, the more concrete and possibly, rigorous, the implementation standards will be.

debates everywhere, most countries did not undertake to determine by law or regulation the exact proportions between administrative and mission-related expenses; instead, they may state the principle of using funds for the designated purposes (Austria) or require the NPO to make this figure public (Bulgaria). Self-regulation, on the other hand, may demand very concrete and often strict methods for allocation of funds and set high standards for those aiming to gain the trust of the public.[28]

Considering the above mentioned diversity, the issue of what is the right balance between public regulation and self-regulation should be considered in light of the specific country situations. It is important to recognise that in most cases, there is interplay between public regulation and self-regulation: for example, the former may set a general framework or spell out principles of regulation, and the latter may address the concrete standards for implementation. In other cases, self-regulation remains of a declarative nature while laws spell out requirements for concrete management practices for NPOs.

II. OVERALL ANALYSIS OF TRENDS IN REGULATION AND SELF-REGULATION OF NPOs IN THE EU

This section summarizes the key trends identified based on the charts and cases as well as challenges faced. The most common trends noted among the initiatives can be categorized as: (1) promotion of accountability and transparency; (2) developing comprehensive frameworks for NPOs; (3) creation of national registries or making existing registration data more easily accessible for the public; (4) introducing a PBO status and/or strengthening accountability requirements for PBOs; (5) tightening regulation of fundraising and financial management; (6) improving NPO governance and accountability through self-regulation; (7) strengthening supervision and investigation powers; (8) increasing transparency in public funding of NPOs. The section further outlines that the practice of consultation and inter-sectoral cooperation is developing slowly and needs to be enhanced; it also points to the increasing role assumed by the for-profit sector in promoting NPO accountability. Finally, it also summarizes the trend to address issues affecting NPOs at a European level.

1. Promotion of accountability and transparency of NPOs. There is a definite trend towards introducing more accountability and transparency into the NPO sectors in all EU member states. This is reflected by the sheer number of initiatives in both public and self-regulation that this research has been able to identify: **close to 140 initiatives from the 27 EU member states and the EEA, including over 65 public and over 70 self-regulatory projects**. From a single provision requiring larger associations to publish the compensation of the three highest ranking officers in France, to a comprehensive review of the legal framework affecting NPOs in Lithuania, member states are increasingly engaging in regulation to promote NPO transparency and accountability. At the same time, European NPOs themselves had recognised the need for increased public trust and undertook self-regulatory initiatives at all levels, from local to national, European and even international. The growing concern with regulation of NPOs across Europe is also reflected by the interest of Pan-European institutions to guide their members in good regulatory practices; the most notable example of such trend is the Council of Europe, which adopted its **Recommendations on the Legal Status of NPOs in Europe** in 2007, and has since established an Expert Council to monitor compliance of its member states with the recommendations.

As discussed above, public regulation and self-regulation initiatives go hand in hand in Europe: a move towards increased state supervision can be observed parallel with a greater desire for self-regulation by NPOs. Although it has been difficult to determine the actual motivations behind these initiatives, the

[28] E.g., CBF prescribes that a maximum of 25% of fundraising income may be directed to cover fundraising costs.

general impression from the feedback received by the researchers is that the reforms are not primarily driven by the FATF and EC COM requirements (with some notable exceptions, see for example the Montreux Initiative, or the Counterterrorism Strategy of the Charity Commission). Efforts are made rather as a **reflection of the increased economic and policy importance of the sector** and the subsequent desire of government to optimise NPO contributions to the public good, and of NPOs to reinforce the confidence and increase the support of the public.[29] Having said that, several of the researched initiatives indicated the influence of a need for increased scrutiny of NPOs in a general climate of strengthening anti-money laundering regulation (e.g., Ireland, Finland).

2. Developing comprehensive legal frameworks for NPOs. There are two visible trends. First, countries across the EU where a comprehensive legal framework for NPOs had not yet been developed, have recently engaged in creating such framework. Second, countries with an existing framework have undertaken comprehensive reforms to revise it and improve it. Most of the new EU member states from Central and Eastern Europe underwent significant reforms during the early and mid-nineties in this regard, several of them are currently re-engaging in basic legislative reforms (Czech Republic, Hungary, Lithuania, Slovakia). At the same time, Cyprus and Malta have only recently engaged in an extensive exercise to develop a regulatory framework for NPOs.[30] Furthermore, a few countries in the "old" Europe have also lacked comprehensive and/or codified framework legislation, from among which Ireland is featured in this report for its far-reaching and innovative regulatory initiative. In addition, countries with a long-standing tradition of regulation of NPOs, such as in the UK has adopted a full-fledged reform initiative as well.

In fact, all four common law jurisdictions, England and Wales, Scotland, Northern Ireland and Republic of Ireland have introduced or are introducing major consolidating legislation to re-affirm the legal basis for charity and improve accountability. Whilst the risk of terrorist abuse is a major issue for the sector, particularly in countries of the UK, the major driver of reform has been a desire to clarify and modernize the regulation of a growing and increasingly complex sector which plays a major role in public service delivery. In Ireland, the Charities Bill 2007 was introduced with the aim to reform the law on charities so as to ensure accountability and to protect against abuse of charitable status and fraud. It also aims to enhance public trust and confidence in charities and increase transparency in the sector.

3. Creation of national registries or making existing registration data more easily accessible for the public. Among common law countries, the UK has a national system of registering charities. In most civil law countries, however, registration is done by legal form and therefore distributed among various registration agencies or levels of administration. While creation of an all-encompassing national system will not be possible (or desirable) everywhere, there is a clear trend on behalf of member states to attempt to create a central registry or at least to integrate already existing registration data into a central, publicly available database. Several initiatives to this end are featured in the Report, at country

[29] The size of the sector has grown enormously since the 1970s and studies suggest that in EU member states there may be 1m NPOs which, in some countries, account for 5% of economic activity (Johns Hopkins University, Salamon 2005). It is also interesting to look at the value of sub-sectors, but information is harder to come by. For example, one estimate suggests that there are at least 1300 Muslim NPOs in the UK and that the value of charitable giving (measured by zakat) is far greater than those NPOs' income (Shaw-Hamilton 2007).

[30] Of all the EU members, the small island states of Cyprus and Malta are currently the ones probably facing the greatest pressure to rewrite and modernize their legal framework for NPOs. This has been brought about by EU accession, which has exposed their previously sheltered NPO sectors to both opportunities (for funding and partnerships) and demands (for improved governance, accountability and transparency) that are unprecedented. In Cyprus this has prompted proposals for comprehensive reform which is just beginning, while Malta adopted its first comprehensive law reform act in 2007 after years of drafting and consultation.

level (Austria, Bulgaria, Hungary, Ireland) and even at the European level (Guidestar Europe). The experience of Guidestar is particularly instructive, as this self-regulation initiative relies on a centralised official database of NPOs which has proven impossible to obtain in the four civil law countries participating in the feasibility stage of the programme. However, this experience also produced valuable learning points and recommendations to increase publicly accessible information on NPOs in Europe.

4. Introducing a PBO status and/or strengthening accountability requirements for PBOs. In civil law countries, introducing a PBO status seems to have become the most straightforward way of unifying accountability obligations and corresponding state benefits for NPOs across legal forms. In most "old" EU countries such a status has been established implicitly (e.g. through tax regulation) or, as a more recent phenomenon explicitly as well (e.g. through a separate law, as in Italy and in Portugal). In the new member states this practice is still developing and several are currently in the process to explore possibilities for introducing a PBO status (e.g., Czech Republic, Slovenia, Slovakia, or Cyprus). A range of countries, both from old and new member states that already have some sort of PBO regulation have recently engaged in strengthening the accountability and reporting requirements for PBOs (Bulgaria, Italy, Latvia, Malta, Netherlands, Poland, Romania). Among others, this report features the Netherlands as a country where previously existing practices in regulating PBOs have now been codified. Naturally, comprehensive charity reforms in the UK and Ireland affect organisations of public benefit as well.

5. Tightening regulation of fundraising and management of funds. Fundraising has been a concern of regulatory reform in several countries. Fundraising is the point at which institutional control over funds are at their weakest,[31] making it perhaps the most vulnerable area to abuse for terrorist or any other unlawful purposes. These risks are further complicated by the rapid evolution of alternative fundraising methods[32] in recent years, making this an increasingly complex area to regulate. Several countries require permits to engage in fundraising while some are currently extending this requirement (e.g., Ireland). A range of countries have recently introduced stricter regulations in relation to fundraising whether in a separate act (e.g. Finland's Money Collection Act) or as part of a more comprehensive reform (e.g. Austria, Bulgaria, Ireland). Notably, nearly all reform initiatives legislate the principle of using funds for proper purposes and strengthen rules of reporting on the use of funds raised. Interestingly, Malta chose to provide an incentive for accountability by making fundraising easier for publicly accountable and transparent NPOs. Furthermore, the UK has addressed management of funds by developing specialised accounting rules for NPOs, a case introduced in this report (SORP).

The countries where public fundraising has been a more recent phenomenon (new member states as well as some of the southern countries like Spain and Portugal) face specific challenges as even the more traditional forms of fundraising are less regulated, while some of the new technologies in fundraising gain significance in a virtually unregulated space. Although efforts are made to regulate the issues, they are not yet addressed comprehensively (i.e., instead of a range of issues only one aspect is tackled) which creates inconsistency. The under-regulation of this field led to problems in Cyprus as well, where NPOs had difficulties in fundraising during the 2004 referendum on the Annan plan and also in other instances.

[31] By institutional control we mean both government and NPO oversight. E.g., for some types of fundraising, e.g. public cash fundraising, there is most often no external verification or official record of the transaction.

[32] Among others, these include telephone appeals, fundraising through internet and new technologies (e.g., sms text messages), interactive television advertising (direct response TV), employment of professional fundraisers to solicit funds in the street ("face-to-face" fundraising).

6. Improving NPO governance and accountability through self-regulation. Although several of the public regulation initiatives identified through this research tackle governance of NPOs, it can be observed that as an overall trend, self-regulatory initiatives take the lead in attempts to improve NPO governance. From the Central and Eastern European Working Group on NPO Governance that published the Handbook on NPO Governance in 2005, to the most recent initiative by Dochas, the Irish Development NPOs Code of Corporate Governance (2008), a range of self-regulation initiatives addressed issues of good governance within NPOs. As pointed out earlier, self-regulation initiatives seem to have more "meat" (more concrete standards) and more "teeth" (more effective compliance mechanisms) when developed for the use of a more narrow group of NPOs. These initiatives are taking place on sub-sectoral level, instead of national level. In fact, very few initiatives across sector have been identified and those have not as yet demonstrated high impact or visible results (although the example of Estonia, featured in this Report, is promising). On the other hand, self-regulation initiatives in particular fields have been successful in creating and spreading examples of good practices in governance, accountability and transparency.

7. Strengthening supervision and investigation powers. Several countries have revised and clarified the roles of supervision agencies and introduced rules to increase inter-agency cooperation. While the Charity Commission stands out as a single agency with specific investigative powers over NPOs, comparable models have been introduced in civil law countries as well. A case in point is the Ministry of Labour and Social Affairs and the Council on Public Benefit Organisations in Poland, which have considerable power to investigate the operation of PBOs. Recent amendments to the NPO law in Bulgaria increased the ability of the Central Registry, and the Ministry of Justice, to monitor PBOs and increased its role in sharing information with other state agencies regarding PBOs under its supervision. In addition, powers to share information and cooperate in investigation have been extended along with the introduction of higher accountability standards for NPOs (in Austria) and a central registration database in Austria and Hungary.

8. Increasing transparency in public funding of NPOs. This trend can be observed primarily in the new member states which have had to distribute an unprecedented volume of public financing through the Structural Funds and other EU financing mechanisms introduced at their accession. As a result financing procedures towards NPOs have been established or revised in many countries: e.g., a Law on Grants has been introduced in Romania; a Law on Transparency of Public Funding in Hungary; while Estonia is developing a performance management system for NPOs who manage public (state) funds. However, the intention to improve transparency in public funding is not unique to the new member states. As an example, France has introduced a series of provisions in 2005 and 2006 aiming at improving governance and reporting requirements of NPOs receiving funding from the central or local governments. England adopted a Funding and Procurement Code, which was first developed in 2000 and then revised and republished in 2005. It aims to influence behaviour by putting forward a framework for the financial relationship between the government and the voluntary and community sector, setting out undertakings for both sides, based on what each can expect from the other.[33] Another interesting development in this field is the spread of pre-qualification systems introduced primarily in the field of funding international development, under which NPOs who satisfy certain criteria will become eligible for a simplified procedure on administrative checks of the grant applications.[34]

9. Slowly developing practice of consultation and inter-sectoral cooperation. The European Union promotes consultation widely as a good practice and has developed guidelines for member states to engage in consultation processes.[35] Yet, this practice is taking up slowly in countries where such

[33]See: www.thecompact.org.uk/information/100022/101508/101518/thefundingandprocurementcode
[34] See for example the PADOR system of EuropeAid.
[35]See *European Governance – A White Paper* Brussels, 25.7.2001. COM(2001) 428 final

tradition is lacking. Cases from the UK and Ireland are featured in this Report as best practice models, especially in regard to consultations early on, when the policy approach and the concept for regulation is being developed. This approach seems to be a key in gaining the support and cooperation of the NPO sector in the adoption and implementation of legislation. The model seems to be more widespread in countries of Western Europe (i.e., Austria, Netherlands, France) than in the new member states. Only in cases from Estonia, Bulgaria and Malta were effective consultations reported. NPO representatives from several CEE countries reported cases where already drafted government proposals were submitted to the Parliament or were made public in final stages on Government level. As a result these initiatives were halted by NPOs or the drafts did not represent opinions of NPOs, which could have been avoided by conducting a proper consultation process and involving the sector early on.[36] A related matter is a more general outreach to the NPO sector and cooperation in producing best practice regulatory models, of which few examples could be found. (The most outstanding examples being Ireland and England.) Nevertheless, while substantial gaps still exist in some countries, good practices in consultation are increasingly undertaken in all EU member states.

10. Increasing role of corporations and the for-profit sector: Partnerships between corporations and NGOs are growing and corporations are increasingly assuming a role and influence in improving accountability and transparency of NPOs. The main ways that can be seen based on the cases include: (1) Practices from corporate governance have served as a model on good governance issues for NPOs. Specifically, there are examples of governance practices of corporations being adopted or considered in NGO self-regulation initiatives (e.g., Dochas Code of Corporate Governance for Irish Development NPOs) or influencing development of quality management systems based on existing corporate models (e.g., ISO and EFQM) (2) Corporations have undertaken certification of NPOs (e.g., Fundación Lealtad mechanism of assessment through 9 Standards of Transparency and Best Practices developed by Spanish business leaders). (3) Corporations have undertaken activities to promoting excellence and transparency (e.g., in Germany, PriceWaterhouseCoopers (PWC) has for the last two years been hosting the "PWC Transparency Prize" honouring the best reporting CSOs; in 2006 KPMG published a study on corporate governance in the third sector.[37]) (4) Where there is a market opportunity, for-profit service providers across Europe have a direct interest in increasing transparency and accountability of NPOs (e.g., those maintaining various NPO databases; fundraising suppliers; fundraising and organisational development consultants etc.).[38] (5) Corporations have also appeared as donors of initiatives which aim to promote NPO transparency and accountability (e.g., supporters to GuideStar Deutschland.) Based on Guidestar Deutschland's market research paper, banks and auditing companies are especially interested in supporting and promoting this area.[39]

11. Trend to address issues affecting NPOs at a European level. A number of public and self-regulation initiatives were identified that aim to address issues relating to NPOs across borders in Europe. While not numerous, these initiatives are significant in their potential impact as they will directly affect the regulatory environment of NPOs in member states and can be expected to increase accountability and transparency of the NPO sectors. The most prominent initiatives include:

[36] Such cases were reported from Slovakia (reform of Associations law), Romania (reform of PBO legislation), Hungary (Law on transparency of public funds) and Poland (foundation law reforms and tax reforms affecting NPOs).
[37] Guidestar Deutschland – A market analysis, September 2007
[38] Just as but one telling example, a key agenda point in the most recent Summer Conference of EUConsult (The European Association of Consultants to and about Not-For-Profit Organisations) has been the review of its own Code of Ethics – within the context of "ethical practices becoming increasingly important in the NPO sector". See: http://www.euconsult.org/fileadmin/user_upload/files/08-5/EUConsult_Summer_Conference_Info_Programme_Registration.pdf
[39] Guidestar Deutschland – A market analysis, September 2007

- Council of Europe **Recommendations on the Legal Status of NPOs in Europe**,[40] which serves as a prominent source of regulatory good practice and provides useful guidance especially to countries where a coherent legislative framework for NPOs has not yet been established or is undergoing major reform. The Recommendations were adopted to recognise the importance of NPOs in modern society and to elaborate minimum standards for their operation. The Recommendations will have a direct effect on accountability regulation, as member states are required to follow its guidance such as: *"NPOs which have been granted any form of public support can be required each year to submit reports on their accounts and an overview of their activities to a designated supervising body."*[41]
- The European Foundation Centre's initiative to introduce the **European Foundation Statute**. Currently, a feasibility study is being conducted to determine the need and relevance of the introduction of this new European legal form.[42] EFC has also developed a model law on foundations and several documents that provide guidance to member states in legislative reforms concerning foundations.
- A similar initiative to introduce a **Statute of a European Association** exists since 1984 when the European Parliament passed a resolution on this matter. Several NGOs, including CEDAG actively worked on this initiative. However, in 2006 it was withdrawn from the legislative process and not much progress has been made since.[43]
- A series of cases have been brought to the ECJ that aim to **diminish barriers to cross-border giving** in the EU. According to the ECJ, several EU countries could be in conflict with the EC Treaty for discriminating against foreign-based foundations and cross-border donations.[44] Two most notable cases are the 'Stauffer' case (concerning the issue of tax treatment of resident and non resident PBOs)[45] and the 'Persche' case (concerning the refusal of tax deductibility for an in-kind donation by a German donor to a Portuguese public-benefit organisation).[46] In the Stauffer case, ECJ ruled that although requirements for tax exemption for PBOs are designed at the national level, if a foreign-based PBO fulfils the criteria of public benefit at the national level, it cannot be excluded from tax breaks just because it has a seat in a different country. Further, in Netherlands as of 1 January 2008 a charitable organisation resident in the EU, the Netherlands overseas territories Netherlands Antilles and Aruba, or another qualified country will have the same tax privileges as a similar Dutch-based institution.[47] Denmark, Poland, Slovenia and Finland have also amended legislation to allow tax benefits to PBOs based in other EU Member States.
- Guidestar is considering developing a **European database on NPOs** (as part of a more international undertaking) as a prelude to the introduction of national Guidestar systems across Europe. Beyond being a useful service for donors regardless of national borders, this

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[40] See Recommendations on the Legal Status of NGOs in Europe (October 2007) at: https://wcd.coe.int/ViewDoc.jsp?id=1194609&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75

[41] Para 62, Council of Europe Recommendations on the Legal Status of NGOs in Europe.

[42] The study is led by the consortium consisting of the Max Planck Institute for Comparative and International Private Law (MPI) in Hamburg and the University of Heidelberg - Centre for Social Investment (CSI) together with the Law Faculty, on behalf of European Commission, Directorate-General for Internal Market and Services.

[43] As reported on: http://www.cedag-eu.org/cedag/index.php?page=european-statute-of-association&hl=en_US

[44] For detailed discussion on this topic see European Foundation Centre Briefing *"Update on cross-border tax environment of foundations"* of April 2008, Ref: befc0829.

[45] Judgment C-386/04 of the ECJ, September 14th 2006.

[46] The Persche case is still pending judgement. For more information see EU Tax Newsletter: Issue 2007/nr.004 prepared by members of PwC's EU Direct Tax Group.

[47] For more see European Foundation Centre's Country Profile April 2008: The Netherlands www.efc.be

approach is also thought to induce interest on part of the country level stakeholders to engage in developing a more in-depth inventory of their NPO sectors.

Implementation of these initiatives is taking time due to the level of diversity they need to embrace. However, they signal a clear trend towards dismantling borders determined by national regulatory systems and enhance the development of the NPO sector on a European level.

III. OVERALL ASSESSMENT OF THE EXTENT TO WHICH NPO-RELATED FATF AND EC COM RECOMMENDATIONS ARE REFLECTED IN THE INITIATIVES

FATF has made 40 recommendations and 9 special recommendations on countering money laundering and terrorist financing. *Special Recommendation VIII (SRVIII)* relates to NPOs, requiring members to:

"Review the adequacy of laws and regulations, and implement measures to prevent:

a) terrorist organisations posing as NPOs;

b) escape from asset freezing measures; and

c) NPO funds being diverted to terrorist organisations."

FATF produced a *Best Practices Paper* in October 2003 and *The Interpretative Note* in February 2006. The Best Practice Paper sets out wide-ranging principles and guidance on NPO oversight by recommending to governments to focus on: (i) financial transparency (ii) programmatic verification and (iii) administration. The Interpretative Note sets out the objectives of SRVIII and general principles for compliance. It states that an effective approach would include (a) Outreach to the sector, (b) Supervision or monitoring, (c) Effective investigation and information gathering and (d) Effective mechanisms for international co-operation.

EC COM (2005) 620 provides an analysis of state efforts to counter the vulnerability of NPOs to terrorist abuse, with a particular focus on coordination and intelligence sharing within and between states. The paper concludes with a series of recommendations for member states and a draft code of conduct for NPOs. The paper recognises the legitimate interests of both Governments and NPO sectors in a sound legal framework and the importance of an appropriate balance between public and self-regulation. Considering this, it identifies the most recent common trends in public regulation and self-regulation and presents recommendations relating to potential actions at the level of the EU, member states and NPOs.

Despite their common origins, these three reference papers of the present study have been developed in different contexts and for different purposes. Therefore, their approach to addressing terrorist financing of NPOs as well as the standards for accountability and transparency contained in the documents differs.[48] This is an important fact to consider when analysing the extent to which the initiatives in this paper are in compliance with these documents. The initiatives employ standards on accountability which are (or are not) reflected differently in these documents. This section will: (1) Briefly outline the approaches of these papers towards accountability and transparency in order to support better understanding of the context of the featured initiatives and their relation to the standards in these documents. A more detailed description of the standards analysed by issue area is available in Annex 3. (2) Highlight the extent to which the issues and standards of the three papers are present in the identified and analysed initiatives.

[48] Essentially, the Interpretative Note provides detailed explanation of standards for the Government, with a particular focus on investigations and intelligence; the Best Practices paper provides guidance from the point of view of what NPOs should undertake with a particular focus on governance and financial controls, and the EC COM (620) looks at mechanisms to ensure information sharing within and among member states of EU.

Accountability and Transparency Issues in the Key Referenced Documents

Definition of accountability and transparency: The EC COM (2005) 620, SR VIII and Interpretative Note imply characteristics of accountability and transparency rather than providing an exact definition. For example, in the case of national regulation *accountability* can mean that competent bodies of members states "operate publicly accessible registration systems for all NPOs operating on their territory and wishing to take advantage of preferential tax treatment, the right to collect funds from the public and the access to public grants" and "have capacities to assess risk of abuse of individual NPOs" (EC COM (2005) 620, Recommendation, 2.1). In addition, the EC COM (2005) 620 requires NPOs to give a list of bank account numbers to the regulator, to prepare an annual report and keep minutes of meetings of decision making bodies. In the case of self- regulatory codes of conduct, for example, an NPO may need to produce a document containing the basic information on the NPO, prepare annual financial statements of income and expenditure and make best endeavours to verify the identity, credentials and good faith of their beneficiaries, donors and associate NPOs (EC COM (2005) 620, Recommendation, 3). The FATF Best Practices paper says that NPOs need to verify that funds have been spent as advertised and planned by asking beneficiaries (limited) questions and "in some instances" conducting field examinations (FATF 2002, 3). Financial accountability is described by the FATF as "full programme budgets that account for all programme expenses ... [which] indicate the identity of recipients and how the money is used"; independent auditing should be "considered" and, where practical, this should ensure that the NPOs are not being misused by terrorist groups (FATF 2002, 2).

As to *transparency* at a national level, it is achieved through a register, whether public (EC COM (2005) 620, Recommendation, 2) or for the use of the regulator (FATF 2006, 3). At the sectoral level, transparency is achieved by making the basic information public and by making the annual accounts and report available for inspection by the regulator (EC COM (2005) 620, Recommendation, 3; FATF 2006, 3). The Best Practices says that NPOs should be "able to present" their programme budgets and tell donors what they are collecting money for (FATF 2002 pp 2-3). The Interpretative Note requires NPOs to keep records that are sufficiently detailed to show how funds have been spent (FATF 2006, 4). In addition, the EC COM (2005) 620, Recommendation require NPOs to give bank account numbers to a regulator (who should keep them confidential), to use registered bank accounts (unless it is not possible to use the formal banking system) and to keep financial statements, annual reports, minutes of meetings of decision making bodies and audit trail records for 5 years (EC COM (2005) 620, Recommendation, 3).

Addressing terrorist financing of NPOs: The three papers contain similar provisions regarding areas which are crucial to address vulnerabilities to terrorist financing in NPOs. Specifically, NPOs should keep proper books, produce financial reports and (where appropriate) operate a 'know your beneficiary' rule and use formal financial channels. For governments, the papers agree that government should be able to monitor and investigate NPOs, and that there should be inter-agency co-operation (including international cooperation). Finally, all three papers state that there should be a proportionate approach to regulation.

Other issues covered in the papers: The following issues are covered by two of the papers::

- The two FATF papers emphasise the need for appropriate investigation and law enforcement powers, and both recommend a flexible and effective policy approach;
- The Interpretative Note and EC COM (2005) 620 state that there is a need for registration of NPOs, public and official access to key information, and access to intelligence. They also state that NPOs should undertake 'know your donor' checks in certain circumstances. Finally, they both emphasise that regulations should not prevent legitimate NPO activity and that

government should educate the sector about risks and engage it in developing measures to mitigate that risk;
- The Best Practices Paper and EC COM (2005) 620 recognise that other regulatory bodies and initiatives, including private bodies and sector-based self-regulation initiatives, have a role to play.

The following issues are covered by one of the papers::
- EC COM recommends rewarding compliance with laws through tax benefits, rights to public fund-raising or access to government funds. It also highlights the need for attention to be paid to data protection rules and avoiding duplicate regulation.
- The Interpretative Note takes the most regulatory approach, with a much greater emphasis on intelligence, investigations and sanctions. For example, it alone recommends that NPOs undertake background checks on employees. It also provides much more detail on the range of powers of intervention to identify and prevent potential terrorist abuse of NPOs that government should have.
- The Best Practice paper has a particular focus on accounting and on Director's responsibilities including recommendations on auditing, record keeping, verification of programmatic activities and some governance issues.

Accountability and Transparency Issues Addressed in the Initiatives

There is a mixed relationship between the initiatives identified and studied in this report and the requirements set out in the Interpretative Note, the Best Practices Paper and EC COM (2005) 620. Few of the initiatives studied were strongly influenced by FATF SRVIII or EC COM, with the apparent exception of the Montreux Initiative and the Charity Commission's Counter-Terrorism Strategy. There was also a less direct influence on some other initiatives, such as the Irish Charities Bill, the Charities Act 2006 in England and Wales, and the Finland Money Collections Act. Nevertheless, all of the initiatives meet the requirements set out in the papers in some way (see individual case studies for details).

Some ***key requirements are covered in detail,*** for example:
- The registration and public database requirements are key aspects of the case studies covering Ireland (Charities Bill), Bulgaria, Malta, Hungary, Austria, and England and Wales (Charity Commission). It is also a central feature of Guidestar, one of the self-regulation initiatives. Indeed, almost all European countries have some kind of registration requirement as part of their regulatory system.
- Accounts, reporting and monitoring are also key aspects of many country's regulatory systems, as featured in the case studies on Poland, Ireland, Bulgaria, England and Wales, Malta, Austria and Estonia.

There was ***less comprehensive coverage*** of the following issues:
- Few examples of effective mechanisms for inter-agency cooperation on NPO issues were identified. Exceptions are provided by England and Wales (Charity Commission Counter-terrorism strategy), Bulgaria, Hungary and Poland;
- Few examples of balance of powers, sanctions and safeguards in case of government competencies to gather information, investigate and intervene in potential cases of NPO abuse. England and Wales (Charity Commission) and Ireland (Charities Bill) provide examples of how this can be done well;
- A flexible, targeted and effective policy approach was noted in Ireland (Charities Bill), the UK (SORP), Austria and Poland. It is perhaps not a coincidence that consultation was also a factor

in the development of the initiatives in most of these countries. There are other examples of both in other parts of the EU, although this approach does not seem to be widespread.

The ***recommendations least covered*** by recent initiatives relate to the 'know your beneficiary' and 'know your donor' rules. The Counter-Terrorism Strategy of the Charity Commission for England and Wales is the only initiative that addresses this issue directly and that only to note the limitations and complications of applying the principle in practice.[49] Elsewhere, regulatory initiatives in Bulgaria and the Netherlands have introduced rules stating that donors must be named in annual reports, but these do not require verification of their identities. On the other hand, some of the self-regulatory initiatives already contain provisions that assist in the implementation of these principles. For example, CBF, the Dutch NPO accreditation agency requires NPOs to keep a record of information on the contributors.[50] While not always as straightforward, other accreditation agencies have similar requirements, therefore major NGOs in countries with accreditation schemes may already (at least in part) comply with these principles.[51] Furthermore, the Humanitarian Accountability Partnership International (HAPI) addresses the need for good practice in identifying and selecting beneficiaries of humanitarian programs, from the point of view of "downward accountability" (i.e. accountability to beneficiaries).[52]

Nevertheless, the fact that these specific recommendations are hardly reflected among the vast variety of ongoing European initiatives is significant. Firstly, it renders a gap in regulation and self-regulation relating to NPO accountability and transparency, the filling of which is seen as desired by the EC and FATF in order to help minimise the risk of abuse of NPOs in Europe. Second, it may signal the difficulties of implementing these recommendations by the member states and self-regulatory bodies. For example, the Charity Commission states that "*it is difficult to see how there can be a standardised approach"*. However it recommends "*further serious consideration*" of "*a risk-based approach with a standardised minimum, whether in the form of a checklist or a set of principles"*.[53]

It is interesting in this regard to point to the standards of the Humanitarian Accountability Partnership International (see Case IV.18.). These standards concern the way humanitarian services are delivered and aim to ensure the highest level of accountability to beneficiaries. A number of standards concern practices in which NPOs identify and select beneficiaries of their programs and ways in which they involve beneficiaries in program design, implementation and evaluation. Dialogue with HAPI and its member organisations may be helpful in reviewing concrete ways of how the "know your beneficiaries and partner NPOs" principle may be implemented in practice, taking into account resource constraints, cost-benefit analysis of the different practices, issues of trust among beneficiary communities and other relevant discussion points.

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[49] The Recommendations say that this area needs further work. For example, we are aware that the Charity Commission is developing its ideas with input from the NPO sector

[50] "Information from the contributor files is not to be made available to third parties without permission from the contributors, except if requested by the competent authorities. The fundraising institution needs to keep a record of information which may reasonably be available on the identity of contributors." (Criteria for the CBF Seal of Approval, Paragraph 3.f.) CBF is currently working with the Ministry of Justice to ensure that its criteria comply more with FATF and EC COM recommendations.

[51] E.g., the Austrian Seal of Quality for Donations prescribes to NPOs to grant donors a right of withdrawal within 14 days after the conclusion of various donor agreements (including direct debit, sponsor membership etc.), and reimbursement of already paid donations. (Criteria #18) This presupposes that the identity of the donor is maintained.

[52] It is our understanding that this principle is also addressed in the documents of the Montreux Initiative however, this could not be confirmed.

[53] For more, see Case IV.6.

Some initiatives relate to ***issues that are at best only partly covered*** in the Interpretative Note, Best Practices paper and EC COM (2005) 620. For example:

- There are a number of interesting and successful initiatives to improve accountability and transparency through a system based on public benefit status. Case studies featuring this approach include Bulgaria, Netherlands and Poland, and this system is present in many other countries including Portugal, Italy and Hungary. However, there is no explicit reference made to this regulatory approach in the three documents. Given the complications of defining the sector in civil law countries described in Section I, the issue of public benefit status as a way of determining categories of NPOs falling under the scope of increased accountability and transparency regulation, may deserve greater attention.
- All the papers recognise the importance of accounts and book keeping. However, aside from a brief reference in the EC COM paper, there is little emphasis in the papers on ways to determine minimum or common accounting standards specific to NPOs. Accounts are an important management tool and a means of demonstrating accountability and transparency. The need to produce accounts to a minimum standard is a feature of the case studies in Austria, Bulgaria and Ireland (Charities Bill). The most comprehensive approach is featured in the study on the UK SORP.
- Sound internal governance is recognised as a vital defence against potential abuse, but is not covered in much detail by the papers. The Best Practice paper covers this area in most detail, focussing on director's responsibilities and the need for proper documentation. In practice, many of the best initiatives for improving governance have been self-regulatory, e.g., among foundations or development organisations. Effective government programmes to encourage enhanced internal governance measures are less common. Exceptions include England and Wales (Charity Commission), Bulgaria and Poland.
- Whilst all the papers recognised fundraising as a major vulnerability, there was little guidance on how to regulate it beyond the requirement that NPOs operate a 'know your donor' principle where appropriate (see above) and the EC COM recommendation that the right to fundraising be restricted to NPOs that comply with regulations. A number of countries have addressed this area of regulation and the report found some interesting examples of oversight of fundraising, most notably in Ireland, Finland and, to a lesser extent, the Netherlands. The International Committee on Fundraising Organisations and its member organisations (certifying agencies) present a good example of (self-)regulation of fundraising in a comprehensive manner. Furthermore, the evolving co-regulatory models (Ireland, Netherlands) provide opportunities to initiate important discussions among NPOs, government and the public on what can be expected from organisations engaged in public fundraising.
- EC COM (2005) 620 mentions that public funding should be offered to NPOs fulfilling registration requirements and complying with transparency requirements. Nevertheless, the report found several initiatives where the government as a major funder influences and enhances accountability and transparency through creating mechanisms for transparent funding distribution and accountable spending and reporting. Beyond examples from France and the UK, a wave of such legislation took place in the new member states – among others, the Romanian 2005 Law on Grants, the Hungarian 2007 Law on Transparency of Public Subsidies, the Bulgarian State Budget Law for 2007 and its implementing regulation and the Estonian Performance Management System for NPOs that receive public funds.

Conclusions relating to the extent to which current initiatives reflect NPO related EC and FATF documents

The disconnect between the issues and recommendations featured in the reference documents and those taken up by the ongoing regulatory and self-regulatory initiatives indicates that more effective implementation is needed. This does not mean that the policy approach needs to be revised; in fact,

many of the policy considerations relevant to a more effective accountability and transparency framework are spelled out in the documents, and particularly in EC COM.

Key policy considerations of the EC Recommendation include, e.g.:

- Minimising the risk of abuse without over-burdening the sector;
- Not to jeopardise the efficient provision of emergency relief and other non-profit activity;
- Ensuring that nothing is done that could undermine the work or reputation of the vastest majority of legitimate NPOs;
- Avoiding a "one-size-fits-all" approach;.
- Not to hinder legal cross border activities of NPOs;
- Avoiding duplication of existing registration/reporting obligations;
- Avoiding overburdening NPOs with excessive administrative requirements and applying simplified requirements to NPOs under a certain size. (See Annex 3. for details.)

The FATF documents also address the policy issues of flexibility in national adaptation, risk-based approach, and proportionality; at the same time (given also their differing purpose and target audience) these documents take, overall, a more narrow regulatory approach, focusing on fiscal regulation, reporting and oversight of the NPO sector.

The need for "refinement" means, for EC in particular, that in order to ensure more effective implementation of the EC COM policy framework in regard to NPO accountability and transparency: (a) the definition of accountability may need to be broadened; (b) the strengthening (capacity building) of the NPO sector as a joint interest of EC, national governments and NPOs could be spelled out more clearly.; (c) the definition of NPOs may need further clarification and more discussion on the types and categories of NPOs covered by reference documents under the various national legal systems would be useful; (d) the scope of issues covered by the recommendations may need to be expanded; and (e) the implementation of certain recommendations, most prominently, the "know your donors" and "know your beneficiaries" principles could be further enhanced.

Ad a) The main reason for the EC to **broaden its interpretation of accountability** and include other forms of accountability as a basis for implementation of its recommendations, is that this will enable the EC to capitalise on initiatives that are key to increasing accountability and transparency of NPOs but are currently not seen as directly relevant to minimizing risk of abuse in the NPO sector. This approach recognises that ultimately accountability initiatives all have a positive effect on decreasing the risk of abuse. A case in point is the potential for discussion with HAPI and other humanitarian self-regulatory initiatives which guard the quality of service delivery to vulnerable populations. In order for the EC to benefit from the breadth of experience of NPOs operating in a wide variety of European and international environments, e.g. in determining feasible ways to implement the "know your donors" and "know your beneficiaries" principles, it may be helpful to **establish a common ground for the starting point: what is included in the understanding of accountability.** This would also provide a basis for an informed discussion on what practices constitute a proper balance between the values and interests driving "upward" and "downward" accountability. Enlisting such practices may have a direct impact on the effectiveness of public and self-regulation initiatives Europe-wide.

Ad b) In addition to a common starting point, **determining common interests of stakeholders** involved can also be helpful in moving forward the process of policy implementation. Based on the analysis of motivations and drivers behind the cases identified in this study, a key common interest – besides and in support of the CT objective - would be the **strengthening of the NPO sector**. **From the point of view of EC** – a strengthened NPO sector with more capacity to regulate itself can be an important and reliable partner in the fight against terrorism and money laundering. Involvement of NPOs in the design and implementation of policy measures adds value in that more effective, feasible

and context-sensitive measures will be applied. Also, the work of many NPOs includes CT relevant activities, including dealing with inequalities, rifts between communities, good governance and so on[54]. **From the point of view of member states**, a strengthened NPO sector contributes more to social and economic development; has more capacity to comply with public regulation; and is likely to undertake a higher degree of self-regulation, thereby increasing its accountability toward the government and the public at large. **From the point of view of the NPO sector**, greater trust and partnership can be developed towards regulators if they are seen to understand the need for the strengthening of the sector besides the need for implementing regulatory measures. Interest in accountability should therefore be coupled with interest in building capacity of the sector. As the cases illustrate, these may include guidance, tools, training, funding, participation, as well as enabling legislation and innovative ways of regulation of the sector.

Ad c) There seems to be a need to address, for the benefit of public regulation and self-regulatory initiatives alike, the issue of **which NPOs shall be covered by regulation on accountability and transparency.** Due to the different regulatory approaches of common law and civil law countries, and the differences among civil law countries, implementation of the recommendations may be hampered (e.g., when trying to apply an instrument designed for one category of NPOs to another group of NPOs in another country). While there may be no need to change the definition of NPOs in the EC COM (2005) 620 itself, establishing priorities through clarifying regulatory and self-regulatory expectations of stakeholders and learning from experiences from various jurisdictions would be useful.

Ad d) As shown above, there are **a range of issues which the study found directly relevant in contributing to increased accountability and transparency of NPOs in Europe**, and which, at the same time, are not widely covered in the key reference documents. As a pragmatic approach to further implementation of the overall policy framework of the EC COM, the EC may need to engage with stakeholders in discussing specific aspects of those issues, ranging from public benefit status to fundraising regulation, and from internal governance to transparency in public funding.

Ad e) There appears to be a need to **engage in further discussions** around some of the recommendations, and most prominently in the areas least reflected in the ongoing initiatives: the **"know your donor" and "know your beneficiary" principles**. Given that the implementation of these principal recommendations is highly sensitive and that many interests are involved, it would seem that in order to have a fruitful stakeholder discussion on these issues, the previously described steps in points a) – d) would be useful (i.e. establishing a common ground for interpreting accountability; defining joint interests of stakeholders; clarifying definitions of NPOs as well as broadening the scope of issues covered by the goals of the EC.)

[54] See *In Larger Freedom: Towards Security, Development and Human Rights for All*, report of the UN SG, September 2005, http://www.un.org/largerfreedom/.

IV. DESCRIPTION AND ANALYSIS OF SELECTED PUBLIC AND SELF-REGULATION INITIATIVES

The following description of 19 initiatives in the field of NPO public and self-regulation have been selected from 140 identified initiatives (see Annexes 6. and 7) based on pre-agreed criteria and the level of information received from local partners. These cases are not representative of all initiatives but illustrate best practice solutions in certain issue areas of both public and self-regulation such as registration, reporting, central registry, online database, PBO status, regulation and supervision, counter-terrorism, accounting, fundraising, certification/accreditation, codes of conducts and standards for accountability and transparency. The context in which they have been developed is also considered in order to assess the potential of transferability of the initiative in other environments. For the same purpose, the challenges of implementation are also highlighted. Finally, in line with the terms of reference in the tender, the analysis of some of the initiatives (especially in the field of public regulation) also considers the specific issues of the case from the perspective of FATF and EC COM 2005 (620) standards. Further information on each initiative can be obtained from the contacts and links provided in the case or in the annexed charts.

TITLE OF INITIATIVE	COUNTRY	PUBLIC REGULATION OR SELF-REGULATION	FOCUS ISSUE(S)	DESCRIPTION
Charities Regulation Bill	Ireland	Public Regulation	Registration, reporting and regulation	Introducing for the first time an integrated system of registration, reporting and regulation implemented by a new independent body.
Reforming the Legal Structure for NPOs	Malta	Public Regulation	Registration and regulatory body	Comprehensive NPO legal reform establishing a clear mechanism for obtaining legal personality, treatment of unregistered organizations, maintaining a register, introducing group of "voluntary organizations" and regulator of such organizations.
Charity Commission for England and Wales	UK	Public Regulation	Regulator and supervisor of PBOs	Oldest government regulator of charities with highly developed policy approach towards charity accountability and transparency.
Model of Supervision of PBOs	Poland	Public Regulation	Supervision of PBOs	Bi-agency model for supervision of NPOs implemented by Ministry and Council.
ANBI (Algemeen Nut Beogende Instelling) status	The Netherlands	Public Regulation	PBO status	Recently codified status granted by the Dutch tax authorities in order to qualify for tax benefits both on income and for donations.
Counter Terrorism	UK	Public Regulation	Counter-terrorism	A detailed and coherent response from a specialist and independent

Strategy of Charity Commission for England and Wales				regulator to the threat of terrorist abuse and the only explicit counter-terrorist strategy for the NPO sector published by a European regulator.
Statement of Recommended Practice for Charity Accounting (the 'SORP')	UK	Public Regulation	Accounting	A comprehensive framework and set of standards for charity accounting and interpretation on how to meet those standards.
Central Registry of Associations	Austria	Public Regulation	Central registry	Model of a centralized public registry that unites decentralized sources of registration information for associations.
Central Registry of PBOs	Bulgaria	Public Regulation	Central registry	Example of how states may decide to develop a registration and oversight system for a key group of privileged NPOs if it is too difficult to create a national centralized system for the sector.
GuideStar	UK/Europe	Self-Regulation	On-line database	Comprehensive online databases of NPOs.
Mixed Regulatory Model for Fundraising	Ireland	Public Regulation/ Self-Regulation	Fundraising	An innovative and flexible system for fundraising regulation, combining elements of both public and self-regulation.
Money Collection Act	Finland	Public Regulation	Fundraising	An example of a stand-alone regulation that deals with the risk of abuse inherent with cash collections.
Code of Ethics of Estonian Non-Profit Organizations	Estonia	Self-Regulation	Code of conduct	The most successful effort to develop a sector-wide code in CEE
Code of Corporate Governance for Irish Development NPOs	Ireland	Self-Regulation	Standards	Standards of best practice that is intended to strengthen the impact of development organisations and enhance stakeholder confidence in them
International Committee on Fundraising Organisations (ICFO) and Central Bureau on Fundraising	International/ The Netherlands	Self-Regulation	Standards and certification/ accreditation of fundraising NPOs	An association of national accrediting bodies for fundraising and an example of NPO certification in a mature fundraising environment.

(CBF)				
Trademark of Trust	Hungary	Self-Regulation	Standards and certification of fundraising NPOs	Accountability standard aiming to support the fundraising activities of NPOs in a less mature NPO sector.
Austrian Seal of Quality for Donations for charities	Austria	Self-Regulation	Standards and certification/ accreditation mechanism	Instance of fruitful cooperation between NPOs, governmental, and other entities in certification of NPOs.
Human Accountability Partnership (HAP-International)	International	Self-Regulation	Standards and certification/ accreditation mechanism	A system of self-regulation and certification mechanisms that target accountability and transparency of NPOs towards beneficiaries.
The Montreux Initiative	International	Self-Regulation	Standards for accountability, capacity building and assessment	An international effort to recognize financial and governance standards of accredited Islamic NPOs.

IV.1. THE CHARITIES REGULATION BILL 2009[55] - IRELAND

The Charities Regulation Bill 2009 is a comprehensive piece of NPO legislation recently enacted in Ireland.[56] The Bill has a major impact upon the accountability and transparency of NPOs by introducing for the first time an integrated system of registration, reporting and regulation implemented by a new body, the independent Charities Regulatory Authority (the 'authority'). Also of interest are the new fund-raising regulations, which combine elements of public and self-regulation (they are analysed separately). The Bill is notable for the transparent and consultative way in which it was developed prior to presentation to Parliament.

Context

Ireland is a common law country and, like most common law countries, has a legislative and regulatory framework for NPOs based upon the concept of 'charity'. In many ways the NPO sector is well-developed with an estimated income of 2.5 billion EUR[57] and a good reputation at home and abroad.[58] The Bill defines 'charity'[59] as an organisation with exclusively charitable purposes for the benefit of the community. The definition is functional – it is based purely upon an activity ('charitable purposes'), rather than the legal form of the organisation. Fifteen charitable purposes are defined, with a sixteenth allowing any purpose analogous to, or in the spirit of, one of the other stated charitable purposes.

The Bill is the result of a commitment to reform charity law made in the *Agreed Programme for Government 2002*[60] that followed recommendations from reports dating back to 1990.[61] The stated aim of the Bill is to provide better regulation, support and management of charities in the state, to enhance transparency and accountability in the sector, to increase public confidence in it and to protect against charitable fraud. It is hoped that a comprehensive, clarified and codified law will make regulation more effective, and that the regulations themselves will increase accountability and transparency, thereby increasing public confidence and preventing fraud. The legislation was subject to a regulatory impact assessment against standards of necessity, effectiveness, proportionality, transparency, accountability and consistency.[62]

The development of the Bill was significantly influenced by practice in Common Law countries.[63] In particular, the registration and monitoring activities of the Charity Commission for England and Wales and the UK SORP accounting standards were held up as models. Civil Law systems appeared to have had little influence, although the consultation revealed a concern to meet the demands of any potential EU legislation on NPOs.

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[55] A copy can be found at:
vwww.oireachtas.ie/viewdoc.asp?fn=/documents/bills28/bills/2007/3107/document1.htm

[56] The Charities Bill 2009 was signed by President Mary McAleese on 28th February 2009.

[57] Estimate of the Centre for Non-Profit Management at Trinity College Dublin quoted in *Sunday Business Post* 24/06/2007

[58] *Accountancy Ireland*, Vol.40 Issue 4

[59] Previously Irish law refereed to English Law, specifically the preamble to the 1601 Charitable Uses Act and the case of Commissioners for Special Purposes of Income Tax v Pemsel [1891] AC 531.

[60] http://taoiseach.gov.ie/index.asp

[61] The *Costello* (1990), *Burton* (1996), *Law Society* (2002) and *Arthur Cox* (2002) reports

[62] *Regulatory Impact Assessment (Screening)* (2007)
http://www.pobail.ie/en/CharitiesRegulation/CharitiesBill2007

[63] There are explicit references to other common law systems in the initial consultation paper, the report on the result of the consultation, and in the study reports mentioned above.

Development of the Bill is the responsibility of the Department of Community, Rural and Gaeltacht Affairs. The department published a *Consultation Paper on Establishing a Modern Statutory Framework for Charities*[64] and invited submissions. During a fourteen week consultation period, 85 responses were received and informed a report[65] published in September 2004. To facilitate consultation, the Department set up a website which included a single point of access to key documents. Most respondents were charities, and "indicate[d] a strong overall endorsement for the framework principles".[66] The resultant Bill "reflects many of the suggestions and contributions submitted during the consultation period by organisations operating in the sector."[67] In particular, there was unanimous support for a new charity register. A second, more limited consultation on the changes to trust law was held in February 2005.

Analysis

If passed in the current form, the Bill will have a significant impact upon the accountability and transparency of the NPO sector. Whilst there is no explicit reference made to either the FATF or EC COM (2005) 620, in general the policy approach in developing the Bill complies with both. Notably, it complies with the requirements to identify and avoid duplicate regulation;[68] to not disrupt or discourage legitimate activity; to promote transparency, integrity and public confidence; to take a targeted, flexible, proportionate and effective approach; and to fully engage the NPO sector in the implementation of recommendations. Specifically, the Bill if passed will **meet the requirements to operate a national public registration system;** to take steps to mitigate risks posed by unregulated organisations; for proper oversight and monitoring of the sector; for ensuring that NPOs keep proper records and can verify their activities; for intelligence, monitoring, investigation and information sharing by the authorities; and for co-operation with domestic and foreign statutory bodies on law enforcement matters.

The registration, reporting, investigation and information sharing provisions in the Bill are of particular interest.

The registration provisions will require all charities to register. Registering charities will be required to submit the name and contact details for the charity and its trustees, the charity's statute, a set of accounts covering the previous 12 months (if available), bank account details, risk assessment plans, details on past and proposed activities and past and proposed fundraising (including any plans to use professional fundraisers) and such other information as the Authority decides. Contact details for the charity and trustees, the charity's objectives and registration number will all be made freely available to the public.[69] The Charity Regulator (with the approval of the Minister) can exempt smaller charities from some of the more onerous registration requirements.

This is a significant improvement as currently only the approximately 7,000 bodies with charitable tax exemptions from the Revenue Commissioners are registered,[70] and the information available even on these is limited. **The registration provisions will in principle subject all charities to oversight and**

[64] http://www.pobail.ie/en/CharitiesRegulation/Archive/file,4024,en.pdf
[65] The report can be found at http://www.pobail.ie/en/CharitiesRegulation/Archive/file,4534,en.pdf and includes a full list of respondents.
[66] p.7 of the report on the public consultation
[67] *Accountancy Ireland*, Vol.40 Issue 4
[68] For example, the Bill excludes charitable companies from a number of accounting and reporting requirements to avoid dual company and charity regulation.
[69] It is envisaged that this information will be online – see http://www.pobail.ie/en/CharitiesRegulation/FAQ/
[70] 6,739 as at January 2006, as reported in the *Regulatory Impact Assessment (Screening)* (2007)

public scrutiny.[71] The aim is that this will remove the possibility to remain unaccountable and enable the regulator, public and donors to verify the *bone fides* of all organisations that claim to be charities and establish the principle that these are publicly accountable organisations. However, the absence of minimum qualifying standards raises question marks about proportionality. Even though the smallest charities may not be required to submit all information, even tiny, temporary unincorporated charities will still be required to register in theory.

The new reporting provisions will require **all registered charities to file an annual return** which includes an audited statement of accounts prepared in a prescribed format. Smaller charities with an annual income of less than 100,000 EUR can have an 'examination' rather than an audit. The trustees will be responsible for ensuring proper books of account are kept that explain the transactions of the charity and enable the charity's financial position to be determined with reasonable accuracy at any time. Books and accounts must be kept for six years. Failure to keep proper books or prepare accounts will be an offence (see below). The documents shall be made available to the public by the Charities Regulatory Authority.

These provisions will for the first time ensure that updated and verified financial and operational **information will be publicly available on unincorporated charities as well as incorporated charities.**[72] Government, donors and the public will therefore be able to know and verify the activities of a significant part of the sector which before was not required to make this information publicly available.

Also notable are the provisions to **empower the Authority to instigate and conduct investigations** into charities, to call for documents and search records, to enter premises with a search warrant, and to impose sanctions (including removal and suspension of trustees and staff and directing the use of charity assets, through an Order of the High Court). There will also be significant penalties in place for offences under the legislation. The Authority has also been **empowered to co-operate with domestic and foreign statutory bodies** on law enforcement matters, in explicit recognition of FATF recommendations.

Certain principles that have informed Ireland's approach are not only transferable, but could function as a model for other states considering comprehensive reform in two ways. In particular, it provides a model for the identification and addressing of gaps within the accountability framework for NPOs, as illustrated by the development of a public register and the extension of the requirements to produce and submit publicly available reports and accounts to all charities.

However, some other issues will need to be considered when contemplating the application of this model in other countries. For example, the development of legislation in Ireland is in general a transparent and open process, as illustrated by the publication of the Agreed Programme for Government and the *Regulatory Impact Assessment (Screening)* (2007). In addition, there has been

[71] Whilst there is no definitive data on the number of NPOs or charities in Ireland, the most comprehensive survey to date, *The Hidden Landscape: First Forays into Mapping Nonprofit Organisations in Ireland*, identified over 24,000 organisations to survey (just over 4,000 replied). Extrapolating from England and Wales would suggest that Ireland had somewhere in the region of 20,000 charities and another 20,000 non-charitable non-profit organisations.

[72] The impact on incorporated charities is less significant as they are already subject to company reporting requirements. Incorporated charities (or 'charitable companies') are those that have legal personality. Unincorporated charities are not legal persons, and real persons must hold property on trust and enter into contracts on their behalf. The proportion of charities that are unincorporated is not known, due to the lack of a register.

widespread consultation with the NPO sector during the development process. To replicate such an approach would require a similarly transparent approach to policy development, a well-developed sector and a high level of trust between the government and the sector. Attempts at such a wide-ranging piece of legislation may be greeted more cautiously by the NPO sector if these factors are not in place.

Secondly, unlike most EU countries, Ireland has a common law system and its regulation therefore relates only to charities, a sub-sector of NPOs which may amount to no more than half of the total.[73] Furthermore, Ireland not only shares a legal system, but also has close cultural ties with the UK. It is clear from consultation documents that the Irish government, public and NPOs understand and are keen to replicate many aspects of the system in the UK, and in particular the system in England and Wales. This has helped create a clear vision and broad support for what is a major reform. Again, it is likely that the public and sector in EU countries with a fundamentally different approach to regulating NPOs and less prior exposure to this model in practice will greet such a proposal more cautiously. More detailed consideration on the transferability of an independent commission model is contained in the section on the Charity Commission for England and Wales below.

IV.2. REFORMING THE LEGAL STRUCTURE FOR NPOs IN MALTA

The legal structure for NPOs in Malta was subject to major reform by the **Voluntary Organisations Act 2007**[74] and the **Civil Code (Amendment) Act 2007.**[75] These Acts are the most recently passed comprehensive NPO legislation in Europe. The Acts have separate but complementary functions. The Civil Code amendments clarify the legal framework for NPOs, in particular establishing a clear mechanism for obtaining legal personality. The Voluntary Organisations Act identifies and defines a major sub-class known as 'voluntary organisations' which may choose to register. Registration brings additional supervision and additional state benefits.

Context

Malta is essentially a civil law state that has been heavily influenced by the common law concept of charity. The NPO sector is most commonly known as the 'voluntary sector'. This definition encompasses all 'charitable', 'philanthropic' and 'non-profit' activity. As in civil law countries, the main legal forms for the voluntary sector are 'foundation' and 'association'.[76] The sector is wide-ranging and active, but lacks capacity and, prior to the reform, proper legal structures. Whilst there is government support, philanthropy and civic engagement are not well developed.

Accession to the EU had a significant effect on law and society in Malta, and particularly on the NPO sector. Accession exposed what was a rather sheltered NPO sector to unprecedented opportunities (for funding and partnerships) and demands (for improved governance, accountability and transparency). Simultaneously there was an increase in the level of government awareness and support of NPOs. These developments increased the pressure to modernise the legal framework for NPOs.[77]

There are a number of laws relating to NPOs in Malta, but prior to the 2007 Acts the legal and regulatory framework was patchily enforced and not considered particularly effective. In particular,

[73] 'Charities' do not include members associations which act for mutual, rather than public, benefit.
[74] http://www.doi.gov.mt/EN/parliamentacts/2007/ACT%20XXII%20English.pdf
[75] http://www.doi.gov.mt/EN/parliamentacts/2007/Act%20XIII.pdf
[76] There are also 'charitable trusts' which are governed by their own laws, and 'hybrid organisations' which display some of the characteristics of both foundations and associations.
[77] *"The current state of affairs…is creating obstacles and hinders the organisations from participating in international and pan-European projects".* ***Strengthening the Voluntary Sector*** (2005)

there was ambiguity about the legal status of NPOs, no clear definition of the sector,[78] no overall authority responsible for all NPOs and no provisions for their registration or monitoring.

Particular motivations for the Act were to create a clear legal status for voluntary organisations, update and simplify regulations in relation to tax exemptions and other benefits, create supervisory structures and improve accountability and governance. The reform is influenced by both civil law and common law models.[79]

The Maltese Government appointed a team of three lawyers to propose an Act. A White Paper was issued, after which public submissions were invited and a public consultation meeting held. Government, opposition and civil society all supported having an Act, but there was significant debate about various clauses in both the draft and final bill.

Analysis

There are two main parts to the reform. The starting point is the reform of the Civil Code to create a clear legal personality for NPOs. The separate Voluntary Organisations Act focuses specifically on "voluntary organizations", defining these organisations and providing for their support and regulation.

The combined Acts will have a significant impact upon the accountability and transparency of the NPO sector in Malta. Whilst there is no explicit reference made to either the FATF or EC COM (2005) 620, in general the policy approach complies with the requirements to not disrupt or discourage legitimate activity; to promote transparency, integrity and public confidence; and to take a targeted, flexible, proportionate and effective approach. Specifically, the Acts meet the requirements to operate a national public registration system; to take steps to mitigate risks posed by unregulated organisations; for proper oversight and monitoring of the sector; for ensuring that NPOs keep proper records; and for intelligence, monitoring and investigation in cases of abuse.

The Civil Code (Amendment) Act is primarily a technical legal reform. It establishes a minimum legal framework for almost all associations and foundations, including, but not limited to, those with public benefit purposes ('purpose foundations' and 'social purpose associations', as defined by the Act). Any of these **organisations can obtain legal personality by registering with the Public Registry**. The Act also sets out basic financial reporting requirements, governance rules and dissolution rules, endows the court with powers to intervene in serious cases and clarifies founders', members' and administrators' liabilities.

Perhaps the most notable aspect of the Act is **the treatment of 'registered' and 'unregistered' associations**. Associations, unlike foundations, are not required to register, as mandatory registration would be contrary to the Constitutional guarantee of freedom of association. The Act's response is to take steps to encourage registration, and ensure that even unregistered organisations are subject to a regulatory framework which does not impinge their Constitutional rights.

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[78] *"[there is] no single instrument of which [NPOs] are the principal subject and there are no commonly-used definitions on important terms, such as 'social purposes' and 'non-profit-making', amongst others."* ***Strengthening the Voluntary Sector*** (2005)

[79] The provisions granting legal personality to associations and foundations through registration follow the civil law model. In particular Italian legal provisions on unregistered associations were cited as an influence in the appendix to ***Strengthening the Voluntary Sector*** (2005). The right for associations to decide against registration but still enrol as voluntary organisations and the focus on the rights of beneficiaries is closer to the common law model.

Registration is encouraged by the provisions of various benefits. For example, only registered associations can publicly fundraise or receive donations and bequests. Furthermore, the liability of founders and members is limited to such sums as they commit themselves to in advance.[80] Meanwhile, the Civil Code recognises 'unregistered' associations in law, and provides some rights – for example, the right to enter contracts, open bank accounts, sue or be sued. They do not, however, have a legal personality, and promoters and members are personally liable to meet all and any debts or liabilities the association incurs which cannot be met from its assets. The Act also imposes minimum governance rules, including a duty to use the organisation's funds for its stated purposes.

The Voluntary Organisations Act applies specifically to 'voluntary organisations' - that is, non-profit making organisations which are controlled by unremunerated administrators. It establishes a Commissioner for Voluntary Organisations as the regulator of the sector. **Voluntary organisations can enrol on the Register of Voluntary Organisations** maintained by the Commissioner. Registration as a voluntary organisation is separate from registration as a legal body.[81] Enrolment is the gateway to certain rights and privileges, such as the automatic right to publicly fundraise[82] sole access to certain funding[83] as well as certain tax benefits.

The Register of Voluntary Organisations contains the following information, which is publicly available:
(a) The name of the organisation;
(b) The address of the organisation;
(c) The registration number of the organisation if registered as a legal person, whether in Malta or abroad;
(d) The names and addresses of the administrators of the organisation;
(e) In case of foreign or international organisations, the name and address of the representative resident in Malta of such organisation;
(f) A copy of the constitutive deed of the organisation and any amendments thereto;
(g) A copy of the annual accounts for the last financial year prior to enrolment, if any, prepared by the applicant;
(h) Annual reports of the organisation;
(i) Annual accounts of the organisation, together with a report of reviewers or auditors as may be required under applicable law.

The **Commissioner** is appointed by the Minister for Social Affairs; however the guarantees that he should impartial and free from direction. He is required to act in accordance with principles that recognise the importance of the voluntary sector to Maltese society. As well as determining eligibility and enrolling voluntary organisations, the Commissioner is responsible for maintaining high standards of accountability and transparency in voluntary organisations. In furtherance of this, he has powers to monitor organisation's activities, establish the form and content of annual reports which must be submitted to him, provide information and advice to organisations and individuals and advise the government on regulations and policies. In cases of abuse, the Commissioner has powers to investigate, including powers to obtain information from any persons involved in the organisation's administration. In serious cases, the Commissioner can apply to an independent Board of Appeal[84] to suspend an

[80] Unless the court decides that the association has incurred a loss due to the founders' or members' knowingly unlawful acts.
[81] In addition to organisations registered with the Public Registrar, unregistered organisations can enrol, as can organisations registered as a limited liability company or a charitable trust.
[82] Only organisations which are also legal persons may fundraise.
[83] Including certain government grants and contracts and access to the Voluntary Organisations Fund.
[84] Appointed by the Minster of Social Affairs, in consultation with the Commissioner.

organisation's operations, cancel its enrolment as a voluntary organisation, seize funds fraudulently raised, or wind it up. These powers also apply in part to un-enrolled organisations.

Malta is an unusual country in that it is among smallest in population EU members and has a legal system with aspects of both common and civil law. However, its potential as a model for its larger neighbours should not be neglected. Whilst the bulk of the reforms merely brought the regulation of NPOs up to normal European standards, its **treatment of unregulated organisations provides an interesting model** in how to approach this often vexed issue.

The two Acts mitigate the potential risks caused by unregulated organisations whilst continuing to recognise fundamental freedoms, such as the freedom of association. They do this in three ways. Firstly, provisions in the Civil Code clarify the position of all 'unregistered organisations', including their duties and liabilities. Secondly, the Commissioner of Voluntary Organisations maintains information on unregistered voluntary organisations. Finally, it provides the Commissioner with specific powers in relation to the accounting and monitoring of 'temporary' organisations set up for a specific, short term social purpose.

Nevertheless, with only a year gone since the Acts were passed a full assessment of their impact is not yet possible. Indeed, in some cases structures are still being put in place. Early reports suggest that a steady number of organisations are registering under the Voluntary Organisations Act, although some groups (such as Roman Catholic Church organisations) are still considering whether to register or not. Furthermore, it is reported that law enforcement of fundraising activities by non enrolled organisations is still negligible.[85]

IV.3. THE CHARITY COMMISSION FOR ENGLAND AND WALES

The Charity Commission is the independent government regulator[86] of charities in England and Wales. It is the largest and oldest unitary regulator in the EU member states. The Commission is not new – it was founded in 1853 – but it has developed sophisticated policies and regulations following milestone legislation in 1960, 1993 and 2006.[87] Its vision is of "charity working at the heart of society" and this informs its approach to regulation. The Charity Commission has both a regulatory role and an enabling role (by providing a significant amount of advice and guidance to NPOs). The section examines how the Commission combines this dual role as an independent non-ministerial government department.[88]

Context

England and Wales has a common law system, and as such analysis of the NPO sector is dominated by the legal concept of 'charity'. All organisations with exclusively charitable purposes are charities. Twelve charitable purposes are defined, with a thirteenth allowing any new charitable purposes which are similar to another charitable purpose. This definition is functional, based upon activity rather than legal form. Virtually all charities are subject to some level of oversight by the Charity Commission for England and Wales.

85 As stated by Claudia Taylor-East, Director of SOS Malta, in an e-mail of 24th August.
86 It is a 'non-ministerial government department'. The Charities Act 2006 specifically prohibits the exercise of any Commission function being subject to the direction or control of any Minister or government department.
87 A copy can be found at http://www.opsi.gov.uk/ACTS/acts2006/ukpga_20060050_en_1
88 See the *Strategic Plan 2008-11* http://www.charitycommission.gov.uk/Library/spr/pdfs/corpplan08.pdf

There are an estimated 865,000 NPOs in the UK.[89] Of these, 189,000[90] are registered charities in England and Wales, and approximately 100,000[91] more are charities in England and Wales which are subject to differing degrees of oversight.[92] Charities in Scotland and Northern Ireland are regulated separately. Non-charitable NPOs in the UK include members associations and cooperatives for mutual or other non-charitable purposes, friendly societies,[93] industrial and provident societies,[94] trade unions, trade associations, universities and informal community associations. Some of these are regulated by other government agencies.

For the charity sector, four main legal forms are available which fall into two categories – incorporated and unincorporated charities. Incorporated charities have a legal identity distinct from their members. They can be either charitable companies or the newly created Charitable Incorporated Organisation (CIOs). Charitable companies are dual regulated, being subject to both company and charity law and registering and reporting to both the Charity Commission and Companies House. CIOs are only subject to charity law and Charity Commission oversight.

Unincorporated charities have no legal identity of their own. Members or holding trustees must hold property or enter into contracts on their behalf, and are liable for any debts the organisation may incur. Unincorporated charities can be unincorporated associations (members associations) or charitable trusts. Trusts are legal devices for holding property for a charitable purpose. Both are subject to charity law and Charity Commission oversight.

Generally speaking, charities in England and Wales enjoy a fundamental freedom to operate, with very few barriers to the establishment of unincorporated charities. However, these freedoms bring significant responsibilities. These responsibilities are established and defined by a considerable body of law, regulations and guidance. The most fundamental responsibilities are that a charity's funds are applied for its charitable purposes, and that 'trustees' (the Board) must act in the best interests of the charity. The trend has been for a lightening of specific restrictions, as reflected in the Commission's policy statement that "*where the risks are low we will enable charities to do better by encouraging greater self regulation or through lighter touch regulation*."[95]

The NPO sector itself is extremely well-established, being large, diverse, active and effective, with an excellent reputation both at home and abroad. The 190,000 registered charities have a combined income in excess of £45 billion and over 600,000 paid staff.[96]

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[89] Figures are from 2005/06, from *The UK Civil Society Almanac 2008.*

[90] *Report of the Charity Commission for England and Wales for the year ending 31 March 2008* available at: http://www.charitycommission.gov.uk/Library/spr/pdfs/annrep2008pt1.pdf

[91] *Charity Commission Counter-terrorism Strategy* (July 2008), which is available on the Commission's website at: http://www.charitycommission.gov.uk/investigations/ctstrategy.asp

[92] Charities with an income below £5,000 are not required to register. Certain other types of charity were exempt or excepted from aspects of the Commission's oversight, but the 2006 Act removed that status for excepted charities and many exempt charities. This covers tens of thousands of charities which were previously subject to oversight under separate legislation. Registration with the Commission will be a staggered process, starting on 1 October 2008 with charities with an annual income in excess of £100,000.

[93] Under the Friendly Societies Act 1974

[94] Under the Industrial and Provident Societies Act 1965

[95] *Strategic Plan for 2008-11* http://www.charitycommission.gov.uk/Library/spr/pdfs/corpplan08.pdf

[96] *Report of the Charity Commission for England and Wales for the year ending 31 March 2008.*

Analysis

In general, the Commission's policy approach complies with the requirements of EC COM (2005) 620, the FATF SRVIII Interpretative Note and the FATF SRVIII Best Practices Paper to identify and avoid duplicate regulation; to not disrupt or discourage legitimate activity; to promote transparency, integrity and public confidence; and to take a targeted, flexible, proportionate and effective approach. Specifically, the Commission model meets the requirements to operate a national public registration system; to take steps to mitigate risks posed by unregulated organisations; for proper oversight and monitoring of the sector; for ensuring that NPOs keep proper records and can verify their activities; for intelligence, monitoring, investigation and information sharing by the authorities; and for co-operation with domestic statutory bodies on law enforcement matters.

The Charity Commission's statutory objectives and strategic outcomes are:

> "1. ...to increase public trust and confidence in charities.
> 2. ...to promote awareness and understanding of the operation of the public benefit requirement.
> 3. ...to promote compliance by charity trustees with their legal obligations in exercising control and management of the administration of their charities.
> 4. ...to promote the effective use of charitable resources.
> 5. ...to enhance the accountability of charities to donors, beneficiaries and the general public."

The main regulatory roles of the Charity Commission are registering new charities, maintaining a public database of registered charities, receiving and monitoring annual returns, annual reports and accounts, giving advice to charities, promoting best practice, giving legal consents or directions to certain dealings or applications of a charity's assets, identifying and investigating apparent misconduct and mismanagement in the administration of charities, and using legal powers to protect charities where it is appropriate and proportionate to do so. Of particular interest are the Commission approach to registration and monitoring, and its robust intelligence and investigative functions. All of these are recognised by both EC COM and FATF as being absolutely crucial to an effective regulatory system. The Commission has developed these systems over many years, and provides a model of how this function can be completed at its best.

Registration with the Commission is compulsory for most charities with an income in excess of £5,000.[97] Registration is a confirmation of its charitable status only. It does not confer any endorsement of the organisation, although all charities are eligible for certain tax exemptions. The £5,000 threshold is an example of the Commission's proportionate approach, recognising that the compliance cost for both charity and regulator is not balanced by the level of risk. Nevertheless, charities with an income below the threshold may voluntarily choose to register,[98] and given the enhanced trust that registered status brings, many choose to do so. In addition, the Commission has a fast-track registration process for charities using a previously approved standard governing document.[99]

[97] There are some exceptions to this requirement for exempt charities (those which are exempt from the Commission's supervision because they are considered to be adequately supervised by, or accountable to, some other body or authority) and excepted charities (ones which do not have to register with the Commission but in most other respects are fully within the its jurisdiction. These include small charities, as well as a number of charities connected to the armed services or the Church of England, although the rules are changing for the last two groups). All charities that opt for the new status of Charitable Incorporated Organisation must register with the Commission, regardless of their income.

[98] This is currently suspended whilst the Commission registers the very large number of excepted charities that are required to register for the first time following changes made by the Charities Act 2006.

[99] This can also be used in exceptional circumstances, such as when a new charity is set up in response to a significant humanitarian disaster.

Registering trustees are required to confirm their eligibility to act, and not disqualified from acting because of any offence listed in s.72 of the Charities Act 1993, and that the charity is governed by the law of England and Wales. The public register[100] specifies the organisation's name, the date of its first operation, its area of operation, contact details of a correspondent, the countries in which it will operate, its address, and its classification. Other information is also provided to the Commission, including the charity's bank accounts, finances, funding, ownership of land and trustee benefits. Registering charities that will work with either children or vulnerable adults are asked to confirm whether CRB disclosures have been obtained for any trustees who are either legally required to, or who are allowed to obtain a disclosure.

Charities have a duty to be transparent and accountable to donors, beneficiaries and the public. As such, all charities, regardless of status, must produce annual reports and accounts which the public can see on request. In addition, registered charities with an income in excess of £10,000 must submit an Annual Return and an annual report and accounts to the Commission. There are four different versions of the Annual Return / Standard Information Return for different income levels.[101] Trustees of charities with an income over £25,000 must, as part of the charity's Annual return, confirm that there are no serious incidents or other matters over the previous financial year which they should have brought to the Commission's attention but have not. Failure to confirm this will be regarded as a breach of legal requirements. Completed Standard Information Returns are published on the Commission's website.

Annual reports and accounts must be prepared in accordance with SORP.[102] Charities with an income of less than £100,000 can produce simplified accounts. An independent examination is needed if gross income is between £10,000 and £500,000, and an audit is needed where the gross income exceeds £500,000 or if the total assets (before liabilities) exceed £2.8m, and the charity's gross income is more than £100,000. The Commission focuses on the largest charities as they have the financial and institutional capacity to comply with more details requirements, and furthermore account for by far the bulk of the sector's assets.

The Charity Commission has **intelligence and investigations function** to identify and address serious mismanagement or misconduct. Cases of concern are identified through monitoring, complaints, and through its intelligence-led Proactive Monitoring Unit established to identify and monitor high risk charities. Where wrong doing is suspected, the Commission can institute and undertake investigations. It has broad interventionary powers of protection and remedy to obtain information from a charity, its trustees or staff, it advisors, bankers, lawyers or accountants, or from any other government agency; to search premises; to protect charity assets; to freeze bank accounts; to remove or suspend trustees or officers; to appoint a receiver/manager; and to direct trustees to take certain actions.

However, this **focus on monitoring, compliance and regulatory powers must be considered within its broader policy approach**. In particular, its risk based and proportionate approach and the emphasis on providing support and advice to charities, which receives a very large proportion of its resources compared to most other regulators. Well supported charities are able to understand and comply with regulations. This leaves a much smaller number of non-compliant charities which can then be subjected to proportionately greater levels of scrutiny. This policy approach is not seen as an optional extra by the Commission, but as being fundamental to the success of its risk based regulatory model.

[100] http://www.charity-commission.gov.uk/registeredcharities/first.asp
[101] *Charity Reporting and Accounting – the Essentials* www.charitycommission.gov.uk/publications/cc15.asp
[102] The Statement of Recommended Practice for Charity Accounting.

The Commission's **risk-based and proportionate approach** to regulation[103] emphasises providing support and guidance and promoting best practice as well as ensuring that charities comply with their legal obligations. The emphasis is on enabling charities to maximise their impact and encouraging innovation, effectiveness and collaborative working across the sector. Through all its operations, legal requirements are lessened for small charities, allowing more resources to be allocated to oversight of larger charities and detailed scrutiny of charities of any size which have been identified as higher risk. The Commission has developed a range of policies and tools to help it quantify risk. Given the size of the sector it regulates, this proportionate approach is vital to the Commission maximising its impact.

In practice, this means that the Commission dedicates the largest portion of its resources to **enabling the sector to maximise its impact**. It aims to encourage and support charities to improve their performance by working in partnership with them and with umbrella groups,[104] helping to define and facilitate best practice and sharing this knowledge widely. This is achieved through the provision of advice and guidance through publications, its website, and through answering e-mails, letters and telephone queries. It continues to find new ways to engage with the sector, for example by working with umbrella bodies to develop self-regulatory standards which it will officially endorse.[105]

Finally, an examination of the role of the Commission in two particular contexts is instructive: firstly, as part of the government's counter-terrorism enforcement; and secondly, its central role within the broader accountability framework for English Civil Society.

The Commission is one of a number of UK government agencies whose role includes fighting terrorism. As such, it has developed close **links with other law-enforcement agencies**, most notably the police and the National Terrorist Financial Investigation Unit (NTFIU). The Charity Commission is also integrated into the governments' counter-terrorism committee structure. More detail on the Commission's counter-terrorism strategy can be found in a separate case study on that issue.

More broadly, the Commission **operates at the centre of highly developed accountability architecture in the UK**.[106] This broad framework is fundamental to the Commission's success, and needs to be a major factor in any consideration about transferability. There are many elements in this architecture: the long established and well understood role of 'charity' as a concept in law and society; the long and deep-rooted tradition of philanthropy in the UK; a well-established sectoral identity and self-awareness; and active umbrella bodies and sector media. The particular role of trustees is also key - an essentially voluntary role that carries significant duties under charity and common law with the possibility of personal financial liability for any losses arising from their actions. All these factors may not exist in many EU countries, and could limit transferability.

An additional factor is the particular nature of the English constitutional system, which creates the circumstances in which **an independent and accountable regulator** can operate. Independence is made possible by the constitutional separation of the judiciary (of which the Commission was originally a branch) from the government. This well-established separation also provides crucial social controls, such as traditions of limited government, respect for the individual and the checks and balances between the legislative, executive and judicial branches.

[103] See ***The Charity Commission's Risk and Proportionality Framework*** (July 2008) http://www.charity-commission.gov.uk/investigations/riskpropintro.asp
[104] http://www.charitycommission.gov.uk/spr/partner.asp
[105] So far three networks have had their standards endorsed, covering 600 charities.
[106] One could say that an accountability "ecosystem" exists (following Keystone).

Accountability is achieved through various means: the Commission must report to Parliament, and faces scrutiny from the Public Accounts Committee; annual reports on its use of funds and achievements against key performance indicators are submitted to the Treasury; an annual external audit is undertaken by the National Audit Office; and the Commission answers to the public through open Board meetings, the Annual Report and the sector media. Furthermore, complaints against the Commission are considered by an Independent Complaints Reviewer, whose decisions the Commission is committed to abide by; and any legal decisions it makes can be challenged and overturned in the Courts or by the new independent Charities Tribunal.

This framework of independence and accountability is vital to the Commission earning the trust and credibility it needs from all stakeholders to operate effectively as a regulator. This framework cannot necessarily be taken for granted in other settings.

Finally, for the system to work, the Commission **needs to provide considerable support to charities** as sophisticated rules bring more demands. In addition, the Commission needs to understand the separate roles of government (protect the public, generic standards) and the sector (good/best practice) and to have **sufficient and independent resources** to fulfil its function: the Charity Commission's budget is equivalent to about €275 per charity per year.

Despite these peculiarities and differences, there are many aspects of the Commission model, both general and specific, that can be replicated. For example, a focus on a proportionate and targeted approach or on enabling charities to maximise their impact can be widely replicated. Other specific practices can also be easily considered in other settings – the Commission's registration or annual return forms could be adapted to local needs, as could many of their publications. Furthermore, some of the policies and practices are interrelated: there is a relationship between the statutory guarantee of the Commission's independent and supportive role and the high level of trust in the Commission from the sector and public. Similarly, the accountability of the Commission itself helps it demand high standards of accountability from the sector. This leads to credibility and a mutual trust, alleviating potential concerns within the sector at the very considerable interventionist powers that the Commission has.

To conclude, it would probably not be possible to replicate entirely the Charity Commission's approach to regulation in another country because of the particular legal and cultural environment in which it has developed. Nevertheless, many of the day-to-day practices and all of the underlying principles could usefully be replicated[107] and may be crucial to developing the broader accountability system in which a highly sophisticated regulator can most successfully operate.

IV.4. MODEL OF SUPERVISION OF PUBLIC BENEFIT ORGANIZATIONS IN POLAND[108]

The Public Benefit Organizations and Volunteering Act 2003 (PBO Act) introduced to Poland a new class of NPO, the Public Benefit Organisation (PBO). The act imposes higher standards of accountability and transparency on PBOs in return for favourable tax treatment and other tax benefits. This is perhaps the most interesting of a number of attempts in Central and Eastern European (CEE) to introduce a PBO status as a means of raising accountability and transparency standards. Particularly interesting is the creation of a bi-agency model, with the Ministry of Social Security responsible for

[107] The Charity Commission's own International Programme follows this approach by applying the underlying principles in the Charity Commission rather than seeking to duplicate it.
[108] For more information please contact Institute for Public Affairs (www.isp.org.pl)

oversight and supervision, and a newly created Council for Public Benefit with a broad and varied role in facilitating the PBO sector's relationship with government.

Context

There are two main forms of NPOs in Poland: associations and foundations, which are regulated by the Act on Associations (1989) and Act on Foundations (1984) respectively. There are around 68,000 registered associations and foundations[109] in a country of around 38 million people.

The NPO sector in Poland is still developing. The average annual budget of NPOs does not exceed 3,000 EUR. Philanthropy is still evolving. There are few self-regulation initiatives at a national level and NPOs' organisational structures are generally weak.[110] The State is making some efforts to address these structural weaknesses: for example, in 2004 it established the Civil Initiatives Fund to provide small grants to support PBO performance of public tasks, support applications for EU funds, and promote cross-sector partnerships.

Associations and foundations may obtain PBO status under the 2003 PBO Act.[111] The aim of the Act is to create a so-called "elite of NPOs" characterised by higher standards of accountability and supervision, which as a result would receive increased access to state benefits, including the 1% tax designation funds.[112] The Act also regulates relations between NPOs and the public administration, especially the local self-government, in the field of service provision. 6,500 organizations have obtained public benefit status under the PBO Act. PBOs that fulfil the criteria listed in the law[113] are registered in the National Court Registry. Information about registered PBOs is available online.[114]

The development of the Act was conducted through a highly consultative process involving different organizations and experts led, at that time, by the Minister of Economy, Labour and Social Policy. The drafters were considering especially the experience of England and Germany concerning public benefit status.

Analysis

The Public Benefit Organizations and Volunteering Act 2003 improves accountability and transparency of the Polish PBO sector by imposing strict new accountability rules on PBOs, backed up by significant powers to monitor, investigate and intervene, with some safeguards in place to ensure the powers are used correctly. Furthermore, the Public Benefit Council institutionalises PBOs involvement in regulation and policy development.

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[109] Researches estimate that not all of the registered NPOs are functional, however, since there is no regulation that would enforce de-registration. It is hard to assess how many NPOs really work. For more see: 2007 USAID NGO Sustainability Index:
http://www.usaid.gov/locations/europe_eurasia/dem_gov/ngoindex/2007/poland.pdf

[110] See 2007 NGO Sustainability Index:
http://www.usaid.gov/locations/europe_eurasia/dem_gov/ngoindex/2007/poland.pdf

[111] PBO status can be obtained also by church organizations and companies with non-profit purposes.

[112] Under the Act, each taxpayer may designate 1% of its personal income tax to a PBO.

[113] The criteria require the NPO (1) to conduct exclusively one or more of the 25 statutory public benefit activities; (2) to conduct activities for the sake of the whole community or a specific part in a difficult living or financial situation; (3) not to conduct business activities exceeding those which helps to fulfill its statutory objectives; (4) to use its entire income for its Public Benefit activities; (5) to have a statutory collegiate body for monitoring and supervision that is separated from the management board; (6) to have status or other internal document that prohibit different conflicts of interest or certain arrangements listed in the law as serving its members or staff or their families.

[114] http://bopp.pozytek.gov.pl/szukaj.do

The Act has a significant impact upon the accountability and transparency of the NPO sector and compliance with both FATF and EC COM (2005) 620 requirements. In general the policy approach in developing the Act complies with the requirements to not disrupt or discourage legitimate activity; to promote transparency, integrity and public confidence; to take a targeted, flexible, proportionate and effective approach; and to fully engage the NPO sector in the implementation of recommendations. Specifically, the Act meets the requirements to provide rights to public funding, tax exemptions and other benefits to NPOs that meet accountability standards; to operate a national public registration system; for proper oversight and monitoring of the sector; for ensuring that NPOs keep proper records and can verify their activities; for intelligence, monitoring, investigation and information sharing by the authorities; and for co-operation with domestic statutory bodies on law enforcement matters.

The Act imposes stricter **accountability rules** by requiring that every PBO publishes annual financial and substantive reports and send them to the Ministry for Social Security and the National Court Register. PBOs must be independently audited if two of the following conditions are true: they have at least fifty full-time employees; they have assets worth at least 2.5 million PLN; they have an income of at least 5 million PLN. PBOs carrying out assigned public tasks worth at least 50,000 PLN (approx. 20,000 EUR) and having income exceeding 3 million PLN (approx. 850,000 EUR) must have a statutory audit every year as well.[115] Furthermore, those PBOs that do not fall under these accounting rules may still need an external audit if the Ministry of Finance, in consultation with the Ministry of Social Security, issues such a degree. The decision is made based on (1) the amount of received donations; (2) the amount of revenue; and (3) the need to ascertain supervision of correct management of records. According to the USAID Sustainability Index, most NPOs do not conduct audits; however, PBOs increasingly have started to do so because of requirements from the donors and the government.[116] External auditing is a crucial tool in confirming the veracity of financial records and is fundamental to any system to ensure accountability.

Significant **investigation and supervision** powers have been vested in the Ministry to initiate controls.[117] The Ministry can also authorise any other public authority with supervisory or prosecution powers to initiate this procedure. Inspectors may also access the organisation's property or documents, demand written or oral explanations, and obtain any other information or data relevant to their inspection. If the organization does not correct the indicated misbehaviour or mistakes in 30 days the Minister may file a petition in court for its termination. These provisions provide the Ministry with sufficient powers and sanctions necessary to investigate potential cases of abuse.

Some **safeguards** have also been introduced. Inspections can only be undertaken on organisations with respect to the fulfilment of public tasks and the use of privileges described in the Law. In addition, a representative of the organization or a witness must be present at the site during an inspection, the report must be signed by the inspector and the head of the organisation, and an objection can be made against the conclusions.

[115] It is prescribed in the Law on Accountancy, 1994

[116] See 2007 USAID NGO Sustainability Index: http://www.usaid.gov/locations/europe_eurasia/dem_gov/ngoindex/2007/poland.pdf

[117] Supervision over any NGO may be also conducted by the Supreme Chamber of Control (NIK), which is a control institution of all organs of administration. This authority has very wide supervisory powers – among many entitlements NIK controllers may demand any necessary documentation, interrogate employees or gather information about the supervised organization from other organizations and institutions. However, as a safeguard, NIK generally performs only auditing activities, and if it identifies any regularity it then informs the public prosecutor who decides whether or not to launch an investigation.

Perhaps the most innovative aspect of the Act is the establishment of a **Council for Public Benefit Activities.** This has a broad and varied role as an adviser, representative, supporter, facilitator, arbitrator, standard-setter, commissioning agent and watchdog, operating in the space between government and self-regulation.

The Council's advisory role includes advice on legal issues such as the implementation of the Act and other laws relating to PBOs and their activities, such as volunteering. It also advises on and provides assistance in resolving conflicts between public administration institutions and PBOs, and advises on standards for performing public tasks and the commissioning of bodies to undertake these tasks. In addition, the Council works in co-operation with PBOs to create and inform the sector about standards of performing public benefit activities. It also helps identify any violations of those standards, and collects and analyses information about the process and outcomes of inspections of NPOs where abuse is suspected. The Council can join the authorities in an official inspection based upon an invitation by the Ministry, the authorities or an NPO. However, it should be noted that this has not happened often.

The Council is composed of five representatives of the public administration, five of local government and ten PBOs. The members of the Council are appointed and discharged by the Minister, although PBOs' representatives are selected from a list provided by the PBOs. The significant PBO involvement means that in practice the Council is often treated as a body representing interests of PBOs to the government. This was not the original purpose of the Council, and this *de facto* role has fed a debate about **the independence of the Council**. Some concerns have been expressed that the appointment mechanism might fail to guarantee the Council's independence, with worries that a less supportive Minister than the current one may use his or her effective power to veto recommendations in a political way. This has led to discussions on how to strengthen the Council's status and ensure its independence and representativeness of the sector.[118]

The Council was not designed to be the 'voice of the sector', and it is unlikely that a truly representative body would be designed with an equal number of government and non-government members, as the Council has. Nevertheless, these concerns should not divert from the importance of the Council as the first institutionalized platform of dialogue between NPOs and authorities in Poland. It has had a positive impact on the role of PBOs in the regulatory and policy-making process, and as a model it has inspired the creation of other forms of institutionalised cooperation within Poland.[119] Bearing in mind the debate over independence, there is good reason to believe that a similar model could be adopted in other European countries with similar systems.

As discussed, this Law vests significant interventionist powers in the Ministry. Both FATF and EC COM state that government needs powers to investigate fully and swiftly intervene where there is evidence of serious abuse. However, there is an extra duty upon government to ensure proper safeguards are in place when it uses its most interventionist powers. Safeguards are an integral part of the responsible and effective exercise of these powers, and play a vital role in calming fears in the NPO sector in countries where there is still nervousness about the extent of government oversight over civil society.

[118] There are on-going discussions about the possibility of amending the PBO law. Some NPOs propose that the Council be comprised only of NPO members. Others propose a revision of regulations concerning the election of members. Another group suggests that the Council becomes an advisory body to the Prime Minister Office or to the Council of Ministers, thereby raising its prestige and role in creating policy towards NPOs and civil society generally (as described by Grzegorz Makowski, Institute for Public Affairs, Poland).

[119] Since the establishment of the Council, the Marshal of the Senate has created a special team for cooperation with NPOs and the Sejm has created a special Parliamentary Commission for Cooperation with NPOs (as described by Grzegorz Makowski, Institute for Public Affairs, Poland).

The level of safeguards appropriate will vary from country to country, depending on the legal and regulatory environment. However, they are important, and if this model is to be replicated a special consideration should be made as to whether to introduce other safeguards. These might include listing the causes when government may conduct on site investigations, giving prior notice of the visit to the premises, or listing causes for which a motion on closure of the organisations can be made. Another possible safeguard would be to institutionalise the Council's role (as described above) as an **independent observer of government inspections of NPOs by making its participation in inspections mandatory**. This would ensure that an independent body could act as a guarantor of fair play. Granting such a role to an independent body would also help the government prove that it is acting in good faith.

More broadly, the regulatory model described in this case can be considered by those countries that are aiming to introduce PBO status. This is particularly true for CEE countries, where interest in PBO status is greatest. They too, like Poland, face a situation where the sector is still developing, the culture of accountability is not yet strong and the relationship with the government is evolving. Furthermore, the Polish model is close to the overall environments and legal systems of other CEE countries and can therefore be easily replicated, especially in terms of the supervisory role of the Minister and the Council.

However, it is important that the powers and safeguards of the supervisory and intermediary body are clearly set out; guaranteeing the rights of the Council, an equivalent body, or the NPOs themselves to observe all investigations undertaken by the authorities. Secondly, both bodies need to have sufficient human and other resource capacity to be able to undertake their role effectively – one of the reasons that the Council has been unable to observe many investigation is because members have not had the time. Overall, Poland has learnt many lessons in developing this model, and these should also be studied carefully if this model is to be adapted elsewhere.

IV.5. REGULATING PUBLIC BENEFIT IN NETHERLANDS

As of 1 January 2008, NPOs have to obtain **ANBI (Algemeen Nut Beogende Instelling) status** by the Dutch tax authorities in order to qualify for **tax benefits both on income and for donations**. Such official recognition was not required by law before. This case considers the criteria which were introduced with this status and the application process. It presents an example of a Western European country with a liberal registration system, and its efforts to increase accountability of organisations which receive tax benefits.

Context

The Netherlands is a civil law country, with NPOs able to assume the legal form of association (formal and informal) or foundation. It has an active and diverse NPO sector, with about 163,000 foundations[120] and 109,000 associations. Of these, about 35,000 would qualify as 'public benefit'. The regulatory framework is characterised by its liberal approach.

The ANBI status was introduced in the Law on Gift and Death Duties and the Law on Income Tax in January 2008. These laws previously contained a list of categories of purposes for which tax benefits (mainly on donations and bequests) could be given. The changes of 2008 introduced two novelties: firstly, mandatory certification by the tax authority; secondly, specific criteria for obtaining ANBI status.

[120] Registered with the Chamber of Commerce, as of January 2008.

Prior to the introduction of the status, tax exemptions on donations to NPOs were mainly approved by the tax authority based on its own criteria. These criteria were not codified, and there were few rules concerning the accountability of NPOs who could receive tax benefits. Evaluations were undertaken of eligible NPOs, although only after the benefits had been received.[121]

The primary motivation for the changes was to **improve transparency and accountability** of organisations that received tax benefits, and to codify existing practice and limit discretion in the application of the eligibility criteria. A secondary motive was the struggle against money-laundering and terrorism; the existing tax law made misuse of NPOs in this respect too easy.

The amendment process started in 2005 and representatives of different organisations, umbrella groups, and churches participated in the drafting of the ANBI criteria. General use was made of relevant information concerning public benefit tax arrangements in other EU-member states.

Analysis

The new ANBI rules came into effect on 1st January 20908. They aim to ensure that NPOs that receive tax benefit merit this privilege and meet certain minimum standards. The major difference with the new system is that organisations now require certification as pre-condition of eligibility for tax benefits. The new rules also codify and clarify new eligibility criteria. Religious institutions are exempt from the requirements.

The ANBI approach reflects the EC COM (2005) 620 requirements that **privileged tax status**, the award of public grants and the right to public fundraising could **be offered to all NPOs** fulfilling the registration requirement and **complying with transparency and accountability measures**. It also complies with the requirements to not disrupt or discourage legitimate activity; to promote transparency, integrity and public confidence; to take a targeted, flexible, proportionate and effective approach; and to fully engage the NPO sector in the implementation of recommendations.

The new system helps improve transparency and accountability in a number of ways. Most importantly, organisations are subject to a **review by the tax authorities** before approval. The review focuses on conformity of the applicant with the regulation's provisions. The review is conducted on the basis of a standardized application form which is filled in by the applicant. The tax authorities may also inquire about other matters before deciding on the status. Several applications for ANBI-status have been refused due to non-conformity to the legal provisions.[122]

ANBI status criteria include:
(1) the NPO should not have any intention to make a profit;
(2) the NPO has to demonstrate its charitable character;
(3) it should be clear that a natural person/legal entity cannot have control over the assets of the institution as if it were his/its own capital;
(4) the institution is not allowed to have more assets than reasonably necessary for the continuity of the institution;
(5) the members of the ultimate policymaking body are only entitled to receive an allowance for expenses and a reasonable fee for attendance. However a reasonable compensation paid to such a member who carries out daily activities, is allowed;
(6) NPO has to give an insight into the foundation's activities, fundraising, and administration of funds and expenditures, it is necessary to have a current policy plan.

[121] As described by Tymen J. van der Ploeg, Vrije University, Netherlands.
[122] As reported by the Ministry of Finance for purposes of this study.

(7) costs of fundraising and administration should be in reasonable proportion to the charitable expenditures;
(8) all proceeds from liquidation of the charitable institution should accrue to a similar institution; (9) the books and records of the charitable institution must be transparent with regard to the points mentioned above.

NPOs with ANBI status must **submit a financial statement** to the tax authorities each year. Larger associations and foundations with an enterprise have to publish their financial statements at the Commercial Register if they have obtained ANBI status. For other associations and foundations there are no obligations to publish their financial statements externally. The **Netherlands Tax Service conducts individual inspections of organisations with ANBI status**, as well as inspection campaigns on a national scale. The Names of qualifying organisations are available on the Ministry of Finance website.

ANBI status links tax benefits to compliance with certain transparency and accountability standards. This model for raising the sector's standards will be of interest to other countries which, like the Netherlands, have a liberal regime where such initiatives are comparatively rare.

However, ANBI status has been in operation for less than a year, and it is too early to comment with authority on how successful its implementation has been. Some concerns have been raised about the system, and in particular **the capacity of both NPOs and the government to meet their obligations**. For smaller NPOs, the requirement to have a policy plan which would provide an insight into the organisations' activities, fundraising, and administration of funds and expenditures are considered by some to be too onerous. For the tax authority, the application and inspections regimes impose considerable demands. Apparently the government does not expect that the tax authority will have a too big burden by this new regulation. However, the implementation will show how much merit these concerns have.

IV.6. THE COUNTER TERRORISM STRATEGY OF THE CHARITY COMMISSION FOR ENGLAND AND WALES

In July 2008, the Charity Commission for England and Wales published a strategy[123] for its regulatory response to the threat of terrorist abuse in the charitable sector. It is a detailed and coherent response from a specialist and independent regulator to the threat of terrorist abuse and, as far as we know, the only explicit counter-terrorist strategy for the NPO sector published by a European regulator. The strategy has a four strand approach comprising: Awareness; Oversight; Co-operation; and Intervention, yet makes great efforts to place the interventionist elements of regulation within an appropriate context of proportionality.

Context

The Charity Commission is the independent government regulator of charities in England and Wales, and the largest and oldest unitary regulator in the EU member states. The structure and role of the Charity Commission is examined in more detail on the separate case analysis of the Commission above. Also examined is the broader legal, regulatory and cultural context of the charity sector in England and Wales.

[123] *The Charity Commission Counter Terrorism Strategy* (July 2008) is available at: http://www.charitycommission.gov.uk/investigations/ctstrategy.asp

Terrorism has been a problem in the UK for decades, and even prior to 2001 the UK had well-developed counter terrorist legislation. All NPOs are subject to terrorist legislation, including the Terrorism Act 2000 and the Terrorism Act 2006. There is no specific law relating to NPOs or charities and terrorism. A Home Office review[124] acknowledged that actual instances of terrorist abuse of or links to charities have proven very rare. The Commission's own experience supports this and their CT strategy states that *"the number of cases in which there is evidence to prove charities have been involved in directly, indirectly or unwittingly supporting terrorist activity is very small. However, such abuse is completely unacceptable, and the impact of even one case involving a charity is potentially significant for public trust and confidence in that charity and the sector in general."* [125]

The Charity Commission's internal guidance on ***Charities and Terrorism***[126] was published some years ago, and sets out its general approach. This rests on three key principles: that the Commission would not register an organisation that had support of terrorism as an object; that use of an existing charity's assets for support of a terrorist activity is not a proper use of those assets; and that links or alleged links between a charity and terrorism are corrosive to public confidence in the integrity of charity.

The Commission's Counter Terrorism Strategy was produced in response to increased domestic and international focus on terrorism. In particular a joint HM Treasury and Home Office review into the charitable sector was carried out as part of the UK's response to the requirements of FATF SRVIII. Following consultation,[127] the Home Office produced a report[128] which recommended that "*The Charity Commission should have public, strategic and operational objectives to identify and minimise the risk of terrorist exploitation of charities. It should have a business strategy that directs activities and resources to deliver these objectives. It should identify and put in place benchmark indicators of success, on which it reports regularly*." It goes on to state that the Commission's approach should consist of "*risk-based diligence and assurance*" and "*proactive investigation and disruption*."

To assist the Commission, HM Treasury has agreed an additional £1 million funding per year from 2007-11. In addition, the Commission redirected some resources to its counter-terrorism activities.

Analysis

Following consultation[129] with the public and sector, the Commission published its Counter Terrorism Strategy in July 2008. Its broader approach means that the Strategy encompasses many of the EC COM (2005) 260 and FATF SRVIII recommendations, such as the requirements to be proportionate, flexible and effective, and not overburden or prevent legitimate NPO activity. It also covers many of the requirements relating to awareness raising, developing risk models, monitoring by government, intelligence, information sharing, investigations and regulatory intervention.

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[124] *Review of Safeguards to Protect the Charitable Sector (England and Wales) from Terrorist Abuse: Summary of Responses and Next Steps* (December 2007) http://www.homeoffice.gov.uk/documents/cons-2007-protecting-charities/cons-2007-charities-responses?view=Binary

[125] *The Charity Commission Counter Terrorism Strategy* (July 2008)

[126] *OG96 – Charities and Terrorism*. http://www.charitycommission.gov.uk/supportingcharities/ogs/g096.asp

[127] *Review of Safeguards to Protect the Charitable Sector (England and Wales) from Terrorist Abuse: A Consultation Document* (May 2007), can be seen at: http://www.homeoffice.gov.uk/documents/cons-2007-protecting-charities/Charities_consultation.pdf?view=Binary The Commission's *Response to the Consultation*(August 2007) can be read at: http://www.charitycommission.gov.uk/Library/supportingcharities/pdfs/terror.pdf

[128] *Review of Safeguards to Protect the Charitable Sector (England and Wales) from Terrorist Abuse: Summary of Responses and Next Steps* (December 2007)

[129] A *Summary of Public Responses to the Draft Counter-terrorism Strategy with Commentary from the Commission* can be found at: http://www.charitycommission.gov.uk/investigations/ctresponses.asp

The objective of the strategy is *"To identify, disrupt and prevent terrorist and other serious abuse of the charitable sector"* using a four-strand approach: Awareness; Oversight and Supervision; Co-operation; and Intervention. As recommended, the Commission has set itself **benchmark indicators of success** for each of the four strands. Significantly, the Commission explicitly states that it will not measure its success in terms of increased numbers of investigations, as this can be misleading.

The Commission's general regulatory approach is that the greatest impact on minimising the sector's exposure to any abuse is to encourage and support robust governance, financial and managements systems within charities themselves. As part of the '**Awareness'** strand, the Commission works to identify and educate charities about the particular risks from terrorist abuse, and provide assistance in taking steps to mitigate them. On top of its normal advice and guidance, it has committed to producing a counter-terrorism 'toolkit' for charities

The Commission has made notable enhancements to its already well-developed **'Oversight and Monitoring'** role with the establishment of an intelligence-led Proactive Monitoring Unit. The unit will analyse trends and profile risks within the sector, and more specifically work to identify and more closely monitor at an early stage those charities that may be facing problems. The aim is to identify and resolve cases before regulatory intervention is necessary.

The Commission already works closely with government regulators and law enforcement agencies to better ensure the disruption of those who seek to exploit charities for criminal and terrorist ends, and under the **'Co-operation'** stand has committed itself to formalising these partnerships through agreements and structured programmes of liaison. The Commission is already integrated into the government counter-terrorism committee structure.

Finally, the Commission states that it will use its powers of **'Intervention'**[130] proactively, robustly, effectively and swiftly where it has evidence or serious suspicions of terrorist abuse involving charities. Terrorist activity is treated as a zero tolerance issue.[131] Interventions are based on evidence and target the core of the abuse, aiming to disrupt any criminal activities, ensure that charitable funds are put to their proper use, and minimise disruption to the wider sector. The Commission is committed to developing a pool of specialist trained counter-terrorism expertise staff as part of its Compliance and Support function.

These four strands are developed within the context of the Commission broader policy commitment to be proportionate, accountable, consistent, transparent and targeted, acting only in cases where action is needed. This approach is based on a realistic assessment of its role as regulator. The Commission recognises that what success it has is largely based on the respect and trust placed in it by the public and charities, and that no regulator has the capacity to eliminate or control all risks. It also explicitly recognises the potential damage that over-regulation can produce: for example, that it might stifle the innovation and adaptability that characterises the sector; that it might restrict the sector's vital role in

[130] More detail on the Commission's powers of intervention can be found in the separate case study on the Charity Commission above.

[131] The particular 'zero-tolerance' issues are: connections to proscribed organisations; charity links to or support for terrorism, financial or otherwise; misuse of charity to foster criminal extremism; fraud and money laundering; and 'sham' charities. Cases involving such issues are immediately referred to the Compliance and Support Division.

relieving need worldwide;[132] that, in particular, it might hamper its work in addressing many of the underlying causes of disaffection that may lead people to turn to extremism or terrorism;[133] and that, overall, it may encourage money to be donated to unregistered organisations or others beyond the scope of the regulator.

The particular issues of 'know your beneficiary' and 'know your donor' provide an illustration of how the Commission approaches some of the choices it faces as regulator in practice. The FATF SRVIII Interpretative Note states that NPOs should "*make best efforts to confirm the identity, credentials, and good standing of their beneficiaries and association NPOs…[and] should also undertake best efforts to determine the identity of their significant donors and to respect donor confidentiality".*[134] However, both FATF and EC COM state that regulation should not over-burden or prevent vital NPO activity. The challenge for a regulator is how to balance these requirements in practice.

The Commission's response follows the four strands: firstly, under the 'Awareness' strand it is developing 'know your...' guidance to "*clarify minimum standards for due diligence in relation to a charity's beneficiaries, partner organisations and donors...[to]...assist with identifying and forestalling funding connections either to proscribed terrorist organisations or to designated persons, groups or entities or to recipients whose activities may give support to terrorism*."[135] Meanwhile, the Proactive Monitoring Unit identifies trends and monitors high-risk NPOs, with intervention powers used for zero-tolerance issues against a backdrop of continued cooperation with other law enforcement agencies.

However, the need to be proportional is paramount. Regarding the proposals that 'know your beneficiary' checks be turned into a standardised requirement across the sector, the Commission has stated that "*it is difficult to see how there can be a standardised approach."* [136] However, "*a risk-based approach with a standardised minimum, whether in the form of a checklist or a set of principles, might be feasible and is worthy of further serious consideration*."[137] Those principles already exist, for example the trustees 'duty of care', which includes a duty to take reasonable steps to ensure that a charity is not being used as a conduit for terrorist financing. Trustees might therefore be expected to take extra steps such as verifying identities where particular risks or suspicions are present. But, as the Commission reiterates, "*any additional burden in terms of monitoring or reporting must be proportionate and clearly capable of being effective*."[138]

The Commission's strategy provides an examination of some of the conflicting pressures on regulators, and is a valuable best practice model for how to negotiate this conflict in practice. Its value as a model is increased because it outlines a strategic policy approach, thereby avoiding some of the barriers to transferability that different legal systems, different regulatory roles or different capacity can create.

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[132] The Strategy states that "*it would be profoundly undesirable if an unintended consequence of a counter-terrorist strategy were to make it impossible for legitimate overseas aid charities to be involved in providing aid, or make it impossible for any charity to provide aid in particular parts of the world*".

[133] For example, they make vital contributions to societies and the economies, deal with severe hardship for some of the most disadvantaged and disaffected groups and provide mechanisms for constructive debate and social action.

[134] Section 6.b.v

[135] Section H, *The Charity Commission Counter Terrorism Strategy* (July 2008)

[136] Section 6.10 of *The Home Office & HM Treasury's Review of Safeguards to Protect the Charitable Sector (England and Wales) from Terrorist Abuse: The Charity Commission's Response to the Consultation* (August 2007) http://www.charitycommission.gov.uk/supportingcharities/terror.asp

[137] Ibid

[138] Ibid

Indeed, the basic four-pronged approach of Awareness; Oversight and Monitoring; Cooperation; and Intervention applied with full regard to issues of proportionality and targeted action can be easily replicated and is highly recommended. Individual regulators can interpret and design specific regulatory responses appropriate to their own circumstances within this framework. Also easily replicated, and important to successful implementation, is the development of benchmark indicators of success for each of the four strands.

IV.7. THE STATEMENT OF RECOMMENDED PRACTICE FOR CHARITY ACCOUNTING IN THE UNITED KINGDOM

The Statement of Recommended Practice for Charity Accounting[139] (the 'SORP') is a comprehensive framework and set of standards for charity accounting. The SORP provides charities with a consistent interpretation on how to meet their legal requirement to produce true and fair accounts, and ensures consistency in the sector's interpretation of accounting standards. The SORP itself and the process by which it is developed provide models of good practice. The latest SORP was released in 2005.

Context

The United Kingdom is a common law country, with the concept of 'charity' central to the regulation and oversight of the NPO sector. There are three separate regulatory systems for charities in the UK: England and Wales; Scotland; and Northern Ireland. The charity SORP applies to all three. Whilst there are differences between the three legal systems, the examination of 'context' in the section on the Charity Commission for England and Wales (above) will serve as sufficient background for the UK as a whole.

The charity SORP is one of a number of different SORPs. Each SORP supplements accounting standards and other legal and regulatory requirements in the light of the special factors prevailing in a particular sector. All SORPs are developed under the remit of the Accounting Standards Board (ASB).[140] The ASB has delegated authority for developing the charity SORP to the Charity Commission for England and Wales[141] and the Office of the Scottish Charity Regulator (OSCR).[142]

The SORP is developed in an independent process in line with the ASB's Policy and Code of Practice.[143] The Commission and OSCR consider the recommendations of a SORP committee[144] made up of accountants, regulators, charity finance directors and academics. There is public consultation on the Committee's recommendations,[145] with the results referred to the ASB for final clearance.

SORP 2005 was influenced by a number of reports, publications, research and policy decisions, of which two are particularly significant: the Strategy Unit's report "Private Action, Public Benefit";[146] and the key policy decision in 2004 not to adopt the International Financial Reporting Standards (IFRSs) for

[139] http://www.charity-commission.gov.uk/Library/publications/pdfs/sorp05textcolour.pdf
[140] The ASB has the legal authority to set accounting standards http://www.frc.org.uk/asb/
[141] http://www.charity-commission.gov.uk/
[142] http://www.oscr.org.uk/
[143] http://www.frc.org.uk/documents/pagemanager/asb/Statement%20SORPs%20Policy%20and%20Code%20of%20Practice.pdf
[144] There is also a Committee on Accounting for Public Benefit Entities (CAPE), which advises the ASB in supervising the development of SORPs for public benefit entities (which includes charities).
[145] The Commission and/or OSCR can object to an aspect of its recommendations, but these need to be agreed by the ASB. No objections were raised to the 2005 recommendations.
[146] www.cabinetoffice.gov.uk/~/media/assets/www.cabinetoffice.gov.uk/strategy/strat%20data%20pdf.ashx

better explained through a new annex. Finally, best practice was recognised, highlighted and rewarded through the Charities Online Accounts Awards.[150]

The success of the SORP has been assessed by the Charity Commission, which undertook an accounts scrutiny programme for charity accounts for 2006/07. This revealed a mixed picture - against a background of generally improving compliance, the programme identified variable quality in trustees' annual reports (with 'standard text' reporting common) and a number of misclassifications and technical errors. Furthermore, it has again proved necessary to issue clarifications and updates to the current SORP. Consultations and discussions are already underway about the next charity SORP.

Nevertheless, the Charity Commission states that the SORP "*plays a key role [in maintaining and enhancing the reputation of the charity sector] by assisting in providing financial information about their activities that is of interest to many people and to meet legal requirements that such accounts give a "true and fair" view.*"[151]

Certainly, SORP 2005 does provide a useful model of a set of charity accounting standards. However, specific transferability is limited by the peculiarities of the 'charity' legal form to common law countries, coupled with specific accounting practices in the UK. Furthermore, relative to some EU countries, the UK charity sector and the UK accountancy sector have a high capacity, and are familiar with and accepting of the particular and sometimes complex requirements of specific charity accounting regulations.

The importance as a model and potential transferability of SORP therefore lies elsewhere. Firstly, in creating clear rules for the sector on how to be accountable. Secondly, in making sure those rules are appropriate to the NPO sector. Thirdly, in encouraging compliance by making the rules proportionate and providing ample guidance. And finally, by developing the SORP in an independent, responsive and consultative process.

IV.8. CENTRAL REGISTRY OF ASSOCIATIONS IN AUSTRIA

In 2001, Austria adopted a new Federal Association Act. The new Act has a number of implications for accountability and transparency of associations. It establishes a Central Register of Associations at the federal level and strengthens rules for NPO reporting and accounting. The Central Registry is a national centralized register that collects and disseminates information about registered associations, although registration is decentralized and conducted primarily at the local level. The Registry thus provides a model for development of a centralized public registry that unites decentralized sources of registration information. The Registry also serves as coordinator of information sharing with authorities, and is an example of how a government registry can ensure a balance between 'data protection' (i.e. ensuring the confidentiality of private or personal information) and the state's need for access to information for its investigations.

Context

The Federal Associations Act updated 1951 legislation to clarify the legal status of associations[152] in Austria and to better protect the public through improved rules on accountability. Furthermore, the Act

[150] http://www.cafonline.org/Default.aspx?page=15469
[151] Introduction to SORP2005.
[152] Foundations are regulated by separate acts. Public foundations obtain their legal personality when approved by the appropriate administration (either provincial administration or the relevant federal ministry). The Ministry of

provided for registers of associations, including a federal register. Consultations were organized to ensure NPOs have opportunity to provide opinion to the draft law.

The Act defines an association as a voluntary affiliation of at least two persons, organized for the long-term and governed by statutes, that has a specific mutual nonprofit goal. An association must be registered with the relevant Local District Authority or Federal Police Directorate ("Vereinsbehörde"), which are also the authorities charged with monitoring association's compliance with the law.[153] These authorities must submit information to the Central Register of Associations (Zentrales Vereinsregister-ZVR). Each of these authorities also keeps its own register of associations subject to same rules on information sharing observed by the Central Register. As of 31 December 2007, 111,282 associations were registered in Austria.[154]

The Act prescribes different types of reporting requirements depending on the size of an organization's assets. Financial statements must be prepared once a year and examined by independent and impartial auditors appointed by the association. If its revenues or expenditures exceed 1 million Euro in two consecutive years, the association's financial statements must include a balance sheet as well as a profit and loss statement, and must be reviewed and certified by two independent auditors. If its revenues or expenditures exceed 3 million Euros in two consecutive years, the financial statements must also be reviewed and certified by a statutory auditor[155] and must be even more detailed, including an appendix with particulars about the use of funds, for example, the use of member fees. This satisfies the EC COM (2005) 620 requirement for simplified accounting and reporting requirements for NPOs of different sizes.[156]

If an association has collected donations amounting to more than 1 million Euros in each of the previous two years, it must present a more extensive annual financial statement, certified by an auditor, including an appendix that verifies that donated used according to the association's statutory purposes. The amounts and the use of member fees, public funds and donations must be made public.

Analysis

The Central Registry compiles and makes available information on all associations. Its rules concerning publishing of information meet EC COM (2005) 620 requirements for protecting the privacy of information while adhering to high transparency standards. The coordination between the local and national registers ensures that there is no duplication of registration and reporting processes. Second, its rules about information sharing among state bodies follows FATF SRVIII Interpretative Note guidance regarding state access to information during investigations.

Internal Affairs keeps a register of those foundations. Private foundations need to be established by notarial deed or through a will. No state approval is required but the private foundation must register with the company register at the Commercial Court. For more information see: http://www.efc.be/ftp/public/eu/CountryProfiles/Austria.pdf

[153] Associations (as well as other NPOs) with charitable or welfare purposes or purposes connected to a state-approved church are tax-exempted. In order to grant tax exemption, the tax authorities evaluate the charitable purposes and whether it conducts thorough and transparent accounting. Currently, around 7,500 charities have claimed a tax exemption. In 2007, 918 associations were dissolved because they were inactive or not capable of acting, and 12 associations because they violated criminal law, infringed the scope of activity stated in their statutes or did not meet the conditions of its legal existence.

[154] This number includes charitable associations, as well as "activity clubs" (e.g. cooking clubs) and self-help groups.

[155] Statutory auditors may be certified auditors and tax consultants or auditing and tax consultancy companies, chartered accountants and tax consultants or accounting and tax consultancy companies.

[156] A.3 of EC COM (2005) 620, "In order to avoid overburdening NPOs with excessive administrative requirements, simplified accounting and reporting requirements should apply to NPOs under a certain size", pg.15.

The Central Register, as a form of combined **information system on associations** is kept by the Federal Minister of Interior. The Minister administers the Register and provides information about associations.[157] Each registration authority at the local level must transfer data from its register to the Central Registry and follow the same rules about disclosure of information. Upon entry in the Central Register the associations receive a ZVR number, which is transferred back to the local registration authority.

As of 2006 all registered associations are listed in the Central Register. In general, anyone may request data on an association through a free online inquiry[158] (usually done by entering the association's "register number," its name or part of its name). This ensures that information about associations is easily accessible to the public, and contributes to transparency of associations. Associations are obliged to notify the authorities within four weeks of any changes regarding their representative bodies or their postal addresses, allowing their information to be updated on an ongoing basis.

The information available on the register includes details on name and address of the association, names of the founders or representatives, the local competent association authority, the ZVR (register) number, the date of establishment and the notice from the annual auditor on financial statements. In accordance with the Data Privacy Act (DSG 2000), other information held on the Central Register which may not be released include the date and place of birth, addresses of the founders or representatives, as well as the existence of any case in which information was blocked for release to third parties.[159] The Register also retains information on 'historical entries' for ten years, including information on their liquidation or winding-up. This information can only be released on explicit request and explanation of justifiable interest. These rules strike a balance between full public access to information and protection of details that may compromise individuals' rights to privacy.

Importantly, the Central Registry is an **information source for other state agencies in their investigations**. The Minister of Interior must make the data accessible to state authorities upon request. However, the Act prescribes robust controls to ensure only legitimate use of information by other departments for official purposes, to which end the Minister has adopted internal regulations to ensure that such inquiries are legitimate.[160] These include checks that the agency has the right to obtain the information in this circumstance, that it has appropriate data handling and data protection rules in place, and that the particular official has the right to access the information.

Further, the Minister of Interior must stop a query authorisation in the Central Register if (1) the prerequisites under which a query authorisation was granted no longer exist (2) the data obtained are used for purposes other than for the fulfilment of a legal task, (3) the secrecy interests worthy of protection of those concerned have been infringed, (4) the data security measures outlined above have been violated, or (5) they have been explicitly waived.

In sum, the federal-level Central Registry ensures that there is a central point where information about associations can be found. The model is replicable in other countries. Importantly, there are clear rules on the type of information to be submitted and disclosed, as well as updated, which applies to all registers, federal and local. The information collected includes not only general registration information but also information on financial matters, which improves transparency and accountability. Further, and of special interest, are the specific rules concerning data protection as well as the role of the Minister in

[157] According to Data Protection Act (DSG 2000).
[158] http://zvr.bmi.gv.at/Start
[159] Such a blockage of information is done in cases where the association requests that no information is released to third parties. The Act prescribes detailed procedure regarding this matter (see article 17).
[160] "Vereinsgesetz-Durchführungsverordnung – VerGV, Federal Law Gazette II No. 60/2005

observing rules on disclosure of information to other state bodies. The latter rules, in line with the FATF SR VIII Interpretative Note, ensure transparency and public confidence in state policies concerning administration and management of associations.

IV.9. CENTRAL REGISTRY FOR PUBLIC BENEFIT ORGANIZATIONS - BULGARIA

The Central Registry for Public Benefit Organizations was established in 2001, and its role further strengthened with amendments of 2006. It is a centralised registration, oversight and coordination body with a remit to impose higher standards of accountability and transparency on a class of NPOs which in return receive additional funding and tax benefits from the state. It is an example of how states may decide to develop a registration and oversight system for a key group of privileged NPOs if it is too difficult to create a national centralized system for the sector.

Context

The political changes in Bulgaria in 1989 were followed by large amounts of foreign funding for civil society, leading to a spurt in the establishment of NPOs and a renaissance for the sector. A modern NPO Law was adopted in 2000 (in force since 2001)[161] and it is the basis for NPO regulation. By the end of 2007, 26,696 NPOs had been registered. Meanwhile, continued dependency on foreign funding has slowed development of local philanthropy and government funding, contributing to increased efforts to improve the domestic funding environment and strengthen the sector, which is still developing.

The 2001 NPO law defines two types of NPOs: associations and foundations. They must register with the district courts. Each court keeps a publicly available but separate registry. In addition, all legal entities (including NPOs) must register with the Bulstat Registry, a unified registry for tax and statistical purposes, and must submit financial reports annually to the National Statistical Institute. Moreover, all legal entities, including NPOs need to adopt internal rules on the identification of and dealing with money laundering and send them within four months of registration to the State Agency National Security (SANS) for approval.[162]

Importantly, the 2001 NPO law regulates the non-profit legal entities which pursue public benefit activities (PBOs). PBOs must declare that they are public benefit NPOs (as opposed being for the benefit of their members) when registering at the district courts. They are then required to register with the Central Registry on PBOs within the Ministry of Justice. PBOs must meet higher reporting, governance and transparency requirements.[163] In return, PBOs have preferential access to certain public funds and tax benefits. There are approximately 5,000 PBOs registered in Bulgaria.

[161] Promulgated, State Gazette No. 81/6.10.2000, effective 1.01.2001, last amendment in State Gazette No. 105/22.12.2006, effective 1.01.2007. The previous law dated back to 1949 and was strongly influenced by the socialist regime at that time

[162] According to the rules of the Law on the Measures against Money Laundering and the Law on Measures against Financing Terrorism, NPOs are also required to report payments above 30,000 BGN (approximately 15,000 EUR) from unknown sources to SANS when the recipient suspects there might be money laundering. There is also mandatory reporting of all cash transaction above 30,000 BGN (15,000 EUR).

[163] For example, PBOs must: have a two-tier organizational structure with a managing and collective supreme body; maintain records of the meetings of their Boards; prepare an annual report on activities and finances; adopt publicly-available rules on how property is spent; and accept limitations on the provision of funds to or transactions with certain entities.

Analysis

The role of the Central Registry is generally consistent with the provisions of EC COM (2005) 620 regarding registration and coordination. Specifically, it establishes national public registration system for a privileged group of NPOs that wish to access state benefits, and this registration is based upon notification rather than approval. Further, authorities have established a better system for information sharing among state actors. Similarly, the system also complies with FATF SRVIII Interpretative Note guidance for investigation and information sharing, monitoring compliance and sanctioning of violations, access to administrative and management information by investigators and confirmation of identity of donors. Further, they promote the FATF Best Practices on presenting full budgets and accounts and conducting independent audits. In sum, the Central Register system is in line with these documents as it does not disrupt and discourage legitimate activity but promotes transparency, integrity and public confidence.

The system took time to develop and refine. The Central Registry was first established with the 2001 NPO law. Certain weaknesses with the system were identified through a natural process of review of the implementation of the law which led to a number of amendments.[164] The most significant, 2006 amendments, followed a survey of over 200 NPOs about their experiences with the law.[165] The survey identified **a number of key problems** which had hindered the effectiveness of the Registry. For example, there was no deadline for NPOs that had declared themselves as public benefit when registering with the district court to apply to the Central Registry, and many had failed to do so. Secondly, a number of PBOs did not submit annual reports to the Central Registry, but they were not sanctioned due to lack of clear provisions on this matter. Lastly, limited financial information was publicly available from annual reports, which did not satisfy accountability standards. A Concept Paper for Changes to the Legislative Framework for NPOs with the support and engagement of over 400 NPOs was prepared. Based on the Concept and discussions, amendments to the NPO law were presented and further developed by a cross-sector working group led by the Ministry of Justice. Subsequently they were adopted by the Parliament.

The 2006 amendments aimed to improve the way the Registry works with PBOs, clarified the type of information organisations should include in their annual reports, empowered the Registry to de-register organizations which fail to submit reports on time for two consecutive years, and strengthened its role of information sharing among different state bodies. As a result**, the reformed Central Registry is a registration, oversight and coordination body which works to improve accountability and transparency of PBOs**.

Following the changes, all PBOs must register within two months from district court registration with the Central Registry, thus **ensuring that the state has actual oversight as to the existing organizations of public benefit.** The Central Registry maintains an electronic database with all registered PBOs[166] which is accessible free of charge. Registering PBOs must provide organisational details to the Central Registry, including management, structure, goals, and internal rules as to how grants are given and how money is spent on public benefit projects. This is publicly available and any interested party can verify this information on a PBO on the internet.

Both the annual report and the financial report should be provided to the Central Registry, ensuring that it can monitor PBOs' work. The Central Registry also has the right to request

[164] 26/4/2001, 16/11/2001, 8/03/2001, 29/12/2002, 17/05/2005, 20/12/2005, 29/12/2005, 11/04/2006, 21/04/2006, 9/05/2006, 29/09/2006 AND 22/12/2006.
[165] The assessment was conducted by the Bulgarian Center for Not-for-Profit law (BCNL), a Bulgarian NPO with a mission to improve the legal framework for non-profit organisations (www.bcnl.org).
[166] http://www.justice.government.bg/ngo/search.aspx

information from PBOs at any time. The annual report of PBOs must now contain information on the amount and number of donations received and given and the names of the donor or recipient. PBOs must carry out an audit (by a licensed auditor) if they receive funding or have assets of more than 1 million BGN or if they have income from for-profit and non-profit activity of more than 2 million BGN).[167] **Both annual reports and financial reports are published by the Central Registry on the internet.** Importantly, the Central Registry has the power to **de-register PBOs** if they fail to submit their annual reports for two consecutive years.

The information reported in annual and financial reports include: (1) the public benefit activities, and information on substantial activities, funds spent for such purposes, their relevance to the objectives and programmes, and the results; (2) amount of properties received in grant and revenues from activities conducted for the purpose of raising funds; the type, size, value and purposes of any donations received or given, and data about donors; (4) an annual financial statement, which has been certified if subject to an independent financial audit; (5) financial results; and (6) declaration of payable taxes, charges, custom duties and other public amounts. They also submit transcripts of court decisions for registration of changes to the board or others, a list of members of the managing bodies and any amendments to the statute or the articles of association.

Finally, the Central Registry, as part of the Ministry of Justice, has a role as **coordinator of information among state bodies.**[168] Specifically, the Ministry is obliged to inform the appropriate state bodies if it detects breaches of laws during annual or ongoing monitoring so that the authorities can undertake appropriate actions.

The Bulgarian system of the Central Registry for PBOs is a well-planned system that increases the accountability and transparency of organisations that seek to obtain access to public funding and tax benefits and ensures there is appropriate oversight of their work. It also allows the public to identify and verify organisations which are of public benefit, and thus help them in their decisions regarding donations. Although as noted above, this system only covers a minority of NPOs, it is an important step in improving the overall transparency of the sector. Most non-profit organisations operate for the benefit of their members. They too are subject to scrutiny, and the court registers contain publicly available information on them, as described above. Nevertheless, Moneyval assessed Bulgaria as only partially compliant with FATF SRVIII as it only focussed on PBOs, recommending that the system for PBOs should be extended to all NPOs.[169] The Bulgarian authorities accepted that a general Central Registry would be preferable, but declared themselves satisfied that the current system does not put any restraints on their ability to investigate.[170]

The Central Registry model with an online database of PBOs can be replicated in other countries with similar legal systems. This presupposes the existence of a separate public benefit status which imposes higher accountability requirements and corresponding benefits for organizations that obtain it. It can be a useful system in cases where registration of NPOs is decentralized and establishment of a centralized registration and oversight body for the whole sector is difficult to implement. The capacity of the Central Registry to undertake all tasks (i.e., number of staff, clear competences, expertise) is important to guarantee success. If well planned and implemented, it can be a useful and efficient tool to promote

[167] The 2006 amendments originally required independent audit for PBOs that have received 50,000 BGN from the state budget or the EU or donated more than 50,000 BGN to a political party. However, these thresholds were changed the same year as described in the text.
[168] In particular, the Prosecutor's Office, Public Audit Office (if PBOs have spent public money), State Agency National Security and tax authorities.
[169] Paragraph 5.3.2, *Third Round Detailed Assessment Report on Bulgaria* (Moneyval (2008) 02)
[170] Paragraph 5.3.2, *Third Round Detailed Assessment Report on Bulgaria* (Moneyval (2008) 02)

and guide accountability and transparency of organizations, especially those which have obtained privileged status of public benefit. Such an institution can become specialized and assist other bodies such as prosecutors, financial investigators and others in coordinating their functions in term of oversight and support of NPOs.

IV.10. GUIDESTAR UK AND EUROPE – CREATING COMPREHENSIVE DATABASES ON NPOs THROUGH A COLLABORATIVE EFFORT OF PUBLIC AND SELF-REGULATION

GuideStar UK is a comprehensive database that aims to become the "go to" source of information about charities in the UK. Its prime source being the official registry of charities, a breadth of information and a powerful search engine make GuideStar UK an important resource for users wanting to verify the basic bona fides of a large number of charitable organizations. GuideStar UK is the most prominent—although difficult to duplicate—model for other European countries seeking to establish validated online databases of NPOs. Based on the experience of GuideStar UK, GuideStar Europe was set up with the goal to become the principal source of information on third sector organisations in Europe. It is currently seeking country-specific as well as European level solutions to overcome difficulties of the varying cultures and regulatory environments. The case of GuideStar Europe offers important lessons about the transferability of an initiative across Europe. It indicates that, with a clear vision, much patience, process orientation and cooperation with local authorities it might be possible to overcome national differences and build a trans-European system to enhance NPO transparency and accountability.

Context

GuideStar UK is based on the US database GuideStar, which was established in 1994 to provide the public with detailed information about NPOs derived from their annual filings with the Internal Revenue Service.[171] Thanks to its rapid success, the GuideStar model spread to Europe with the establishment of GuideStar UK in 2003. GuideStar UK's founding was stimulated by the 2002 Cabinet Office Strategy Unit Report, which judged the level of public information about charities inadequate. At the time of its founding, GuideStar UK was awarded a £2.9 million (EUR3.7 million) grant by the Treasury and Cabinet Office, an amount supplemented by support from US and UK grant-making trusts and private donors. Today GuideStar in the UK covers some 169,000 organisations, or about 85 per cent of the total number of UK charities, and works with an annual budget of about £1 million (EUR 1.3 million). There is a public site that can be used free of charge.[172] Beyond the official charity reports on the site every existing organisation is able to update and supplement its information without paying any fees. GuideStar UK now also offers a range of added value data services to its clients for a fee including directories, reports, intelligence services, and consulting. Policy makers and other clients increasingly rely on GuideStar data as a reliable source of information and pay for the added value the service offers.

GuideStar UK promotes accountability and transparency by enabling direct public access to essential information about charitable organisations. Working in cooperation with the Charity Commission for England and Wales, GuideStar UK posts summary information about the registration, activities, governance, and finances of NPOs that file mandatory annual reports with the Commission. Users can access this information to confirm an organization's mission, legal status, annual budget, or the names of trustee and staff. The Charity Commission recently improved its online register of charities[173] and it provides essentially the same basic information as GuideStar. The difference is that charities are able to

[171] www.guidestar.org
[172] http://www.guidestar.org.uk/
[173] http://www.charity-commission.gov.uk/Showcharity/RegisterOfCharities/RegisterHomePage.aspx

amend the information provided on GuideStar by themselves and also add further information that they believe is relevant (e.g., on mission, governance). While the absence of supplementary information from NPOs may not be negatively assessed by users, many organizations recognize that updating or adding information to GuideStar enhances their credibility. GuideStar UK's planned array of paid services (see above) will deepen the ability of specialized users, such as donors, grant makers, local governments, researchers, and companies, to conduct due diligence checks, statistical profiles, performance measurements, and other studies. Therefore, as an easily accessible source of information about charitable organisations, GuideStar UK provides an independent measure of NPO credibility.[174]

For European publics that have trailed in widespread access to reliable, independent information about NPOs, GuideStar UK represents a database model with substantial allure. GuideStar Europe is a project co-funded by the European Commission under its *eTEN* programme as well as governmental, private sector, and philanthropic sources that has explored the feasibility of implementing GuideStar systems in ***Hungary, Germany, the Netherlands,*** and ***Ireland*** (as well as, eventually, other countries in Europe as part of GuideStar's international proposition) and a pan European platform.[175] Motivated by the recent growth in philanthropy and increasing public demand for NPO accountability in these countries, and recognizing the lack of proper information about NPOs, leading national NPO providers sought out GuideStar and have been taking part in an initial exploratory phase over the past two years. Until the end of 2008 the four national partners have been working to determine whether GuideStar systems are feasible in their country environments. Governments in each country are generally supportive of the GuideStar proposal as data providers, partners or financial contributors, although the exact nature of their contribution has yet to materialise.

Analysis

It has proven somewhat complicated to adapt the GuideStar UK model to other countries in Europe. Countries participating in the GuideStar Europe study are facing significant challenges. Foremost among them is the lack of registries and/or reporting requirements with functions approximating those of the Internal Revenue Service in the US or the Charity Commission for England and Wales. A distinguishing feature (and in fact, added value) of GuideStar is that all information must be valid and comprehensive.[176] Thus a considerable burden will either fall on state agencies to introduce and enforce registration and reporting requirements or on NPOs to voluntarily submit standardised and independently verifiable information. Approaches to address these challenges have been designed in the four countries of the project, details of which are to be defined, and which could also serve as models for other countries.

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[174] As with all models of self-regulation, there are some advantages and disadvantages connected with GuideStar's approach. GuideStar's policy is to assemble, generate and provide information on NPOs without providing an evaluation of the information, thereby leaving it to the donor to decide on the worthiness of support of any organization. This may, however, create false impressions and adverse incentives among NPOs as illustrated by the fact that (based on the US experience) one of the most looked for piece of information is the percentage of administrative costs of an NPO. Since this figure is provided in isolation, donors tend to chose NPOs which present lower administration costs regardless of the fact that this piece of information needs to be interpreted in a more complex manner. (However, NPOs have the opportunity to provide explanations on their administrative costs.)

[175] www.guidestarinternational.org; www.guidestareurope.org

[176] For example, GuideStar's market analysis in Germany identified over 15 different holders and providers of data on NPOs. While GuideStar aims to build on these and tap into existing databases, it may have difficulties providing an added value to the specialized databases that are serving certain audiences well, unless it provides comprehensive and validated data, which the others do not have.

It is instructive to look at the results produced by the market feasibility studies and follow-on "deployment plans" in each country.[177] The four countries have faced very different regulatory, policy and cultural environments and have arrived at very different solutions that have one main common denominator: to be able to provide reliable information on NPOs that ultimately feed into a pan-European searchable database. These results point to the notion that while circumstances may differ, there can be creative solutions to achieve greater transparency of NPOs across Europe.

From among the four countries, Ireland seems to be moving ahead in the most straightforward way and with most resemblance to existing databases in the UK and the US. While Ireland has been lacking an official charity registry, legislation is under way (see the case on Ireland in this Report) and GuideStar Ireland can be launched parallel, or ideally together, with the new system. It has a clear and ambitious business proposition which promises to build a "data-rich relational database of cca. 8000 Irish nonprofit companies" with up to 350 (!) fields[178] of "narrative and financial data from regulatory sources augmented and updated by additional disclosures by the NPOs themselves."[179] The database will be a stand-alone entity that requires working capital estimated at € 2M[180] over five years, building a largely self-financing mechanism to support itself over time. Once funding is secured, a full-scale Guidestar can be built in 16 months. Given that such database currently does not exist in Ireland, duplication with regulatory initiatives will be less of an issue than it had been in the UK where the Charity Commission database already existed when GuideStar was launched.

Partners in Hungary and the Netherlands seem to be able to also rely on regulatory sources for basic information on NPOs; this would mean registration authorities and tax authorities in both countries.[181] However, due to the lack of legal frameworks for reporting to registration authorities, updating and providing reliable information beyond the registration data remains a challenge in these countries. GuideStar partners plan to build on existing self-regulatory databases of the partner organizations (NIOK in Hungary and CBF in the Netherlands) to amplify the information available on NPOs. The systems may result in basic data on about 50,000 NPOs in Hungary[182] and 20,000 NPOs in the Netherlands,[183] while more in-depth searchable data may be available on about 10,000 NPOs in Hungary and a couple of thousand NPOs in the Netherlands (which, however, represent the highest fundraising incomes).

In Germany, due to the highly decentralised system of registering NPOs not even basic registration data is likely to be available from a single validated source at a national level. DZI, the local partner is

[177] A summary of the market analyses and the deployment plans for each of the four countries are displayed on www.guidestareurope.org

[178] One of the most difficult issues in building the global Guidestar system is to determine the reporting fields which would have to be available for all participating NPOs. Guidestar experts talk about a minimum of 4-8 such obligatory fields (including e.g. the name and seat of the charity), compared to which 350 is quite informative.

[179] Summary of market analysis of GuideStar Ireland, www.guidestareurope.org

[180] The estimated cost is the highest among the tested four countries because of the in-depth nature of the data in Ireland.

[181] The registration database of the Office of the National Judicial Council (ONJC) in Hungary contains basic registration data of almost all organizations registered as NPOs (see footnote below); the tax authority database in Hungary will provide supplementary data and cross-checking opportunities. In the Netherlands, NPOs are registered at the Chamber of Commerce along with for-profit legal entities and thus, to be clearly identified, Chamber of Commerce data will need to be used in combination with Inland Revenue data where NPOs with a public benefit status (ANBI) are registered (see case on ANBI in this Report).

[182] The only type of NPOs not included in the ONJC registry are the so called public benefit or nonprofit companies, many of which were founded by the government and municipalities. They make up only 2.8% of the sector in terms of the number of NPOs but dispose over 37.5% of the sector's income.

[183] This includes over 18,000 NPOs that are registered with the ANBI status.

therefore aiming to start by drawing on a smaller pool of validated data and to channel data from its own comprehensive database of seal-bearing organizations into the GuideStar system. Thus, there may not be more than 2-300 organizations in the German GuideStar initially; however it is expected that NPOs will voluntarily provide their data once the added value of the database is proven to them.

Costs could also pose considerable obstacle to realizing the GuideStar Europe projects. While the common technology platform developed by GuideStar International to be used in Europe could reduce individual country costs, the initial investment and expense of maintaining a comprehensive database is nevertheless considerable (although much lower than it was in the UK). While GuideStar UK has relied almost exclusively on government and private funding, governments and donors elsewhere in Europe, even if supportive of the project, may not be as willing to cover its costs, especially if there is to be no return in the form of user fees. Participating countries have developed business plans where the estimated yearly operation is around 200 000 Euros/year/country, depending on the data model of the country. GuideStar Europe believes this can be raised as governments and donors come to recognise that a searchable, validated and comprehensive database of NPOs is to be considered a public service worthy of public support.

GuideStar Europe is also exploring the feasibility of a GuideStar Europe Portal, a comprehensive, trans-European database founded on a common technical standard that could facilitate cross-border searches and encourage uniform transparency standards throughout European civil society. Though this project is still in an early planning stage, it is apparent already that launching it on the basis of established GuideStar systems in participating countries may not be possible. Indeed, the "transnational" approach is thought to generate interest and market demand in the individual countries towards developing national GuideStar systems. Essentially, GuideStar International has developed a model where data from the different countries can be hosted in a central platform without the establishment of a national GuideStar entity. This requires strong collaboration from state offices with data to provide the information to the central system of GuideStar. This can still allow the option for self reporting by organisations but without a local presence its likeliness is smaller; therefore the information may not be as rich as in the cases of direct presence in a country. GuideStar International believes that the country-by-country development can go hand in hand with the central platform development and the two efforts are to strengthen each other.

The desire from among the NPO sector in European countries to introduce GuideStar signals the widespread desire to provide the general public, donors and specialized users in Europe with reliable information on NPOs. GuideStar offers just that through a comprehensive, easily accessible and searchable database. However, interest and commitment from other key stakeholders, namely the legislator, the regulator and the donor public have as yet not been clearly demonstrated everywhere. Therefore, although the model has excellent potential, as established in the UK, elsewhere in Europe it will first need to overcome significant challenges involving the varying availability of central electronic NPO registries, lack of unified reporting frameworks and the need for a sustainable business model. Nevertheless, GuideStar advocates remain optimistic and plan for the long term. Market demands from a public increasingly internet-savvy and inquisitive of NPOs, supported by an evolving, innovative technological platform and an informative self-reporting framework may produce resourceful solutions until the regulatory knots are disentangled.

IV.11. THE MIXED REGULATORY MODEL FOR FUNDRAISING IN IRELAND[184]

The reform of the regulation of fundraising by charities in Ireland is a major part of the Charities Regulation Bill 2009.[185] The most notable feature is the 'mixed regulatory model' proposed in the General Scheme to the Bill.[186] This outlines an innovative and flexible system combining elements of both public and self-regulation in parallel. The statutory elements of the Bill also provide a model of how existing vulnerabilities need to be identified and legislation updated to reflect new risks. Following approval by the Dáil Éireann, the Bill was and enacted in February 2009. The self-regulatory elements of the Bill have finished the consultation stage, and the Department of Community, Rural and Gaeltacht Affairs is currently in discussions about a process for implementing[187] the proposed scheme in advance of the setting up of the Charities Regulatory Authority.

Context

Please refer to the case study of the Irish Charities Regulation Bill above for a brief description of Ireland's NPO sector, the legislative and regulatory framework within which it operates, and the development of the Charities Bill.

As with the NPO sector as a whole, there is little hard data on the extent of fundraising in Ireland. In recognition of this a report[188] was commissioned into the scale and nature of fundraising in Ireland. The report did not estimate the total amount of fundraising in Ireland, but did suggest that the fundraising field is populated by a large number of local and regional charities, whose fundraising efforts are part time, and a relatively small group of national and international charities which have full-time fundraising teams.

The mixed regulatory model was motivated by recognition that statutory oversight is not always the most effective basis for regulation. It was feared that such oversight would place excessive restrictions on those smaller organisations that account for a large proportion of fundraising activity. A *Regulatory Impact Assessment*[189] assessed attempts in England and Wales to bring the operational aspects of fundraising under statutory control as unsuccessful, concluding that they produced costly and inflexible regulation. The paper instead recommended the mixed regulatory model adopted in the Bill. It is hoped that this will ensure that minimum standards of accountability and transparency are ensured, whilst retaining enough flexibility to accommodate to the varying sizes of organizations and levels of professionalism and speedily adapt to changes in fundraising practice.

In addition to the administrative and operational aspects of fundraising, it was recognised that there were other significant gaps in the regulatory regime. Some gaps had developed due to new fundraising practices not covered by the current legislation, which dates from 1962.[190] Other gaps have never been adequately addressed by the law: for example there is no legal duty for fundraisers to apply funds for the

[184] For more information contact Irish Charities Tax Research at www.ictr.ie
[185] A copy can be found at http://www.oireachtas.ie/documents/bills28/acts/2009/a0609.pdf
[186] http://www.pobail.ie/en/CharitiesRegulation/Archive/file,6875,en.pdf
[187] The Department hopes to build on the momentum already created by the consultation process and move to implementation in parallel with the legislative process. The proposed scheme does not require a Charities Regulatory Authority to be in place since it has its own Monitoring Body and adherence is voluntary.
[188] The report, ***Exploring the Irish Fundraising Landscape*** was commissioned from the Centre for Nonprofit Management at Trinity College, Dublin, by the Irish Charity Tax Research Limited. The report is available at: http://www.ictr.ie/220408/Exploring-Irish-Fundraising-Landscape.pdf
[189] *Regulatory Impact Assessment (Screening)* (2007) http://www.pobail.ie/en/CharitiesRegulation/CharitiesBill2007
[190] Street and House to House Collections Act 1962

purposes for which they have been raised. The chief motivation was therefore a desire to close gaps and modernise the current legislation. The overall aim is to create a flexible regulatory system which would promote best practice amongst fund-raising organisations and give donors and the public confidence in the bone fides of fund-raising organisations.

Analysis

The 'mixed regulatory model' of public- and self-regulation for fundraising is the most innovative aspect of the Bill. This approach reflects the FATF requirements that **governments encourage the important role of self-regulation,** foster cooperative relationships between the public, private and NPO sector (in particular in producing best practice models) and take a flexible approach which reduces compliance burdens without creating loopholes. In addition, the approach taken in developing the regulations meet EC COM requirements to fully engage the NPO sector in the implementation of recommendations.

Also important are the steps the Bill takes to **identify and close gaps in current fundraising oversight**. This complies with a number of EC-COM (005) 620 and FATF SRVIII requirements, including that NPOs should ensure funds are used for the stated purpose, that governments operate a national public registration system, and that the right of charities to fundraise is restricted to NPOs that register and meet accountability standards[191].

The 'mixed regulatory' model is set out in the General Scheme of the Bill. This specifies that there are two essentially separate but complementary roles in the oversight of fundraising activity. **Fundraising administration and operation will be regulated by Codes of Good Practice developed with the charity sector, whilst fundraising permits and accountability requirements will be subject to statutory oversight.**

The Codes of Good Practice will set out agreed best practice for the operational and administrative aspects of fundraising. The Scheme of the Bill stated that the Codes should be developed in consultation with the NPO sector, and consequently a three phase consultation process was launched and recently completed.[192] This was a detailed consultation process, led and conducted within the charity sector but financed by the government. The result was a proposed scheme for developing and monitoring of Codes of Practice, which included a *Final Statement of Guiding Principles for Fundraising* (February 2008).[193] This scheme will be implemented in advance of the setting up of the Charity Regulatory Authority but it is expected that once established the new regulator will endorse the Codes.

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[191] Non-charities, such as sporting organizations, can continue to fundraise provided they have the necessary police permit.

[192] In phase one, the *Consultation Paper on the Regulation of Fundraising by Charities through Legislation and Codes of Good Practice* (September 2006) (www.ictr.ie/Codes-Consultation%20Document.pdf) was discussed at six regional workshops. The phase two paper *Draft Proposals for the Regulation of Fundraising by Charities through Legislation and Codes of Good Practice* (April 2007) (http://www.ictr.ie/reports/draft_proposals_doc_phase2.pdf) was discussed at a national workshop and at separate meetings with umbrella bodies and the Irish Fundraising Forum for Direct Recruitment. Following a recommendation from phase two, a working group developed the *Draft Statement of Guiding Principles for Fundraising* (October 2007) (http://www.ictr.ie/220408/Draft-Statement-of-Guiding-Principles.pdf), which was discussed at a national seminar.

[193] A series of regional seminars were held in May 2008 to disseminate and launch the final statement www.ictr.ie/220408/General-Statement-of-Guiding-Principles-Feb08.pdf and the feasibility report, *Regulation of Fundraising by charities through legislation and codes of good practice* www.ictr.ie/220408/final-report.pdf

The Statement of Guiding Principles for Fundraising produced at the end of the consultation *"seeks to go further than the minimum legal requirements by offering a set of overarching principles and guidance about how fundraising should be approached and organised. It thereby complements and builds on the existing legal framework within which all charities operate"*.[194] These *Principles* cover best practice suggestions for the operational and administrative aspects of fundraising organisations and recognize that further Codes may be developed to address particular fundraising practices. The *Principles* identify three core principles of Respect, Honesty and Openness. They go on to detail specific best practices in six areas: Commitment to Donors; The Conduct of Fundraisers; Board and Senior Management Responsibility; Honest Communication; Financial Accountability; and Monitoring and Compliance. The principles provide specific guidance regarding the conduct of fundraising practitioners. Charities that subscribe to these principles are required to confirm their compliance in the Annual Report and the Statement of Annual Accounts and other relevant published material. Further, the Principles employ the principle of "comply or explain", i.e., charities should provide explanation in case they do not comply with some of the provisions of the Guiding Principles.

The Principles are envisioned as voluntary and NPOs can decide if they wish to adhere to them. It is proposed that a **Monitoring Group** will deal with complaints and breaches of the Principles. The Monitoring Group, which will have a majority of independent members, will also monitor the effectiveness of the Principles, and work with the sector to identify and address changes in fundraising practice. However, the Monitoring Group will **also have a status of an appeal body.** The General Principles provide that charities will need to develop their own complaints mechanism, and the public and donors will first need to address their complaints to the charities. If they are not satisfied by the response the complaint will be referred to the Monitoring Group.

Finally, the Bill retains **reserve powers for the Minister to make statutory regulations** on the manner and conduct of fundraising should the mixed regulatory model fail. The explanatory memorandum to the Bill states that the Minister should consult with the Authority about whether or not the Code has failed, and what should replace it. The Feasibility Report suggests that benchmarks should be established at the outset about how to measure the success or failure of the Code, and that these should be agreed between the Authority, the Monitoring Group and the fundraising sector.

The public regulation aspects of the mixed-regulation cover the various statutory duties and obligations in relation to fundraising, including the use of funds, a permit regime for public fundraising, and increased transparency and accountability requirements for fundraising organisations. All these changes address gaps in the current legislative framework for fundraising.

Firstly, the Bill imposes **a legal duty to use funds for the charitable purposes for which they have been donated.** This is vital for prosecuting fraudulent fundraising. Secondly, the Bill identifies gaps in oversight and ensures that all fundraising activity and all fundraising charities come under the regulatory regime. It does this in two ways. Firstly, it requires all fundraising charities to register with the Charities Regulatory Authority. Secondly, it amends the Street and House to House Collections Act 1962 to include bank transfers as 'collections', and creates a new category of 'non-cash collections' covering promises and pledges of money. The result is that **all public fundraising activity will require a permit, and all fundraising charities will be required to disclose key information to the public,** including fundraising activities, registered number, objectives, address and accounts. As a result, the authorities, donors and the public will be able to verify the bone fides of all fundraising activities and organisations. The Authority will also be provided with additional powers to make charities provide information on their fundraising activities.

[194] Statement of Guiding Principles for Fundraising, Section 1, Introduction

Although this initiative is still in a draft stage, it has already provided a valuable alternative model of the avenues countries can take when regulating fundraising. Particularly important is how this initiative demonstrates that regulation can adopt an integrated approach, with elements of self-regulation and statutory regulation developed and implemented in parallel to complement their respective strengths. It is too early to say how successful this approach will be in practice, although the consultation and Statement on Principles were successful. There will be considerable interest in how this initiative develops and what lessons can be learnt from it.

Also important is how the initiative recognises that fundraising is primarily a relationship between donors and organizations and is often informal in nature. Its attempts to draw the line between what requirements could be imposed by law and what standards could be regulated by the charities themselves are notable.

Finally, the focus in the legislation on new forms of fundraising is instructive. It is likely that many other EU countries will, like Ireland, need to update their legislation to reflect the rapid pace of change in fundraising methods.

IV.12. THE FINLAND MONEY COLLECTION ACT

The Finland Money Collection Act 2006[195] is a good example of a stand-alone regulation that deals with the risk of abuse inherent with cash collections. The Act updates and clarifies legislation dating back over sixty years. It introduces additional safeguards, accountability requirements and oversight powers. However, it does not include a 'know your donor' provision.

Context

Finland is a civil law country, and the regulatory framework for NPOs is established by the Foundations Act and the Associations Act. These cover a large number of bodies with varying operations and activities.[196] The National Board of Patents and Registration registers and receives annual reports from all NPOs.[197] Non-profit organisations are exempted from paying certain categories of taxes, with exemption from all taxes available for NPOs considered to be especially significant for the public benefit.[198]

Whilst Finland has had money collection regulations in place since 1949, it was felt that a new act was required chiefly to distinguish the act and regulation of money collection from other forms of fundraising. There were particular concerns about the crimes related to the purchase of items by the public in the belief that the revenue was to be used for a good cause. The government also explicitly stated that one of the aims of the act was to reduce the risk of money laundering or the financing of terrorism.

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[195] http://www.finlex.fi/fi/laki/kaannokset/2006/en20060255.pdf

[196] The information on foundations comes from ***Best Practice in Foundation Management: Grant Giving Foundations.*** The analysis on associations is based on information provided by the Permanent Mission of the Republic of Finland to the OSCE, who completed the ODIHR questionnaire. It is quoted on the Legislation Online website at: http://www.legislationline.org/?tid=220&jid=17&less

[197] Associations are not obliged to register, although unregistered associations do not have legal capacity and would not enjoy certain rights or undertake certain obligations that registered associations are entitled to. Associations may also register with their local authority.

[198] Act on the Tax Relief of Certain Non-profit Associations (680/1976)

Previously the main legislation was the Money Collection Act 1980. This required fundraisers to obtain a permit to conduct public money collection. Permit authorities are the district police and the State Provincial Office for Southern Finland. The Act established rules for checking NPOs and any associated collectors, monitoring collections and reporting. These rules remain in place.

If money collection is arranged by using lists or by collecting money to boxes, the lists and boxes are stamped by the police. In other cases the money must be deposited to separate bank accounts and permit authorities will check the bank statements and approve the accounts. Permit authorities often stipulate permit receivers to give also a final report after all funds have been used. Both the permit authority and the Ministry of the Interior supervise that the accounts are submitted. A trustees board can be appointed if the account has not been submitted in due time.

Analysis

The stated purpose of the Money Collection Act 2006 is enabling and enforcing: it aims to enable lawful money collections for non-profit purposes, and prevent dishonest activity in connection with money collection. The Act was published after two public hearings with NPOs and an internet-based consultation with the public. There was very little opposition to the Act.

Both FATF and EC COM recommendations recognise public and cash-based fundraising, as an area of particular vulnerability. This Act complies with the requirements to ensure NPOs state the purpose for which funds are raised, and ensure that they are used for this purpose; for proper oversight and monitoring of the sector; for ensuring that NPOs keep proper records and can verify their activities; and for intelligence, monitoring, investigation and information sharing by the authorities. The regulations are also proportionate and effective, and promote transparency, integrity and public confidence.

However, the FATF SRVIII Interpretative Note also states that NPOs should "*undertake best efforts to document the identity of their significant donors and to respect donor confidentiality*".[199] The Act includes no such requirement or recommendation for fundraising organisations. The term 'significant donor' can be interpreted in a number of ways, and it could be argued that it is unlikely that a significant donor would make a donation through a cash collection. Further, there is nothing preventing other NPO laws or recommendations establishing a principle that fundraisers verify the identity of any individual wishing to make a significant donation to a cash collection. Nevertheless, the Law does not provide for this circumstance and this fact should be noted.

The assessment by FATF and EC COM that public cash fundraising is particularly vulnerable is well-placed, as illustrated by how often this issue arises in typologies of the use of NPOs as conduits for terrorist financing. This is particularly true for donor countries like those found in the EU. The Money Collection Act 2006 helps minimise this risk in three ways. Firstly, it updates and clarifies the legislation. Secondly, it establishes new rules to ensure greater accountability and transparency in fundraising activity. Finally, it provides the authorities with greater powers to supervise, investigate and prevent potential abuse.

Greater clarity is achieved by updates to the Act to recognise that many new forms of fundraising have emerged. The Act distinguishes between the different forms of fundraising and sets out what is and what is not permitted. The Act also clarifies the role of the 'practical arranger', excluding certain unsuitable persons from the role.[200] These amendments are important because, as many countries have found, fund-

[199] Section 6.b.v

[200] This covers any board member and any other person exercising actual decision-making power in the applicant organization. Reliability is verified by such methods as criminal record checks.

raisers have developed many new techniques in recent years and often they are not covered by existing legislation.

Accountability and transparency is achieved through measures which affect both fundraisers and the authorities. Fundraisers are required by the Act to open a separate bank account to receive monies raised (an exception can be granted for small collections) and to name the practical arranger on fundraising permits. The permit authorities are required to make information available to the public on the granting, refusal and cancellation of permits and details of any written warnings. In addition, the authorities are required to establish a money collection supervision database to allow the different supervisory authorities to share information with each other and the public.[201] As a result, both the authorities and potential donors are able to obtain information on fund-raising organisations and activities, enabling them to verify their bona fides.

Finally, new powers are provided to the permit authorities to supervise collections. These includes powers to obtain information from collectors, banks or government agencies; powers to prohibit the continuation of a collection or the use of funds collected; and powers to appoint a trustee to apply the funds. These powers will discourage, prevent and help identify fraud by bogus fundraisers, thus improving donor confidence that it is safe to donate funds.

Finland's money collections provisions have been developing for nearly sixty years, and so are well understood and accepted by Finish NPOs and society. Attempts to replicate this legislation elsewhere will need to put considerable efforts into educating both the sector and the public in the new requirements. Nevertheless, there are three pillars that support this legislation that are important and which can be used as a model. These pillars are: Clarity – there are clear rules on what rules apply to what type of fundraising; Accountability: the organisation and key individuals provide information on their activities; and Oversight – authorities monitor fundraising activity, and have appropriate powers to investigate further and intervene as necessary.

IV.13. A "LIVE" CODE OF ETHICS OF NON-PROFIT ORGANIZATIONS - ESTONIA[202]

The Code of Ethics of Estonian Non-Profit Organizations (the Code) was adopted in 2002 parallel to a number of initiatives aiming to promote and strengthen cooperation between the state and the non-profit sector. It sets out the principles for a transparent and accountable operation of the sector. The process of development of this Code champions this initiative as perhaps the most successful effort to develop a sector-wide code in Central and Eastern Europe (CEE).

Context

The Estonian NPO sector is sizable considering that only 1,4 million people live in Estonia. It is characterised as vibrant, active and quickly developing. Having 27, 000 registered NPOs that contribute towards approximately 1-2% of the country's GDP, the Estonian NPO sector is considered to be one of the most sustainable in CEE.[203] The building blocks of legal environment and infrastructure for NPO

[201] The database had not been constructed at the time of writing.
[202] Code of Ethics of Estonian Nonprofit Organizations www.ngo.ee/7457. For more information about this case please consult the Network of Estonian Nonprofit Organizations, NENO which is the largest Estonian organization uniting public benefit non-profit organizations. (www.ngo.ee)
[203] The USAID NGO Sustainability Index For Central and Eastern Europe and Eurasia http://www.usaid.gov/locations/europe_eurasia/dem_gov/NPOindex/

activities were put in place quite quickly after Estonia regained its independence from the Soviet Union.[204]

The most striking aspect of the regulatory environment for NPOs in Estonia has been the development of a relationship between the state and sector which is regulated by agreements and good practices. Most important is the Estonian Civil Society Development Concept (EKAK)[205] that was adopted by the Parliament in 2002. EKAK is a significant document that has supported the development of a strong relationship between the public and the non-profit sector through various mechanisms. For example, NPOs participate actively in policy and decision-making processes, and in joint cross-sector working groups. Further, in 2007 the Government established a National Foundation for Civil Society[206] as a reflection of its commitment to support the development of a sustainable sector.

Analysis

The Code of Ethics sets out accountability and transparency standards which are promoted by EC COM (2005) 620 and its Annex 3, as well as FATF SR VIII Interpretative Notes and Best Practices. It is a short document which lays out 23 principles of ethical operation grouped under eight headings (1) democratic governance; (2) civic courage and care; (3) sustainability and prudence in using funds and resources; (4) responsibility and accountability;(5) openness and transparency; (6) independence and avoidance of conflicts of interest; (7) honouring commitments and recognition of authorship of ideas; (8) tolerance. The Code emphasizes the importance for NPOs of having statutes and internal documents that are guided by clear missions. Responsibility for the work of the organization is placed in the highest governing bodies and employees; involvement of volunteers and members is considered as a high value and the foundation of civil society. It encourages use of funds responsibly and for purposes for which they were designated. Narrative and financial reports should be published at least once a year,[207] accountability is defined as a responsibility to founders, members, stakeholders, donors and the public; and openness and transparency are fostered by requiring that the information about NPOs' work and funding be publicly-available.

The Code was developed in 2001-02 as a first signal by NPOs' of their support and commitment to implementation of EKAK, even before EKAK was actually adopted in Parliament. The Code was also a response to a perceived need to increase awareness about the importance of the non-profit sector, its contribution to the society and to improve its public image. NPOs were often criticized by the public sector, media and businesses, and individual cases of malpractice were generalized to portray (negatively) the sector as a whole. Leading NPOs realized it was crucial to begin to change from within, to address challenges within the third sector itself before making demands towards others. The aim of the Code was to formulate and harmonize principles from which NPOs could proceed in their action and against which they and others could evaluate individual NPO performance.

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[204] The Estonian Non-Profit Associations Act and Foundation Act have been modified several times since they came into effect in 1996, mainly covering issues such as establishment, internal governance, and dissolution. The most recent changes in the Estonian Non-profit Associations' Act, Commercial Code and other related laws have targeted accountability and reporting of NPOs.

[205] Estonian Civil Society Development Concept http://www.NPO.ee/1030

[206] The main goal of the National Foundation is to contribute towards enhancing the capacity of NPOs acting in public interest, in development of the civil society and in formation of an environment favourable for civic initiatives www.kysk.ee/?s=21

[207] The most recent amendments to the Law on Associations (June 2008) oblige associations to submit their annual narrative and financial reports to the Commercial Register. However, these changes are to be effective as of 2010, and until then associations will continue to submit reports to the Tax and Customs Board and are not publicly available. Therefore the Code is significant in that it encourages NPOs to make the reports public themselves, whether on their websites or through other channels.

The text of the Code was developed by lead experts[208] in cooperation with other members of the sector. Consultations were held via the Internet and seminars in each of the 15 counties in Estonia were held in order to solicit input from wider group of NPOs. This gave the possibility to hundreds of NPOs to have their say. The Code was adopted at the General Assembly of NPO Roundtable[209] in April 2002.

A widely discussed issue was whether there should be any body such as, for example, a Court of Honour that should hear matters and make decisions concerning ethical behaviour of NPOs. This idea was rejected due to the foreseen difficulty in establishing a body with widely respected legitimacy. Instead of giving the decision-making on NPO compliance to a group, NPOs decided that the Code should serve as a tool for every individual and institution which would help them evaluate whether an NPO is acting ethically and should be given support. Following this, the Preamble of the Code emphasizes that "*It is the duty of nonprofit organizations to contribute to the development of a safe, balanced and caring society. In so doing the nonprofit organisations are guided in their day-today activities by the Republic of Estonia legislation. The Code of Ethics provides the principles for actions of NPOs, which increase the reliability of the organizations and the non-profit sector in the society*." The Code acknowledges that the laws are the primary source for guidelines on the work of NPOs, and that this Code supplements the laws by placing responsibilities on individual NPOs to act accountably and thus contribute towards the better image of the sector. Other than this general "call for action", the implementation of the Code was never formalized and there is no established mechanism of enforcement.

Usually, this kind of "loose" implementation framework would render a Code vulnerable to ignorance or even abuse. Still, the Estonian Code has been more successful than other Codes in CEE in that it is a live document still applied and invoked. It is included among the funding requirements of the National Foundation, thus **every organization applying for funding from the National Foundation has to explain how it follows the principles of the Code**. However, NPOs have been using it apart from this more recent development as well. NENO for example, uses it an annex to all contracts of employment. Several NPOs have posted the Code on their websites, and some have developed a more specific ethical statement for their organization based on the Code.

There are certain key factors that are contributing to its success: (1) The creation of the Code through participatory process gave hundreds of NPOs the opportunity to consider the key issues in detail and gain ownership over the Code. As a result there is a common understanding as to what ethical behaviour of NPOs means. (2) The Code allows for a flexible approach in applying the principles to their own organizations (by giving the responsibility to each NPO in adopting and implementing it) (3) The Code does not stand alone but is a natural part of wider framework, especially EKAK and several Codes of Good Practices that followed.[210] As these documents are logically integrated and have been considered in a joint framework, reasonable and causal links can be established which add external pressure for implementation of the Code. For example, if an NPO wants to be involved by the public sector or access public funding, there are certain ethical principles that it has to follow in its activities.

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[208] Mr. Agu Laius, at that time Chairman of NPO Roundtable, and Ms. Kristina Mänd, at that time CEO of Network of Estonian Nonprofit Organizations (NENO) were main drafters of the text.

[209] The Roundtable of Estonian Non-Profit Organizations was active from 2000-04, and it served as a public and open form of co-operation for Estonian non-profit organizations. It was established for discussing the principal issues and forming opinions concerning the non-profit sector, as well as for protecting the interests of the sector and its constituent organizations (www.emy.ee/eng).

[210] For example, the Good Practices of the Involvement which lay out the principles of participation and involvement of NPOs in policy and law making processes (http://www.ngo.ee/11583). Currently, a Code on Good Funding is being drafted.

In sum, the example of the Estonian Code can be replicated in other countries that strive to develop a national code for the sector. However, there are several key factors that should be considered. First, it is important to take into account the legal and policy framework in which the sector operates and consider the position of a code within the system. Most importantly however, NPOs must invest in the process. A consultation process can ensure that the code is drafted based on the realistic assessment of the sector's current needs and capacities. Further, as seen in the example of the Estonian Code, even without formal enforcement mechanisms, the process helped educate NPOs, and created ownership. Many NPOs in Estonia have understood the meaning and importance of the Code's principles and have tried to integrate them in their work. This last consequence is perhaps the most valuable in the impact it has had for the NPOs.

IV.14. IRISH DEVELOPMENT NPOs CODE OF CORPORATE GOVERNANCE

In 2008 Dóchas,[211] the Association of Irish Non-Governmental Development Organisations and the Corporate Governance Association of Ireland (CGAI),[212] issued a Code of Corporate Governance for Irish Development NPOs, members of Dóchas. The code sets forth standards of best practice that are intended to strengthen the impact of development organisations and enhance stakeholder confidence in them. The involvement of an expert body in this project, the borrowing of the "comply or explain" rule from corporate governance, wide stakeholder consultation, and stated intentions to monitor implementation suggest that the Dóchas effort represents a new level of professionalism in promulgating standards of NPO governance.

Context

The Dóchas code is the result of widespread attention to corporate governance issues as well as the growing role and size of the Irish development sector. In recent years, the Irish development sector has expanded quickly with the establishment of many smaller organisations along with large international NPOs. Reflecting the importance of this trend, in 2006 the Irish government issued a White Paper on Irish Aid affirming its commitment to increase the Irish official development assistance budget to one of the highest levels in the OECD. In the same year, the government also presented plans to introduce new charity legislation, stimulating widespread discussion in the voluntary sector about self-regulation and the imposition of standards and codes of conduct. Taken together, these events exposed the probability of increased public scrutiny of the work of the Irish development sector and the need for NPOs working in this area to demonstrate high levels of quality management, oversight, and governance.

Recognizing that Irish development NPOs had relatively weak accountability standards, Dóchas CGAI, a new professional association promoting good governance in the private, public and non-profit sectors decided to develop a set of good governance guidelines. The Dóchas-CGAI project drew on the well-developed corporate governance culture in Ireland - in particular, obligations to explain non-compliance with the code that have been a hallmark of UK governance practices.

Analysis

The Code of Corporate Governance sets out accountability and transparency standards which are promoted by EC COM (2005) 620 and its Annex 3, as well as FATF SR VIII Interpretative Notes and Best Practices. Of particular importance is the focus on the principles of functioning of organizational boards, which satisfies the need to vest responsibility of legal compliance with the highest governing body of the organisations.

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[211] For more information on this initiative contact DOCHAS at: www.dochas.ie.
[212] www.cgai.ie

Dóchas is a prominent umbrella organisation providing a forum for consultation, cooperation, and unified communication among Irish development NPOs. It is also an Irish platform of the EU wide CONCORD structure. The initiative to develop a governance code was a strategic objective driven by the Dóchas board of directors and led by a working group composed of Dóchas representatives and experts in corporate governance from CGAI. The process of formulating the code was a lengthy one, with extensive research and consultation with member organisations. Other relevant actors, such as government departments and NPOs working in other sub-sectors, were briefed to ensure that no significant opposition from them arose. Dóchas credits this **broad consultation process, which emphasised voluntary acceptance of the code over imposition from above, with the code's initial positive reception.**

Reflecting a familiarity with common best practices, the code itself is largely similarly to others already in existence, such as those issued by Boards Count, NCVO, the Governance Hub, the Combined Code of Corporate Governance, and the Central and Eastern European Working Group for Nonprofit Governance.

Terrorist financing was not a consideration in the development of the code; however, application of the code's principles, particularly those related to board responsibility, transparency, and integrity, should make it difficult for organisations to engage in terrorism financing without board awareness and/or involvement.

The Code aims to help enhance the effectiveness of Development NGOs by clarifying what **effective corporate governance** looks like and how Boards can govern effectively; reassuring an organisation's stakeholders about the way organisations are governed; and maintaining and enhancing public confidence in Irish Development NGOs and in the development aid sector generally.[213] The code sets out principles based on legal and regulatory requirements and commonly recognized standards. It sets out a number of core principles, and presents a series of supporting principles which further explain them. The Core principles refer to the work of the Board and are:[214]

(1) LEADERSHIP: Every organisation should be led and controlled by an effective Board of directors which collectively ensures delivery of its objects, sets its strategic direction and upholds its values.
(2) ACCOUNTABILITY: The directors as a Board should collectively be responsible and accountable for ensuring and monitoring that the organisation is performing well, is solvent, and complies with all its obligations.
(3) RESPONSIBILITIES: The Board should have clear responsibilities and functions, and should compose and organise itself to discharge them effectively.
(4) REVIEW AND RENEWAL: The Board should periodically review its own and the organisation's effectiveness, and take any necessary steps to ensure that both continue to work well.
(5) DELEGATION: The Board should set out the functions of subcommittees, officers, the chief executive, other staff and agents in clear delegated authorities, and should monitor their performance.
(6) INTEGRITY: The Board and individual directors should act according to high ethical standards, and ensure that conflicts of interest are properly dealt with.

[213] According to Dóchas' view, the Code reflects their view on NPO accountability as category with a number of dimensions (upward, downward, horizontal and inward) and a number of mechanisms (disclosure, standard setting, participation and audit).
www.dochas.ie/documents/ngo_accountability_paper.pdf
[214] The full text of the Code is available at: http://www.cgai.ie/CGAI%20Governance%20Code.pdf

(7) OPENNESS: The Board should be open, responsive and accountable to its users, beneficiaries, members, partners and others with an interest in its work..

Importantly, the Code sets out a list of guidelines to support implementation of the core principles and the supporting principles. The Code recognizes three principles of implementation: that the guidelines are optional and organizations should interpret them in a manner that is appropriate to their organisation's size and stage of development. That larger development NGOs are encouraged to adopt as many of these practices as is feasible while smaller organisations may consider progressively adopting them as they grow. Finally, the Code is viewed as a live document, and its guidelines will be regularly reviewed in the light of experience of Dóchas members and to ensure they are consistent with evolving standards of corporate governance internationally.

Important feature of the Code is that NPOs that voluntarily subscribe to the code are expected to make a statement in their annual reports and other relevant published material. In the statement, the organisation must either confirm that it complies with the code's principles or provide an explanation of non-compliance. This **"comply or explain" approach,** a well-established mechanism in the corporate governance arena, enables organisations to interpret the code flexibly to suit their particular circumstances while offering stakeholders and others concrete information by which to evaluate the organisation's performance.

Dóchas decided that it would be bound by the Code with immediate effect, and that the 39 Dóchas member organisations would work towards compliance with the Code over the next two years. Since its introduction in early 2008 the Code has been popular with Dóchas members and a significant number of non-members. Users find it practical, understandable, accessible, and flexible. Because Dóchas is a high-profile signatory, the Code has been well publicised and has attracted significant media interest. Dóchas expects there will be considerable peer pressure on NPOs to adhere to the code. It has even suggested to Irish Aid, the government assistance programme, that is consider making adherence to the code a criterion for accessing Irish Aid funding.

The Dóchas experience illustrates the widespread popularity of a broad consultative process in developing accountability standards. However, whereas many organisations adopting such an approach end up with overly simplified or watered down standards, Dóchas added unusual "bite" to the product by including professional advisors in its development and imposing a "comply or explain" mechanism in its implementation. While it is too early to predict the code's ultimate impact, the prominence of Dóchas in the Irish NPO sector and the potential linking of the code to governmental funding suggest that it may be taken more seriously than most other codes, despite its voluntary nature.

IV.15. CERTIFICATION OF FUNDRAISING ORGANISATIONS IN EUROPE – THE INTERNATIONAL COMMITTEE ON FUNDRAISING ORGANISATIONS AND THE CENTRAL BUREAU ON FUNDRAISING - THE NETHERLANDS

The International Committee on Fundraising Organisations (ICFO) is an association of national accrediting bodies for fundraising.[215] ICFO's purpose is to harmonize accreditation procedures and standards and act as an international forum for discussion and debate on accreditation issues. While ICFO addresses the need for uniform standards for NPOs that raise funds across borders through developing international standards, its main aim is to promote the importance and support the

[215] http://www.icfo.de/index.htm

emergence and improvement of independent monitoring agencies worldwide. ICFO experience suggests that standards for NPOs are best set at the national level if they are to be meaningful for the donors and the general public. One of the most successful members of ICFO is the Dutch Central Bureau on Fundraising (CBF), which presents a best practice model for certifying organizations.

Context

In Western European countries and elsewhere, efforts to enhance donor confidence about the credibility of organisations raising public and private monies for charitable purposes go back many decades. Long-established independent organisations exist to monitor and accredit NPOs, provided they meet set standards and are thereby considered worthy of support.[216] Although committed to shared values of good governance, absence of conflict of interest, transparent and audited financial statements, and truthful and accurate fundraising, these watch-dog organisations may differ substantially in their approaches to monitoring and certification. Country differences typically arise from varying legal structures, donor markets, transparency and accountability requirements, fundraising and organisational cultures, relationships with government agencies, and the ownership and structure of the watchdog agency itself.

For 50 years IFCO has brought together organisations that subscribe to a mission of urging accountability in charitable fundraising efforts. ICFO's aim is to enhance donor confidence that funds are used for purposes for which they are given. Its members include bodies in Austria, France, Germany, Italy, the Netherlands, Norway, Sweden, Switzerland, and the UK. Despite—or because of---their notable differences, ICFO's members have profited from a periodic discussions about areas of shared concern. Out of respect for its members' different legal, historical, and cultural contexts, ICFO has traditionally shied away from urging common standards or guidelines among its members. However, prompted by the growth in organisations fundraising and operating across borders prompted ICFO to go beyond its founding mission and, in the 1990s, develop standards to apply to such organisations. The resulting international standards are general and brief and ICFO sees no value in further developing them.[217] They rather assert the importance of developing national standards that are responsive to the national markets of donors and improve the certification and monitoring processes through ongoing learning and member-exchange. In addition, recently ICFO reached out to promote establishment of independent monitoring agencies in countries where such do not exist and has found potential partners from places like Taiwan or China.

Analysis

The Stichting Centraal Bureau Fondsenwerving (Central Bureau on Fundraising Foundation, or CBF) is an independent accrediting agency in the Netherlands that promotes responsible fundraising by charitable organisations.[218] In addition to issuing a seal of approval to qualifying organisations, CBF offers a statement of no objection to smaller and new organisations that would otherwise have difficulty meeting its full standards. This tiered accreditation process is noteworthy in that it allows CBF to cover

CBF was created in 1925 to promote responsible fundraising by charitable organisations.[219] Today, CBF's main activity is to issue a seal of approval to fundraising and gaming organisations and to provide information to the public about the Dutch NPO sector. In 1996 the Dutch Accreditation Council granted CBF the authority to award the CBF seal of approval to NPOs meeting its standards. CBF standards, developed in-house, are very precise, detailing requirements in the areas of governance, policy, spending, fundraising, accounting, and reporting. CBF has 25 paid employees, and evaluations and determinations about award of the seal are conducted by CBF staff. By 2007 CBF had issued seals to 270 out of 450 organisations applying for the seal. Most of these organisations are larger charities, but CBF also issues a certificate of no objection (i.e., to fundraising) to smaller and newer organisations. The criteria for the certificate of no objection are similar to those for the seal but are abbreviated and somewhat less stringent. CBF annually monitors compliance with both certificates and publishes information about organisations that have been assessed on its website and via a public information telephone line. CBF is a member of the ICFO and is also part of the GuideStar Europe project, within the framework of which CBF is developing a GuideStar-like database of annual reports of Dutch NPOs—it currently claims to have a compilation covering 95% of the market, or 800 million EUR—along with donor advisory and other services. CBF is funded 50 percent by public and municipal subsidies and 50 percent by fees from applicant organisations. The cost of the seal to organisations is about 5,000 EUR plus an annual prorated fee of 380 EUR to 7580 EUR.

CBF standards reflect the latest best practices in the NPO and corporate sector. Expectations include:

- In the case of organizations without a supervisory body, an independent governing body with at least five members who, among other things, resign periodically, are not paid for their services, and are free of close family and other comparable relations to other members of the board. Board members must also not be employees, board members, founders, or shareholders of entities that benefit from the fundraising organization's funds or conduct with it legal acts with a monetary value.
- In the case of fundraising organizations with a supervisory body, an independent governing body with at least one member to which similar rules apply. The supervisory body must consist of at least three members without close family and other comparable relations to other members of the supervisory body and the board.
- Provisions to guard against conflict of interest between the fundraising organization and members of the governing board, supervisory body, and employees. Members of the governing board and supervisory body must sign disclosure statements and abstain from decision-making in matters in which the conflict is involved.
- Multi-year policy plans with financial estimates, drawn up by and, as regards implementation, overseen by the governing board and/or supervisory body.

[219] For more information on CBF's approach, see Burkhard Wilke, *Monitoring Charitable Organisations: Criteria and Assessment Methods* (International Committee on Fundraising Organisations, 2003) and Ingrid Hélène Guet, *Monitoring Fundraising: A Comparative Survey of ICFO members and their Countries* (International Committee on Fundraising Organisations. 2002). Both publications are available at www.icfo.de/publications.htm. *Certification as a Viable Quality Assurance Mechanism in Transition Economies: Evidence, Theory, and Open Questions* by Andreas Ortman, Katarine Svitková, and Adriana Krnacová (Prague: Charles University Center for Economic Research and Graduate Education, 2005) also has useful information and analysis.

- Truthfulness and accuracy in external communications, and fundraising techniques that are free from intimidation. Information about fundraising activities and programmes must be made available to the public on demand.
- A maximum of 25% of revenues from fundraising expended annually on fundraising costs.
- Clearly delineated financial procedures. Funds are to be spent only in accordance with the budget and on designated purposes within a period of three years. Progress on expenditures is to be monitored and reported.
- Filing of an externally audited annual report.

CBF standards are under constant review. CBF judges its accreditation system to have resulted in greater transparency, proportionately higher expenditures on programmes and lower expenditures on fundraising and administration, and a higher cost for malfeasance among NPOs due to public exposure. CBF also seems to have encouraged greater trust of NPOs generally and a growth in donations by as much as EUR100 per donor annually, in part because CBF has good name recognition and a high approval rating among Dutch consumers, as shown by a recent poll. CBF certifies close to 300 NPOs a year, which together account for 80% of all fundraised amounts by NPOs.

As an established organisation with deep institutional capacity, CBF offers a system of assessment, accreditation, and information reaching the part of the Dutch NPO sector that raises most funds from the public.

IV.16. TRADEMARK OF TRUST - A LOCALLY DEVELOPED CERTIFICATION SYSTEM IN HUNGARY

The Trademark of Trust is an accountability standard aiming to support the fundraising activities of NPOs in Hungary. An independent committee examines candidate NPOs and gives an award to successful applicants. Areas covered by the standard include governance, conflict of interest, planning and evaluation, finances, fundraising, and transparency. Detailed descriptions of requirements behind these standards are distributed to NGOs and a shorter version is available for public consumption. Its significance lies in the fact that it is the only "indigenous" certification system developed in a new EU member state (as identified by this research), as it is not modelled on a Western standard but was developed in cooperation with small local NGOs in the Southern region of Hungary.

Context

Numerous self-regulation initiatives have taken off in the recent years within the NPO sector. These include the adaptation of PQASSO standards, introduction of ISO by several larger NPOs, the Guidestar Hungary initiative, among others. Grant programmes of the National Civil Fund have encouraged introduction of quality management systems and other self-regulatory tools among NPOs. These efforts are in a large part due to the increased public attention to NPO wrongdoing, cases of which were widely reported by the media in recent years.[220] Cases generating scandals ranged from alleged misuse of the 1% designations[221] to an allegedly cover-NPO for importing foodstuff. More recently, a foundation collected 1 million HUF for the cure of a sick child and handed over only 250,000 HUF, or 25% of the donations to the family, explaining that the rest of the funds need to cover their fundraising and administrative expenses.

[220] Five such cases were identified from Hungary for the Study on NPOs and Financial Crime conducted by Matrix.

[221] The 1% designations allow every taxpayer to allocate 1% of personal income tax to qualifying NPO. For more see: www.onepercent.hu

The difficulties of self-regulation lie in the fact that the NPO sector is still quite weak and at the same time notoriously unwilling to engage in sector-wide collaborative efforts.[222] Thus, it was quite likely that certification systems and watchdog type initiatives will take precedence over codes of conduct in Hungary. The Civil Society Development Foundation Hungary is one of the organisations that has taken a lead in developing and adapting quality management systems for NPOs in the past few years. It is the license holder of the Hungarian adaptation of PQASSO,[223] which it developed and tested over two years; it is the only Hungarian NPO to receive the Committed to Excellence Award from the EFQM in 2007[224] and it is working with the Hungarian Quality Foundation to adapt this model to NPOs in Hungary; and it developed the Trademark of Trust as their own product based on the needs of NPOs identified through their work.

It is the philosophy of the Civil Society Development Foundation (CSDF) Hungary[225] that the more types of quality systems are available for NPOs, the more effective self-regulation is going to be. There is no "one size fits all" solution to assist NPO development and increase accountability of the sector. Therefore a choice of available strategies and tools need to be created and NPOs need to make informed choices as to which system they wish to apply.

The idea of the Trademark of Trust emerged as CSDF was working with NPOs on adapting the PQASSO system. It could be seen that although designed for "small" organisations, even the larger, more established NPOs found it challenging to comply with some of its requirements, due to the generally lower level of NPO organisational development in Hungary.[226] In addition, PQASSO is a holistic, complex quality management system adopting a TQM approach[227] to nonprofits, which is based on self-assessment, aims at continuous learning and organisational development according to strategic needs and priorities of the organisation. NPOs signalled to CSDF Hungary that they would need something less complex but still assisting them to follow best practices; and most importantly, a tool that would help them prove for their donors and the public that they meet the requirements expected from a public benefit organisation in Hungary.[228]

The Trademark of Trust was therefore designed to be applicable to the average Hungarian NPO. It was developed with a group of NPOs in Southern Hungary, and piloted with eight local NGOs from that region over 2006-2007. The standards are based on international best practice, however, NPOs spent much time discussing and agreeing on them so as to find the right balance between what is ideal and what can realistically be expected. CSDF experts made sure during the process that principles of good practice are not violated. This also meant that in the process of developing the standards, NPOs had to

[222] This characteristic of Hungarian NPOs has been pointed out in several publications about the sector.
[223] This is called MINTA, an acronym for "Quality for Social Organisations and Foundations" which reads "exemplary".
[224] This is the first step of the three-level certification system of the EFQM model
[225] CSDF is an international non-profit management training and support centre based in Hungary, which operates since 1994. www.csdf.hu
[226] Most Hungarian NPOs do not even have paid staff not to mention comprehensive organisation-wide systems of planning and evaluation that are promoted by PQASSO. The area of governance and board development is also problematic for most NPOs. This is not to say that there is no need to improve; rather that PQASSO serves a purpose of long-term development, while many NPOs are in need of immediate proof of compliance with principles of good practice regardless of their level of organizational development.
[227] Total Quality Management. Tools reflecting this approach tackle every aspect of organizational life, from strategy to office management to employee motivation.
[228] Note that there is no effective implementation of the PBO system in Hungary, so despite having the status NPOs are in need to reassert public confidence.

be educated and they needed to internalise some of the good practice expectations that were not obvious (e.g. that governance and management need to be separated).

The overall model of the standard follows the structure of the BBB Wise Giving in the US. The "Trademark of Trust", as a model is held by CSDF Hungary, which licenses regional or municipal "franchises" to implement the model in their areas. In Southern Hungary, the franchise partner has been the regional civil society support centre.[229] Hungary has a well established network of regional and local support centres, therefore the "franchise system" can be built around these (although any entity with the needed capacity may apply for the franchise). In the meantime, a loose network of major fundraising organisations dealing with cancer also started to assess its members through this tool and so the potential need for issue-based adaptations also emerged.

The Better Business Bureaus (BBB) of the United States originated 50 years ago in the fact that customer trust is crucial for any business. **Customers listen to other customers**, what customers say about them has a direct effect on their income. In this model an independent board of customers provides a report on the business that is publicly available for anyone. In 2001, through a merger with the National Charities Information Bureau, this model was extended to charity organizations as well. Furthermore, from 2003, a Charity Seal has been introduced which provides a certification from the local BBB to the charity (there are 128 BBB-s in the US and Canada).

Analysis

The novelty of this approach follows from the fact that it is being introduced in a country where philanthropic culture is not well developed and where CSOs lack public trust, so both of these need to be addressed. Therefore the initiative has two equally important aims: to increase the accountability and transparency of the "average" Hungarian NPOs by providing them incentives for qualitative development; and to introduce a tool which will engage the interested public in assessment of NPOs and thus raise awareness about the importance of NPO accountability among their stakeholders.

The Trademark of Trust model is an interesting and innovative certification scheme in the following ways:

- It is highly participative: it develops the accountability standards together with the CSOs and the stakeholders who will apply them. This makes it resemble more the codes of conduct, which are undertaken voluntarily, therefore ensures ownership of the process and motivates those involved to put in the effort needed for maintaining it.
- It is flexible to cater for differences among CSOs: while maintaining core principles of accountability and transparency, it allows for tailor made versions for each group of CSOs willing to undertake the certification process. (However, they need to be measured by the same standards within the group and there is quality control provided by CSDF Hungary.)
- It applies a bottom-up approach: rather than starting with an overall national standard for all CSOs, it aims to engage communities (geographic or professional) in the discussion about what needs to be improved and how. Eventually this can result in a national Trademark of Trust Alliance which provides the quality control and technical assistance for the local chapters.
- It builds capacity along with measurement: in order to make it possible for CSOs to comply with the standards, they receive training and technical assistance on how to achieve them.
- Perhaps most importantly, it engages the stakeholders of CSOs in the assessment process, thereby creating a link between the organizations and their constituencies, which then generates increased interest toward supporting the CSOs involved. (It is important to be wise in selecting

[229] Another aspect of the process of developing the standard was the capacity building of the NPO support center, which will also be needed for partners in other regions.

the certification board, given that they cannot be seen as politically or otherwise affiliated. The board can also include CSO beneficiaries and service users, who have the experience of how a person in need should be treated by the CSO.)

Noteworthy is the communication of the standards, in that two versions are developed: a more detailed and technical one for the NPOs and an easily understandable one for the public. The standards, in the areas of governance, conflict of interest, planning and evaluation, finances, fundraising, and transparency, were developed guided by the question of what a donor would be interested to know (based on the stakeholder responses). There are serious requirements behind the "easy reading". Implementation of the first standard "The NPO complies with and even exceeds legal requirements" is aided by a detailed table of legal requirements regarding public benefit and non-public benefit organisations; alternatives of how to exceed the requirements without adding a major administrative burden are listed; evidences of meeting requirements are provided. The standards also consider differences between associations and foundations. Development of very concrete guidance on how to comply with regulations was assisted by an expert organisation giving legal advice to NPOs in the region.

Challenges of the model include funding (essentially, during several years of its development it has to be supported through grants), finding a balance between capacity building and certification of existing capacities; ensuring that locally adapted standards comply with best practices; selecting credible and generally well-regarded accreditation boards; selection of and investment in the "franchise partners".

While it is early to talk about the impact of this initiative, its approach is worth considering in other countries, especially in new MS where NGO capacities are weaker and there is a need to simultaneously address capacity building and certification needs. Successful adaptation certainly requires an organisation such as CSDF Hungary, which has high level of expertise and a range of experiences in both capacity building and quality management.

IV.17. AUSTRIAN SEAL OF QUALITY FOR DONATIONS

The Austrian Seal of Quality for Donations[230] for charities issued by the Austrian Chamber of Chartered Accountants was established in 2001 in the aftermath of a major scandal in the Austrian NPO sector. Development of the Seal represents an instance of fruitful cooperation between NPO, governmental, and other entities.

Context

The Austrian NPO sector is characterized by its newness, small size, and relatively undeveloped legal structure. Until the 1980s, Austrian charities were dominated by the Catholic Church. With the arrival of several large international organisations, this situation began to change, and by 2005 it was estimated that there existed 600 fundraising organisations. Aside from large, long-standing institutions such as CARITAS and the Austrian Red Cross, most NPOs are still small, raising less than 70,000 EUR annually. Nevertheless, the recent expansion of the sector has seen a significant increase in fundraising activity, along with greater professionalism and aggressiveness in fundraising efforts. NPOs intending to engage in public fundraising have to obtain permission by the authority of the respective "Laender" authority (state authority) usually two months in advance (these obligations are prescribed in various

[230] Information for this section is drawn from "Austrian Seal of Approval for Charities" by Gerhard Bittner, a presentation at a workshop on certification systems for nonprofit organizations in Prague, May 23-24, 2005 as well as discussions with the Ministry of Finance in Austria.

state laws). NPOs with "public benefit" or "beneficial" purposes are eligible to receive tax deductible donations under the Federal Tax Act.[231]

Analysis

The Austrian Seal of Quality for Donations sets out accountability and transparency standards which are promoted by EC COM (2005) 620 and its Annex 3, as well as FATF SR VIII Interpretative Notes and Best Practices. The development of the Seal with participation of representatives from the public and NPO sector is of particular significance.

The Austrian Seal of Quality for Donations was developed to promote transparency and greater trust in fundraising efforts. In 1998 a donation scandal at WorldVision Austria led to the establishment of a working group by the Österreichisches Institut für Spendenwesen (Austrian Institute for Fudraising Organisations, or ÖIS[232]), a section of the Österreichische Forschungsstiftung für Entwicklungs-hilfe with no staff and no independent budget. The working group was charged with considering better documentation, information, and regulatory efforts to address the needs of NPOs and their donors. The working group consisted of representatives of the government, media, consumer protection organisations, professional fundraising associations, and seven NPO umbrella groups. It urged the creation of a seal of approval for charities, and criteria were drafted based on models from Germa y and Switzerland.

A more difficult issue was implementation: while NPOs fought to prevent the establishment of a new administering body and instead proposed that the Seal remain an NPO initiative, others insisted that outside bodies must be involved. In the end, a compromise was reached. Responsibility for assessing compliance with criteria of the Seal is assigned to organisations themselves. Evidence of compliance is verified annually by external accountants, who report to their professional association, the Austrian Chamber of Chartered Accountants and Tax Advisors, an independent public-law body. The Chamber awards the Seal to an organisation on the basis of the auditor's report. The development of the Seal was completed i 2001. ÖIS publishes a list of organisations receiving the Seal.

Applicants have to undergo a **self-assessment** in form of a checklist of more than 300 questions concerning the specific criteria. After the self-assessment a **tax advisor conducts an on-site visit** and assesses compliance with the sta dards. The the report will be se t to the Chamber of Chartered Accountants and Tax Consultants, which will examine the results again and finally decide about the awarding of the Seal. The application and the assessment have to be conducted annually. However, small organizations (with revenues less than 40,000 Euros) can conduct it every two years in order to avoid undue burdens.

*The Catalogue of Criteria of Standards for Donation-Collecting Organisations to Receive the Austrian Seal of Quality for Donation*s is developed based on several objectives and general conditions. Among others, the objectives a d general conditions outline the importa ce of tra sparency towards donors and the general public, the fact that good use of donations can stimulate others to give, and that the seal should be open to all regardless of size or activities. The document also provides a detail definition of what is considered an NPO. The Catalogue than details the specific criteria in the several 7 categories: accountancy, internal control systems, use of donations according to the statutes and their dedication, economy and efficiency, financial policy concerning the use of donations, human resources, integrity of publicity.

[231] The donation itself is only deductible for donors if it is contributed to an NPO with scientific purposes, for instance museums or NPOs for medical purposes.
[232] www.osgs.at, www.spenden.at

The system was tested during a three-year period, after which certain modification was made (for example, criteria were revised to include a mandatory annual report).

Currently 183 NPOs out of the estimated 600 organizations collecting donations in Austria are bearing this Seal. These NPOs cover about two thirds of all private donations collected in Austria (total estimate of 350 million EUR per year). The proportion is astonishingly large, given the short period of implementation. The Sea may be shown on letter heads, at every public appearance and is thought to be a good way to promote the image of the NPO sector.

The Austrian Seal of Quality for Donations was developed quickly and inexpensively and has been accepted by significant number NPOs. Although some smaller NPOs complain about the expense of the mandatory audit, the main benefit of the Seal is its ease and breadth of implementation. The system of self-certification followed by external assessment, can therefore be easily considered by other countries and NPOs, and adapted to meet local needs of fundraising organizations and other types of NPOs.

IV.18. IMPROVING ACCOUNTABILITY OF HUMANITARIAN ORGANIZATIONS - THE HUMANITARIAN ACCOUNTABILITY PARTNERSHIP INITIATIVE

The Human Accountability Partnership (HAP-International, HAP, HAP-I) is the outcome of a decade-long trend in which humanitarian organizations have sought to improve the quality and accountability of their work. HAP is known for its innovative accountability principles, which emphasize the rights of beneficiaries, the Humanitarian Accountability and Quality Management Standard and the quality assurance certification scheme. As a partnership, HAP serves a relatively small but well known community of international NPOs. Its services to members include extensive support in achieving and maintaining certification with the HAP Standard.

Context

HAP is one of a number of initiatives that begun in the aftermath of the1994 Rwanda genocide, when calls were made to establish a strong self-regulatory body able to improve the performance of international humanitarian NPOs. Problems among these organisations at the time of the crisis included mission failure, confusion over roles, and low ethical standards.[233] Several efforts responded to this challenge: the International Federation of Red Cross and Red Crescent Societies issued its widely used Code of Conduct; and several organizations, including the Sphere Project, the Active Learning Network for Accountability and Performance in Humanitarian Action (ALNAP), and HAP were founded to promote a better understanding of accountability and performance issues. HAP has emerged as the most prominent advocate of rights-based accountability standards for international humanitarian NPOs. Although the HAP Secretariat is registered in Switzerland, its 25 members (e.g., Oxfam GB, Save the Children UK, World Vision International, Care International, the Norwegian Refugee Council, Muslim Aid) operate globally.

Analysis

HAP's accountability model consists of an **interlocking system** of principles, the Standard, and a quality assurance scheme promoted through certification and accreditation.

[233] The analysis is developed based on interview with Ms. Monica Blagescu, Field Representative, HAP-I, an article from Lisa Jordan, *"A Rights-Based Approach to Accountability"* published in: "Global Accountabilities Participation, Pluralism, and Public Ethics" Edited by Alnoor Ebrahim and Edward Weisband, 2007 and the website of HAP www.hapinternational.org

HAP membership is open to community based organisations, international NPOs, international organizations or donors. HAP Members make a commitment to: comply with the Principles of Accountability; prepare an accountability workplan; report annually to HAP on the implementation of the workplan; and to monitor and verify compliance conducted by the HAP Secretariat. HAP members are assisted in maintaining their membership eligibility by a generous menu of benefits, including training and advisory services. HAP also offers field support so that members can *"realize accountability principles in real humanitarian emergencies in real time."*[234] In this regard, HAP is not a loose network or a community of practice, but a formalized partnership with enforceable membership obligations, which provides assurance that members are striving to meet the Principles of Accountability.

The **Principles of Accountability** were developed in 2003. These summarized, for the first time, core elements of good practice in accountability in humanitarian situations. HAP is also mandated to investigate complaints of non-compliance with the Principles of Accountability made against member agencies.

While the Principles may not be sufficient to measure the quality and accountability of members' work, the **Standard in Humanitarian Accountability and Quality Management** has benchmarks and verifiable indicators that allow for a thorough review.[235] The Standard development process started in 2005 through an extensive consultation process in different countries across the globe. The process involved a wide range of stakeholders, including humanitarian staff and beneficiaries. Two questions were asked: *"what matters most in an agency's management system with regard to having the best possible impact upon the well-being of beneficiaries"* and "*what is affordable and what is measurable"*. The Standard was adopted in January 2007. To help agencies use the benchmarks in their work, HAP has developed a Guide to the Standard.

In substantive terms, HAP Standard features – **mission critical, affordable and measurable** – distinguish it from other quality accountability initiatives. Built around six benchmarks and associated requirements, the HAP Standards and certification scheme are essentially a quality assurance system. Among other things, the standard require organizations to have a quality management system, enable beneficiaries to participate in programme decisions, and meet the development needs of staff.

Through the HAP **certification scheme,** compliance with the HAP Standard is verified by independent registered auditors. HAP certification allows agencies to demonstrate their achievements in accountability and quality management through a process recognised by humanitarian peers and developed according to the ISO standard development process. (A Certification and Accreditation Board makes the final decision about granting the certificate.) Compliance with the HAP Standard is a commitment - voluntarily made and externally verified - of the centrality of beneficiaries to an agency's humanitarian work. HAP **certification aims to provide assurance to disaster survivors, staff, volunteers, host authorities and donors that the certified agency will deliver the best humanitarian service possible.**

HAP is now developing an **accreditation system** that will allow affiliated NGO networks and associations to certify their own members of compliance with the HAP Standard. Networks and other qualified bodies would first need to show that they are able to correctly interpret and apply the HAP Standard according to appropriate procedural standards. Once they pass this review, they would then be granted authority to register and certify their members and to run HAP approved complaints handling mechanisms.

[234] Resources and tools available to all are available at: www.hapinternational.org/resources/default.aspx
[235] http://www.hapinternational.org/pool/files/hap-2007-standard(1).pdf

Further, HAP has developed a **New Emergencies Policy** (NEP) as a commitment by HAP member agencies to make special collective efforts to apply the HAP Principles of Accountability from the beginning of all new humanitarian emergencies. The Protocol for the Implementation of the New Emergencies Policy sets out a simple mechanism for putting this commitment into practice, and exploring the case for collective action.

The Standard and the compliance verification process are still young. Five members have already been certified and two of these are now preparing for their mid-term monitoring audit. HAP estimates that the reason why only few members have achieved certification to date is that the change management processes that agencies need to undertake requires more time than it was initially envisaged. Fifteen other members and non-members are moving towards certification and are currently engaging with the baseline analysis process.

HAP quality assurance scheme is supported by leading humanitarian donors. According to HAP, they support this scheme as they have a direct interest to see that the funding they offer towards humanitarian aid is being effectively spent and delivers best results for the disaster-affected communities. Some donors are also HAP associate members.[236]

The HAP quality benchmarks and requirements pertain, most of all, to the ways and means of how member NPOs should provide effective and accountable humanitarian services. They do not address the full spectrum of organisational governance and management, in fact, they say little about board development, financial management or fundraising practices. (Except that financial compliance with national laws is a threshold requirement for any member to be eligible to apply the standards.) In other words, **the HAP quality approach focuses on the service design, implementation and review aspects** as well as organisational management aspects supporting those to ensure that humanitarian work is delivered in a high quality way (an ISO-based approach rather than a TQM-based approach)[237]; a **key yardstick in defining "quality" being the concept of "downward accountability" or the ability of the NPO to meet the needs of its beneficiaries**.

This "downward accountability" approach is to the benefit of HAP, given that it aims to address a key area of need in this type of work implemented globally. Its scheme is generally less helpful when discussing ways to effectively realise "upward accountability" as defined in this Report; however, **it may be of great assistance to the policy makers and regulators when trying to establish standards that are in the intersection of the different interpretations of accountability;** most prominently, the principle of "know your beneficiaries and partner NPOs". Since HAP's focus is on ensuring good practices in selecting and involving beneficiaries in humanitarian programmes, it may provide guidance to the implementation of this principle.

[236] http://www.hapinternational.org/members.aspx

[237] ISO-based quality approaches focus on processes of service provision while TQM-based quality approaches have a holistic approach to the organisation, including among others, its strategies, communications, income and expense structures, financial management practices etc. For more, see Annex 4 and 7.

Example of a HAP Standard[238]

Benchmark 3 **The agency shall enable beneficiaries and their representatives to participate in programme decisions and seek their informed consent**		
No	Requirement	Means of verification
3.1.	The agency shall specify the processes it uses to identify intended beneficiaries and their representatives with specific reference to gender, age, disability and other identifiable vulnerabilities	Review mechanism used to identify and disaggregate intended beneficiaries

In sum, HAP provides an example of a system of self-regulation and certification mechanisms that are targeting accountability and transparency of NPOs towards beneficiaries. The HAP Standard and the certification scheme assure that agencies deliver good quality work in practice and at field level, where it matters most. It is an example of initiative which aims to contribute towards confidence in and higher standards of humanitarian services. The standards and the certification system can be reviewed and considered by others who aim to increase standards of services towards beneficiaries.

IV.19. A STRINGENT, FATF-INSPIRED CODE OF CONDUCT – THE MONTREUX INITIATIVE

The Montreux Initiative is an international nongovernmental effort to recognize the financial and governance standards of accredited Islamic NPOs,[239] and therefore to improve perceptions of and encourage support for them.[240] It is a peace promotion dialogue which arose as a direct response to recent counter-terrorist measures, it aims to measure accountability and transparency and to separate the justified obstacles (placed on a NPO because of misuse of its funds) from any politically motivated obstacles. It proposes an ambitious programme of capacity building and assessment that would be jointly funded by Western and Middle Eastern sources. Implementation is developing slowly due to political and financial challenges.

Context

The size of the NPO sector has not been measured in many countries, and the Islamic NPO sector is no exception. An approximate calculation suggests that there are more than 60,000 Islamic NPOs in the Gulf, Middle East and North Africa, and there are also significant numbers in the West.[241] They are a key conduit for *zakat*[242] and other forms of Islamic charitable giving, and it is considered that they may be better able to provide humanitarian and development support to Muslim communities than other organizations would be because of their better local and cultural understanding.

Counter-terrorist measures introduced in the wake of 9/11 are intended to prevent exploitation of all NPOs for the financing of terrorism and other kinds of criminal abuse. A widespread perception is that these regulations have targeted Islamic NPOs (for example, nearly all US Government terrorist

[238] http://www.hapinternational.org/pool/files/hap-2007-standard(1).pdf
[239] "Islamic NPO" is used in a descriptive way, to mean an organization that is motivated by Islam, or receives much of its funding from donors with the same motivation, or both.
[240] http://www.eda.admin.ch/eda/en/home/topics/peasec/peac/confre/conrel.html
[241] E.g. there are more than 1,300 in England and Wales. See: James Shaw-Hamilton, "Recognising the umma in humanitarianism" 2007.
[242] *Zakat* is one of the pillars of Islam; it represents an obligation of Muslims to give a certain percentage of their money to those in need once a year.

designation lists[243] of NPOs are of Islamic ones) and have undermined trust in them, leading to reduced support by donors (as the general public have been discouraged from supporting them and/or some donations are driven underground), and to beneficiaries.[244]

Perception is important and several initiatives have developed in recent years to build bridges and counter the negative effects of counter-terrorist measures on Islamic NPOs. For example, the Humanitarian Forum[245] seeks to (re)integrate Islamic charities into the international community of humanitarian organisations through accountability, partnerships and capacity building. The UK's Charity Commission has urged a balanced approach (combining promotion and protection) to the risks facing all NPOs, domestically and in its international work. Its new Faith and Social Cohesion Unit[246] encourages Islamic NPOs to register as charities and improves governance in the sector.

Analysis

Among recent self-regulation initiatives, the Montreux Initiative is the one that is most closely linked to the FATF standards and is **unique in publicly confirming compliance in an independent assessment process**. The philosophy and methodology of the initiative is to set up a short term instrument that helps build trust in the humanitarian action of Islamic charities while taking into account security concerns.

The Montreux Initiative was launched by the Swiss Federal Department of Foreign Affairs (DFA) in the framework of its peace promotion policy, which made "religio-political conflicts" a special priority in 2005. The goal of this project was to overcome the problems described above through confidence building and cooperation between NPOs and governments. An expert group included Western governmental representatives and representatives of international Islamic NPOs based in Egypt, Saudi Arabia and the UK. The NPO experts were selected partly because of their work and partly because of the wider constituencies they could represent.

An initial meeting in Montreux in 2005 designed two key documents (the "Montreux Conclusions"). The first, a **Code of Conduct** focuses on good governance, due diligence and financial transparency: it consciously consolidates the 2005 versions of the FATF's SR VIII and the US Treasury's Voluntary Guidelines[247] into a single list of requirements. The Code therefore covers areas like operational transparency, good governance, information on employees, financial management (including solicitations, use of banks, audit), programme management programmatic verification, grantee due diligence) and record-keeping. The detail of some of these requirements suggests that many NPOs would not immediately comply with all requirements, whether Western or Islamic. Some of the Islamic NPO representatives on the core group said that, with increased interest in Islamic NPOs after 9/11, they had improved their internal standards to ensure that they complied with the stricter requirements: Western NPOs did not have this additional incentive. After debate within the expert group, this narrow form of upward accountability was chosen because the Montreux Initiative was designed to deal with specific obstacles that self-selected Islamic NPOs felt they faced since 9/11, such as the perceived or real risk of terrorist designation lists and delayed/cancelled bank transfers.

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[243] US Treasury Designations are under Executive Order 13224. The Order provides a means by which to disrupt the financial support network for terrorists and terrorist organizations by authorizing the U.S. government to designate and block the assets of foreign individuals and entities that commit, or pose a significant risk of committing, acts of terrorism. http://www.state.gov/s/ct/rls/fs/2002/16181.htm

[244] Some criticism – even in official publications – has gone further and suggests that this grants a monopoly to Christian organizations to enable them to convert Muslims. See: Mohammed Abdul Rahim "Arabic Organisations Absent from African Scene in Charitable Activities" in *QACA*, ed. 1, p20.

[245] Organisation registered in the UK but with an international board and membership, see: www.humanitarianforum.org

[246] www.charity-commission.gov.uk/tcc/faithsc.asp

[247] http://www.treasury.gov/offices/enforcement/key-issues/protecting/docs/guidelines_charities.pdf

The second document is a set of **Recommendations to Governments**, describing in broad terms the principles under which NPOs should be regulated.[248] These standards are meant to supplement rather than supplant national regulation, demonstrating that the small numbers of NPOs assessed under the standards are "clean". The Montreux Initiative claims to respect the national sovereignty of all donor and host governments, as well as the authority of FATF and the UNCTC.

Several workshops and the formation of a core group of experts, funded by the Swiss MFA together with the UK's Foreign and Commonwealth Office, followed. Outputs of the meetings include designs for capacity building and accreditation, while a "Compliance Indicators and Assessment Manual" guides NPOs and assessors in capacity-building and assessment efforts.[249] International figures were also approached to be Trustees. This planning phase was to be followed by an implementation phase, consisting of capacity-building activities, organizational assessments, an information campaign, and research, under the direction of a professional secretariat. With this in mind, a roundtable was held in 2006 with a larger range of Islamic NPOs (both geographical and numerical), and a CEO was recruited. According to a member of the initiative's core group, Islamic NPOs have been responsive to the Montreux Initiative: for example, 18 organisations have ratified the Montreux Conclusions.[250] Interestingly, even though the Code of Conduct is rigorous and would be a challenge to many Western NPOs, most of the standards were not contentious amongst NPO participants at the various meetings: the NPOs said that they already met these – and in some cases – harder standards. Of course, these claims could only be tested through accreditation.

However, the issue of Islamic NPOs has been highly contentious since 9/11, and there is a reluctance to be the first – and therefore the most visible – charity participant in, or Government sponsor of, an untested accreditation process.[251] Political turmoil in the Middle East and suspicion of the initiative as a security-driven, Western-based project, have delayed implementation for some time. Nevertheless, the Union for Good[252] is implementing a capacity-building process based on the publicly available Code of Conduct independently of the Montreux Initiative.

Several Governments in Europe and the Gulf have expressed interest in the Montreux Initiative; e.g., in 2006 a roundtable was held with several EU Governments (forming the start of a Group of Friends). It was anticipated that this would lead to more tangible support and that the cost of implementing the initiative would be shared equally by governments in the West and in the Gulf. The Swiss Government remains the sole funder as the termination of UK funding at the end of the design phase has yet to be offset by commitments from other sources. There seems to be distrust amongst Western Governments about positively vetting Islamic charities and caution about the reaction to any policy linking counter-terrorism and Islam. At the same time, Gulf Governments wanted reassurance that key western

[248] These are inspired by the Charity Commission approach. The *Recommendations* pre-date the US State Departments *Guiding Principles for the Regulation of Nonprofit Organisations*, but do not go into so much detail.
[249] Assessment would be handled by a separate department to capacity building. Independent assessors would be selected according to professional expertise (although there was disagreement within the core group as to whether this should be related to audit or (criminal) investigation). They would spend a significant amount of time with the NPO looking at its records and policies; the NPO would be able to provide information but not influence the report and so, if they disagreed with the outcome they would be reassessed rather than the outcome changed.
[250] Email exchange with Mr Emanuel Schaeublin, July 1, 2008
[251] Islamic NPOs have been reluctant to join the Montreux Initiative because the process is untested and is inherently political. There is also a danger that it can move from self-selected regulation to suspicious self-regulation: the Montreux Initiative can be misunderstood by donors, banks and intelligence agencies, who could see non-accreditation as suspicion of wrongdoing as opposed to choice. It can also be misunderstood by Governments, which may want to apply a specific, emergency solution to a wider range of NPOs.
[252] An international umbrella alliance of 50 Islamic NPOs working in the Palestinian Territories.

Governments approved the initiative. At present the core team is working to inform key governments about the initiative in more detail and seek their concrete support.

The Montreux Initiative is a notable – perhaps unique – **sector-led effort to improve and measure the administration, reputation and sustainability of bona fide Islamic charities with explicit reference to counter-terrorism measures.** The Montreux Initiative was designed relatively soon after 9/11, when the NPOs felt an urgent need to redress as emergency situation. They were happy to sign up to stringent requirements provided there was some hope that these would be matched by some recognition on the part of the Governments. This was not forthcoming and, with time, the NPOs felt increasingly as if the compromises would all be on their part. They were also wary of joining a foreign regulatory process without the approval of their Governments. This suggests that time and the choice of participants in a roundtable are crucial, bearing in mind the possible benefits of the process - but also the political difficulties with it.

The Montreux Initiative illustrates the difficult context in which accountability debates after 9/11 take place and the need to focus on building bridges. The Montreux Initiative has stalled, due to NPO and Governmental caution. This could be remedied by financial support and political support from Western and Middle Eastern governments, and further confidence-building with NPOs to reassure them that the purpose of accountability is to improve their work and is not a surveillance tool. There seems to be a mutually-reinforcing caution, since neither Governments nor NPOs may be willing to move forwards without some political comfort from the other side. However, the Montreux Initiative has been considered in other contexts, such as Sri Lanka.

If the project goes forwards or is considered for replication, it will be important to ensure that it remains an additional standard the NPOs can choose to be assessed against, rather than forming the basis of sector-wide regulation.

V. CONCLUSIONS

General issues

1. Accountability and transparency can be achieved in a number of ways. There is a need for a targeted approach and flexibility in regulating NPOs and setting standards on accountability and transparency. There is no "one-size fits all" solution: it is impractical to look at a single system as a possible model for all countries. "The challenge will be to balance high standards with space for innovation, diversity and responsiveness."[253]

2. There are numerous and diverse public regulation and self-regulation initiatives in the EU member states, which affect the accountability and transparency of NPOs. An increasing interest in NPO accountability and transparency can be observed across Europe. This takes place in the framework of a wider context of debate on governance, accountability and transparency.

3. The success of the initiatives depends to a large extent on the buy-in of NPOs, whether compliance is to be ensured through a system of rewards or penalties if guidance has not been followed. Experience suggests that engagement with the NPO sector and serious consultation regarding regulations that affect them are crucial.

4. Accountability does not have a single – or even a generally agreed – definition. The Report examines a more narrow (upward) definition of accountability. At the same time, some of the initiatives that contribute relevant information and good practices have been motivated or influenced by other concepts of accountability (wider context).[254] Therefore, a wider understanding of accountability needs to also be considered when assessing and adapting good practices in Europe.

5. The report also notes national/regional differences between the initiatives. There is a range of factors that determine the effectiveness of any regulatory or self-regulatory solution, including the country's history, social, economic and cultural development, as well as its legal system and overall system of checks and balances; and the level of development of the sector and of regulation.

6. Motivations and drivers of these initiatives are different. The clearest trend in terms of motivations is the increasing economic and policy significance of the NPO sector both nationally and internationally. Predominantly, motivations for public regulation initiatives are domestic, but a few initiatives are motivated by experiences of implementation in other countries.

7. The timing of most reform initiatives identified and featured in this Report coincide with the introduction of FATF SR VIII and EC COM (2005) 620. Undoubtedly, these documents have had some influence on country-level policies over the past years. A few countries have undertaken NPO sector review and/or introduced some administrative measures prompted by the FATF recommendations (e.g., Portugal and Spain); others have so far only been exploring the possibilities of compliance (e.g. Denmark, Sweden); yet others have more recently engaged

[253] Brown and Jagadananda 2006, 37

[254] Specifically, in cases #13-18 the initiatives were driven by or concern a more holistic approach of accountability.

with the NPO sector to assess and address emerging issues (e.g. UK, Netherlands). Overall, the reference documents seem to have played a modest role in the reform initiatives featured in this Report.

8. The operational distance between agencies responsible for ensuring compliance with FATF and those responsible for supervising NPOs has been noted as a possible factor hindering greater interaction between CT policies and NPO regulation (e.g., rarely departments in the same ministries are responsible , and aside from implementation of SRVIII, they often have no cause for interaction). Furthermore, there is often a difference in approach (both policy and practice) between the NPO regulator, and the security community and the financial crime regulator.

Levels of regulation

9. There are a number of initiatives aiming at the European level that affect NPO transparency and accountability. Bringing these initiatives to fruition takes time as their implementers struggle with the diversity in regulatory practices and NPO development. A proper consultative process is crucial.

10. Within countries, public and self-regulation initiatives are developing in parallel. They go hand-in-hand and there is no blueprint to determine which would more effectively address certain areas of regulation. However, there are trends indicating their respective roles and good practice models developing in the country specific contexts within the EU. Newly emerging co-regulatory models are notable, whereby authorities rely on self-regulatory bodies to effectively implement regulation (UK, Ireland, Netherlands, Estonia).

11. In public regulation, the main trends are: (a) Convergence of standards on accountability and transparency at a national level within countries; however, the setting of common standards for accountability and transparency across Europe as a whole is not so straightforward, given the diversity of NPOs, government and societies they operate in. (b) To require higher accountability standards for organizations that have obtained charitable or public benefit status, as opposed to those which have not. (c) Expanding the range of organisations that fall under accountability and transparency regulations.

12. The number of self-regulation initiatives identified is high and they take many forms, which reflects the breadth and diversity of the sector itself. The motivations mostly come from the need to provide reassurances about NPO quality and reliability to donors and the public, and, to complement regulatory regimes in an effort to increase the effectiveness of the sector as a whole.

Comparison of initiatives with EC COM

13. Regulatory and self-regulatory initiatives in Member States assist to a large extent in the implementation of the three key FATF and EC documents examined in this report. A good number of initiatives can be found especially in the areas of registration and public database requirements, as well as requirements relating to accounts, reporting and monitoring of NPOs.

14. Public and self-regulatory initiatives are also in line with other key recommendations of the three key documents, i.e. effective inter-agency cooperation; having powers to gather information, investigate and intervene; and adopting a flexible, targeted and effective policy approach; however, these initiatives are less in number.

15. The only recommendations which are scarcely addressed by recent initiatives are the “know your beneficiary” and “know your donor” rules. (The only real examination of this is the counter-terrorism strategy of the Charity Commission for England and Wales, although accreditation schemes and a couple of other self-regulation initiatives include some basic rules.) This is a significant gap, given the prominence of these rules in EC COM and FATF Interpretative Note and the sensitivity of stakeholders to context-specific and proportional implementation (reflected by e.g., difficulties in determining the breadth of "material support" provisions in national legislation).

16. Public and self regulation initiatives identified in this study are addressing a range of important areas that are to a lesser extent covered in the three documents, including issues related to the public benefit status; NPO accounting and bookkeeping; internal governance; fundraising; and transparency of public funding.

17. The disconnect between the areas covered by ongoing public and self regulation initiatives and the FATF and EC recommendations signal the difficulties MS face when attempting to implement recommendations in their national contexts (especially the “know your beneficiary” and “know your donor” rules).

Issues in policy implementation

18. NPO accountability and transparency initiatives across Europe take place in the framework of a wider context of debate on governance, accountability and transparency. EC COM (2005) 620 recognizes many of the elements of this wider debate in its policy approach, but a number of regulatory recommendations seem to be building on the more narrow policy approach of FATF SRVIII. Recognizing the broader context in the implementation of recommendations could more effectively promote NPO transparency and accountability. Most importantly, it could provide a broader range of means to member states and NPOs in implementing the policy framework.

19. The cases illustrate aspects of accountability and transparency and the regulatory solutions presented are not sufficient on their own; in each country, many elements combine to create a mutually reinforcing framework of accountability; e.g., the Charity Commission's SORP, together with mature NPO and accountancy sectors with incentives to comply (because of Trustees' personal liability and regulation of the accountancy sector), combine with the more general aspects of regulation. Therefore, CT policies towards NPOs cannot be seen in isolation but need to be regarded as an integral part of the existing regulatory framework in member states.

20. The cases reflect that the concept of accountability is wider than the way it is defined in the documents. Some initiatives that are key to increasing accountability and transparency of NPOs are currently not seen as directly relevant to minimizing risk of abuse in the NPO sector. Considering those when discussing the concept of accountability could help with implementation. E.g., NPOs that develop accountability frameworks focusing on beneficiaries may be of assistance in developing feasible methods to implement the “know your beneficiaries” principle.

21. A common interest of all stakeholders engaging in accountability and transparency initiatives is building capacity of the NPO sector. Interest in accountability should therefore be coupled with interest in other ways of strengthening the sector. As the cases illustrate, these may also include

guidance, tools, funding, participation, as well as enabling legislation and innovative regulatory solutions.

Areas of need

22. The Report shows that while NPO accountability and transparency initiatives are abundant, there is very little sharing and learning going on among those. Sometimes exchange of information and experience is lacking even at the national level, but most outstandingly, there is no point of reference for learning and exchange at a transnational level within the EU.[255] A mechanism would be needed to provide pro-active facilitation in order to promote identification and exchange of best practices, sharing of learning points and adaptation of models across member states.

23. The Report also reveals a need to assist member states and NPOs in the implementation of the EC COM policy framework, e.g., through creating more opportunities to share member states' experiences in implementation. Furthermore, education and information of implementing agencies (regulators, law enforcement officials etc.) on the NPO sector and accountability and transparency issues concerning NPOs may be needed especially in countries with less developed regulatory frameworks.

24. In order to ensure effective and high quality implementation of the EC COM, it is desirable that the EC engages a range of stakeholders in the process of addressing the needs identified above. As the stakeholder group directly affected by the regulatory initiatives, it is essential that NPOs are included in the design and maintenance of a facilitation mechanism; in capacity building; and in exercises of clarifications and definitions.

[255] There are a few initiatives aiming to undertake research and provide resources at a global level; a most recent example is the initiative of the One World Trust to compile a directory of NPO self-regulation projects around the world.

VI. RECOMMENDATIONS

A. Principles to be applied

All stakeholders should bear in mind, to a greater extent, the principles agreed upon by the Justice and Home Affairs Council on 1 and 2 December, 2005. These are:

- *Safeguarding the integrity of the non-profit sector is a shared responsibility of states and non-profit organisations.*
- *Dialogue between Member States, the non-profit sector and other relevant stakeholders is essential to build robust defences against terrorist finance.*
- *Member States should continually develop their knowledge of their non-profit sector, its activities and vulnerabilities.*
- *Transparency, accountability and good governance lie at the heart of donor confidence and probity in the non-profit sector.*
- *Risks of terrorist finance are managed best where there are effective, proportionate measures for oversight.*

As discussed in the Conclusions, accountability and transparency initiatives strengthen the sector in a broader way than does a mere focus on terrorism and money-laundering. Also, it is important for stakeholders to have a more in-depth understanding of the NPO sector and how it works, the way accountability and transparency fits into this and the specific challenges of humanitarian response.

In these Recommendations, "stakeholders" include NPO regulators, financial sector regulators, NPOs (individual and umbrella groups), donors and academics. In addition, discussions could include candidate and neighbourhood countries where practicable, to increase awareness and understanding of the issues and prepare them to undertake pro-active steps in their own countries.

B. European Commission

The Report highlights a number of gaps and areas for development. Recommendation 1 describes a mechanism to remedy these, while Recommendations 2 to 4 explain the issues in more detail. They can be carried out by the "Centre of Excellence" (see below), NPOs or other expert organisations concerned with the promotion of NPO accountability and transparency.

The recommendations were developed with a view to their financial and organisational feasibility. In the short term, many of them can be funded from the existing programme "Prevention and Fight Against Crime".[256] In the longer term, the EC could consider developing a policy and a financial programme for funding national and EU level initiatives aiming to promote and strengthen NPO accountability and transparency.

1. Consider establishing a "Centre of Excellence" to promote NPO accountability and transparency, and to serve as an ongoing resource for information and exchange.

The Centre could take a number of forms, from a hosted website to an independent organization (e.g. an NPO). Its main role would be proactive facilitation of information sharing among the many interesting

[256] We understand that this budget line is broad enough to support initiatives that support broader accountability and transparency approaches.

initiatives in the EU. Also, many institutions are interested in accountability and transparency but need to be brought together, encouraged and supported.

Two possibilities for the design of the Centre of Excellence

A simple solution would be for the "Centre" to be **a newly created website or one attached to an already existing initiative with a similar function,** hosted by an organisation well positioned to administer it. Its design, content and maintenance could be contracted out to the host/organisation, while its marketing and promotion would be conducted jointly with the EC (so as to ensure that it reaches its audiences effectively). This is also the most cost-effective solution.

An alternative solution would be for the EC to fund the Centre through a **multi-year service contract or grant project**. The EC could then run a rigorous procurement process to award the tender to an existing organisation which undertakes to develop the Centre over a period of 2-3 years and commits to building its sustainability over time.[257] This approach would likely provide higher incentives to bring private resources to the table (e.g. European foundations or banks), and would rely on expanding already existing institutional capacity rather than building it up, thereby making the "Centre" more "bottom up" and investment less costly for the EC.

The Centre could be designed, established and governed jointly by the NPO sector and EU/member states to ensure that it is as rich and complete as possible. The process by which it is formed – established on the foundations of a broad agreement and buy-in from all interested parties – is as important as the way it functions.

Besides the website, the Centre could also use other ongoing mechanisms for debate: an informal **"forum of dialogue"**[258] among various stakeholders could be set up, whereby thematic meetings and expert exchanges could be held that could lead to better informed policy implementation on side of all participants. Membership needs to reflect a combination of expertise in various fields e.g. sector development, international aid, regulation, governance, counter-terrorism, possibly corporate accountability etc. Meetings could be held once a year with a wider audience; in addition, parallel working groups could be organized that could meet several times a year on more focused themes of discussion. Effectiveness of the "forum of dialogue" could be measured through monitoring of the policy initiatives that are initiated or improved based on information and learning obtained through the "forum". The "forum" could be maintained virtually through a website – but in-person meetings appear to be necessary to ensure joint learning of stakeholders.

2. Facilitate ongoing information-sharing, discussion and research.

- Facilitate continuous information sharing between stakeholders on the content and issues of existing initiatives, motivations, drivers and lessons learnt, as well as adopted standards to ensure there is conscious learning.
- Publicize and promote different tools, resources, etc.
- Increase cooperation among different stakeholders on an EU level.

[257] In addition, on the expiry of the initial funding, another three years of declining support or a matching challenge grant could serve as an exit strategy on part of the EC. The US Treasury's support of GuideStar could act as a model.

[258] Following the "community of practice" or similar model found in several international agencies. A recent example is an initiative to share experiences and lessons learnt among donors in strengthening civil society jointly led by the EC and the World Bank. See www.decim.org.

- Promote the importance of consultation and cooperation between governments and NPOs on national level. In addition, encourage MSs to support collaboration and creation of networks of government officials at a national level that deal with NPO issues with an eye toward the sharing of good practices.

- Consider supporting research in key policy areas:

  (1) Further examples of accountability and transparency initiatives and monitoring impact of current initiatives.
  (2) Risks and vulnerabilities in the NPO sector, and the link between NPO strength and increased accountability.
  (3) Practical tools to enhance NPO accountability and transparency, and the quality of overall regulation/self-regulation of the sector.

3. Build capacity of member states to address NPO accountability and transparency issues

- Support and promote information and education of government officials (including a range of regulatory and law enforcement agencies) and NPOs on accountability and transparency issues, best practices, methods and initiatives.

- Specifically, support effective implementation of the FATF and EC documents on the basis of discussion with different stakeholders and encourage regular contacts and exchange of information between NPO regulators and financial crime regulators in member states.

- Consider establishing a peer-learning event (or a series). This could be very helpful to officials in countries with a less developed regulatory framework or less mature NPO sectors. It would also be a useful way for countries with more developed regulatory tools to share experiences and solutions.

4. Discuss aspects of policy implementation with stakeholders

- On the basis of the above Recommendations, promote agreement on an overarching goal of NPO sector strengthening in the context of the broad debate about accountability and transparency ongoing among the donor, academic and practitioner community.

- Particular aspects of policy discussion could be:

  (1) The definition of NPOs. This will assist MS to prioritise areas of the NPO sector and can lead to recommendations regarding the public benefit status, for example.
  (2) A definition of accountability. In particular, look at the context in which accountability and transparency initiatives are emerging and include in the discussion about NPO regulation those factors driving the debate that are currently outside the scope of debate (e.g. through a more holistic definition that includes downward accountability).
  (3) Know your partner/beneficiary/donor. This principle is important, and practical definitions and tools could be useful to assist stakeholders in implementing it.

- Explore other areas of policy that emerge during discussion. The principles of the Justice and Home Affairs Council are ambitious (see above) and the objectives of NPO sector strengthening are complex. A wide-ranging debate on both could lead to effective ideas in addressing the actual risks associated with NPO vulnerabilities in Europe.

C. Member states and NPO regulatory authorities

- Use the existing body of knowledge in-country and across borders to obtain in-depth information on the NPO sector for better informed policies e.g., by promoting contacts between NPO regulators and financial crime authorities; through specialised research projects; or through collaboration with existing self-regulatory initiatives and databases. In addition, make available models of good regulatory practices for other member states, for example through contributions to a European level body with the mission to share these practices (such as a "Center for Excellence", see above).

- Where lacking, consider creation of a centralised national database or registry for certain categories of NPOs (e.g. PBOs or NPOs receiving some type of preferential tax treatment), relying on high level technology that is able to derive and integrate data from existing resources; where possible, through working with self-regulatory initiatives such as Guidestar to share cost burdens and bring added value to the product.

- Involve NPO sector into consultations on regulatory reform efforts early on at the concept development stage, e.g. by involving expert NPO representatives in the design of the policy research; making concept drafts of legislation available on the internet; establishing cross-sectoral working groups and expert commissions; convening focus groups or public conferences on the subject etc.

- Provide support to NPOs in their efforts to comply with regulation, e.g. through publishing guidelines on compliance; contracting specialised organisations which provide advice and capacity building services to NPOs; allying with existing self-regulatory initiatives to ensure effective implementation of the regulation etc.

- Support the development of specific accounting frameworks for NPOs in the MS, in order to ensure that the accounting principles and rules are tailored to NPO needs while providing the public with relevant and reliable financial information regarding NPOs.

D. NPOs engaged in self-regulatory initiatives

- Advocate, where appropriate, with national authorities for the public availability of official registration data for public benefit organisations (as determined by the national laws).

- Share learning from self-regulatory initiatives with peers across borders as well as the regulatory authorities and the public at large.

- Cooperate with and provide support to national regulatory authorities in the design and implementation of good practices regarding NPO accountability and transparency.

- Cooperate with and provide support to EC initiatives following from this Report and earlier Reports and Recommendations with a view towards creating a joint understanding of the NPO accountability and transparency framework.

- Examine the three key reference documents and consider how to promote their various recommendations in their country contexts, especially those relating to the "know your donor/partner/beneficiary" principle through the self-regulation initiatives.

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ANNEX 1. SCOPE OF ISSUES CONCERNING PUBLIC REGULATION AND SELF-REGULATION

ANNEX 2. A GENERAL OVERVIEW OF SELF-REGULATORY INITIATIVES

ANNEX 3. A GENERAL OVERVIEW OF PUBLIC REGULATION INITIATIVES

ANNEX 4. RECENT PUBLIC REGULATIONS FOR CONCERNING TRANSPARENCY AND ACCOUNTABILITY OF NON-PROFIT ORGANISATIONS IN THE EUROPEAN UNION

ANNEX 5. RECENT SELF-REGULATORY INITIATIVES CONCERNING TRANSPARENCY AND ACCOUNTABILITY OF NON-PROFIT ORGANISATIONS OF THE EUROPEAN UNION

ANNEX 1.
SCOPE OF ISSUES CONCERNING PUBLIC REGULATION AND SELF-REGULATION

The research focused on programmatic and financial accountability and transparency. An illustrative list of some of the key issues arising in relation to public regulation and self-regulation are contained in the chart below:

PUBLIC REGULATION	SELF-REGULATION
Registration of NPOs ▪ Criteria for establishment ▪ Registration requirements ▪ Public registries	**Legal treatment of** ▪ Umbrella organizations and networks (ability to establish and join, mandatory registration, mandatory structure and governing bodies, participation of international and foreign organizations and their branches) ▪ Participation in international networks/umbrella organizations (mandatory submission of information to local courts, penalties)
Internal governance of NPOs ▪ Governing documents ▪ Duties of highest governing body ▪ Internal reporting requirements ▪ Rules against conflict of interest ▪ Duties and liabilities of officers, board members, etc.	**Codes of conduct** ▪ Motivations/goals vs. impact/results ▪ Process of development ▪ Content and types ▪ Mechanisms for compliance ▪ Factors considered in development and implementation
External supervision of NPOs ▪ Reporting to supervisory agency ▪ Reporting to fiscal authorities ▪ Audit and accounting requirements ▪ Inspections of NPOs ▪ Public disclosure of information	**Quality management systems** ▪ Process ▪ Selected types and rationale ▪ Leadership and participation ▪ Effects of implementation
Fiscal framework for NPOs ▪ Public benefit or charitable status ▪ Tax treatment of NPOs ▪ Tax treatment of donors to NPOs, including cross-border donors ▪ Public funding of NPOs ▪ Fundraising rules for NPOs	**Certification and accreditation systems** ▪ Aims, specific functions, composition, financing of certifier ▪ Certification process (seals of approval, criteria, monitoring, fees) ▪ Capacity of the sector regarding compliance ▪ Independence of the certifier ▪ External and internal benefits (impact and results) ▪ Challenges and strengths ▪ Relationship between the certifying and the Government in relation to state benefits for certified NPOs
Termination and dissolution ▪ Grounds for termination ▪ Termination procedures ▪ Rules for liquidation of assets ▪ Role of oversight authority	**Registries and databases run by non-profit bodies** ▪ Motivations and Impact (key focus) ▪ Goals and effects ▪ Information provided ▪ Relationship to public bodies ▪ Funding and sustainability

ANNEX 2.
A GENERAL OVERVIEW OF SELF-REGULATORY INITIATIVES

Self-regulatory initiatives among European NPOs have taken off in the past decade. Ranging from comprehensive, finely elaborated quality management systems to brief statements of beliefs and values, these initiatives reflect the breadth and diversity of the sector itself. Some initiatives are inclusive, uniting NPOs around a common commitment to shared ethical or professional standards. Others are exclusive, posing stringent criteria that must be met to confer eligibility to join a group or use a seal of approval. Some initiatives promote trust, collaboration, and partnerships among like-minded NPOs; others aim to improve perceptions of NPOs by the wider public. No matter what their form or benefits, however, all self-regulation originates in the same basic urge: to provide reassurances about the quality and reliability of charitable organisations and, in so doing, to make unnecessary stricter regulatory regimes that might limit the freedom of movement and effectiveness of the sector as a whole.[259]

These initiatives usually focus on management practices (especially financial management and governance), improving NPO performance, interaction with beneficiaries and donors, and public information sharing. Their scope may be broader than this, or they may focus on only one area. Self-regulatory initiatives can be put to various valuable uses: among others, they may offer benchmarks against which to measure organisational performance; they can provide organisations with instruction and guidance in best practices; they can help prevent abuses by eliciting pledges from NPOs to behave properly or in accordance with set expectations; or - a topic of recent concern - they can ensure that meeting beneficiary needs remains an organisation's top priority. Self-regulatory initiatives also help build networks and sense of solidarity among NPOs by engaging them in a process of articulating and adhering to shared beliefs.

Other distinguishing characteristics involve the way standards themselves are applied. Whether or not meeting standards is a condition for membership or simply a voluntary commitment, organisations can either self-certify their compliance or undergo an examination by an external agent. Standards may be accompanied by a monitoring process, aimed at identifying instances when an organisation fails to comply; and they may have an enforcement mechanism, in which non-compliance triggers sanctions such as withdrawal of membership or a public announcement. The way in which initiatives are developed is also important. Initiatives often result from a broad consultative process, which is valued in its own right as a consensus-building activity, but they can also be issued from the leadership of an organisation or group.

The attached chart, "*Recent Self-Regulatory Initiatives Improving Transparency and Accountability in Non-Profit Organisations in the European Union,*" surveys the most significant initiatives arising in Europe in the past decade, and in particular the past five years. Information contained in the chart was compiled in two ways: through an e-mailed survey to 130 NPO practitioners and experts in Europe; and through desk-top research of online sources, including scientific literature and the websites of participating organisations. The chart includes the details for each initiative including country of origin, date of adoption, type of the initiative, title of the initiative, originating body or group, geographical scope, target audience as well as a brief description and summary of issues.

The diversity of self-regulatory initiatives summarized in the table is obvious. At the same time, the table reveals several significant trends:

[259] There is a growing body of literature examining approaches to and benefits of self-regulation by NPOs. The report includes a comprehensive bibliography of such studies.

- Overall, self-regulatory initiatives have tended to originate in countries with more mature and diversified NPO sectors. The largest share of initiatives comes from the UK and Switzerland, followed by the Netherlands and Germany. As the UK and Switzerland both host an unusually high number of organisations operating beyond their national borders, the majority of initiatives arising in these two countries have an international or global scope. Altogether, these four countries account for nearly half of significant self-regulatory initiatives in recent years.

- Initiatives in the new member states of the EU have reflected donor priorities, which is a natural outgrowth of the relative newness of the NPO sector in those countries. In the years leading up to EU membership, most initiatives took the form of codes of conduct, usually promulgated by national donors' forums or similar groups heavily supported by Western sponsors. Recent initiatives are more indigenized and aim at the growing number of local donors. Examples include the Trademark of Trust of the Civil Society Development Foundation (CSDF) Hungary and the Code of Conduct being developed by the Donors' Forum in Slovakia. The newer initiatives also often emphasize information-sharing about NPOs, as seen in the database developed by the Nonprofit Information and Training Center (NIOK) in Hungary.

- Self-regulatory initiatives are growing in complexity and comprehensiveness and increasingly aim at overall organisational performance. The UK has been a leader in developing quality management systems, which range from off-the-shelf products (e.g., PQASSO[260]) to rigorous international standards (e.g., ALNAP, ActionAid's ALPS, AccountAbility's AA1000 Assurance Standard, and the BOND Approach to Quality Standards). Many of these initiatives are accompanied by intensive training and advisory services. Such efforts are spreading elsewhere: for example, the Institute for Quality of NGOs in Spain has recently announced an ambitious project to develop a certification system comparable to ISO standards, accompanied by training and a platform for information exchange.

- Most certification and accreditation schemes have focused on fundraising and the use of donor contributions. Members of the International Committee for Fundraising Organizations (ICFO) have been a leader in this respect. A few efforts aim at the general management practices of highly specialized groups, such as humanitarian organisations working internationally (the Humanitarian Accountability Partnership International or HAP) and international schools (Council of International Schools). In recent years, there has been increased discussion of the desirability of certification efforts at a national and even international level. These are often tied to or stimulated by the growth of online databases that provide the public with an unprecedented amount of information about NPOs. There are also some certification programmes aimed at individual practitioners, e.g. fundraisers.

- The development of databases of NPOs is accelerating as web-based resources are exploited, as evidenced by projects in Italy, Germany, Hungary, the Netherlands, Austria, the UK, Switzerland, and elsewhere. These databases often go beyond disclosure requirements legislated by law, especially if NPOs themselves are directly involved in their development and maintenance. An exciting future step is the linking of national databases in a Europe-wide network, as envisioned by the GuideStar Europe project. Such an achievement can be expected to stimulate cross-border giving and programmes.

[260] Practical Quality Assurance System for Small Organizations

- Standards, guidelines, and codes of conduct remain by far the most widespread type of effort. Most are voluntary and aspirational—that is, they recommend best practices for organisations but compliance is not investigated or enforced. Less commonly, subscription to a set of guidelines or code of conduct will be a criterion for membership in an umbrella group, but even then compliance is rarely enforced. Codes of conduct generally function at a sub-sectoral level; however, in recent years the number of codes intended for national and even international audiences has grown dramatically. Responses to our survey indicate that at present codes are under development in Belgium, Ireland, Germany, the Netherlands, Slovakia, and Sweden, among other places. Most of these newer codes have been drafted by means of a broad consultative process and increasingly are accompanied by systems of measurement and monitoring.

These tends testify to the fact that self-regulatory initiatives continue to be a focus of intense discussion, debate, and effort among European NPOs. Taken together, they confirm the abiding desire among NPOs to achieve, without governmental coercion, a high level of transparency in sharing information and a high degree of accountability in meeting stakeholders' expectations and needs.

1. INTERNATIONAL INITIATIVES

International self-regulatory initiatives involve those projects that seek to apply standards, codes of conduct, and other mechanisms without distinction to national borders. Most European-based international efforts first appeared in the mid-1990s and have gathered steam since 2000.

The majority of these initiatives can be traced back to the Rwandan crisis in 1994, after which humanitarian organisations were urged to improve their systems of accountability to aid recipients. A number of initiatives were begun in response to this request: the International Federation of Red Cross and Red Crescent Societies developed its widely used Code of Conduct in 1994; the Sphere Project was established in 1997 to promote a Humanitarian Charter; the Active Learning Network for Accountability and Performance in Humanitarian Action (ALNAP) was also established in 1997 as a forum on learning, accountability, and performance issues for the humanitarian sector; and the Humanitarian Accountability Partnership (HAP), began as field research immediately after the crisis.

Eventually, ALNAP, HAP, and the Sphere Project joined together as a loose grouping of organisations focused on improving quality and accountability in the humanitarian sector. They are now joined in the Quality and Accountability group by Coordination Sud in France, Groupe Urgence Réhabilitation Développement (Groupe URD) in France, People In Aid in the UK, and the Emergency Capacity Building Project. Members of the group share a commitment to attaining improved performance in the humanitarian sector. To achieve this goal the directors of these organisations meet regularly to ensure collaboration and coherence in their activities. In recent years they have been joined by other projects and organisations which, if not technically members of the Quality and Accountability Group, have a similar aim of improving accountability to aid recipients, especially among the humanitarian NPOs. These organisations include AccountAbility (originators of the AA1000 Assurance Standards), One World Trust (developers of the Global Accountability Project), and BOND (which is developing a beneficiary-based approach to quality assurance).

Another much newer trend in international initiatives involves responses to the 2001 terrorist attacks in the United States. In the aftermath of this tragedy, Western governments introduced regulatory measures to ensure that NPOs did not become vehicles for funding and assisting terrorists and organisations that

support them. These counter-terrorist measures included heavier administrative burdens, including heightened reporting requirements and more extensive screening of partners and aid recipients. An onerous effect of the new regulations has been to discourage donors and the general public from supporting Islamic charities and organisations working in the Middle East.

Two recent projects, the Humanitarian Forum and the Montreux Initiative, aim to address this phenomenon. The Humanitarian Forum is a UK-based initiative founded in 2004 to promote dialogue among Islamic charities, governments, and multi-lateral agencies. The Montreux Initiative is profiled among the cases.

One other trend that bears noting on the international stage is the effort to develop international codes of conduct. The organisation EUConsult, founded in 1991, offers membership to international consultants in the charitable sector who subscribe to a code of ethics.

More recently the International Accountability Charter, issued in 2006 by a group of prominent international organisations, claims to be the first initiative to set out international cross-sector standards for NPOs. Both initiatives have had limited impact to date, mainly because they are aspirational in nature and lack enforcement mechanisms. However, the Steering Group of the International Accountability Charter is developing an implementation process to put "teeth" in the code. This development will bear watching, as it could mark a new potential for effectively implementing codes of conduct across borders.

2. INITIATIVES ON THE EUROPEAN LEVEL

Europe-wide self-regulatory initiatives are few. The main reasons for this probably include the diversity of the region and NPO resistance to the imposition of general standards, as they see in them the multiple risks of unresponsiveness to local needs, stifled creativity, and open doors through which state bodies can emerge to control the sector. Until now, therefore, the bulk of self-regulatory initiatives have taken place on a national or sub-sectoral level. Nevertheless, in recent years indications have grown that European NPOs may be ready for region-wide standards.

A number of recent initiatives suggest this trend. The Excellence Model offered by the European Foundation for Quality Management (EFQM) was developed in 1992 to improve the competitiveness of the European economies. EFQM became the leading corporate total quality management framework in Europe and has been used by thousands of businesses. The introduction of simplified EFQM models in 2001 allowed NPOs seeking a non-prescriptive management framework to make use of this widespread resource. The EFQM has been implemented with excellent results by organisations in Ireland, Hungary, and elsewhere.

Another pan-European initiative is the *Handbook of Non-profit Governance*, developed by a working group in Central and Eastern Europe. This easy-to-ready reference tool presents basic guidelines for good governance that are meant to apply in all countries and contexts, regardless of cultural, historic, and other differences. To date the *Handbook* has been disseminated via translations in 14 languages to NPOs throughout Europe and around the globe. It is typically introduced along with training modules and an information campaign in a locally funded capacity-building project.

A third such initiative is the EFA Certification given by the European Fundraising Association to organisations and fundraising practitioners who satisfy the qualification requirements. The EFA Certification programme identifies the competencies that form the backbone of a robust professional

fundraising qualification and offers guidelines and a syllabus to ensure successful training delivery. Organisations from across "new" and "old" Europe actively worked together with EFA to ensure the success of the project.

The success of these easy-to-use tools point out the need for and interest in self-regulatory initiatives that can unite the region with common formats, expectations, and values and thereby facilitate cross-border exchange. Two very different projects illustrate the challenges and benefits that regional initiatives might encounter. GuideStar Europe is a new and ambitious project to tie together European charities and their supporters by means of a comprehensive online NPO database. ICFO, on the other hand, is a long-established Europe-based association of diverse national bodies that has traditionally viewed itself as a forum for discussion and sharing experiences. With the growth of international fundraising and project implementation, ICFO has had to both change its mission and confront the need for uniform standards to apply across borders. Both initiatives are facing the underlying challenges of trying to enact and apply international (Europe-wide) standards at the national levels. (See case studies of these initiatives in the Report.)

3. INITIATIVES ON NATIONAL/SECTORAL LEVEL

National or sectoral-level self-regulatory initiatives in Europe cluster around four main types: quality management systems, codes of conduct, certification schemes, and databases.

a. Quality management systems are in essence drawn from the business sector, where they have improved the performance and output of companies for decades. Systems for NPOs may be directly based on existing corporate models (such as those of ISO and EFQM) or they may be developed especially for non-profits. An example for the latter is PQASSO[261], which is the most used quality management tool in the UK and is also gaining popularity among NPO users in Central Europe, e.g., in Croatia and in Hungary.

b. Certification schemes offer a seal of approval to organisations that are determined to meet benchmarks, usually as a result of examination by an external body. Most national level certification systems to date have been generated by members of ICFO (the Dutch member, CBF is profiled in the Report). In recent years alternative forms of certification have been discussed. One result is the announcement this year by the Institute of Quality for NGOs in Spain that it is launching a new certifying body for Spanish NPOs, developed in cooperation with Caritas and the Spanish Red Cross.[262]

c. Codes of conduct range from simple statements of "oughts" to detailed prescriptions for policies, governance structures, planning and evaluation, and the handling of funds. Though usually voluntary, they may be used to adjudicate eligibility for membership in

[261] See http://www.ces-vol.org.uk

[262] Indicators for each initiative are designed to test different things, such as that a "successful" NPO has reached a certain threshold quality (AccountAbility) or efficiency/achievement (New Philanthropy Capital), or that it is better than another NPO (Société Générale de Surveillance) or that it seems innocent of wrongdoing (Montreux Initiative). These sorts of initiatives are interesting therefore if seen in a very specific context. For example, the focus and rigour of the Montreux Initiative suggest that it should be seen as an emergency solution by NPOs that feel they are under attack for financial, terrorist-related mismanagement. This leads to the general criticism of ratings and certification processes: they suggest that all stakeholders have the same interests, that there is a baseline to measure acceptable practice, that NPOs have the same key goals, that NPOs are analogous to private companies, and that similar private-sector systems have not been discredited in recent years (Jordan 2005, 12).

associations or measure the quality of an organisation. In Europe there have generally been two waves of interest in codes of conduct in the past decade. The first wave took place in Central and Eastern Europe eight to ten years ago as those new non-profit sectors aimed to consolidate their hard-won gains with statements of belief in ethical practices (see text box). The second wave, in Western Europe, has followed more recently, largely as a response to post-Enron emphasis on good corporate governance. The Istituto Italiano Donazione, for example, developed a "Charter for Donation" in 2004, according to which subscribers commit to holding their donors in the highest regard by protecting their right to precise and transparent information. In Belgium, the King Baudouin Foundation is currently developing a code of conduct for the Belgium NPO sector through a lengthy consultative process. (See also text box on the Wijffels Code.)

d. Databases are generally understood as easily accessible information about NPOs made available to the general public. In many European countries, where mandatory requirements are not stringent, the public lacks access to much information about NPOs. Databases are considered to support philanthropy by promoting transparency and helping donors to make informed decisions about which organisations to support. Databases have primarily been maintained by accrediting organisations such as the Deutsches Zentralinstitut für soziale Fragen (DZI), Osterreichisches Institut fur Spendenwesen (ÖIS), and the ZEWO Foundation in Switzerland, which have access to more detailed information about NPOs as a result of their accrediting activities. Newer efforts modelled on the GuideStar system from the US combine information from regulatory and certifying agencies with information supplied by the organisations themselves. (See the case study on Guidestar in the Report.)

Codes of Conduct in CEE

Codes of conduct are popular with umbrella groups and national networks of NPOs. They are valued for promoting solidarity among organisations while reassuring the public that NPOs work with solid ethical and professional values. Perhaps reflecting the strong presence of US donors, where codes of conduct are particularly valued, they proliferated in Central and Eastern Europe over the past decade. In **Estonia**, the Code of Ethics for Estonian Nonprofit Organizations was produced by a roundtable of organisations in 2002 but it was left to the will of NPOs to apply it. However, in a recent turn of events, the new national funding mechanism for NGOs has added a requirement that applicants for funding must not only promise to act ethically, following the national Code of Ethics or their own internal code, but must also explain how this requirement is being met. In **Romania**, Opportunity Associates Romania (OAR) has been coordinating the development of a code of conduct since 2007 with the support of World Learning Romania. It is currently still being discussed by the NPO sector and the framework for application is still under construction. A distinguishing feature is that this initiative aims to incorporate learning points of earlier attempts to establish sector-wide codes of conduct and looks carefully at compliance mechanisms. The history of codes of conduct in CEE suggests that, despite their popularity, codes of conduct have had limited success on a national level, largely because of the difficulty of uniting and enforcing similar practices among diverse organisations. Recent efforts recognise and are trying to overcome this weakness.

The Wijffels Code

A Dutch advisory group known as the Wijffels Commission recently articulated good management guidelines for NPOs in that country. This code gives clear rules on transparency, board independence, and checks and balances within organisations. As an anti-terrorist measure, the Ministries of Justice and Finance recently revised the code to include voluntary registration of information about groups

supported by Dutch charities. Some Dutch NPOs have resisted such measures as an invasion of privacy by government agencies.

4. INITIATIVES ON SUB-SECTORAL LEVEL

This group of initiatives generally address NPOs working in the same or related fields, such as humanitarian assistance or grantmaking. Indeed, these two sub-groups have been at the forefront of self-regulatory efforts in recent years: associations of foundations because they are eager to protect the integrity of the grantmaking process, and humanitarian NPOs because they emphasize the need to provide better service to beneficiaries. An association of foundations, foundation umbrella group, or donors' forum exists in most European countries with an active charitable sector. Traditionally reticent about their members' business, many of these associations have recently recognised the importance of greater transparency about their members' assets, governance, and grantmaking procedures.

Principles of Good Foundation Practice in Germany

The Bundesverband Deutscher Stiftungen (Association of German Foundations) protects the interests of German foundations and assists them in handling their affairs. In addition to individual consultancies, the Association provides its members with information, discounts, and training. In 2006 the Association developed and distributed its *Principles of Good Foundation Practice,* which briefly describe basic expectation for foundations in such areas as transparency and conflict of interest. The organisation called for a broad discussion among members about content and practical application.

Code of Ethics and Standards of Foundation Practice in Slovakia

The Slovak Donors' Forum (SDF) was founded in 1996 as an informal platform for the exchange of information about members' activities and the Slovak non-profit sector. SDF members pursue joint activities and respect ethical principles that contribute to the enhancement of culture of giving. SDF has adopted a *Code of Ethics*, which calls on all donors to adhere to its principles and to respect it to the extent permitted by their individual conditions, as well as by their way of operation and functioning. The aim is to contribute to the enhancement of the culture of giving, openness and transparency of the whole not-for-profit sector in the Slovak Republic. Since 2005, it is also developing *Standards of Foundation Practice* to complete the Code of Ethics. The Standards are still being tested and developed. Their aim is to create a product capable to promote a brand of transparent and accountable foundations, to help with reinforcement of financial stability and to contribute to the development of culture of giving and tradition of civic society. The Standards also contain a self-assessment tool divided into 9 sections covering 9 key topic areas: governance, communications/disclosure, grantmaking, finance, administration, personnel, public policy, mission and strategy and evaluation. Each of the nine sections is divided into 3 levels: legal compliance, good practices for accountability and practices of excellence for accountability. There are several ways of assessment, depending how and who completes the questionnaire.

Humanitarian organisations clustered in the UK, Switzerland, Netherlands, and Nordic countries have actively supported international self-regulatory efforts, as outlined in above. On a sub-sectoral level they have been equally active: in the UK, for example, the comprehensive Approach to Quality Standards issued by BOND, a network of voluntary organisations working in international development, was developed in 2006 to push its members into respecting the primacy of the beneficiary in quality and accountability standards. This initiative is notable for the depth of its preparatory research and

consultation. A more modest but nevertheless highly professional set of standards for Irish assistance organisations developed by Dóchas is detailed in the report.

5. INTERNAL CODES OF INTERNATIONAL ORGANIZATIONS

Many organisations have internal codes of conduct. These range from statements of ethical principles to detailed instructions for handling such matters as financial affairs, grievances, and conflict of interest. The effectiveness of such codes is usually dependent on the seriousness with which they are treated by upper management and the governing bodies. Their impact can often be measured in terms of awareness and educational efforts among staff, volunteers, donors, and partners, as well as the presence of monitoring and enforcement mechanisms, such as regular disclosure statements, audits, and punitive steps in case of violation.

Internal codes of conduct are especially important—and harder to write and enforce—in international organisations with geographically dispersed offices and employees from different cultures. Codes may be interpreted as containing a cultural bias if they describe as unethical a situation that is acceptable in another context. As a result, compensatory language often goes in the opposite direction. For example, Oxfam's Code of Conduct states that the majority of board members of affiliates should not be paid employees, whereas it is usual in Europe for no employees serve on the governing board. To avoid such problems, the internal codes of many international NPOs often wind up being overly general and pallid. Other international organisations chose not to develop a code and instead subscribe to general statements of principle such as the International Accountability Charter.

Enforcing Transparency within Transparency International

An example of how this weakness can be effectively counteracted with a meaningful, affiliate-wide set of expectations is offered by Transparency International (TI), an organisation that fights corruption. Because of its mission TI has a special need to ensure that the organisation and its employees behave according to unquestionable ethical norms. It has therefore buttressed its internal code of conduct with an explicit conflict of interest policy, a register of interests, and an ethics committee. Each TI national chapter undergoes an accreditation process that confirms, among other things, that the chapter has a code of conduct or code of ethics (which must be approved by the TI headquarters) and conflict of interest policy. The accreditation process also includes a lengthy self-evaluation in which chapters demonstrate their adherence to TI values of transparency, accountability, and integrity.

ANNEX 3.

A GENERAL OVERVIEW OF PUBLIC REGULATION INITIATIVES

The following annex describes the specifics themes addressed in the identified initiatives by parliaments, governments or public bodies at a national or international level which are designed to enhance transparency and accountability in the NPO sector. The initiatives include both new initiatives and developments or reforms of existing initiatives. The specific regulatory themes that have been identified are as follows: (1) Comprehensive Legal Reforms relating to NPOs; (2) Registration of NPOs; (3) Public Benefit Status; (4) Governance and Reporting; (5) Investigation and Supervision; (6) Fundraising Laws; and (7) Public Funding.

(1) Overview of Recent Comprehensive Law Reform Initiatives

All four common law systems[263] have introduced or are introducing major consolidating legislation to re-affirm the legal basis for charity and improve accountability. Whilst the risk of terrorist abuse is a major issue for the sector, particularly in countries of the UK, the major driver of reform has been a desire to clarify and modernize the regulation of a growing and increasingly complex sector which plays a major role in public service delivery. There has also been a continuation of the trend whereby the formal regulatory burden of government has lessened as expectation and demands on individual NPOs for greater accountability and transparency have increased[264].

The new EU member states that changed political and legal systems in the 1990s have seen the most rapid and far-reaching reform in the last two decades. Here the framework laws for NPOs have been entirely redrawn. However, reforms have continued in the last five years as the consensus on the role and operating space for NPOs is being re-evaluated; and fine tuning of earlier laws occurs as well[265]. The risk of terrorist abuse of NPOs does not appear to be a major policy concern. Areas of focus have included the terms and conditions by which NPOs become eligible for tax breaks, funding or other state benefits, with demands for improved governance and greater public accountability and transparency[266].

[263] England and Wales, Scotland, Northern Ireland and Republic of Ireland

[264] There are numerous examples of this in England and Wales, where legal limits on trustees' rights to pay themselves for additional services, purchase trustee indemnity insurance, sell property, invest charity funds or spend endowments have been removed. They have been replaced with a legal 'duty of care', usually achieved by clearly demonstrating that they have acted in line with the Charity Commission's policy and guidance, and that fundamentally they have acted in the best interests of the charity.

[265] e.g., in Hungary, Estonia, Czech Republic, Bulgaria, Poland, Romania

[266] e.g. the 2006 amendment to the Bulgarian Law on Non-Profit Legal Entities, which improved internal governance, reporting and supervision. Also the Estonian Non-Profit Associations Act and Foundation Act, which have been modified several times since they came into effect in 1996, mainly covering issues such as establishment, internal governance, and dissolution.

Of the "old" EU member states, the nature of reform has been more varied. Some states have introduced reforms of the legal framework[267]. However such examples are few, and in most countries reforms have been limited, single issue changes[268].

(2) Registration of NPOs

The registration of NPOs refers to the formal application by NPOs for state recognition. In the EU, registration usually brings some form or benefit, most of all, recognition of the NPO as a legal entity. In addition basic tax exemptions are granted to registered NPOs under most regimes. Registration may be compulsory or voluntary, depending on the particular NPO and the legal system.

Registration is closely tied to the issue of freedom of association, which is guaranteed under the European Convention on Human Rights. It is therefore theoretically possible to establish an NPO in any EU country, and an obligation to register may not interfere with that.

Registration criteria in particular states reflect the legal system in place. In common law countries, organisations with charitable purposes, regardless of legal form, are required to register (certain smaller charities and certain sub-sectors are exempt). In civil law countries, the trigger is the legal form, with a requirement in some states for all associations and/or foundations to register. Often, different rules apply for foundations and associations. Freedom of association in all these cases is guaranteed by the right to establish alternative or informal NPOs which are not required to register, or which would not be refused registration.

The process of registration varies from state to state. In some states all that is required is for new NPOs to notify the authorities of their existence, with state scrutiny amounting to confirmation that the organisation has been legally established and has lawful purposes. In other states, particularly where benefits are significant, more stringent tests on the suitability of an NPO may be undertaken (see also the section on Public Benefit Status below).

In return for the advantages of registration, certain obligations are placed upon NPOs. These are often explicitly linked to improved accountability and transparency. Most states keep a public list of the details of registered NPOs. In addition, most registered NPOs are required to report on their activities to government and/or the public. Often, a range of other legal requirements linked to governance or accountability also apply.

The registration agencies themselves vary, with a few specialist agencies[269], but the majority having broader responsibilities. These include general registration agencies[270], Courts[271], tax authorities[272] or other bodies[273].

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[267] For example, Spain, where the Foundation Act (as amended 2006) significantly improved the 1994 Act; Also Belgium, where the Law on Non-Profit Associations, International Non-Profit Associations and Foundations from 2002 (amended several times since its adoption) modernised and amended legislation from 1919 and 1921.

[268] As illustrated by several French amendments (e.g., transparency for all financial information including specifically on fundraising campaigns; setting standards for compensation to executives; improvements of the legal regime of foundations; the tax incentives for individual and corporate philanthropy and sponsoring; improvement of the procedure for PBO status of foundations), or the Money Collection Act in Finland.

[269] e.g., Charity Commission for England and Wales

[270] e.g., the National Register of Collective Entities in Portugal, or Ministry of Interior in Slovakia

[271] e.g., Estonia, Hungary

[272] e.g., Sweden

[273] e.g., Netherlands - Chamber of Commerce and Industry

These features of registration make it a vital first step in the creation of a transparent and accountable NPO sector. It helps the government and public identify those agencies which are legally considered to be NPOs, ensures information on registered NPOs is made publicly available, and often requires NPOs to meet certain minimum transparency requirements.

Recent policy developments have been shaped by two contradictory trends. On the one hand, many new member states have been obliged by the guarantee of freedom of association to adopt a more liberal and less exclusive registration regime.

Despite the various rulings guaranteeing freedom of association, there are still examples of European states failing to recognise this in practice. Not all cases end up at the European Court of Human Rights, but in some countries it remains quite common for registration to be delayed or disrupted[274].

This is in contrast to the trend elsewhere in Europe, where there has been a movement towards a simplification of the registration process. This does not necessarily mean less oversight, but rather better targeted oversight[275]. Another trend has been toward consolidation of registration agencies[276], making it simpler for NPOs to comply and for the public to find information on NPOs. More general social trends towards greater transparency have also had an impact, with many states making information on NPOs more easily available[277].

(3) Public Benefit / Charity Status

Public benefit status (also referred to as charity status in common law countries) refers to the recognition by the law of a special status for some or all non-governmental, non-profit organisations. Typically, this status offers additional benefits and/or opportunities to organisations, but imposes greater restrictions and/or additional obligations, often directly linked to improving accountability and transparency. This status is one of the most significant legal mechanisms for raising standards of accountability in NPOs in Europe.

The terms used to describe the status of the test to assess eligibility varies between states. Typical examples are charity/charitable, public benefit and public utility (*utilité publique*).

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[274] One respondent cited the Czech Republic, where the Ministry of Interior last year began to either reject registration or suspend the activities of civic associations based on its interpretation of the Law on Association of Citizens. The action was targeted at civic associations that collect fees for public benefit services, even though the law does not clearly state whether or not this is permissible. Meanwhile, even successful registration with the Czech Courts can take up to two years. Similarly, in 2006, a Hungarian association that was trying to register a chapter in each of the 19 counties of the country with the exact same founding statute received 19 different responses from the competent local courts as to how they should modify their statute to fulfil the legal requirements. Responses to their appeals from the five higher courts also varied greatly. It is not uncommon for the registration process in Hungary to take a year despite the legal provision of maximum 60 days.

[275] For example England and Wales, with the result that the system is more efficient, with most registrations completed in two weeks.

[276] For example the Chamber of Commerce and Industry in the Netherlands, or the reforms in Belgium, where registration of all entities is now undertaken by the Banque-carrefour des Entreprises (BCE). Another interesting example from outside of the EU is Macedonia, which consolidated registration for all legal entities from the courts to a Central Registry. This also had the inadvertent effect of liberalizing the system for NPO registration.

[277] A good example is Austria, where the Ministry of Interior is creating a central associations' register (zentrales Vereinsregister).

Broadly, there is a distinction between common law and civil law countries. In common law countries, all organisations with exclusively charitable purposes are charities and as a result subject to the benefits and obligations of charitable status as set out in charity law. 'Charitable' is that which is public benefit. With the exception of small charities and some particular types of charity, registration and oversight by the government is compulsory.

In civil law countries, public benefit status is not usually automatically conferred upon otherwise qualifying organisations. Instead, those organisations which meet the criteria may choose to apply for the status. The criteria are generally more onerous, detailed and specific than in common law countries. Typically there is a higher level of scrutiny of applications, with a particular focus on certain features which are considered desirable, such as accountability, low management costs or other good practices. However, the detailed scrutiny is also often more formal (e.g., looking at documents but not at practice) and may result in less actual information on the NPO than the seemingly less burdensome process in common law countries[278].

Public benefit organisations are prohibited from distributing profits for private benefit. In addition, further restrictions or obligations may be applied on its public benefit activities, commercial activities, fund-raising, public reporting or accountability. Some countries also prescribe a special governing structure for organisations that wish to obtain public benefit status[279].

The benefits afforded by public benefit status vary, but typically fall into one or more of the following categories: preferential tax status; right to receive tax-deductible donations; simplified procedure for approval of public fund-raising; preferential or exclusive access to certain government funding programmes; preferential or exclusive access to other government support; right (or even obligation) to publicly display public benefit status.

Public benefit status can be conferred to NPOs explicitly by including provisions in framework legislation[280], or separate laws concerning public benefit status[281], or in tax laws[282]. In some countries, various activities and criteria concerning public benefit can be found in different laws[283].

[278] In Bulgaria, for example public benefit status was obtained in a two-tier procedure in which first the organisations declared in their statutes before the courts that they will be public benefit organisations and then had to register in a special Central Registry with the Ministry of Justice. There was no fixed term for this process so there were a number of organisations which were public benefit according to their statutes but were not registered with the Central Registry. To rectify this, the 2006 amendments to the NPO Law introduced a fixed deadline of 2 months after the court registration in which organisations need to register in the Central Registry as well

[279] For example, a mandatory requirement for a two-tiered governing structure. This aims to ensure that the organisations will have additional internal supervision over their activities and that they are indeed undertaking activities and spending the public funds according to their status and other conditions stipulated in the public benefit legislation. In some states, this requirement is important mainly for the foundations, as generally they can have only one body, and it can be a one-person body, like in Poland or Bulgaria. However, if they wish to obtain public benefit status they must have two bodies, one of them collective. Bulgarian law follows this approach by requiring that public benefit organisations must have a "collective supreme body and managing body". In other countries, the additional governing body is tied to the level of income of the NPO. In Hungary, if the annual income of a public benefit organisation exceeds five million HUF (approx. 21,000 euro) the establishment of a supervisory body separate from the governing body is mandatory, even if such obligation is not prescribed by other laws.

[280] e.g., basic law that governs associations and foundations such as Bulgaria

[281] e.g., Hungary, Poland, Latvia, England and Wales, Ireland

[282] e.g., Estonia, Germany and Netherlands

[283] e.g., Law on Sponsorship and Support in Lithuania

Recent developments in common law countries have focused on the definition and mechanism for the 'public benefit' test by which an organisation's charitable status is assessed. In civil law countries, policy discussions have centred on the criteria for public benefit status, the mechanisms by which these are assessed, and the rights and obligations that this status brings and supervision of this organisations[284].

An important issue, which is a focal point of all current reforms and initiatives to regulate public benefit status, is who decides which organisations qualify for public benefit status? The question has critical implications for the regulation of public benefit organisations and the entire non-profit sector. The decision-maker has the authority to grant public benefit status; often has the authority to revoke public benefit status; and in some countries is also responsible for supervising and supporting the work of public benefit organisations. By granting public benefit status, the decision-maker lays the foundation for distinct regulatory treatment – treatment that entails both state benefits (usually tax exemptions) and more stringent accountability requirements.

In some countries, this authority is vested in a governmental entity such as the Ministry of Justice (e.g., Bulgaria). In other countries a state body grants the status, based on a recommendation of an independent commission[285]. In many countries, the public benefit determination is made by the tax authorities who decide which organisations are entitled to fiscal privileges based on their publicly beneficial purposes and activities[286]. In other countries, this power is vested in the courts[287]. Court-based registration can offer the additional advantage of accessibility, in cases where courts throughout the country hold the authority. Furthermore, courts can actually speed up the process of public benefit recognition, in countries where NPOs can apply simultaneously for both registration as a legal entity and recognition as a public benefit entity[288]. A few countries grant public benefit status by governmental decree[289]. These practices reflect the particular historical, cultural and legal contexts in these countries. Perhaps the most innovative approach is the use of independent commissions to decide on this status. The key benefits to the commission approach are its independence from political interference and the quality and consistency of decision-making made possible through the concentration of expertise[290].

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[284] e.g., Latvia, Poland, Netherlands

[285] In Estonia, for example, only the organisations that are included on a government list are entitled to tax benefits. The decision as to whether an organisation can be entered on the list is made by the Tax and Custom Board. However, the law also provides for the establishment of a Committee of Experts, which should provide recommendations to the Tax and Custom Board on every application. The Committee consists of 9 representatives of NPOs, mostly from umbrella organisations from different fields of activities. They are appointed by the Ministry of Finance after consulting with the NPOs.

[286] Countries adopting this approach for at least some categories of public benefit activity include Denmark, Finland, Germany, Greece, the Netherlands, Portugal and Sweden. In Denmark, for example, the tax authorities grant public benefit status through an annually published list of qualified organisations. In Finland, the status is granted for a period of five years by the National Tax Board. In Germany, the local tax authorities are responsible for granting public benefit status and verifying that requirements for retaining this status are met every three years.

[287] For example, Greece, France and Hungary have vested this authority in the court. In France, the Conseil d'Etat – its highest administrative court – has authority to decide whether associations and foundations qualify for "public utility" status.

[288] E.g. Greece and Hungary

[289] In Belgium, for example, organisations engaged in cultural activities are granted public benefit status by royal decree. In Luxembourg, public benefit status is granted by Grand-Ducal decree after application to the Ministry of Justice.

[290] The best known example is the Charity Commission for England and Wales. The Charities Act 2006 also introduced a Charity Tribunal as an appeal body. The example of the Commission is now replicated in Scotland, where the Office of the Scottish Charity Regulator (OSCR) was established in accordance with the Charities and Trustee Investment (Scotland) Act. Its main tasks are to: determine whether organisations are charities, maintain a

(4) Governance and Reporting

A large number of regulations and government initiatives have the aim of ensuring that an individual NPO's internal operations meet a common set of minimum standards. This reflects the widespread belief that strong governance procedures are the single best defence against potential abuse, a view confirmed by a UK report in 2000 which found poor internal governance to be at the root of the large majority of cases of serious abuse reviewed.

The standards that governments attempt to impose take a variety of forms. At their most basic is the requirement that an NPO's resources are used for its lawfully intended purposes. However, in most states these standards go into much greater detail, sometimes even prompting NPOs to complain that the cost of meeting the standards outweigh the potential loss they are designed to avoid[291].

As well as establishing minimum standards, most governments seek to establish measures to ensure that they continue to be met. In many cases standards are written in law and accompanied by a legal obligation on responsible officials to ensure that they are met. In addition, every EU state has some form of reporting or monitoring systems to ensure compliance. At its most basic, almost all NPOs are required to provide some kind of report to government[292], and in many there is additional scrutiny or verification of the information provided. The problem is most often in the lack of capacity of the oversight agency to properly review and verify the information for all the submitted reports.

The standards themselves can be broadly split into financial and non-financial. Both are crucial to ensuring an NPO is both accountable and transparent. Not surprisingly, there is significant divergence in practice between states. This is particularly true for non-financial standards, such as internal management rules. Some states favour detailed legislation setting out the clear boundaries for acceptable practice. Often, the law sets a clear framework but allows broad discretion to the officials to determine whether the reports meet the requirements[293]. Other states set relatively few rules altogether, preferring broad principles against which a wide range of actions can be judged[294].

There is less divergence in practice in the regulations relation to financial accountability, upon which most governments place a great deal of emphasis. There seem to be two reasons: firstly, financial accountability is simpler to monitor through the submission and scrutiny of financial reports; secondly, there is a perception that most abuse will be financial in nature, leading to the assumption that financial accountability is the key to its prevention or detection.

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public register of charities, facilitate and monitor compliance, and identify and investigate misconduct. This model is also proposed in Bills being considered in Ireland, and Macedonia.

[291] See, for example, the reporting requirements for foundations in Spain, where 200 Amendments to the Foundations Law include a requirement for foundations to submit annually an Action Plan to the Protectorate as monitoring body. The Plan must include a budget for proposed activities. It is felt that the requirement may negatively affect smaller foundations). .

[292] Bulgaria's 2006 amendments to its NGO Law require reports to be submitted annually to the Central Registry. The Registry also received the power to de-register organisations which did not submit their annual reports for two consecutive years. The amendments to the Estonian Non-profit Associations' Act, Commercial Code and other related laws, require that from January 1, 2010 non-profit associations must also submit their annual reports to the Central Commercial Register

[293] In Hungary, within the framework set out by the tax law, the tax authority has almost full discretion to decide on whether a certain activity of the NPO is a taxable economic activity.

[294] Charity trustees in England and Wales can be asked to demonstrate how they have acted in the best interests of the charity

(5) Investigation and Supervision

Sufficient powers and capacity to identify, investigate and sanction those responsible for abuse of NPOs is vital to an effective regulatory system, particularly in the most serious cases such as those that involve terrorism. Both FATF (in its Interpretative Note and Best Practices Paper on SRVIII) and the EC Commission (in its Communication on Terrorist Financing in the NPO Sector) recognise this, emphasising the importance of obtaining and sharing accurate information on potentially criminal activities within the NPO sector.

Where criminal activity has occurred or is suspected, an NPO can expect to attract the interest of a much broader range of agencies than in its day-to-day activities. In addition to the normal NPO regulator(s), national law enforcement agencies will be involved, as may the courts. Should terrorist financing be suspected, it is possible that the Financial Intelligence Unit and/or Central Bank will be involved. Should the crime be international in nature, a range of foreign and international agencies might also have an interest.

Generally speaking, these agencies will have the powers they need to fully investigate an NPO when there are serious concerns. Recent trends have therefore centred on two areas.

The first is an increase in the powers of government agencies to monitor, investigate and intervene in NPOs. This is part of the general move by government to increase these powers, particularly where terrorism may be a factor[295]. However here, as elsewhere, there are contradictory forces at work. The public nature of NPOs can help embolden regulators to be more interventionist than they would be with a purely private organisation, as there is a more direct public interest at stake. On the other hand, government intervention in the operation of an NPO is more likely to arouse public opposition than it would for a purely private organisation, as the public will have a far greater sense of ownership. It is not clear yet how these contradicting forces will be reconciled.

The second trend is more straightforward. This is the trend towards increased cooperation and information sharing between relevant agencies, particularly in relation to the most serious cases. The range of agencies involved is broadening, with banks in particular playing a greater oversight role as part of the anti-money laundering and counter-terrorist financing efforts[296].

(6) Laws Regulating Fundraising

Fundraising is the point at which institutional control over funds are at their weakest, making it perhaps most vulnerable area to abuse for terrorist or any other unlawful purposes. These risks are further complicated by the rapid evolution of alternative fundraising methods in recent years, making this an increasingly complex area to regulate.

Cash collections remain the most difficult area of fundraising to regulate. The informality, anonymity and lack of a paper trail make it very hard to monitor collections. In addition, the spontaneity and relatively small sums involved make donors far less cautious than they might otherwise be. Many cash collections remain informal activities undertaken by private individuals for a wide variety of causes. Risks of fraud are multiple, including bogus collections, misrepresentation of NPOs, theft, and 'skimming' of lawfully collected funds.

[295] In Estonia, for example, the courts may order a special audit into foundations where there is "good cause".

[296] Details on cooperation between law enforcement agencies on serious criminal matters are not always easy to come by, but we know from the UK example that FATF recommendations in this area do have an impact upon practice at a national level.

Recent years have seen a relative decline in the importance of cash collections, as larger NPOs focus efforts on promoting safer and more sustainable methods of giving such as regular bank transfers. Old solicitation techniques, such as newspaper advertisements and postal appeals (direct marketing letters), continue. To these have been added telephone appeals, internet and television advertising, fundraising through new technologies (e.g., sms text messages) and, perhaps most controversially, the employment of professional fundraisers to solicit funds in the street ("face-to-face" fundraising).

Whilst in theory easier to monitor, these developments have raised a new set of challenges for legislators and regulators. In addition to the theft through misrepresentation which remains possible, fraudulent fundraisers can obtain personal financial details, or enter into fundraising agreements whereby all but a derisory percentage of funds raised are kept by the fundraiser.

The countries where public fundraising has been a more recent phenomenon (new member states as well as some of the southern countries like Spain and Portugal) face specific challenges as even the more traditional forms of fundraising are less regulated, while some of the new technologies in fundraising gain significance in a virtually unregulated space. Therefore, the government often reacts by regulating one specific issue that arises, thereby creating more confusion and inconsistency in the overall regulatory environment[297].

Governments have responded to these new challenges with a variety of activities. These have included redefining what counts as a 'collection' or 'public' in the law[298]; increasing accountability requirements for fundraisers[299]; introducing tighter regulations governing the role of professional fundraisers[300]; increasing scrutiny of fundraising organisations[301]; launching campaigns launched to raise awareness amongst the public of potential risks[302]; making fundraising easier for publicly accountable and transparent NPOs[303]; and giving extra supervisory and investigative powers to regulators[304].

(7) Mechanisms for Distribution and Spending of Public Funding

Government funding is a second most important source of funding for NPOs[305]. It is among the key elements of a supportive government approach towards strengthening partnership with and supporting the growth of NPOs. Many countries subject to this research have designed a compact, charter, cooperation agreement or a strategy which outline the core principles of good partnership between the

[297] An example is the provision introduced in the Czech Republic (in 2006) that exempted fundraising text messages from VAT obligations, which was a gain for fundraising NPOs on the one hand and created inconsistencies on the other, since other forms of soliciting services were not exempted. The under-regulation of this field led to problems in Cyprus as well, where NPOs had difficulties in fundraising during the 2004 referendum on the Annan plan and also in other instances

[298] Ireland – Charities Bill 2007

[299] Finland – Money Collection Act

[300] England and Wales – Charities Act 2006

[301] ibid

[302] Denmark – 'Your Contribution Can Be Misused' campaign, 2006

[303] Malta – Voluntary Organisations Act 2007

[304] Ireland – Charities Bill 2007

[305] According to the John Hopkins Research Project The study included 16 advanced industrialized countries, 14 developing countries from Africa, Asia and Latin America, and 5 countries from Central and Eastern Europe, including the Czech Republic, Hungary, Poland, Romania and Slovakia. See "Global Civil Society: An Overview," Lester M. Salamon, the John Hopkins Comparative Non-profit Sector Project, 2003 (www.jhu.edu/~ccss).

state and the NPO, in general, and its financial aspects in particular, which serve as a ground for more specific and detailed pieces of regulation[306].

However, the commitment of the government to support NPOs through government funding mechanisms cannot be measured only by the amount of funding that it makes available to them. The rules that regulate the distribution and monitoring of the use of funds should also be considered as they are directly linked to the issues of transparency of distribution of public money. Importantly, the increased demand by NPOs for more available and more accessible government funding has prompted governments to not only consider revision of legislation to support the transparent giving, but also demand more accountable spending by the NPOs. This trend is especially visible in EU new member states where the culture and government attitudes are still evolving towards more positive trends, while capacity of NPOs demands further strengthening.

In order to ensure that the good funding principles are respected, governments across Europe have adopted documents that set up a framework for the public funding procedures. These documents define and elaborate the principles of funding. Some documents detail the specific procedural requirements that are necessary for those principles to come to effect[307].

As a general trend in the new member states it can be observed that accession to the EU and specifically the access to the Structural Funds, which represent a previously unimaginable volume of resources for the administration to distribute and private actors to absorb, generated a wave of legislation that focuses on the appropriate procedures and use of public funds. While all these countries were required to harmonize their procurement legislation to the EU directives, procurement laws do not address all aspects of disbursing public funds and especially those in relation to Structural Funds. The most visible cases of abuse in several of the new member states[308] were linked to misuse and corruption in handling the Structural Funds or other newly available public disbursement schemes. As a result, governments were quick to adopt legislation with the aim to regulate grant disbursements across the board. Such regulation has not always been fully satisfactory, but overall has contributed to an improved funding environment and increased transparency and accountability of the actors involved on all sides (government, private and non-profit sectors).

[306] Hungary's first strategic document decided that it would need to increase the level of government support, comparing to other policy alternatives. Consequently, in its strategy from 2002 it adopted this goal by setting a target of doubling the level of government support by the end of its term and in 2005 the government funding exceeded 40% of overall income of the sector. This was facilitated by the creation of the National Civil Fund as a grant mechanism, which distributes funds for operational costs to non-profits. National Civil Funds have since been created in Poland and Estonia as well. As a policy to support growth of indigenous foundations, the Czech Republic created a mechanism for endowments by using 1% of privatisation proceeds as a source.

[307] For example, England has developed in consultation with the sector a Code on Funding and Procurement. Hungary and Romania recently adopted extensive laws covering these procedures. The focus of French regulation of government funding was to harmonize the way funding applications are instructed among the different government ministries. Other countries, such as Croatia, have adopted a code which establishes the basic standards and principles for granting financial assistance from the state budget. Bulgaria's State Budget Law for 2007 and its implementing regulation create clear guidelines as to how budget grants are given. Estonia is currently developing a performance management system for NPOs that receive state funds.

[308] e.g., Hungary, Romania, Bulgaria

Annex 4: Recent Public Regulations Concerning Transparency and Accountability of Non-Profit Organisations in the European Union

Geographical Scope	Date of Adoption	Title	Types of NPOs regulated	Areas covered (see scope of issues chart)	Initiating Body(ies) or Group(s)	Website address	Description
Austria	2002	Law on Associations	Associations	All areas including to work of associations, including establishment of Central Registry	Ministry of Internal Affairs	www.bmi.gv.at	The new Act establishes a Central Registry of Association on federal level and strengthens rules for NPO reporting and accounting by distinguishing between smaller and bigger entities.
Belgium	2002 - 2004	Amendments to Law on Nonprofit Organisations and Foundations	Associations and foundations	All areas related to NPOs, including transparency and accountability		www.efc.be (the Belgium profile) ; http://bb.vu.nl	The law of June 27 1921 concerning non-profit organisations and foundations was amended by the law of 2 May 2002, 16 January 2003, 22 December 2003, 9 July 2004 and 27 December 2004.
Bulgaria	2006	Amendment to Law on Non-Profit Legal Entities	Associations and foundations	Registration; internal governamce; external supervision	Bulgarian Center for Not-for-Profit Law	http://www.bcnl.org/newsen.php?n=196	The amendment affects some of the reporting requirements for PBOs. From 2007, public benefit NGOs must include in their reports to the Registry information on the kind, the amount and the purposes of the donations received and granted, as well as data about the donors. All reports are public and must be published in the bulletin and on the website of the Central Registry.
Bulgaria	2006/2007	State Budget Law for 2007 (and onwards) and its implementing regulation	NGOs	Provision of budget grants to NGOs	Bulgarian Center for Not-for-Profit Law and Members of Parliament	http://www.bcnl.org/newsen.php?n=207	It creates clear guidelines as to how budget grants are given, provides principles under which proposals will be evaluated and limits the chance for direct recipient of budget subsidies to receive additional budget grants after a competition. Prior to the amendment there was not even an application form.
Croatia	2007	Code on Good Financing	Associations	Public funding principes and criteria	NPOs and Government Office for Associations	http://www.uzuvrh.hr/	It establishes the basic standards and principles for state authorities and the Office of the Government of the Republic of Croatia concerning the procedure for granting financial assistance from the state budget to associations, related to implementation of projects which are of special general/public interest.
Czech Republic	on-going	Redrafting of Civil Code	Public benefit organsiations	All aspects concerning work of PBOs	NPOs		The redrafting of the Czech Civil Code is in its last stage. A particular focus on distinguishing public benefit and private profit-making interests in municipal culture, and on clarifying the use of public resources for sports initiatives. The concept of the PB Status in the new Civil Code provides a broader basis for a voluntary choice of conditions, under which the status will be awarded together with specific benefits in taxation, public procurement and public subsidising fields. In general, the status will be available to an organisation of any legal form which submits a valid application and accepts any required changes to their statutory documents.
Czech Republic	on-going	Amendments to Public Benefit Corporations Act	Public benefit corporations	all aspects concerning work of PBCs	PBC		Work on a special Bill covering issues of public benefit status is under way. The existing Act 248/1995 on PBC is just one of three or four basic legal acts that are related to the PBO issue. As of today, the PBCs are the only legal form in the Czech Republic which is not allowed to distribute any profit to its founders, directors or even employees. The Government Legislation Committee is about to discuss a proposal for an amendment to the Act 248/1995 that would allow the use of the concept of the PBC to the hospitals and other not-for-profit PB service providers.
Cyprus	on-going	Plans for amendments to NPO law	NPOs and public benefit organisations	General legal framework; Public benefit organisation status.	Planning Bureau		Original plans to look at the chanelling of overseas development assictance through domestic NPOs has now expanded into a general review of Cyrpus' NPO laws. Plans are at an early stage, but a fundamental review of the legal frameowrk and plans for a new public benefit status are being discussed.

England and Wales (UK)	2005	The Funding and Procurement Code	Publicly funded NPOs	Established guidelines for relationship between the government as funder and NPOs as service providers	Office of the Third Sector	http://www.thecompact.org.uk/information/100022/101508/101518/thefundingandprocurementcode/	This Code was originally published in May 2000, and was revised and republished as the Funding and Procurement Code in 2005. It aims to influence behaviour by putting forward a framework for the financial relationship between the government and the voluntary and community sector, setting out undertakings for both sides, based on what each can expect from the other.
England and Wales (UK)	2005	Charities SORP 2005	Charities	Statement of recommended practice for charity accounting	Accounting Standards Board: Charitiy SORP Committee.	http://www.charity-commission.gov.uk/investigations/sorp/sorp05docs.asp	The main changes in the new edition are a clarification of the purpose and scope of the SORP, the incorporation of new financial reporting standards issued since 2000, and the inclusion of more detailed and clearer explanations of information and recommendations.
England and Wales (UK)	2006	Charities Act 2006	Charities	Registration, internal governance, fiscal framework, external supervision, termination	Home Office commissioned a review (Private Action: Public Benefit) and developed legislation. Chief motivations were need to modernise certain adminstrative provisions and clarify public benefit status.	A whistle-blowing duty for auditors (from the Charities Act 2006): http://www.charitycommission.gov.uk/investigations/whstl.asp. A duty on trustees of larger charities to immediately report serious incidents (also C. Act 06): http://www.charitycommission.gov.uk/investigations/rsi.asp	Introduced Charity Tribunal as body of appeal. Reformed public benefit status (updated and clarified provisions). Reformed fundraising regulations. Administrative and legal reforms of the Charity Commission. Probably the most detailed and comprehensive public initiative to regulate NGOs.
England and Wales (UK)	2007, 2008	1. Charity Commission Charity Commission policy on charities and their alleged links to terrorism 2. Charity Commission Counter-Terrorism Strategy 3. Operational Guidance - Charities and Terrorism	Charities	Terrorism policy and FATF SR VIII	Charity Commission (following the larger Home Office review)	*Charity Commission policy* www.charitycommission.gov.uk/supportingcharities/terrorism.asp *Charity Commission Counter Terrorism Strategy* www.charity-commission.gov.uk/Library/investigations/pdfs/ctstext.pdf *Charity Commission Operational Guidance* www.charitycommission.gov.uk/supportingcharities/ogs/g096.asp	The three documents outline the Charity Commission's strategy, policy and operational response in relation to charities and terrorism. They describe how the Commission attempts to balance a 'zero tolerance' approach with its core principles of evidence-based action and proportionality.
England and Wales (UK)	2008	Proposed changes to licensing of public fundraisers	Charities	Public fundraisers	Office of the Third Sector (which took over the Home Office's responsibilities for the CC in 2007)	Home Office proposal document http://www.homeoffice.gov.uk/documents/ria-charities-bill-060105/ria-charities-bill-3-211204?view=Binary. Also interesting is the Commission's view: http://www.charitycommission.gov.uk/spr/pubcolls.asp	The Home Office Report, which led to the Charities Act 2006, recommended some changes to the public collections regulations. Basically, they moved responsibility for licensing charities to undertake public fund-raising from local authorities to the Charity Commission.
England and Wales (UK)	2008	Consultation Draft: Practice Note 11 'The audit of charities in the United Kingdom (Revised)	Charities	Audit	Charity Commission	http://www.frc.org.uk/images/uploaded/documents/ISAPN11draft10ed.pdf	The Auditing Practices Board has published a consultation draft revision of Practice Note (PN) 11 'The Audit of Charities in the United Kingdom,' according to a Financial Reporting Council (FRC) press release. The PN 11 addresses major regulatory and other developments affecting charities since 2002.

Estonia	1999	Income Tax Act, art.11	Tax exempt organisations	Criteria for tax exemption		http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=X40007K11&keel=en&pg=1&ptyyp=RT&tyyp=X&query=tulumaksu	Tax-exempt status in Estonia is the functional equivalent of public benefit status. Only organizations included on a government list are entitled to tax benefits. The Income Tax Act defines criteria according to which organizations can be included in that list. Decisions made by the Tax and Custom Board and Committee of Experts can provide recommendations on every application. tax exemptions were first introduced in 1993, and later incoporated in the 1999 Income Tax Act.
Estonia	2001-2005	Amendments to Non-profit Associations Act and Foundations Act	Associations and Foundations	Government power to order a special audit into an NPO		http://www.legislationline.org/?tid=220&jid=16&less=true	Various small amendments were made in this period. Of these, most interesting were the changes to the special audit provisions. The power to order a special audit existed prior to these amendments. These amendments changes some of the provisions relating to the power to appoint a special auditor and the powers fo the auditor to obtain information. It is not thought that these powers have yet been used in relation to an NPO.
Estonia	2008	Draft Amendments	Associations and Foundations	Submission of accounts and reports; public availaibility of accounts and reports; simplified procedure for removing inactive NPOs from register.	NENO	www.ngo.ee	Previously non-profit associations submitted reports only to the Tax and Customs Board and the public did not have access to them. Foundations submitted reports to the Central Commercial Register with public access. According to the amendments to the Non-profit Associations' Act, Commercial Code and other related laws, starting from January 1, 2010 non-profit associations must also submit their annual reports to the Central Commercial Register, thus increasing transparency. Reports will be posted online. There will also be a standardized cover page of non-profit associations' annual reports that would make it easier and quicker to extract certain type of data. Another bill proposed changes to some other parts of the Associations Act and Foundations Act which will harmonize NPO laws with the business code to make the legal rules more equal for all registered organisations.
Estonia	2008 -	Performance Management System	NPOs that receive state funds	Assessment of the effectiveness of state funding to NPOs	Ministry of Finance wants to assess how effectively state funding is being used	www.praxis.ee	The deadline for analysis and to suggest principles for the system was August 8, 2008. This is perhaps the first such initiative of its kind, certainly in the EU New Member States, but it will potentially have a significant impact upon the accountability of a realtively small but important part of the sector.
Finland	2006	Money Collection Act (255/2006)	NGOs and others	Public collection of funds (fundraising): need for permit; audit requirement; powers to investigate and intervene when fraud is supsected	Ministry of Interior sponsored legislation to "make it possible to organise money collections in order to fund non-profit activities and to prevent dishonest activity in connection with money collection"	The law in English http://www.finlex.fi/en/laki/kaannokset/2006/en20060255.pdf Guidelines on obtaining at licence from Police www.poliisi.fi/poliisi/home.nsf/pages/562C8788A7A74631C2256C29003042D8	It has a high impact on accountability in a limited area. A good stand alone law on Money Collections highlighting government response to increased complexity and vulnerability in this area.

France	2003	Law No. 2003-709 on Philanthropy, Associations, and Foundations	Associations and foundations	Registration of NPOs Criteria for establishment, Tax treatment of donors	Government initiative	http://www.legifrance.gouv.fr/./affichTexte.do?cidTexte=JORFTEXT000000791289&dateTexte=20080626&fastPos=1&fastReqId=2013521060&oldAction=rechTexte	Improvements of the legal regime of foundations, improvement of the tax incentives for individual and corporate philanthropy and sponsoring, improvement of the procedure for public benefit status of foundations.
France	2004/5	Law No. 2004-1343 on simplification of the Rule of Law and Ordinance # 2005-856 Décree. no 2007-807 of 11 May 2007	Associations and foundations	Fiscal framework for NPOs Tax treatment of NPOs	Government initiative	http://www.legifrance.gouv.fr/./affichTexte.do?cidTexte=JORFTEXT000000428372&dateTexte=20080626&fastPos=1&fastReqId=66725199&oldAction=rechTexte	Significant improvement by suppression of the prior authorization system by the local administration of donations/legacies to NPOs
France	2004	Decree # 2004-76 on issues of financial transparency regarding executive compensation in NGOs; Decree # 2005-1677 of Dec28, 2005 on issues regarding conflict of interests	Associations and foundations	External Supervision, Tax treatment of NPOs	Government initiative	http://www.legifrance.gouv.fr/affichCodeArticle.do;jsessionid=AF9515D27C9C54C520F0909E703F58C9.tpdjo09v_3?cidTexte=LEGITEXT000006069569&idArticle=LEGIARTI000006294462&dateTexte=20080418&categorieLien=id	Improvement of transparency by setting objective standards to assess the reasonableness and adequacy of executive compensation in NPOs.
France	2005	Ordinance # 2005-856 of July 28 2005 on the integration of the specific financial statement required in case of public fundraising campaign in the general financial statement of the NGO	All NPOs involved in public fundraising campaign (practically, mostly associations and foundations)	External Supervision of NPOs	Government initiative	http://www.legifrance.gouv.fr/affichTexteArticle.do;jsessionid=AF9515D27C9C54C520F0909E703F58C9.tpdjo09v_3?cidTexte=JORFTEXT000000162114&idArticle=LEGIARTI000006657687&dateTexte=20080418&categorieLien=id	Improvement of transparency as now all financial information, including fundraising campaign information, is available in one document.
France	2005	Decree # 2005-1677 on issues regarding conflict of interests	Associations and foundations involved in economic activities or receiving public funding for 153,000 euros and above	Internal governance of NPOs External Supervision of NPOs	Government initiative	http://www.legifrance.gouv.fr/affichCodeArticle.do;jsessionid=93E1D8073461F25BB9946A8223A86918.tpdjo09v_3?cidTexte=LEGITEXT000005634379&idArticle=LEGIARTI000006235093&dateTexte=20080626&categorieLien=cid	The regulation enhances prevention of conflicts of interest by applying to NPOs standards in place in the corporate world.
France	2006	Programmatic Law No. 2006-450 for Research	Foundations	Registration of NPOs Criteria for establishment	Government initiative	http://www.legifrance.gouv.fr/./affichTexte.do?cidTexte=JORFTEXT000000426953&dateTexte=20080626&fastPos=1&fastReqId=1973410867&oldAction=rechTexte	Creation of new types of foundations dedicated to research: Foundations for Scientific Cooperation, University Foundations, and Partnership Foundations, all regulated in the Research Code.
France	2006	# 2006-586, Article 20 on publication in financial statements of the compensation of the three highest compensated director/officer and staff member	Associations with a budget over 150,000 Euros and receiving one or several subsidies/grants of an amount of 50,000 Euros from the government or any local authority	External Supervision of NPOs	Government initiative	http://www.legifrance.gouv.fr/./affichTexte.do?cidTexte=JORFTEXT000000607509&dateTexte=20080418&fastPos=1&fastReqId=225695171&oldAction=rechTexte	Impact on big associations , which have more legal/fiscal flexibility and financial means to compensate executives. Logical step after the ability to compensate the directors and officers was loosen in the late 90's. Improvement of transparency on this issue with standards already in place in many countries (cf. form 990 in the USA for example).

France	2006	# 2006-586, Article 22 on the publication of the public funding allocated by cities of over 3500 inhabitants to NGOs	Government and local authorities	Fiscal framework of NPOs (Public funding)	Government initiative	http://www.legifrance.gouv.fr/./affichTexte.do?cidTexte=JORFTEXT000000607509&dateTexte=20080418&fastPos=1&fastReqId=225695171&oldAction=rechTexte	Information should be easily accessible on the web and therefore transparency should be improved.
France	2007	Decree # 2007-566 applicable as of Jan 1, 2008 modifying the rules for VAT deduction for NGO that are partially subject to the tax	NPOs with activities or resources taxable to VAT	Fiscal framework for NPOs Tax treatment of NPOs	Governmental initiative imposed by EU regulation	http://www.legifrance.gouv.fr/./affichTexte.do?cidTexte=JORFTEXT000000795901&dateTexte=20080418&fastPos=1&fastReqId=690484946&oldAction=rechTexte(fr	Improvement of the VAT regime of public funding (Non taxable subsidies do not have to appear anymore at the denominator of the fraction used to calculate the percentage of deduction of VAT).
Germany	2007	Law on Further Enchancement of Civic Engagement	Foundations	Tax incentives for donations and tax exemptions on economic activities	Alliance for Philanthropy experts group	www.efc.be	
Hungary	2003	Act L of 2003 on the National Civil Fund Programme	Civil society organisations	Public funding	Government	http://www.icnl.org/knowledge/library/showRecords.php?country=Hungary&subCategory=1&sort=effectveasc	The NCF is a unique national structure with elected NPO representatives forming the majority of its governing and grantmaking bodies. It has had a controversial effect on the transparency and accountability of the sector, as media repeatedly pinpointed funding patterns which indicated self-serving decisions by the NPOs.
Hungary	2005	Act LXXXVIII of 2005 on Public Interest Volunteer Activities	Public benefit organisations	Tax benefits on expenses connected with volounteering	Government	http://www.icnl.org/knowledge/library/showRecords.php?country=Hungary&subCategory=1&sort=effectveasc	Some level of impact regarding more transparent handling of reimbursement for volunteers.
Hungary	2006	Act IV of 2006 (Company Law)	Public benefit companies	Public benefit company status will be replaced with non-profit company	Government	www.hungarytrade.co.uk/itd2/complaw.doc	Currently registered PBCs have to transform, merge or dissolve by June 2009. At the same time, a new category of organization called the "non-profit corporation" (or "non-profit company") has been created.
Hungary	2007	Act CLXXXI of 2007 on Transparency of Subsidies Provided from Public Funds	NPO	Public funding	Government	www.ecnl.org	Aims to increase transparency of disbursement of public funds mainly by establishing very strict rules on conflict of interest across all levels of decision-making. NPOs will not be able to participate directly or indirectly in any process of grantmaking from public funds (including the local level). Contradicts earlier laws still in effect which intended to bring NPOs into the decision-making bodies of various funds.
Hungary	2007	1065/2007 Government Decree on the measures to further develop government-NGO relations	NPOs	NPO-Government relations	Government	www.ecnl.org	Two important provisions: 1. creation of a public NGO database that gathers all public information about organizations posted online by ministries or other central public administrative bodies; 2. change in the authenticated registry of NPOs so that all public data of NPOs can be easily accessed and utilized. This entails that the whole official state registration system for CSOs needs to be changed and electronic registration needs to be introduced.

Ireland	2009	Charities Bill 2009	Charities	Registration; internal governance; fiscal framework; fundraising; external supervision; termination	Department of Community, Rural and Gaeltacht Affairs (and probably NGOs). No charity legislation has been enacted for over 40 years. The Agreed Programme for Government 2002 set out to change this situation.	http://www.fatf-gafi.org/dataoecd/63/29/36336845.pdf ; http://www.pobail.ie/en/CharitiesRegulation/	High impact on transparency and accountability of NPOs by introducing for the first time an integrated system of registration, reporting and regulation implemented by a new body, the independent Charities Regulatory Authority.
Italy	2001	Decree no. 329/2001	NPOs	Oversight agency		www.efc.be (the Italy profile) www.agenziaperleonlus.it (ONLUS - in Italian)	ONLUS (Non-Lucrative Organisations for Public Service/Social Benefit) are NPOs which carry out activities in the fields of health, education, charity, education, amateur sport, art, culture, environmental protection and scientific research, and are eligible for specific tax benefits only if they meet certain requirements. In 2000 the ONLUS Agency was given authority for all of the third sector, not just ONLUS.
Italy	2003	Banca D'Italia operating Guidelines	Banks	Vefication of NPOs.	FATF SRVIII		A Banco D'Italia decree requireing banks to check that any NPO customers are genuine NPOs.
Italy	2007	Legal Reform Proposal	Foundations and Associations	Registration, governance and reporting,	Special Commission chaired by Vice-Minister of Economy	EFFECT, Spring 2008 www.efc.be	The legal reform has three main aims: to widen statutory autonomy to improve the status of private non-profit associations and foundations through which everyone can excercise their civil and social freedoms; to promote the broadest interpretation of the right to associate (article 18 of the costitution); and to eliminate any unnecessary control by public authorities over the establishment, recognition and registration of legal entities (excluding those already covered by special laws). It gives foundations and associations full legal capacity and personality.The legal personality will be recognised by registering it in the registry of juriridical subjects (liability will be limited to the organisation's asset). The amendments scale back government control over NPOs, increases freedom of association, incites self-regulation and accountabilty to stakeholders. Due to political changes in Italy they were not purused, and are still in draft proposed form.
Latvia	2003	Associations and Foundations Law	Associations and foundations	Registration, internal governance, termination, reorganization, annual accounts, volunteer work	NGO Center and responsible ministries. Lack of legal status for foundations, reform of the legal regulation of the sector.	http://www.icnl.org/knowledge/news/2003/11-25.htm	
Latvia	2008	Draft Amendments to the Law on Public Benefit Organizations	Associations, foundations and religious organizations	Definition of public benefit; registration; donations; external supervision; revocation of status; termination	Governemnt/NPOs	http://www.icnl.org/knowledge/library/showRecords.php?country=Latvia&subCategory=1&sort=effectiveasc	Broad ranging legislation, the key provisions including: property and financial resources acquired by the PBOs shall be allocated for activities which are non-commercial and public benefit by nature; reduction of the number of documents submitted to Ministry of Finance in order to obtain PBO status; reduction of number of documents submitted for annual reporting; revised procedures for the revocation of PBO status. The bill faces two more readings in the Saeima.
Lithuania	2004	Law on associations	Associations	Registration; internal governance; activities; termination	Government/NPOs	http://www.icnl.org/knowledge/library/showRecords.php?country=Lithuania&subCategory=&sort=effectiveasc	There is a new initiative to reform all laws concerning NPOs in Lithuania, including laws affecting associations, foundations, public benefit status and tax laws. Currently a research on these issues is finalized to set basis for reform.
Lithuania	2005	Law on Charity and Support 2002 as amended in 2005	NPOs	Donations, support receiver status, requirements	Government/NPOs	http://www.legislationline.org/legislation.php?tid=2&lid=8318&less=false	It is not clear precisley what amendments were made in 2005, although it appears that one was to increase reporting requirements from annual to monthly.
Lichtenstein	2001 -	Proposals for amendments to Foundations Law		Transparecny; public information	International pressure to meet agreed standards	www.efc.be	Parts of the international community have been pressuring Lichtenstien to reform its foundations law, which is perceived as a haven for tax avoidance and money laundering.
Luxemburg	2008	New foundation law appeal				www.efc.be	

Macedonia	2007	Law on Donations and Sponsorship in Public Activities	Associations, foundations, institutions	Tax benefits for corporate and private donors; fundraising	Corporations, Members of Parliament	www.ecnl.org	The law provides a definition of donations and sponsorships, outlines the purposes for which they may be given, and defines entities eligible to provide and receive donations/sponsorship under the law. The law also provides tax deductions for both individuals and corporations for donations and sponsorship provided for the public interest. There are concerns related to the adopted text. For example, the law seems to allow corporations to receive tax deductible donations and sponsorships from individuals, it is not clear what type of associations and foundations may benefit from tax deductible donations, and there are reporting requirements that may add burden to donors and recipients.
Macedonia	on-going	Amendments to the Law on Citizens' Associations and Foundations	Associations, foundations, public benefit organizations	Definition of public benefit; registration; donations; internal governance,external supervision; revocation of status; termination	NPOs and Ministry of Justice	www.ecnl.org	These are important amendments to the law, because they aim to strengthen internal governance of NPOs, improve process of registration, introduce public benefit status, allow NPOs to directly engage in economic activities, clarify process of supervision by state authorities as well as finanial accountability rules.
Malta	2007	Voluntary Organisations Act	Voluntary organisations (non-government, non-profit and public benefit. Incorporated or unincorprated)	Voluntary organisation status; government funding; fundraising.		www.sosmalta.org	Enrolled organisations get VO status, allowing it to receive government support (grants, advice, favoured status) and removing need for Police approval of public collections.
Netherlands	2008	Introducing the ANBI status	NPOs	Qualification as a charity in order to receive tax benefits		www.efc.be (the Netherlands profile)	It states what are the conditions for a charitable organisation from 1 January 2008. The criteria include: non-profit making or distributing; charitable in character; clear policy plan; transparent books and records.
Poland	2003	Public Benefit and Volunteerism Law	Public benefit organizations.	Public Benefit Tasks; public benefit status (registration, internal governance, external supervision termination); volunteering; 1% allocations	Ministry of Social Security	www.isp.org.pl	The law aimed to imporve accountability and transparency of public benefit organizations and through this form to the sector. It is considered as highly relevant law for the Polish sector.
Poland	on-going	amendments to Law on Foundations	Foundations	All areas concering foundations.	NPOs	www.isp.org.pl	A group of NPOs have launched an initiative to review and improve the Foundations Law. Currently discussions are taking place about the issues which need revisions, as well as research on experiences in other countries.
Portugal	2007	Public Interest Decree	PBOs	Aspects concerning PBOs		http://www.sg.pcm.gov.pt/requisitup.htm	Decreto-Lei nº 391/2007, of December, 13th (decree of law) revoked many aspects of the former one: Decreto-Lei nº 460/77, of November, 7th.
Romania	2005	Law 246/2005 (Law on Associations and Foundations)	Associations, foundations, unions and federations	Registration; internal governance; public benefit status (to be regulated by governmental decree);relations with public authorities; termination.	General Secretariat; pertinent ministries and central authorities.		It has a high impact on transparency and accountability. It eliminates the lists of qualifying general interest and community interest activities that appeared in earlier legislation and simplifies the certification process for Public Utility Status. Previously, different ministries or central authorities imposed different requirements. Now, all applications are submitted to the General Secretariat of the Romanian Government, which must obtain recommendations from the pertinent ministries or central authorities within 60 days.
Romania	2005	Law 350/2005 (On the Conditions of Non-refundable Financing from Public Funds Assigned For General Interest Non-profit Activities)	Non-profit natural or legal persons – associations or foundations, as well as religious denominations	Public subsidies	Government / Ministry of Justice		It has high impact on accountability and transparency for government grant recipients. Its impact especially at the local level has been controversial.
Romania	2007-8	Amendments to the PBO law	Public benefit organisation	Critreia for PBO status	Government		In September 2007 Romanian Government submitted in Parliament one draft law that hardens the procedure for obtaining PBO status. This law was resent to Parliament by the President. Consequently CSDF produced a new draft of the PBO Law that was not taken on board by the Government. Currently consultations are being held with MPs to promote this new law in the Parliament.

Scotland (UK)	2005	Charities and Trustee Investment (Scotland) Act 2005	Charity	Definitions; registration status; accounting standards; accounting and reporting; monitoring; making information public; investigations and sanctions.		http://www.oscr.org.uk http://www.oscr.org.uk/2005Actoverview.stm	Broad ranging legislation which establishes OSCR as the Scottish charity regulator. OSCR is created to: register charities; keep and maintain a public register; support charities; monitor charities; and investigate complaints. The law requires most charities to register. Registered charities must: keep proper accounting records and produce independently audited accounts; annually prepare and submit a statement of accounts, a report on its activities and an annual return. An additional from is required of charities with an income in excess of £25,000, and more detailed information from charities with an income in excess of £100,000.
Slovakia	on-going	Law on Volunteering		all aspects concerning volunteer work	NPOs		The process started at international seminar on volunteering organized by the Open Society Foundation Bratislava on January 24, 2008. There is a joint initiative that includes civic association CARDO (a volunteering center in Slovakia) and law experts collaborating with 1. Slovak Non-profit Service Center.
Slovakia	2003	Act No. 595/2003 (Income Tax Law)	Associations, foundations, non-investment funds, not-for-profit organizations providing publicly beneficial services	Introduction of 2% mechanism; tax deduction for donations eliminated			Requires pre-registration, increased transparency and more stringent reporting from NPOs aiming to take advantage of the 2% tax designation mechanism (every year taxpayers may opt to designate 2% of their income tax to a qualifying NPO).
Slovakia	2004-now	Draft Code on Non-Profit Law	Associations, foundations, non-investment funds, not-for-profit organizations providing publicly beneficial services	Codification of legislation	Minister for European Affairs, Human Rights, and Minorities; Ministry of Justice.		Harmonization of NGO legislation, simplification of procedures.
Slovakia	2006	Law 688/2006 (Income Tax Law)	Associations, foundations, non-investment funds, not-for-profit organizations providing publicly beneficial services	Reduction of tax benefits	Government	http://www.finance.gov.sk/En/Default.aspx?CatID=10&id=27	The changes reduce the tax benefits available to NPOs under the '2%' mechanism. The 2% is reduced to 1%; the minimum donation is increased from SKK20 to SKK100 and minimum value increased to SKK2,000; maximum donations by legal entities to a single recipient are capped at SKK1m; Only those operating in the areas of health, children's sporting activities, social care, and preservation of cultural values will be eligible. In addition, tax exemption on the first SKK300,000 trading profit is removed.
Slovakia	2007 - ongoing	Draft Law on Civic Associations	Civic associtions (which form 87% of registered NPOs)		Ministry of Interior		The law will replace the old law on civic associations from 1990. Among the requirements are: annual reports; audits of all public sources; removal of right to commercial activities; requirement for new societies to obtain permission to perform only mutual benefit activities.

Slovenia	2006	61/2006 (Law on Associations)	Associations	Registration; internal governance; book-keeping;, financial reporting; economic activity; public benefit status		http://www.usig.org/countryinfo/slovenia.asp	
Spain	2002	Foundation Act 50/2002	Foundations	Definition; general interest purposes; establishment; legal status; registration; internal governance and accountability; public accountability; monitoring; liability; dissolution; tax; deductions on donations		http://www.efc.be/ftp/public/eu/CountryProfiles/spain.pdf	It is comprehensive and more liberal than the previous law. However, it is still a little bureaucratic in places (e.g. approval seems to be needed for annual work plan and dissolution).
Spain	2002	Organic Law 1/2002 regulating the Right of Association	Non profits excluding civil, commercial, industrial, labour, economic interest organisations, co-ops and mutual benefit societies	Freedom of association; legal requirements for establishing NPOs; registration; internal governance and accountability; liability and its limits; public benefit status; reporting requirements for PBOs; state dissolution;		The law in Spanish: http://www.boe.es/boe/dias/2002/03/26/pdfs/A11981-11991.pdf A summary of the law in English: http://www.lexuniversal.com/en/articles/909	The law addresses a gap in NPO oversight with a liberal yet fairly comprehensive legislation. However, it is not clear what the oversight authority is, only PBOs are monitored, and there are no powers to investigate or deal with unlawful activity. It does specifically refer to terrorism (it must not be supported in any way, including glorifiaction of terrorist and humilation of terrorist victims).
Spain	2006	Regulations on State-wide Foundations (implementation of the 2002 Foundation Act)	Foundations set up under national law and active not only at regional level	Internal governance.			Addresses: payout rate on board members, board operations, membership. The board changes are applicable only if provisions on these matters are absent from an organisation's statutes. As reported, a particularly problematic area is the Action Plan that foundations have to submit annually to the Protectorate, as monitoring body, which according to the Regulation stipulates must include a budget for proposed activities (this may negatively affect smaller foundations). Also, the Regulation is unclear regarding what forms of disposal of foundation assets and rights have to be reported to the Protectorate.
Sweden	2006	Amendment to Stiftelselag SL Foundations Law (2006/870)	Foundations	Supervision of foundations		Excerpts from an unofficial translation of 1994 law can be found at: http://www.legislationline.org/legislation.php?tid=2&lid=41&less=false	High impact, although few provisions have been changed. It has not been possible to clarify exactly what amendments were made. Most probably changes pertain to accountants and their obligations. It is known that from 2005 detailed information on the auditor must be included in the state registry.
Sweden	2006	Companies Act	Limited companies	Creation of a new type of non-profit company	To improve public confidence in non-profit activities with the establishment of a new non-profit legal form which prohibits owners from extracting surplus money	http://www.sweden.gov.se/sb/d/9171/a/82653	It creates a new type of company - limited companies with special limitations on profit distribution. An essential element of these companies is that they are run for a purpose other than to provide shareholders with profits. The new regulations will help create a corporate form especially adapted for non-profit-making undertakings. The regulations are also intended to ensure that profits primarily remain within the company. In these new kinds of companies, only a certain limited profit distribution may take place (government bond rate + one percentage point) on the capital contributed by shareholders as payment for shares. Use of this corporate form is optional. The new regulations are completely business neutral, which means that they are not adapted to any particular kind of business. These regulations allow special auditor reviews and provisions on compulsory liquidation if a company of this new kind has made a profit distribution or other kind of transfer that conflicts with the legal regulations.

Annex 5: Recent Self-Regulatory Initiatives Concerning Transparency and Accountability of Non-Profit Organisations of the European Union								
Country/Region of Origin	**Date of Adoption**	**Type of Initiative**	**Title of Initiative**	**Originating Body or Group**	**Geographical Scope (e.g., transnational, sectoral, sub-sectoral etc...)**	**Targeted Audience**	**Description**	**Website address**
Austria	2002	Certification/ Accreditation	Austrian Seal of Approval for Charities	Osterreichisches Institut fur Spendenwesen (ÖIS)	Sectoral	Austrian NPOs	This seal of approval resulted from the recommendation of a working group set up in 1999 with representatives of NPO umbrella groups, government, consumer protection groups, media, and fundraising organisations. The seal addresses such areas as transparency regarding legal status, purpose, and finances; measures for protecting donors; and ethical commitments in fundraising. The Austrian Chamber of Chartered Accountants and Tax Advisors conducts an external audit to verify organisations' compliance with the criteria. Charities can use seal for one year. ÖIS also has online database with essential information about organisations that indicates whether they have been awarded the seal.	http://www.osgs.at/
Belgium	2003	Standards/Guidelines/ Code of Conduct	Statement of Principles	Belgian Network of Foundations	Sectoral	Foundations active in Belgium	This statement of principles and good practices is designed to guide Belgian foundations that wish to increase their transparency and accountability. All members of the Belgian Network of Foundations must adhere to the principles of the statement.	http://www.reseaufondations.be/fr/decla-b.htm
Belgium	2007	Standards/Guidelines/ Code of Conduct	Principles of Accountability for International Philanthropy	European Foundation Center (EFC) in partnership with Council on Foundations (COF) (US)	International/sub-sectoral	Grantmaking foundations	Voluntary and aspirational, these principles and accompanying practices aim to help funders make better decisions in pursuing their international missions and to encourage more foundations to get involved internationally. They are the result of a 2-year collaborative effort by a working group in consultation with EFC and COF members, donor associations and networks, international NGOs, and grantees and partner organisations. The principles espouse the values of integrity, understanding, respect, responsiveness, fairness, cooperation, and effectiveness.	www.efc.be/projects/ic/account.htm
Belgium	2008	Standards/Guidelines/ Code of Conduct	Good Governance in the Belgian Association World	Excellence for Non Profit Foundation	Sectoral	Belgian NPOs	This project aims to inform and raise awareness about good governance among Belgian NPOs. After a study of good governance initiatives already underway in Belgium and abroad, a national public questionnaire was released online. Questionnaire results were used to draft 25 recommendations intended to serve as a measure of good governance practices. The recommendations focus on mission, composition and operation of board of directors, posts, responsibilities, internal organisation, conflict of interests, advertising, and stakeholders.	www.excellencefornonprofit.eu http://smooz.4your.net/afa/files/Bonnegouvernance_conclusions.pdf
Belgium	projected 2009	Standards/Guidelines/ Code of Conduct	Code of Good Governance	King Baudouin Foundation	Sectoral	Belgian NPOs	The code is being drafted by a 20-member working group and was finished in May 2009.	http://www.kbsfrb.be/code/page.cfm?id_page=125&ID=644
Bulgaria	2003	Standards/Guidelines/ Code of Conduct	Code of Ethics	Bulgarian Donors' Forum	Sub-sectoral	Bulgarian grant-making NPOs	Acceptance of this code of ethics is a condition for membership in the Bulgarian Donors Forum. The code is brief and focuses on the general principles of integrity, transparency, ad quality. There is no monitoring or enforcement mechanism.	www.dfbulgaria.org

Czech Republic	2004	Standards/Guidelines/ Code of Conduct	Code of Ethics for Foundations	Czech Donors Forum	Sub-sectoral	Czech grantmaking NPOs	The Code is a part of the membership package for members of the Donors Forum. It is the only existing material of its kind in the Czech Republic. First adopted in 1999, it changed several times. It is open to all registered foundations – 1200 organizations (they can follow it even if not being a member). It addresses issues of governance, transparency, finances and the ethical behaviour of the individual foundation within the whole foundation sector. It is also a living document: based on this the Donors Forum has terminated the membership of one of the member foundations for non-ethical and non-transparent behaviour.	www.donorsforum.cz/
Denmark	2004	Standards/Guidelines/ Code of Conduct	Guidelines to Ethical Fundraising	Indsamlingsorganisationernes Brancheorganisation (ISOBRO)	Sub-sectoral	Danish NPOs	ISOBRO is a leading association of Danish NPOs. It has issued a set of compulsory guidelines to ethical fundraising that are intended to help members achieve the highest professional standards. The guidelines address respect for donor's integrity and freedom; public credibility about the purpose and management of the organisation; and credibility regarding the use of funds. ISOBRO has pledged to monitor members' adherence to the guidelines and has established a fundraising ethics committee to hear complaints of violations of the code against ISOBRO members.	www.isobro.dk
Estonia	2002	Standards/Guidelines/ Code of Conduct	Code of Ethics of Estonian Nonprofit Organizations	Roundtable of Estonian Non-profit Organizations	Sectoral	Estonian NPOs	The Code of Ethics of Estonian Non-Profit Organizations was drafted by a working group and approved by the Roundtable of NPOs. It sets out accountability and transparency standards grouped under eight headings: democratic governance; civic courage and care; sustainability and prudence in using funds and resources; responsibility and accountability; openness and transparency; independence and avoidance of conflicts of interest; honouring commitments and recognition of authorship of ideas; and tolerance. Other than this general call to embrace the code, its implementation was never formalized and there is no established mechanism of enforcement. However, the code is widely invoked and is included among the funding requirements of the National Foundation.	www.emy.ee/eng/alusdokumendid/eetika_eng.html
Finland	2004	Standards/Guidelines/ Code of Conduct	Best Practice in Foundation Management: Grant Giving Foundation	Council of Finnish Foundations	Sub-sectoral	Finnish grant-making foundations	In 1970 some 30 Finnish grant giving foundations established thee Council of Finnish Foundations (the Council), an advisory committee for foundations. The Council was registered in the autumn of 2003 and has 56 member foundations and have outlined best practice standards on foundation management to guide their work.	www.saatiopalvelu.fi
France	1989	Certification/Accreditation	Charter of Ethics	Comité de la Charte	Sectoral	French NPOs	Comité de la Charte is an independent association of more than 50 members whose aim is to ensure transparency in the use of donations. Organisations voluntarily agree to adhere to standards and submit to ongoing monitoring by committee members. Those meeting the criteria of the charter receive permission to use a seal of approval and become a member of association. Comité de la Charte is a member of ICFO.	www.comitecharte.org/index.php
France	2004	Quality Management System	Quality COMPAS	Groupe URD	International/Sectoral	Aid NPOs	Quality Compas is an open-access quality assurance method supplemented by tools, training modules, and consultancy services. The result of a 6-year research project, it was designed specifically for aid agencies to improve the services they provide to crisis-affected populations. The system also intends to strengthen NPO credibility and build public confidence in the eyes of beneficiaries, institutional donors, and the general public. It includes free online software and training modules; training courses and consultancies offered for a fee; and an information handling system (Dynamic COMPAS) that is recording key data about the project for impact assessment. Groupe URD is a member of the Quality and Accountability Group.	www.compasqualite.org/en/index/index.php

Germany	2003	Standards/Guidelines/ Code of Conduct	Secretariat Code of Conduct	Transparency International (TI)	International/organisational	TI chapters	TI has developed a comprehensive set of internal regulations covering financial transparency and conflict of interest.	www.transparency.org/about_us/organisation
Germany	2004	Certification/Accreditation	DZI Charitable Seal	Deutsches Zentralinstitut für Soziale Fragen (DZI)	Sectoral	German NPOs	DZI is an independent foundation that assesses charities against set criteria in order to foster trust and further the public's ability to compare organisations. Its seal of approval serves as proof that a charity is serious, transparent, and uses donations wisely. DZI maintains an online database of certified organisations. Withdrawal of seal can be accompanied by recommendations for remedying reasons for withdrawal. DZI is a member of IFCO.	www.dzi.de/hinweise.htm
Germany	2006	Database	Guidestar Germany	Deutsches Zentralinstitut für Soziale Fragen (DZI)	Sectoral	German NPOs	DZI is responsible for piloting the German version of GuideStar, the online database of NPOs originally started in the U.S. The German project is intended to demonstrate how GuideStar technology can be adapted to European countries with differing transparency cultures and how common standards of reporting could enable Europe-wide searches. DZI's involvement includes execution of the pilot project, stakeholder engagement, user consultation, and evaluation. DZI will also contribute to the business and implementation plan of a European-wide GuideStar service. The Maecenata Institut für Philanthropie und Zivilgesellschaft is providing central research support. Due to the size of the German NPO sector, the city states of Berlin and Hamburg are the beginning focus of the project.	www.guidestareurope.org/germany
Germany	2006	Standards/Guidelines/ Code of Conduct	Good Foundation Practice	Association of German Foundations	Sub-sectoral	German foundations	The code is a brief statement addressing transparency, relations with grantees, conflict of interest, etc., to which association members are asked to adhere. The association has called for a broad discussion among members about the principles' content and practical application.	www.stiftungen.org
Hungary	2005	Quality Management System	MINTA	The Civil Society Development Foundation Hungary	Sectoral	Hungarian NPOs	MINTA is the Hungarian adoption of PQASSO. Although there are small changes due to aspects of the Hungarian legal and developmental context, the main principles and the structure of the system (3 levels and 12 quality areas) are the same. 15 NGOs that have adopted MINTA are reported to be satisfied with its comprehensiveness and flexibility.	www.csdf.hu
Hungary	2005	Database	Guidestar	NIOK	Sectoral	Hungarian NPOs	In the-mid 1990s NIOK set up an open database of information voluntarily offered by NPOs. This database, which is widely used by donors, volunteers, clients, partners, corporations, public administrators, and the media, contains information on 11,500 nonprofits. Within the framework of the GuideStar Europe project, NIOK is exploring the feasibility of incorporating into the database official data on NPOs to increase trust and transparency. A market validation phase was underway from April 2007 to October 2008. If the plan proves feasible, the implementation phase will result in a comprehensive catalogue of organisations online.	www.guidestareurope.org/hungary
Hungary	2007	Certification/ Accreditation	Trademark of Trust	The Civil Society Development Foundation Hungary	Sectoral	Hungarian NPOs	The Trademark of Trust is an accountability standard for the fundraising activities of Hungarian NPOs. It defines the necessary conditions for being trusted in two ways: through a detailed version for the NPOs, and a shorter, simpler version for the public. An independent committee examines the application of NPOs and gives an award for the successful applicants. Areas of the standard are governance, conflict of interest, planning and evaluation, finances, fundraising and transparency.	www.csdf.hu

Ireland	2008	Standards/Guidelines/ Code of Conduct	Code of Governance of the Irish Development NGOs	Dóchas and Corporate Governance Association of Ireland	Sub-sectoral	Irish development NPOs	This code of good governance was developed by a voluntary group of experts certified in corporate governance in partnership with NPO representative body Dóchas. Dóchas encourages its members to embrace the code and if necessary explain reasons for non-compliance in their annual reports. Dóchas will monitor implementation.	www.dochas.ie
Ireland	2008	Standards/Guidelines/ Code of Conduct	Statement of Guiding Principles for Fundraising	Irish Charities Tax Research Ltd	Sectoral	Irish NPOs	The code was developed in connection with 2007 Charities Bill as a government-NPO initiative. It tries to strike a balance between enhancing public confidence and not burdening NPOs, especially smaller ones. It emerged from a broad consultative drafting process. Implementation is to be monitored by an independent working group.	www.ictr.ie
Italy	2004	Standards/Guidelines/ Code of Conduct	Charter for Donation	Italian Institute for Donation	Sectoral	Italian NPOs	The mission of the Italian Institute for Donation is to foster excellence, transparency, integrity, fair management practices, and ethical conduct and, in so doing, increase donations thanks to an environment of trust and transparency. The institute confirms such behaviours through in-depth verification procedures, with a focus on fundraising and the final destination of funds. The charter resulted from collaboration among Forum Permanente del Terzo Settore, Sodalitas, Summit della Solidarieta, and Comitato Telethon. Subscribers commit to holding their donors in the highest respect by honouring their right to receive precise and transparent information. The charter covers all aspects of administration and fundraising and is apparently aspirational.	www.istitutoitalianodonazione.it/?r=564&sfNews=3357
Italy	on-going	Database	Registration DataBank	Formez Training and Study Centre	Sectoral	Italian NPOs	Creating a unique registration data-bank of all Italian recognized NPOs and for doing registration according to the same criteria (Governance project “system of governance/ internal audit diffusion")	
Netherlands	1996	Certification/Accreditation	CBF Seal of Approval	Central Bureau on Fundraising (CBF)	Sectoral	Dutch NPOs	CBF's seal promotes trustworthy fundraising by Dutch NPOs. The standards cover fundraising, governance, communications, and financial auditing and reporting. CBF also offers a Certificate of No Objection designed for smaller NPOs. Both certifications are valid for 5 years, and certified organisations may display the seal's logo. CBF's website offers data on assessed organisations. CBF is a member of ICFO.	www.cbf.nl/Home/uk.php
Netherlands	2004	Standards/Guidelines/ Code of Conduct	Recommendations	Association of Foundations in the Netherlands (FIN)	Sub-sectoral	Dutch foundations	Members of FIN are private Dutch foundations that subscribe to FIN's "recommendations." The recommendations address foundation objectives and donations policies as well as conflict of interest, handling of requests, supervision of grants, and financial reports. FIN publishes a directory of its members for the use of for those looking for grant support. At the moment the association has 250 members.	www.verenigingvanfondsen.nl/english/index.htm
Netherlands	2006	Certification/Accreditation	G3	Global Reporting Initiative (GRI)	International	NPOs, business, public sector organisations	The GRI Sustainability Reporting Guidelines, created in 1997 through a multi-stakeholder, consensus-seeking approach, are now in their third generation. They provide universal guidance for reporting on sustainability performance. The guidelines consist of principles addressing the content and quality of reports, report boundaries, and disclosure items (including performance indicators). GRI was formed with support of United Nations Environment Programme. It is an independent organisation but works closely with UNEP as well as the United Nations Global Compact.	www.globalreporting.org/ReportingFramework/G3Guidelines
Netherlands	2007	Database	Guidestar	Central Bureau on Fundraising (CBF)	Sectoral	Dutch NPOs	CBF and the branch organisation of acknowledged fundraising organisations, VFI, are developing a national system of information on charities. Their intention is to enhance the quality, availability, and accessibility of information on the philanthropic sector while serving the information needs of a wide range of users. CBF and VFI started a pilot GuideStar project as part of the European e-Ten project. In its first phase the project is undertaking a market analysis and defining labels and fields for the eventual website. The Ministry of Justice is a cooperating partner.	www.guidestareurope.org/the-netherlands
Netherlands	2008	Standards/Guidelines/ Code of Conduct	Code of Conduct for Dutch charities	NGOs	Sectoral	Dutch NPOs	Piloting New Code of Conduct for Dutch Charities (CBF Keur) (November 2007) which includes clauses to prevent the financing of criminal and terrorist purposes through charities - the new CoC is being piloted in 2008 among 6 Dutch Charities, Cordaid is one of them. The document is in Dutch and not yet for distribution.	www.cordaid.nl

Norway	1991	Certification/Accreditation	Stiftelsen Innsamlingskontrollen I Norge	Innsamlingskontrollen (Norwegian Fundraising Control)	Sectoral	Norwegian NPOs		www.innsamlingskontrollen.no
Poland	2000	Standards/Guidelines/ Code of Conduct	Community Foundations Standards	Academy for the Development of Philanthropy	Sub-sectoral	Polish local NPOs	The Standards were drafted by representatives of 12 organisations - members of CF Network and the Academy for the Development of Philanthropy.	http://www.filantropia.org.pl/comm_found/CF_standards.html
Romania	2002	Standards/Guidelines/ Code of Conduct	Annual Report Awards	Romanian Donors' Forum	Sub-sectoral	Donors	The Romanian Donors' Forum launched a contest for the best annual reports with the purpose of promoting transparency and accountability in the NPO sector. The contest has gained significant popularity among Romanian NPOs.	http://www.donorsforum.ro
Romania	2002	Database	Romania Development Gateway	eRomania Gateway Association	National	Public administration, business, and civil society	The Romania Gateway Portal is a project launched under the auspices of the Development Gateway initiative of the World Bank. It offers an institutional framework for information exchange on development issues at the local, national and international level among public, private, and NPO sectors. The portal include development-related communities of interest, databases, official documents, news, and discussion forums.	ro-gateway.ro
Romania	2007	Standards/Guidelines/ Code of Conduct	Reinforcement of the Nonprofit Sector's Legitimacy	Opportunity Associates Romania (OAR)	Sectoral	Romanian NPOs	This code of conduct, an outgrowth of a meeting with the Johns Hopkins University in 2006, establishes standards in leadership, management, human resources, finances, activity, and public relations.	www.oar.ro; www.coddeconduitaong.ro
Slovakia	2000	Code	Code of Ethics	Slovak Donors Forum	Sectoral	Donors	The Code calls on all donors to adhere to its principles and to respect it to the extent permitted by their individual conditions, as well as by their way of operation and functioning. The aim is to contribute to the enhancement of the culture of giving, openness and transparency of the whole not-for-profit sector in the Slovak Republic.	http://www.donorsforum.sk/EN_aboutus_code.html
Slovakia	2005 (on-going)	Standards	Standards of Foundation Practice	Slovak Donors Forum	Sectoral	Foundations	The Standards are still being tested and developed. Their aim is to create a product capable to promote a brand of transparent and accountable foundations, to help with reinforcement of financial stability and to contribute to the development of culture of giving and tradition of civic society. The Standards also contain a self-assessment tool divided into 9 sections covering 9 key topic areas: governance, communications/disclosure, grantmaking, finance, administration, personnel, public policy, mission and strategy and evaluation. The standards complete SDF's Code of Ethics.	www.donorsforum.sk
Slovenia	2001		Support to NGO Sector Slovenia	Netherlands Ministry of Foreign Affairs	National	NPOs and government	This project was implemented with financial support from the Matra Programme of the Dutch Foreign Ministry, which provided technical assistance to the Government of Slovenia and the Slovene NPO sector. The project aimed to strengthen dialogue between the government and civil society and contribute to the sustainable development of NPOs and their networks. The strategy of the project was four-fold: to support the newly established NGO Center, stimulate NGO networking, stimulate a regulatory framework that encompasses legislation, funding and taxation measures, and institutionalize of the dialogue.	http://www.humanconsultancy.com/Support%20to%20NGO%20sector%20Slovenia.pdf

Spain	2001	Standards/Guidelines/ Code of Conduct; Database/Registry	Principles for Transparency and Good Practices	Fundación Lealtad	Sectoral	Spanish NPOs	Fundación Lealtad was created in 2001 by business leaders who wanted to increase the public's trust in NPOs. The foundation's 9 Standards of Transparency and Best Practices are the result of a year-long development process that included consultations with central and local public authorities, charities, academics, business people, and other entities directly or indirectly involved in the nonprofit sector. NPOs may voluntarily submit their organisation to analysis against the standards. The results are published in a transparency report detailing compliance. The standards are meant to apply to all size and sub-sector of organisations. Tools related to the project cycle management and logical framework approach are widely used and some donors regard them as compulsory.	www.fundacionlealtad.org/web/jsp/index.jsp
Spain	2008	Certification/Accreditation	Institute for Quality of NGOs (ICONG)	Acciòn Social	sectoral	Spanish NPOs	Acciòn Social is an umbrella organisation representing 25 Spanish NPOs, foundations, and associations. It has announced the launch of the Institute for Quality of NGOs, a body that aims to become a certifying body for NPOs. ICONG will deliver and standardize quality control in a manner comparable to ISO standards in other sectors. The organisation will also provide training, a platform for the exchange of best practices, and information in cooperation with the Ministry for Employment and Social Services, which is funding the initiative. Other organisations involved in the creation of ICONG include Caritas and the Spanish Red Cross.	http://q-ong.org/index.php, http://www.plataformaong.org/
Sweden	1940s	Certification/Accreditation	Accountability and Transparency Report	Stiftelsen för Insamlingskontroll (SFI) - Swedish Foundation for Fundraising Control	Sectoral	Swedish NPOs	Since the 1940s Swedish banks have designated with the number 90 accounts that are used by charitable organisations exclusively for public fundraising. To receive a so-called 90 account, organisations must be approved by SFI, follow SFI rules regarding fundraising, and submit to yearly supervision. If an organisation fails to fulfil SFI's statutes, norms, and guidelines, the 90-account is immediately withdrawn. The Swedish public regards a 90-account as a guarantee of the credibility of charitable organisations.	www.insamlingskontroll.se http://www.ne.su.se/research/enter/pdf/breman.pdf
Sweden	1999	Standards/Guidelines/ Code of Conduct	Guidelines for Ethical Fundraising	Swedish Fundraising Council (FRII)	Sectoral	Swedish NPOs	Fundraising organisations in Sweden gained a common voice with the founding of the Swedish Fundraising Council. Its 85 members include the biggest Swedish fundraisers, such as the Swedish Cancer Society, Save the Children Sweden, Swedish Red Cross, and Greenpeace. Its mission is to promote ethical and professional fundraising and improve the conditions for fundraising through political lobbying and negotiations with commercial suppliers. Ethical questions related to fundraising are important and the Swedish Fundraising Council has established a set standards and a code of conduct for members.	http://www.frii.se/index6.shtml
Switzerland	After 1934	Certification/Accreditation	ZEWO Seal of Approval	ZEWO Foundation	Sectoral	Swiss NPOs	ZEWO is an independent foundation whose aim is to further transparency in public benefit NPOs. Organisations are certified by ZEWO staff to comply with corporate governance and ethical standards and use donations appropriately. Organisations are regularly monitored and are granted permission to use ZEWO's seal of approval. ZEWO maintains an online searchable database of about 500 organisations that have earned its seal. ZEWO is a member of ICFO.	www.zewo.ch/index.html
Switzerland	1996	Standards/Guidelines/ Code of Conduct	The Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief	International Federation of Red Cross and Red Crescent Societies	International/sub-sectoral	National Red Cross and Red Crescent societies and NPOs offering disaster relief	This code is widely recognized as a fundamental document for establishing the quality of Red Cross and Red Crescent Societies and humanitarian NPOs worldwide. The preamble to the code of conduct states that it "seeks to guard our standards of behaviour. It is not about operational details, such as how one should calculate food rations or set up a refugee camp. Rather, it seeks to maintain the high standards of independence, effectiveness and impact to which disaster response NGOs and the International Red Cross and Red Crescent Movement aspires. It is a voluntary code, enforced by the will of each organisation accepting it to maintain the standards laid down in the Code."	www.icrc.org/web/eng/siteeng0.nsf/htmlall/57jmvx?opendocument
Switzerland	1997	Standards/Guidelines/ Code of Conduct	Sphere Project	Group of humanitarian NPOs and the Red Cross/Red Crescent Movement	International/sub-sectoral	Humanitarian NPOs	The Sphere Project, developed after the Rwandan crisis in the mid-1990s, offers standards in four areas: nutrition and food aid; settlement and health; water and hygiene; and food security. The standards were developed in collaboration with 4,000 people from 80 counties. They include key indicators and guidance notes as well as general guidelines for participation, assessment and evaluation, and other concerns. There is no formal compliance mechanism. Sphere also offers an online database and offline learning activities. Spere is a member of Quality and Accountability Group.	www.sphereproject.org

Switzerland	2003	Certification/Accreditation; Quality Management System	Humanitarian Quality Management Standard	Humanitarian Accountability Partnership International (HAP)	International/sub-sectoral	Humanitarian NPOs	HAP was founded as a result of field work undertaken after the 1994 Rwandan crisis. The organisation is known for its accountability principles, which focus on the rights of stakeholders, especially beneficiaries, to be involved in decision-making and programme evaluation. HAP has elaborated the accountability principles in a set of more formal management standards for humanitarian NPOs. More recently, these standards have been applied to a certification system in which an independent formal third party evaluates organisations against benchmarks and requirements. HAP is membership organisation and members must demonstrate compliance with HAP standards. Training and other support are provided. HAP also runs a research programme designed to examine the costs and benefits associated with the practical application of accountability principles. HAP is a member of the Quality and Accountability Group.	www.hapinternational.org/default.aspx
Switzerland	2005	Standards/Guidelines/ Code of Conduct	Swiss Foundation Code	SwissFoundations	Sub-sectoral	Swiss grant-making NPOs	This proprietary code offers recommendations regarding foundation management, development, and finances. The 3 normative principles and 22 strategic recommendations are voluntary, brief, and can be implemented by small, medium-sized and large foundations without major administrative adjustments. The code must be purchased from SwissFoundations.	www.swissfoundations.ch/en/portrait/swiss-foundation-code.html
Switzerland	2005	Standards/Guidelines/ Code of Conduct	Montreux Initiative	Swiss Federal Department of Foreign Affairs and Geneva Institute of International Studies (IUHEI)	International/sub-sectoral	Islamic charities	To counteract the suspicion of Islamic charities that developed after September 11, an expert group in Montreux developed a set of recommendations for governments and a code of behaviour for charities that aim to promote a climate of trust and collaboration, improve transparency, contribute towards understanding between cultures, and combat terrorism. The group intends to launch a programme of capacity building and conduct third-party assessments of charities in a future phase of the project.	www.eda.admin.ch/eda/en/home/topics/peasec/peac/confre/conrel.html
Switzerland	2006	Standards/Guidelines/ Code of Conduct; Accreditation/Certification	Swiss NPO Code	Conference of Presidents of Social Service Organizations (KPGH)	Sub-sectoral	Swiss social service organisations	This detailed code of good governance for charitable organisations is based on best practices from the Swiss and international private sectors. It is intended for use by medium-sized to large charities and social service providers domiciled in Switzerland. The code has recently been joined to a certification process administered by ZEWO, the Swiss monitoring agency for fundraising organisations. KPGH has authorized the ZEWO Foundation to act as an independent inspection agency, recommending organisations for certification by KPGH if they are determined to be in compliance with the code based on submitted documentation, a questionnaire and, if necessary, personal visits.	www.swiss-npocode.ch/d_index.htm; http://www.swissfoundations.ch/en/portrait/swiss-foundation-code.html.
UK	1992	Quality Management System	Charter Mark	Cabinet Office	Public sector	Public sector or voluntary organisations serving the public	The Charter Mark is a tool designed to help organisations focus on, and improve, their customer service and delivery to users. The following 6 criteria make up the Charter Mark standard. 1: Set standards and perform well 2: Actively engage with your customers, partners and staff 3: Be fair and accessible to everyone and promote choice 4: Continuously develop and improve 5: Use your resources effectively and imaginatively 6: Contribute to improving opportunities and quality of life in the communities you serve	www.cabinetoffice.gov.uk/chartermark.aspx
UK	1997	Standards/Guidelines/ Code of Conduct; Quality Management System; database	Active Learning Network for Accountability and Performance in Humanitarian Action (ALNAP)	Multiple donors and organisations in the humanitarian sector	International	Humanitarian assistance NPOs	ALNAP is an international membership forum that aims to promote a culture of learning across the humanitarian sector. ALNAP activities include its annual Review of Humanitarian Action, an evaluation of the performance of humanitarian organisations though a synthesis of reports from its membership, and an assessment of the quality of organisational evaluations using the ALNAP Quality Pro-forma tool. ALNPS works with NPOs to improve their evaluation skills through biannual meetings, reports, and practical tools such as guidance booklets and training modules. ALNP also hosts a comprehensive evaluative reports database. ALNAP is a member of the Quality and Accountability Group.	www.alnap.org

UK	1997	Quality Management System	PQASSO	Charities Evaluation Services	Sectoral	NPOs	PQASSO is a practical, low-cost quality assurance system for small NPOs and projects within larger organisations. PQASSO is the most popular quality system in use in the third sector and viewed by many as the sector's 'industry standard'. Its standards focuses on 12 quality areas: planning for quality, governance, management, user-centred service, staff and volunteers, training and development, managing money , managing resources, managing activities, networking and partnership, monitoring and evaluation, results. Each area is broken into three levels of achievement that detail requirements for organisations to meet, starting with legal obligations. PQASSO is now in its third edition and has been adapted in Croatia and Hungary.	www.ces-vol.org.uk/index.cfm?pg=42
UK	1999	Guide to Financial Management for NGOs	Management Accounting for Non-Governmental Organizations (MANGO)	Management Accounting for Non-Governmental Organizations (MANGO)	Sectoral	UK NPOs	MANGO's mission is to strength the financial management of NPOs. Mango publishes an easy-to-use guide to financial management and also provides training in this area. Mango's approach is based on the 7 principles of stewardship, accountability, transparency, integrity, viability, accounting standards, and consistency.	http://www.mango.org.uk
UK	2000	Quality Management System	ALPS (Accountability Learning and Planning System)	ActionAid	International/organisational	ActionAid offices and partners	ALPS lays out a comprehensive internal policy framework for involving communities and partner organisations in ActionAid's programme work. Key elements of ALPS are its emphasis on accountability to the poor, particularly women and girls, and its goal of sharing information freely between ActionAid and the people with whom it works. ALPS sets out key accountability requirements, guidelines, and processes regarding planning, monitoring, strategy formulation, learning, reviews, audits, and personal attitudes and behaviours. A rigorous process of appraisals involves internal and external stakeholders, strategic plans, annual reports, and similar documentation.	www.actionaid.org/main.aspx?PageID=261
UK	2001	Standards/Guidelines/ Code of Conduct; Registry/Database	Global Accountability Project	One World Trust	International/cross-sectoral	International NPOs, governmental organisations, and business	The Global Accountability Project consists of 2 components: the GAP Framework (an accountability tool for NPOs and stakeholders), and annual accountability reports (profiles of the accountability and transparency performance of major organisations). While the GAP Framework must be purchased, the accountability reports are available online free of charge.	www.oneworldtrust.org/?display=project&pid=10
UK	2003	Certification/Accreditation; Quality Management System	Guide to School Evaluation and Accreditation-Standards and Indicators	Council of International Schools	International/sub-sectoral	Nonprofit and for-profit international schools	CIS offers accreditation international schools worldwide. Schools eligible for accreditation must undergo a rigorous assessment of all aspects of school governance, management, and educational approach. The assessment process includes a continuous cycle of self-study and peer-to-peer reviews by teams of experts. The accreditation award indicates the highest level of professionalism. Training workshops are offered to accreditation candidates.	www.cois.org/page.cfm?p=3
UK	2003	Accreditation/Certification	AA1000 Assurance Standard	AccountAbility	International	NPOs	AccountAbility has developed a generally applicable standard for assessing the credibility and quality of NPO sustainability reporting. The standards are consistent with the Global Reporting Initiative's Sustainability Reporting Guidelines. Underlying the AA1000 Series is the principle of inclusively, which recognizes the right of stakeholders to be heard and the obligation of organisations to respond. A reporting organisation completes a self-assessment and contracts with an assuring organisation to legitimate its certification, which is valid for one year.	www.accountability21.net/publications.aspx?id=288

UK	2003	Registry/Database	Guidestar UK	Guidestar International	National	UK NPOs	GuideStar UK is a free searchable database providing information about charities in England and Wales. The database consists of information about charities provided from Charity Commission records and updated by charities themselves. GuideStar UK also offers a range of paid services to researchers and other specialized users. It is a participant in the GuideStar Europe project and is supported by HM Treasury, Home Office, Charity Commission, and trusts.	www.guidestar.org.uk/guidestar.aspx
UK	2005	Standards/Guidelines/ Code of Conduct	Statement of Principles for Public Benefit Entities	Accounting Standards Board	Sectoral	Public benefit charitable organisations	The Board is the UK's independent regulator responsible for promoting confidence in corporate governance. In December 1999 the Board published its Statement of Principles for Financial Reporting, intended primarily for profit-oriented entities. While believing the statement was also relevant to public benefit entities, the Board saw that some of the principles needed to reformulation or a change of emphasis. A discussion paper was issued for public comment and new guidelines for applying the principles to public benefit organisations were issued in 2007.	http://www.frc.org.uk/asb/publications/it39_p325.html
UK	2006	Standards/Guidelines/ Code of Conduct	A BOND Approach to Quality Standards	BOND	Sub-sectoral	UK international development NPOs	In answer to a report by the organisations Keystone and AccountAbility emphasizing the primacy of the beneficiary in quality standards, BOND developed a new definition of quality that requires devolving decision-making to those in the field (within appropriate control frameworks). To implement this innovative approach BOND established a working group on accountability and quality standards, a pilot group for putting accountability into action, and an "action learning set" (i.e., a paid group activity allowing NPOs to reflect on their practices) with an accountability focus. BOND acknowledge the tension between beneficiaries' interests and organisational priorities but emphasises beneficiaries interests must come first. An advisory team consists of representatives from major organisations working on accountability issues in the UK.	www.bond.org.uk/quality/standards/index.htm
UK	2006	Standards/Guidelines/ Code of Conduct	Code of Governance for the Voluntary and Community Sector	Governance Hub	Sectoral	UK NPOs	The comprehensive code of good governance was issued by the National Governance Hub, a partnership of 9 organisations working to improve governance of charities and other voluntary and community organisations. The code is a practical and easy-to-use guide to help charities develop good practices. The Governance Hub is one of 6 hubs funded in a 10-year government project to pool expertise and offer free services, information and support to the NPO sector. The Charity Commission contributed to the development of the code in partnership with NCVO, ACEVO, Charity Trustee Networks, and ICSA and encourages all charities to use it. In 2008 the Governance Hub was dismantled and its activities were absorbed by NCVO.	www.governancehub.org.uk
UK	2006	Standards/Guidelines/ Code of Conduct	Keystone Public Reporting Framework	Keystone	International/sub-sectoral	NPOs in social change field	The Keystone Framework encourages transparent reporting and the incorporation of beneficiaries' perspectives. The tools are available for use free of charge. Users are invited to comment on them online. They are consistent with efforts by the Quality and Accountability Group and the organisation AccountAbility.	www.keystoneaccountability.org/tools/download/profiler
Central/Eastern Europe	2004	Standards/Guidelines/ Code of Conduct	A Handbook of NGO Governance	European Center for Not-for-Profit Law	International	NPOs	Drafted by a voluntary working group of NPO leaders, the Handbook's aim is to provide practical, regionally grounded standards and guidelines for governing NPOs. The handbook has been translated into 14 languages, some with sector-specific introductory analyses. In some countries the Handbook has been introduced as part of a larger project of trainings and public awareness.	www.ecnl.org
Europe	2007	Certification/Accreditation	EFA Certification	European Fundraising Association (EFA)	International/sub-sectoral	Fundraising professionals	EFA is a voluntary representative body composed of associations from 14 countries. To help raise fundraising standards and promote philanthropy, the EFA has developed the first Europe-wide certification framework. The certification, developed with funding from the EU, identifies competencies that form the backbone of a robust professional fundraising qualification. EFA also offers a syllabus and guidelines to ensure successful training delivery and certifies training programs for fundraising professionals via national-level members.	www.efa-net.eu/efa_cert_miniweb/index.htm

Europe	1992	Quality Management System	EFQM Excellence Model	European Foundation for Quality Management (EFQM)	European	European business, governmental, and nonprofit organisations	EFQM defines excellence as outstanding practice in managing an organisation and achieving results. The EFQM Excellence Model is a non-prescriptive framework based on 9 criteria. 5 of these are "enablers," covering what an organisation does, and 4 are "results," covering what an organisation achieves. The summary of model: excellent results with respect to performance, customers, people, and society are achieved through leadership driving policy and strategy, which is delivered through people, partnerships and resources, and processes.	www.efqm.org
International	1979	Quality Management System	ISO 9000	International Standards Organization	International	Business, governmental, and nonprofit organisations	The ISO 9000 family of standards addresses quality management, or what the organisation does to fulfil the customer's quality needs and applicable regulatory requirements while enhancing customer satisfaction and achieving continual improvement of its performance. For NPOs this is not a widely used system, although an increasing number of organisations in Europe are adopting it.	www.iso.org
International	1997	Standards/Guidelines/ Code of Conduct	ICFO International Standards	International Committee of Fundraising Organizations (IFCO)	International	International fundraising NPOs	National accrediting bodies in numerous countries joined together to form the ICFO in 1958. ICFO helps to harmonize accreditation procedures and standards and acts as an international forum for discussion and debate on accreditation issues. ICFO has developed a set of international standards for international NPOs that directly, or indirectly through subsidiary bodies, raise funds from the public for charitable or public benefit purposes. The standards cover five key areas of governance and management: membership and responsibilities of the governing body; fulfilment of public benefit goals; fiscal control, management and reporting; fundraising practices; and provision of public information. It expects these guidelines to be determined and administered by an independent non-governmental agency or function that is separate from governmental legal and taxation oversight.	http://www.icfo.de/standards.htm
International	2005	Standards/Guidelines/ Code of Conduct	The Atlantic Code of Ethics	The Atlantic Philanthropies	International	Atlantic directors, trustees, and staff	This code sets forth standards that should be followed by individuals engaged in Atlantic Philanthropies business or activities that could reflect on the organisation. Among other values and principles, the code addresses the issue of transparency. Atlantic commits to reporting financial and other information in an accurate, appropriately complete, fair, and clear way.	http://atlanticphilanthropies.org/news/reports/code_of_ethics
International	2005	Certification/Accreditation	Certified Sustainability Assurance Practitioner Partner	AccountAbility	International	NPO practitioners	This practitioner certification is meant to compliment AA1000 series products. Three grades of certification possible with application, training, and fee (cost not readily evident on website).	www.accountability21.net/default.aspx?id=368
International	2006	Standards/Guidelines/ Code of Conduct	International Non-Governmental Organizations Accountability Charter	ActionAid International, Amnesty International, CIVICUS, Consumers International, Greenpeace International, Oxfam International, International Save the Children Alliance, Survival International, International Federation Terre des Homes, Transparency International and the World YWCA	International	International NPOs	The International Accountability Charter is said to be the first initiative to set out international, cross-sector standards for the nonprofit sector. It outlines common commitment to principles of excellence, accountability and transparency. Developed by group of leading international NPOs, the charter sets out core values and operating principles. Since its publication, adherence to the charter is voluntary. A steering group has been founded to develop an implementation process. The charter's secretariat is housed with CIVICUS.	www.ingoaccountabilitycharter.org/

International	2006	Standards/Guidelines/ Code of Conduct	International Statement of Ethical Principles in Fundraising	European Fundraising Association	International	Fundraising professionals	On behalf of EFA, the Institute of Fundraising evaluated codes of ethics provided by national bodies of fundraisers. This analysis led to the development by the EFA of an International Statement of Ethical Principles in Fundraising. The document identifies 5 key principles--honesty, respect, integrity, empathy and transparency--and 6 areas of responsibility--donations, stakeholders, communications, reporting, payments, and national laws. The statement has been ratified and adopted by national-level bodies of fundraisers.	http://www.efa-net.eu/english/dropdown_menue/codes.htm
International	2007	Standards/Guidelines/ Code of Conduct	Principles of Partnership	Global Humanitarian Platform	International	UN and non-UN humanitarian organisations	Organizations participating in the Global Humanitarian Platform agree to base their partnership on the following principles: Equality; Transparency; Result-oriented approach; Responsibility; Complementarity. Endorsed in 2007, the principles were tested in three country contexts: Indonesia, Zimbabwe, and El Salvador (as part of the Panama regional hub). Since then, organisations have been reporting on their use and providing general feedback on the PoP.	http://www.globalhumanitarianplatform.org/pop.html#pop
International	2007	Quality Management System	HAP 2007 Standard in Humanitarian Accountability and Quality Management	HAP	International	Humanitarian organisations	This is the first international voluntary self-regulation/certification scheme that verifies compliance with a standard of humanitarian accountability and quality management. By comparing an organisation's processes, policies and products to the standard's six benchmarks, it is possible to measure how well the organisation assures quality and accountability in its humanitarian work.	http://www.hapinternational.org/projects/standard/hap-standard.aspx
International	2010	Standards/Guidelines/ Code of Conduct	ISO 26000	International Standards Organization (ISO)	International	Business, governmental, and nonprofit organisations	ISO 26000 is the designation of the future International Standard giving guidance on Social Responsibility (SR). It is intended for use by organisations of all types, in both public and private sectors, in developed and developing countries. It will assist them in their efforts to operate in the socially responsible manner that society increasingly demands. ISO 26000 contains guidelines, not requirements, and therefore will not be for use as a certification standard like ISO 9001:2000 and ISO 14001:2004. The national member of Sweden and Brasil is coordinating the development of the guideline.	www.iso.org/sr