Legal Framework for The Activity of Public Benefit Organisations in The Republic of Croatia

STATE OF AFFAIRS ON 30 SEPTEMBER 2005

Mladen Ivanović

Public Benefit Status: A Comparative Overview

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Nacionalna zaklada za razvoj civilnoga društva

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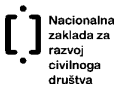

Foreword

Since 2002, there have been discussions of various intensity in Croatia on the need to define and regulate the status of Public Benefit Organisations.

Some of those who advocated that Public Benefit Organisations should have a recognised status were prompted by the large increase in registered NGOs whose numbers grew from 15,793 in 1999 to nearly 28,000 in 2005.

However, a more valid reason, according to the second group of advocates, was the need to differentiate, as in the case of other countries, between those NGOs that act for the public benefit, and those that have been established with the goal of satisfying the needs of their members.

Those who do not press for the introduction of PBO status claim that there is no such legal practice in Croatia, that is, regulating such a status is more suitable for countries that have a certain developed tradition and mechanisms for registering and monitoring the work of Public Benefit Organisations,

As early as 1998, the House of Representatives of the Croatian National Parliament in its *Decision on the Standards for Establishing Associations Whose Activity is of Interest to the Republic of Croatia, and Granting Financial Support to Associations from State Budget Funds* (Official Gazette 86/98) made an attempt to introduce the concept of organisations which acted for the general good by introducing the term association "whose activity is of interest to the Republic of Croatia".

In order to provide an expert basis for further discussion on this topic, the National Foundation for Civil Society Development, in cooperation with the European Centre for Not-for-Profit Law from Budapest, prepared this brochure which is divided into two parts: (1) analysis of the current

legal framework where PBOs are more or less recognised, and (2) international overview of the status of Public Benefit Organisations to help all interested parties to learn about the solutions achieved in other European countries.

The authors of the two texts in the brochure faced a special challenge, and so did the translators, since there is no harmonised terminology to designate Public Benefit Organisations. For this reason, the Croatian text in most cases uses a descriptive definition, such as "organisations that act for the general benefit", "organisations acting for the public benefit", "organisation performing activities of public interest", etc. This shows that there is a need to find a unified term, but also a description of what we mean by this term, in the sense of performing activities for the public benefit.

In addition, it is necessary to define what privileges PBOs will have, in what way this will be regulated, and who will approve their status.

This brochure offers some proposals and provides the opportunity to apply the best practices of countries where the legal framework of PBOs' activities has already been defined.

We owe special thanks to Mr Mladen Ivanović who conducted a quality analysis of the current legal framework in Croatia, and to Mr David Moore who prepared the international overview of legal framework solutions for PBOs. We would also like to thank the Academy for Educational Development which, with the support of USAID - US Agency for International Development – enabled, through its financial assistance, the preparation and printing of this brochure.

We believe that this small, professional contribution will offer additional support to the Government Office for Cooperation with NGOs and the Council for the Development of Civil Society in their efforts to open a broad public discussion on the possibility of introducing the status of Public Benefit Organisations in the legal framework of the Republic of Croatia.

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I
INTRODUCTION

NGOs which act for the public benefit (Public Benefit Organisations or PBOs) are a counterweight to organisations founded with the aim of satisfying the needs of its members (Mutual Benefit Organisations – MBOs). On the one hand, public benefit is achieved by their mere activity, and on the other, it is achieved by the fact that such NGOs often take on the activities which would otherwise be implemented by central or local government had it not been for these NGOs. PBOs also add value to the activities run by the central or local government and provide them with additional, richer content. The very feature of public benefit imposes the need to create a legal framework to stimulate PBOs and to facilitate their work.

The political and legal framework of the former Socialist Federative Republic of Yugoslavia was not conducive to the free development of institutions of civil society, which meant that the Republic of Croatia entered the 1990s without a clear perception of its importance and without any idea about the importance of PBOs. This fact significantly slowed down the development of the legal framework regulating the status and activity of PBOs. For instance, the Humanitarian Aid Act adopted in 1992 defined the idea of public interest,[1] but it did not determine any benefits for PBOs. Even a few years after that (1995), the Act on Foundations and Funds established, among other things, that "by means of suitable regulations, *the state stimulates and facilitates the work of foundations*" (Article 17, paragraph 1 of the Act). Despite that, during the 1990s, no legal framework existed to stimulate the activity of foundations or other PBOs.

1 In Article 3, this Act specifies: "Public interest, in the meaning of this Act, implies especially the forms of humanitarian aid which aim to protect the health of the population, ensure and improve the quality of life, especially accommodation, housing and nutrition, the conditions of education, and assistance in the reconstruction of housing, public and other facilities."

The end of the 1990s finally brought along some changes because the legal system started to pay more attention to PBOs. However, the issue of their legal status has not been solved systematically. Instead, it has been dealt with only sporadically, by disconnected provisions in different Acts.

The Acts relevant for the legal status and activity of PBOs, and which are in force at the time of writing this overview, have been categorised, for clearer understanding, in three groups: firstly, there are Acts which regulate the legal status of specific kinds of non-profit organisations and which contain provisions on PBOs. Secondly, there are Acts which prescribe privileges for PBOs, and finally, there is the Act which comprehensively regulates the legal status of the Croatian Red Cross and the Act which regulates fire protection activity. Within each group, Acts are presented chronologically, according to the date when they were passed.

II
ACTS REGULATING THE LEGAL STATUS OF NON PROFIT ORGANISATIONS WHICH CONTAIN PROVISIONS ON PBOS

II.1 Act on Foundations and Funds
(OFFICIAL GAZETTE, NO. 36/95 AND 64/01)

The Act on Foundations and Funds expressly sets out that foundations and funds may (but do not have to) act for the public benefit. When defining the concept of the foundation and fund, the Act, among other things, stipulates the following:

"ARTICLE 2

In the meaning of this Act, a foundation is an asset whose aim is, by means of the resources it raises, to achieve autonomously and permanently a purpose which produces **public benefit** or some charity purpose.

In the meaning of this Act, a fund is an asset whose aim is, within a certain time period, to achieve a purpose which produces **public benefit** or some charity purpose."

Apart from providing for the possibility that foundations and funds act for the public benefit, which is included in the Croatian term "*općekorisno*", Article 2, paragraph 3 of the Act also defines the "*purpose which produces public benefit*":

"In the meaning of this Act, any purpose which produces public benefit is that purpose whose achievement generally promotes cultural, educational, scientific, spiritual, moral, sports, health, ecological and any other social activity or purpose or improves the material situation of society."

The concept of public benefit (acting for the public benefit or public good), as prescribed by the Act on Foundations and Funds, does not necessarily mean that public benefit should relate to the whole community. Public benefit can also mean acting for the benefit of a target group only (Article 2, paragraph 5):

"The purpose of the Foundation which produces public benefit, or its charity purpose, is achieved even when it concerns only the persons who belong to a certain class, profession, national, linguistic, cultural, scientific or religious group or something similar, or to a certain circle of persons, or persons who live in a specified area, or people who are included in the activity of a certain organisation, institution or other legal person…".

This definition includes a wide range of foundations within the range of foundations whose purpose is to produce public benefit, including public foundations and private (family) ones.

The purpose of the foundation or fund which produces public benefit must be specified in its founding document (Article 4, paragraph 2, item 3). Whether the purpose that the founder of the foundation or fund anticipated is actually considered to produce public benefit is decided upon by a registration body,[2] on the basis of the already quoted provisions which define the term and content of the purpose of foundations and funds which produce public benefit."

Article 17 of the Act stipulates the obligation of the state to build a legal framework to facilitate the work of foundations and funds that act for the public benefit:

"B*y means of suitable regulations, the state stimulates and facilitates the work of foundations*."

…

The assets of the foundation as well as its income enjoy special tax benefits.

Special laws will regulate the issues concerning the type and amount of tax benefits and tax preferences for founders, donors and users of foundations.

Special laws may determine obligatory contributions to certain foundations from the income raised by games of chance or from the profit made by certain public corporations."

Since the purpose whose effect produces public benefit is one of the possible purposes of the foundation or the fund, the loss of this feature

2 Article 2 paragraph 6 of the Act sets out, among other things, that: "affairs related to the establishment and work of foundations, including the issues specified by this Act, are dealt with by the Ministry responsible for the affairs of general administration…". However, by passing the Act on the Structure and Scope of Affairs of Ministries and State Administrative Organisations (Official Gazette, no. 199/03), the Ministry responsible for the affairs of general administration ceased to exist, so that these affairs are dealt with by the Central State Office for Administration, under whose competence, among other things, is the registration of foundations and funds.

represents one of the possible reasons for the termination of a foundation or fund. In connection with this, Article 25, paragraph 1, item 3 of the Act stipulates that the foundation is terminated "*...if the purpose of the foundation no longer produces public benefit...*".

II.2 Act on Association

(OFFICIAL GAZETTE, NO. 88/01)

Although non-government associations are the most frequent type of organisations of civil society in Croatia,[3] so that the largest number of PBOs are registered in the form of an organisation, the Act on Associations does not contain special provisions on PBOs. There is only one provision which indicates that the legislator, when passing the Act, anticipated the difference between PBOs and MBOs. When the Act deals with the issue of funds granted from the state budget, Article 23, paragraph 1 sets out:

"The Government of the Republic of Croatia, on the basis of a published tender, grants funds from the state budget to associations for a project or programme which is of special interest for the general/public good in the Republic of Croatia." [4]

Paragraph 3 of the same provision sets out that only associations registered in the Register of NGOs may submit a tender to obtain a grant from the state budget. This represents an additional criterion (registration) for associations which, based on the fact that they implement a programme or project which produces benefits for the general good, have a right to apply for a grant from the state budget.

3 The published data show that there are about 25,000 registered NGOs in the Republic of Croatia.

4 From 1998 to 2003, this method of financing was implemented by individual ministries and the Office for NGOs of the Republic of Croatia. At the end of 2003, the National Foundation for Civil Society Development was established which took over the task of financing PBOs from the Office for NGOs.

II.3 Humanitarian Aid Act

(OFFICIAL GAZETTE, NO. 96/03)

Pursuant to the provision set out in Article 2 of the Humanitarian Aid Act, this Act only applies to NGOs, religious communities and other domestic and foreign non-profit legal persons registered in the appropriate Register in the Republic of Croatia, whose statutory aim, among others, is to provide humanitarian aid. These organisations are referred to in the Act by the single term "humanitarian organisations". The given provision which determines the scope of organisations addressed by this Act implies that there are at least three requirements that humanitarian organisations must fulfil for this Act to apply to them: it has to be a non-profit organisation; the organisation must be a legal person, in other words, it has to be registered or at least entered in the appropriate register; and, thirdly, the provision of humanitarian aid must be one of its activities, or that activity must be determined by the statute. Furthermore, Article 4, paragraphs 6 and 7 of the Act explicitly specify that non-profit persons (informal organisations, citizen initiatives) may occasionally provide humanitarian aid in the form of material goods for satisfying the basic living needs of the users referred to in Article 1 of the Act without the consent of the Ministry, if they inform the Ministry in advance of such intention. However, the same Article also specifies that these non-profit legal persons (those which provide humanitarian aid without the consent of the Ministry) do not enjoy the legal status of a humanitarian organisation pursuant to this Act.

Pursuant to the provision set out in Article 3, paragraph 1 of the Act, humanitarian organisations which provide humanitarian aid in order to protect the health of the population, ensure and improve the quality of life, especially accommodation, housing and nutrition, ensure conditions for education, provide assistance in the reconstruction of housing, public and other facilities, bring together and organise work with children and young people and persons with special needs, whose provision of aid is not conditioned by membership, act for the public benefit and as such enjoy special legal status. In addition, paragraph 3 of the same Article sets out that humanitarian organisations, but also citizens and legal persons which support them (donate to them), enjoy customs, tax and other benefits determined by special regulations.

The Act regulates the procedure of acquiring the legal status of a humanitarian organisation. Pursuant to the provision of Article 4, paragraph

1 of the Act, a legal person acquires the status of a humanitarian organisation after it has obtained consent for providing humanitarian aid from the Ministry of Labour and Social Welfare. After the changes in the organisation of the state administration and after the abolishment of the Ministry of Labour and Social Welfare, this competence, we suppose, belongs to the Ministry of Health and Social Welfare.[5]

The reasons for which a humanitarian organisation may lose its privileged status are specified in Article 7, paragraph 1 of the Act:

The Ministry shall, by virtue of its position or upon the proposal of the administrative body of the unit of local self-government responsible for the affairs of social welfare, pass a decision on repealing the legal status of a humanitarian organisation referred to in Article 3 paragraph 1 of this Act and it shall delete the humanitarian organisation from the Register referred to in Article 8, paragraph 1 of this Act, when the supervision implemented determines one of the following cases:

1. status-related changes and changes in work due to which the humanitarian organisation no longer fulfils the requirements referred to in Article 2 and Article 3, paragraph 1 of this Act,
2. failure to correct irregularities in work which were indicated by the administrative body of the unit of local self-government competent for the affairs of social welfare or by the Ministry in the implementation of inspection,
3. non-earmarked use of humanitarian aid, and
4. provision or lack of provision of aid which brings into question the health, safety and dignity of the beneficiary as a person.

Pursuant to paragraph 3 of the same Article, the decision on repealing the status of a humanitarian organisation shall be passed also at the request of the humanitarian organisation itself.

5 Although the Act on the Structure and Scope of Affairs of Ministries and State Administration Organisations does not determine which ministry registers humanitarian organisations, the nature of things suggests that this should fall within the competence of no other ministry than the newly established Ministry of Health and Social Welfare.

II.4 Act on the Legal Status of Religious Communities

(OFFICIAL GAZETTE, NO. 83/02)

The Act on the Legal Status of Religious Communities does not explicitly determine religious communities as non-profit legal persons which act for the public benefit, but it does contain provisions which imply such a type of activity of religious communities. Namely, listing the possible sources of funds of a religious community, Article 17, paragraph 1, item 3 of the Act specifies that a religious community raises funds "...BY PERFORMING CHARITABLE, EDUCATIONAL, CULTURAL, ARTISTIC OR OTHER ACTIVITY WHICH PRODUCES PUBLIC BENEFIT...". In addition, paragraph 2 of the same Article sets out that funds from the state budget shall be granted to a religious community whose yearly amount shall be determined depending on the type and significance of religious facilities (cultural, historical, artistic, etc.) and depending on the activity of the religious community in educational, social, health, and cultural areas and its contribution to national culture, as well as on the humanitarian activity of the religious community and its activity which produces public benefit.

III
ACTS REGULATING PREFERENCES AND BENEFITS FOR PBOS OR FOR INDIVIDUALS AND LEGAL PERSONS WHO SUPPORT PBOS

III.1 Act on the Organisation of Games of Chance and Prize Games

(OFFICIAL GAZETTE, NO. 83/02 AND 149/02)

Directly addressing PBOs goes beyond the framework of the content of the Act on the Organisation of Games of Chance and Prize Games. However, the provisions which deal with the allocation of income from games of chance and prize games suggest the type of NGOs that the legislator considers as organisations which act for the public benefit and to which the right is given to a share of income from games of chance and prize games. The provision of Article 10 of the Act sets out, among other things:

"*The Government of the Republic of Croatia shall determine, by means of a regulation, the criteria for determining the users and method of allocation of income from games of chance for financing the programmes of organisations which:*

— promote the development of sport,
— contribute to the fight against drugs and other forms of addiction,
— deal with social and humanitarian activity,
— deal with problems of disabled persons and satisfying their needs,
— deal with technical culture,
— deal with culture,
— deal with extra-institutional education of children and young people,
— contribute to the development of civil society....".

Apart from organisations which are active in all the above-stated areas, Article 67, paragraph 2 of the Act, in the segment which defines the concept and method of organisation of prize games, prescribes that organisers of prize games shall pay 5% of the fixed value of the fund of prize games for the benefit of the Croatian Red Cross. This clearly determines that the Croatian Red Cross is an organisation which the legislator considers an organisation acting for the public benefit (which is confirmed by the passing of a special Act on the Croatian Red Cross).

The Regulation on criteria for determining the users and method of allocation of part of the income from games of chance (Official Gazette, no. 68/03) details more precisely the method of allocating part of the income from games of chance. Article 2 of this Regulation stipulates:

"*The criteria for the allocation of funds are determined in accordance with national strategies and programmes for satisfying public needs in appropriate activities, and in accordance with the programmes for stimulating the development of civil society, and are shown in the share of particular programme activities in the total share of the income from games of chance, defined by Article 10, paragraph 2 of the Act.*

The distribution of a share of funds from games of chance determines that these funds are allocated to organisations in the following manner:

1. 30 % to organisations which promote the development of sport,
2. 8 % to those which contribute to the fight against drugs and other forms of addiction,
3. 4 % to those which deal with social and humanitarian activity,
4. 28 % to those which deal with the problems of disabled persons and satisfy their needs,
5. 6.5 % to those which deal with technical culture,
6. 5 % to those which deal with culture,
7. 4 % to those which deal with extra-institutional education of children and young people,
8. 14.5 % to those which contribute to the development of civil society".

Article 3, paragraph 1 of the Regulation which regulates the method of allocating funds from the state budget makes it even clearer which organisations, or types of organisations, are considered organisations acting for the public benefit:

"The funds referred to in Article 2 of this Regulation which are paid on the state budget account of the Republic of Croatia, thus making part of its income, are allocated in the state budget in the following way:

1. funds from Article 2, paragraph 2, item 1, to the Ministry of Education and Sports, for activity 577030 - Promotion of the programme of public sports needs (Croatian Olympic Committee – 93.33%) and activity 577031 – promotion of sports activities by disabled persons (Croatian Sports Federation of Disabled Persons – 6.67%);
2. funds from Article 2, paragraph 2, item 2, to the Ministry of Health, for activity 618042 – Other health programmes;
3. funds from Article 2, paragraph 2, item 3, to the Ministry of Health, for activity 618007 - current grants to NGOs in the country (Croatian Red Cross - 50%) and to the Ministry of Labour and Social Welfare, for activity 583049 - Humanitarian and donor activities (organisations which deal with social and humanitarian activity - 50%);
4. funds from Article 2, paragraph 2, item 4, to the Ministry of Labour and Social Welfare, for activity 583049 - Humanitarian and donor activities (programmes of NGOs for disabled persons, for the purpose of improving the quality of their lives);
5. funds from Article 2, paragraph 2, item 5, to the Ministry of Education and Sports, for activity 577028 - Programmes of technical culture;
6. funds from Article 2, paragraph 2, item 6, to the Ministry of Culture, for activity 565003 -Basic activity of NGOs in culture;
7. funds from Article 2, paragraph 2, item 7, to the Ministry of Education and Sports, for activity 577000 – Administration (extra-institutional education of children);
8. funds from Article 2, paragraph 2, item 8, to the Government of the Republic of Croatia - the Office of the Government of the Republic of Croatia for NGOs, for activity 509014 - NGOs for the Development of the Community (96.55%) and to the Ministry of Foreign Affairs, for activity 556000 - Administration and secretariat (programmes of organisations which support cooperation between countries - friendship organisations 3.45%)".

III.2 Value Added Tax Ac

(OFFICIAL GAZETTE, NO. 47/95, 106/96, 164/98, 105/99, 54/00, 73/00, 127/00, 48/04 , 82/04 AND 90/05)

Article 11 of the Value Added Tax Act regulates exemption from VAT payment. Among other things, VAT is not paid on services and the delivery of goods by religious communities and institutions. Item 10 of the stated Article sets out that services and the delivery of goods by freelance artists and artistic organisations are exempt from the payment of VAT. Although the term "organisation" in this context may not be very precise, it certainly includes registered non-profit artist organisations.

The Regulation on Value Added Tax, in Article 70, item 1, prescribes that the temporary duty-free import of goods is exempt from VAT payment, as is the final import of humanitarian aid, except petrol and petroleum products, tobacco and tobacco products, alcohol and alcoholic drinks. Humanitarian aid (in the meaning of Article 12, items 1 and 12 of the Act) includes: the import of goods for the needs of humanitarian organisations (equipment, operating supplies) and for the programmes of assistance that these organisations provide; donations of goods when foreign donors give them to health, educational, cultural, scientific, religious and social institutions, sports amateur clubs and bodies of state, local and regional self-government; as well as imports by the same parties which are paid for from received foreign pecuniary grants.

III. 3 Profit Tax Act

(OFFICIAL GAZETTE, NO. 177/04 AND 95/05)

By establishing who is a tax payer, Article 2, paragraph 6 of the Act stipulates that state institutions, institutions of the units of regional self-government, institutions of the units of local self-government, state institutes, religious communities, political parties, trade unions, chambers, NGOs, artistic organisations, voluntary fire protection societies, technical culture communities, tourism communities, sports clubs, sports societies and associations and foundations and funds are exempt from paying profit tax. Only exceptionally, as defined by paragraph 7 of the same Article, if these legal persons perform economic activity and if the non-taxation of this activity would lead to the acquisition of unjustifiable ben-

efits in the market, shall the Tax Administration, at its own discretion, or at the proposal of other tax payers or stakeholders, issue a decision that these persons are subject to the payment of profit tax for that activity.

In stipulating the expenditure which reduces the profit tax base, Article 7, paragraph 7 of the Act sets out that the expenditure of the taxation period also includes donations in kind or in money, made in the country for cultural, scientific, educational, health care, humanitarian, sports, religious, ecological or any other purpose which produces public benefit, to NGOs and other persons who perform the mentioned activities pursuant to special regulations, in an amount not higher than 2% of income realised in the previous year. Exceptionally, the amount may be higher than 2% of the income of the previous year if this is determined in decisions made by competent ministries on the implementation of the financing of special programmes and actions.

III.4 Income Tax Act

(OFFICIAL GAZETTE, NO. 177/04)

In determining the issue of expenditure that the income tax payer may use for reducing the tax base, Article 36, paragraph 27 of the Income Tax Act sets out that tax payers may increase personal deductions for donations made in the country for cultural, educational, scientific, health, humanitarian, sports and religious purposes, in kind and in money, remitted to the giro account of organisations and other persons that deal with these activities pursuant to special regulations, in an amount not higher than 2% of receipts for which an annual tax return was filed and for which yearly income tax was established in the previous year. Exceptionally, personal deductions are increased for donations in an amount higher than that prescribed, provided that they have been made pursuant to decisions passed by competent ministries on the implementation and financing of special programmes and actions, but not for the ordinary activity of the person who receives the donation.

III.5 Customs Act

(OFFICIAL GAZETTE, NO. 78/99)

The Customs Act contains several benefits for PBOs. The provision of Article 187, paragraph 1, item 5 prescribes that exemption from the payment of customs duties applies to goods which satisfy basic human needs, such as food, medicine, clothes, bedding, hygienic items and similar things, which registered humanitarian organisations import for free distribution to people in danger and victims of natural disasters and other catastrophes. So, in this case, benefits relate to humanitarian organisations, but not to any other type of organisation, provided that those humanitarian organisations are registered. The third criterion for exemption is that exemption shall be granted only to those organisations whose book-keeping records and procedures enable the Customs Administration to check the affairs related to these goods.[6]

Furthermore, item 6 of the above-quoted provision prescribes that exemption from payment of customs duties applies to humanitarian organisations and associations of blind, deaf and people with a hearing disability and persons suffering from muscular and neuromuscular illnesses for specific equipment, machines and instruments, and spare parts and operating supplies for the needs of those persons, which are not manufactured in the country.

Item 16 prescribes that exemption from the payment of customs duties applies to goods which were, in the form of donation, given to institutions in culture and other non-profit legal persons in culture, freelance artists or artists for performing their activity, and on the basis of the opinion given by the Ministry of Culture.

6 The quoted provision further stipulates that exemption does not refer to alcohol and alcoholic drinks, tobacco products and motor vehicles.

III.6 Judicial Charges Act

(FINAL TEXT: OFFICIAL GAZETTE, NO. 26/03)

Exemptions provided for in the Judicial Charges Act which relate to PBOs are scant. The provision of Article 15, paragraph 1, item 9 prescribe that that exemption from the payment of charges applies to humanitarian organisations and organisations which deal with the protection of disabled persons and families of dead, missing and imprisoned people in performing humanitarian activity. In addition, paragraph 4 sets out that this exemption applies to those humanitarian organisations which are selected by the Minister of Labour and Social Welfare.[7]

III.7 Act on Tax on Real Estate Transactions

(OFFICIAL GAZETTE, NO. 69/97 AND 153/02)

The provision of Article 11, paragraph 1, item 1 of the Act on Tax on Real-Estate Transactions prescribes that exemption to pay tax on real estate transactions applies to the Republic of Croatia and units of local self-government and government, state bodies, public institutions, foundations and funds, the Red Cross and similar humanitarian organisations founded pursuant to special regulations.

III.8 Administrative Charges Act

(OFFICIAL GAZETTE, NO. 8/96, 77/96, 131/97, 68/98, 66/99, 145/99, 30/00, 116/00, 163/03, 17/04, 110/04 AND 141/04)

Pursuant to the provision of Article 6, item 2 of the Act, exemption from the payment of administrative charges applies to, among others, institutions of pre-school education, education, science, culture, protection of cultural and natural heritage, health, social welfare and humanitarian organisations in performing their activity. Item 3 prescribes that exemption from the payment of administrative charges applies to organisations for disabled persons and similar organisations in performing their activity.

III.9 Act on Administrative Charges in the Area of Intellectual Property Rights

(OFFICIAL GAZETTE, NO. 64/00 AND 160/04)

Exemption from the payment of charges in this Act is almost identical to the Administrative Charges Act. Pursuant to the provision of Article 8, paragraph 1, item 1, exemption from the payment of administrative charges in the area of intellectual property rights applies to institutions in the area of pre-school education, education, culture, protection of cultural and natural heritage, health, social care and humanitarian organisations in performing their activity. Item 2 provides for the expansion of exemption to disabled persons and their organisations in performing their activity, and item 4 applies to disabled war veterans and their organisations in performing their activity.

7 As already mentioned in footnote 5, today this would be done by the Minister of Health and Social Welfare. However, the provision is somewhat imprecise because it is not quite clear whether the Minister of Labour and Social Welfare should pass a special law on the right to exemption from the payment of judicial charges, or if the right to exemption will apply to all humanitarian organisations which acquire this status pursuant to the provisions of the Humanitarian Aid Act.

IV
ACTS REGULATING THE LEGAL STATUS OF SPECIAL PBOS

IV.1 Fire Protection Act

(OFFICIAL GAZETTE, NO. 139/04-EDITED TEXT AND 174/04)

The provision of Article 1, paragraph 2 of the Fire Protection Act sets out that fire protection is a professional and humanitarian activity of interest for the Republic of Croatia. By determining fire protection as an activity of public interest, the legislator defines the legal status of organisations which perform this activity. Article 2, paragraph 1 of the Act sets out that fire protection is performed by fire protection units, voluntary fire protection societies and fire protection communities as professional and humanitarian organisations which exercise rights to benefits and preferences, pursuant to regulations.

Article 6 defines the legal status of non-professional fire protection units. Paragraph 1 prescribes that voluntary fire protection societies and fire protection communities are established, work and are terminated pursuant to the provisions of the Act which provides for the establishment and activity of organisations, unless this Act specifies otherwise, while paragraph 2 explicitly specifies that **voluntary fire protection societies and fire protection communities are of interest for the Republic of Croatia**.

By defining the method of financing fire protection units, the Act in Article 44 states that a representative body of a municipality, town, and the City of Zagreb may, in order to finance the ordinary activity of public fire protection units and voluntary fire protection societies, pass a decision to introduce or increase communal fees for the needs of financing fire protection.

Article 48, paragraph 2 of the Act prescribes that public fire protection units, voluntary fire protection societies and fire protection communities are wholly exempt from the payment of value added tax on invoices for the purchase of equipment, material, and services for the purpose of performing their activity.

Additional benefits for purchasing equipment are specified in Article 49, paragraph 1 of the Act: a municipality, town and the City of Zagreb which have a public fire protection unit, voluntary fire protection societies, fire protection communities and legal persons which have professional fire protection units within their business activity and voluntary fire protection societies also within their business activity are exempt from the payment of charges on purchased or donated fire engines, fire equipment, fire extinguishers and spare parts. Furthermore, paragraph 2 specifies that voluntary fire protection societies and fire protection communities in paying communal services determined by the Act on Public Utilities Management bear costs identical to those of households and use autonomously currency funds which they realise through the contributions of legal and physical persons.

IV.2 Act on the Croatian Red Cross

(OFFICIAL GAZETTE, NO. 92/01)

The special status of the Croatian Red Cross (hereinafter: CRC) is defined in Article 1 of the Act which lays down that the CRC is a national, humanitarian and voluntary association of communities of organisations of county Red Cross associations and organisations of town and municipal Red Cross associations (hereinafter the Croatian Red Cross) which act on the basis of the principles of the international movement of the Red Cross and Red Crescent and enjoys the special protection and care of the Republic of Croatia.

Special protection and care is evident in the provision of Article 12, paragraphs 2, 3 and 4 which determine part of the sources of funds for financing the activity of the CRC:

"...

From the paid residence fees, 15% is earmarked for the lifeguard service at the seaside and for the ecological protection of the coastal area.

From the compulsory insurance of motor vehicles, 1% is earmarked on a yearly basis for the benefit of the CRC to promote activities for providing first aid with a view to decreasing the number of car accidents.

From one share of the funds that the Croatian Lottery allocates to humanitarian support, 51% is earmarked for the benefit of the CRC for performing the affairs and tasks referred to in Articles 9 and 11 of this Act."

Article 14 specifies additional sources of funds for the CRC:

"...

— 0.2% of the funds from the budget of a municipality, town and county is earmarked for the work and activity of the tracing service at the respective municipality, town and county levels and funds allocated to the National Tracing Service from the state budget are provided pursuant to the defined plan of work and international obligations,
— for public authority and ordinary activities, from 0.5% to 1.8% of funds are earmarked from the budget of a municipality, town and county.

..."

The Act also prescribes benefits for those who donate to the CRC. Thus, Article 15 of the Act prescribes that tax deductible expenses for taxpayers who are physical and legal persons include all outflows of goods with pecuniary value (money, goods and services) provided without compensation to the CRC pursuant to the law.

A series of concrete benefits to the CRC is specified in the provision of Article 20 of the Act:

"The Croatian Red Cross shall enjoy the following benefits:

1. it is exempt from the payment of taxes and contributions on income from its movable and immovable property, gifts and inheritance,
2. it is exempt from the payment of taxes and contributions on realised income from shows, concerts, lectures, etc., and lotteries that it organises, which income is earmarked for humanitarian purposes,
3. it is exempt from the payment of taxes and contributions for producing promotional and educational materials,
4. it may organise one lottery draw a year aimed at the programme for voluntary blood donation, with an exemption from paying the organiser's fees,
5. it is exempt from the payment of fees on submissions to state bodies,
6. it is entitled to a discount for the transport of goods and persons by means of public transport, a discount for group trips and it is exempt from the payment of toll for using highways and toll booths for vehi-

cles of the Croatian Red Cross. The discount in the transport of persons who carry the Red Cross identity card and the discount in group trips (the group consisting of at least five persons) is established in the amount of 50% of the fare. It is exempt from the payment for the public transport of goods which constitute humanitarian aid. The funds which compensate public transporters for the services provided are provided from the state budget and are paid pursuant to the rules passed by the Minister of Finance,

7. it is exempt from the payment of post, telephone and fax services for the tracing service and at the time of a major natural, ecological or other disaster, with the effect of massive destruction, at the time of epidemics and armed conflicts, for calls for voluntary blood donations, and for all sorts of shipments of the Croatian Red Cross,
8. in the payment of communal services, it bears costs identical to those of households,
9. the zero rate of VAT applies to the purchase of humanitarian aid and to the provision of services within the activity of the Croatian Red Cross, pursuant to the law,
10. it is exempt from the payment of customs duties pursuant to the law,
11. it uses autonomously the currency funds it realises."

V
ON THE CONSISTENCY OF REGULATIONS REGULATING THE LEGAL STATUS AND PRIVILEGES OF PBOS

The legal system of the Republic of Croatia has only in recent years taken a clearer stand regarding PBOs, which triggered the creation of a system which defines the legal status of such organisations and which defines the privileges which these organisations, depending on their activity, enjoy. The most clearly defined is the position of voluntary fire protection societies and the Croatian Red Cross. Special laws not only define their position, but also specify the largest part of concrete benefits that these organisations enjoy in financing or performing their activities.

The Act on Tax on Real-Estate Transactions and the Act on the Organisation of Games of Chance and Prize Games particularly emphasise the Red Cross as one of the organisations which enjoys special benefits, either by exemption of payment of tax on real-estate transactions or by the special allocation of funds raised by games of chance.

Along with the mentioned exception, special regulations which provide for benefits for PBOs generally address certain categories of organisations according to their activity, and not individual organisations. Of the represented groups of organisations according to their activity, the following should be emphasised:

a) **humanitarian organisations**

Humanitarian organisations and humanitarian aid are present in the already mentioned regulations. However, we have to take into account that the syntagm "humanitarian organisation" is not used consistently in various regulations. One of the reasons for this may lie in the fact that the Humanitarian Aid Act, which clearly defines the concept of a humanitarian organisation, was passed subsequent to most of the other regulations which regulate the benefits for PBOs. Therefore, some regulations clearly

show that a certain benefit is applied to humanitarian organisations which have acquired a privileged position pursuant to the Humanitarian Aid Act, while in others the concept of a humanitarian organisation may be interpreted so as to include all organisations whose activity is fundamentally and by the nature of things humanitarian.

b) **organisations for disabled persons**

Organisations for disabled persons come second in representation in regulations which prescribe certain benefits for PBOs. The generic term "organisations for disabled persons" is mainly mentioned in this context, without determining some of the leading organisations. Still, the Regulation on the Criteria for Determining the Beneficiaries and Method of Allocating Part of the Income from Games of Chance mentions in particular the Croatian Sports Federation of Disabled Persons as one beneficiary of funds from games of chance. The Administrative Charges Act, in the area of intellectual property, stresses particularly "disabled persons and their organisations" and "disabled war veterans and their organisations". Apart from that, even the customs law mentions associations of blind and deaf persons and persons with a hearing disability, and persons suffering from muscular and neuromuscular diseases in exercising certain benefits.

c) **organisations of social welfare**

Organisations of social welfare are inconsistently addressed in regulations which deal with benefits for PBOs. They are explicitly mentioned only in the Administrative Charges Act, the Act on Administrative Charges in the Area of Intellectual Property and the Regulation on Criteria for Determining the Beneficiaries and Method of Allocation of Part of the Income from Games of Chance. Other regulations do not mention these organisations explicitly, which means that certain categories of benefits easily "slip past" them, or that in exercising these benefits they are left to the discretionary assessment of administrative bodies.

d) **organisations in culture**

Organisations in culture are represented in the distribution of funds from the organisation of games of chance, as in most regulations which deal with benefits for PBOs, but not in all. For instance, organisations in culture are not exempt from the payment of tax on real-estate transactions, or from judicial charges.

e) **organisations in education**

These organisations are not represented in the allocation of funds from the organisation of games of chance, nor do they enjoy customs benefits or exemptions. Furthermore, these organisations are not exempt from the payment of judicial charges and tax on real-estate transactions. Even in regulations in which they are represented, organisations in education are inconsistently described. Namely, some regulations use three related Croatian terms for education: "*odgoj i obrazovanje*", "*obrazovanje*" and some mention the term "*prosvjeta*".

f) **scientific organisations**

Scientific organisations are not recognised in all the regulations which deal with benefits for PBOs. Namely, scientific organisations are not represented in the Customs Act, the Judicial Charges Act, and the Act on Tax on Real-Estate Transactions.

g) organisations in the area of health

These organisations are partly represented in the allocation of funds from the organisation of games of chance (as support to organisations which "*contribute to the fight against drugs and all other types of additions...*"). However, they are overlooked in the Customs Act, the Judicial Charges Act and the Act on Tax on Real-Estate Transactions.

h) **sports organisations**

Sports organisations are included in respect of the allocation of funds from the organisation of games of chance (as support to organisations "*which promote the development of sport...")*, and in some tax regulations. However, the Customs Act and some other laws do not perceive sports organisations as PBOs.

The aforementioned Acts illustrate that the Croatian legal system has no clear definition of a PBO, and consequently benefits for such organisations are not consistently specified either. Some types of organisations have been clearly recognised as public benefit organisations, so that they are represented in all or almost all the regulations which provide for certain benefits (e.g. humanitarian organisations and organisations which deal with the protection of disabled persons). However, the legal status of some organisations which perform an activity which might be considered a public benefit activity (e.g. organisations in culture) is not consistently pro-

vided for, so that one regulation exempts them from a material obligation and another, although it could have the same legal grounds, does not list them as privileged.

The danger of the approach taken by the Croatian legislator, in which every particular regulation states the type of organisation which is entitled to certain benefits on the grounds of its position in terms of public benefit, lies in the fact that in such listing, some type of organisation is easily skipped, even though it definitely produces public benefit. For instance, none of the previously mentioned regulations includes within the category of privileged organisations those which deal with the protection of the human environment or with the protection of human rights, although the nature of the public benefit they produce is unquestionable.

In addition, in some cases, determining the user of the benefit or the conditions for exercising the benefit is imprecisely defined or defined in a generalised way, which leaves room for discretionary assessment by the competent body on whether or not a certain organisation meets the requirement for realising a certain benefit, which leads to legal uncertainty. An organisation is not completely sure, until the final decision, whether or not it will realise the benefit specified by the law.

The fact that some organisations are represented in the allocation of funds raised by the organisation of games of chance, but do not enjoy benefits pursuant to special regulations, is completely illogical. This actually means that on the one hand the state gives these organisations significant amounts of money, just because it wishes to stimulate their activity which produces public benefit, but on the other, it takes money away from them by way of certain charges. Similarly, there are no grounds for an organisation to be exempt on one hand from the payment of administrative charges, but subject on the other hand to paying judicial charges.

As for terminology, in the aforementioned laws it is not easy to determine what public benefit organisations are. Only the Humanitarian Aid Act uses the notion of acting for "the public benefit", the Act on the Legal Status of Religious Communities uses the term "activities beneficial to the public", while the Fire Protection Act stipulates that fire protection is an "activity of public interest". All the other above-mentioned regulations do not use any of the terms given in the previous sentence. Instead, the relation of the legislator toward specific kinds of organisations derives from the privileges this organisation enjoys in relation to other organisations, so that it implies that the legislator considers the activity of such an organisation as a public benefit activity.

TABLE 1: Acts which prescribe privileges for PBOs – overview according to the type of organisation

	NGOs	FOUNDATIONS	FUNDS	PRIVATE INSTITUTIONS	RELIGIOUS COMMUNITIES
Act on Organisation of Games of Chance and Prize Games	Uses the term "organisation" which includes all types of non-profit legal persons				
VAT Act	●			●	
Profit Tax Act	●	●	●		●
Income Tax Act	●	●	●	●	●
Customs Act	●	●	●	●	
Judicial Charges Act	Uses the term "organisation" which includes all types of non-profit legal persons				
Act on Tax on Real-Estate Transactions	●	●	●		
Administrative Charges Act	●			●	
Act on Administrative Charges in the Area of Intellectual Property Rights	●			●	

TABLE 2: Acts which prescribe privileges for PBOs – outline according to the activity of the organisation

	Act on Organisation of Games of Chance and Prize Games	VAT Act	Profit Tax Act	Income Tax Act	Customs Act	Judicial Charges Act	Act on Tax on Real-Estate Transactions	Administrative Charges Act	Act on Administrative Charges in the Area području prava of Intellectual Property Rights
HUMANIT.	●	●	●	●	●	●	●	●	●
CARE FOR DISABLED PERSONS	●				●	●			
SOCIAL WELFARE	●	●						●	●
CULTURE	●	●	●	●	●			●	●
EDUCATION	●	●	●	●				●	●
SCIENC		●	●	●				●	
HEALTH CARE		●	●	●				●	●
SPORT	●	●	●	●					
CIVIL SOCIETY DEVELOPMENT	●								
PROTECTION OF HUMAN RIGHTS									
PROTECTION OF ENVIRONMENT									
FIGHT AGAINST ADDICTION	●								
TECHNICAL CULTURE	●								

TABLE 3: Acts regulating the legal status of non-profit organisations, and which contain provisions on PBOs

PROVISIONS	Act on Foundations and Funds	Act on NGOs	Humanitarian Aid Act	Act on the Legal Status of Religious Communities
	Article 2 In the meaning of this Act, a foundation is an asset whose aim is to autonomously, i.e. by means of the resources it raises, and to permanently achieve a purpose which produces public benefit or some charity purpose. In the meaning of this Act, a fund is an asset whose aim, within a certain time period, is to achieve a purpose which produces public benefit or some charity purpose. In the meaning of this Act, any purpose which produces public benefit is that purpose whose achievement generally promotes cultural, education-al, scientific, spiritual, moral, sports, health, ecological and any other social activity or purpose or improves the material situation of society..... ... *Article 17* By means of suitable regulations, the state stimulates and facilitates the work of foundations. ... The assets of the foundation as well as its income enjoy special tax preferences. Special laws shall regulate issues concerning the type and amount of tax benefits and tax preferences for founders, donors and users of foundations. Special laws may determine obligatory contributions to certain foundations from the income raised by games of chance or from the profit made by certain public corporations.	*Article 23* The Government of the Republic of Croatia, on the basis of a published tender, grants funds from the state budget to organisations for the project or programme which is of special interest for the general/public good in the Republic of Croatia. ...	*Article 3.* Humanitarian organisations which provide humanitarian aid in order to protect the health of the population, ensure and improve the quality of life, especially accommodation, housing and nutrition, ensure conditions for education, provide assistance in the reconstruction of housing, public and other facilities, bring together and organise work with children and young people and persons with special needs, whose provision of aid is not conditioned by membership, act for the public benefit and as such enjoy special legal status. ...	*Article 17* A religious community raises funds "...by performing charitable, educational, cultural, artistic or other activity which produces public benefit..."

Proposal of Measures

The legislator has systematically and indisputably recognised only some types of non-profit legal persons as public benefit organisations. The legislator regulated their legal status in all or at least most of the relevant regulations. Judging by the legal form, NGOs and private institutions enjoy all (NGOs) or almost all (institutions) benefits and privileges which the legal system provides. Unlike them, foundations and funds, despite an explicit provision in the law according to which the state shall by means of suitable regulations stimulate and facilitate the work of foundations, enjoy benefits only in some regulations.

Considering PBOs according to activities, it is evident that there are activities that the legislator indisputably recognised as activities that the state (society) must stimulate and support because they are of general significance. In this context, the best-regulated status is that of humanitarian organisations because they enjoy benefits in all relevant regulations. Immediately after them come the activities of culture and education, which most relevant laws recognise. All other organisations (science, health, social welfare, etc.) are not even remotely included in most relevant regulations, while there are also those which deal with activities which certainly are in the public interest (protection of human rights, protection of the environment, protection of children), but which are not at all represented in relevant regulations.

In order to create a system that recognises all PBOs (according to their legal form and their activities), the following must be done:

— Establish a single concept of PBOs and clearly define the requirements that a legal person should meet in order to be able to acquire such a legal status. In this respect, it is not necessary for a special law to reg-

ulate the legal status of PBOs, since this could be done by laws in the area of taxation, while other laws might only refer to the provisions of the tax laws. In this way, the chances of unequal treatment would be eliminated in relation to non-profit organisations of different legal forms or different activities. Besides, this would remove legal uncertainty since every organisation would know whether or not it met the requirements for acquiring a privileged status.

- Special laws should stipulate that the establishing of the right to a certain benefit should be accompanied by a document from the Tax Administration attesting that the requirements for acquiring the legal status of a PBO have been met. This document could signify entitlement to various benefits (exemption from the payment of administrative or judicial charges, customs duties, etc.).

— The Tax Administration is the logical choice as the state body to determine legal status, since privileged organisations are in any case represented in tax regulations, so this would not additionally burden state administration.

— Abandon the practice of every law separately listing the types of privileged organisations, which allows for one organisation to be exempted, for instance from paying judicial charges, but not from paying administrative charges, etc.

— In order to prevent any unclear stipulation and different interpretations of whether "activity for the public benefit", "activity of public interest" and "activity for the public good" mean one and the same thing, it is necessary to introduce in the legal system a single term to denote PBOs (e.g. "organisations which act for the public benefit").

Public Benefit Status: A Comparative Overview

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I
INTRODUCTION

The legal framework for non-governmental, not-for-profit organizations (NGOs) typically permits organizations to be created in different forms to pursue any legitimate aim, including both mutual benefit and public benefit interests. In most countries, however, the state does not want to extend benefits to all NGOs indiscriminately; instead, the state typically extends benefits to a subset of these organizations, based on their purposes and activities. By providing benefits, the state seeks to promote certain designated activities, usually related to the common good. NGOs pursuing such activities are given many different labels, including "charities" and "public benefit organizations." Moreover, in some countries, there may be no explicit status defined in the law, but certain purposes and activities are nonetheless linked to state benefits. In this article, we use the term "public benefit" to refer to this special status – however described in the national context – and the term "public benefit organization" (or PBO) to refer to organizations legally recognized as having this status.

The practice of distinguishing PBOs and facilitating their activities is deeply rooted in European society. Codification of the common law system dates back to 1601 and the English Statute of Charitable Uses, whose purpose was to enumerate charitable causes and to eliminate abuse. Over time, the notion of public benefit was expanded beyond the relief of poverty to include caring for the sick, training of apprentices, building of bridges, maintaining roads and other related purposes. In the civil law tradition, foundations – which were dedicated to a public benefit purpose – existed in Europe in the fifth century BC. Today, most civil law countries extend tax preferences to both foundations and associations, contingent upon public benefit purposes.

This article seeks to present an overview of European practices for regulating organizations with public benefit status. We will focus on (1) the regulatory frameworks for public benefit status; (2) the definition of public benefit and qualifying activities; (3) the appropriate decision-making authority; (4) the procedures and conditions for certification/registration; (5) the state benefits for public benefit organizations; and (6) the accountability of public benefit organizations.

II. REGULATORY CONTEXT

There is no single "right" approach to regulating public benefit. While there is consistent recognition of the need for public benefit regulation, at least in Europe, the regulatory frameworks vary. This section seeks to identify the primary regulatory trends.

Fundamentally, public benefit status is an issue of fiscal regulation. To promote public benefit activity, the legal framework must link public benefit status directly to preferential tax treatment or other forms of government support. In exchange for these benefits, PBOs are generally subjected to more stringent supervision to ensure that they are using their assets for the public good.

Public benefit status can be conferred on NGOs either explicitly – through provisions included in framework legislation or in separate public benefit legislation – or implicitly – through provisions in various laws that are functional equivalents of the operational provisions of public benefit legislation. In many countries, such as Germany and the Netherlands, tax legislation lists public benefit activities and defines fiscal privileges for NGOs pursuing those activities. The advantage of this approach is administrative simplicity; since public benefit status is an issue of fiscal regulation, it is natural to regulate public benefit issues through the tax code. The disadvantage is that, in some legal traditions, it is inappropriate to impose operational requirements (such as requirements addressing internal governance and reporting) through the tax law.

By contrast, NGO framework legislation specifically defines public benefit status in Bosnia, Bulgaria, Romania, and other countries. The primary drawback of this approach arises in countries that address different organizational forms through separate laws: a law on associations, a law

on foundations, etc. Regulating public benefit status issues in each separate law increases the likelihood of inconsistent regulatory treatment. Public benefit organizations, regardless of the underlying organizational form, should be subject to a number of similar requirements. What is important is the public benefit nature of the organization, not whether it is a membership or non-membership organization.

Furthermore, where public benefit status provisions are inserted in NGO framework laws, reform of the relevant tax provisions often lags behind. Organizations may have no incentive to apply for public benefit status, if such status does not entail any financial benefits. In Bulgaria, for example, two years elapsed between the introduction of the public benefit concept (through a new NGO law) and the provision of some benefits for PBOs (through revisions to the tax law). In Bosnia, tax reform has been pending since the 2001 enactment of a new NGO law incorporating the public benefit concept.

Increasingly, therefore, countries are adopting specific "public benefit" legislation, in an effort to address the full range of issues comprehensively and consistently. Hungary adopted public benefit legislation in 1997, Lithuania adopted a Law on Charity and Sponsorship in 2002, Poland enacted a Law on Public Benefit Activities and Volunteerism in 2003, and most recently, in 2004, Latvia adopted a Law on Public Benefit Organizations. These specific laws generally address the full range of regulatory issues relating to public benefit status, including the definition of public benefit status, the criteria for obtaining it, the benefits it entails, and the obligations it imposes.

III. DEFINITION OF PUBLIC BENEFIT AND QUALIFYING ACTIVITIES

This section seeks to provide guidance and comparative information on the definition of public benefit and the appropriate qualifying activities. While there is no single approach to defining public benefit, there are developing trends of international good practice.

First, it is common to enumerate certain specific purposes which are deemed to serve the common good. Thus, a public benefit activity is any lawful activity that supports or promotes one or more of the purposes enu-

merated in the law. The list below contains virtually all of the public benefit activities recognized in one or more countries in Europe:

(a) Amateur athletics;
(b) Arts;
(c) Assistance to, or protection of, physically or mentally handicapped people;
(d) Assistance to refugees;
(e) Charity;
(f) Civil or human rights;
(g) Consumer protection;
(h) Culture;
(i) Democracy;
(j) Ecology or the protection of environment;
(k) Education, training and enlightenment;
(l) Elimination of discrimination based on race, ethnicity, religion, or any other legally proscribed form of discrimination;
(m) Elimination of poverty;
(n) Health or physical well-being;
(o) Historical preservation;
(p) Humanitarian or disaster relief;
(q) Medical care;
(r) Protection of children, youth, and disadvantaged individuals;
(s) Protection or care of injured or vulnerable animals;
(t) Relieving burdens of government;
(u) Religion;
(v) Science;
(w) Social cohesion;
(x) Social or economic development;
(y) Social welfare;
('a) Any other activity that is determined to support or promote public benefit.

Of course, the list may be too extensive for any one country. Countries choose public benefit purposes that reflect their needs, values, and traditions. In the Netherlands, for example, the public benefit purposes developed in fiscal jurisprudence include purposes that are ecclesiastical, based on a philosophy of life, charitable, cultural, scientific, and of public utility. German tax law includes public health care, general welfare, environ-

mental protection, education, culture, amateur sports, science, the support of persons unable to care for themselves, and churches and religion. In France, the tax law defines public benefit to include, among others, assistance to needy people, scientific or medical research, amateur sports, the arts and artistic heritage, the defense of the natural environment and the defense of French culture. In Hungary, separate public benefit legislation lists 22 different purposes, including health preservation, scientific research, education and culture. Similarly, Polish law lists 24 public benefit activities.

Many countries exclude certain activities or goals from qualifying as public benefit. Restrictions commonly include political and legislative activities, such as lobbying and campaigning (e.g., Hungary prohibits involvement in direct political activities and the provision of financial aid to political parties). Restrictions on economic activity are also not uncommon. Some countries exclude purposes related to sports and religion; others do not.

SECOND, many countries include a "catch-all" category, which simply embraces "other activities" which are deemed to serve the common good. This is an effective way to ensure that enumerated purposes are not interpreted in an overly restrictive manner, and that the concept of public benefit remains flexible, keeping pace with changing social conditions. Public benefit definitions lacking such a "catch-all" category may impede the inclusion of emerging activities that serve the public benefit. The law may simply include a provision similar to the following: "Any other activity that is determined to support or promote public benefit." Such "catch-all" categories are not uncommon, even where the law enumerates a list of specific purposes, as in Latvia and Lithuania.[1] As a common-law country, the U.K. relies on case precedent to define "charitable" purposes. Over time, courts in the U.K. have classified charitable purposes under four broad categories: (1) relief of poverty, (2) advancement of education, (3) advancement of religion, and (4) other purposes beneficial to the community, and accept that the definition of "charitable purpose" must change to reflect current social conditions.[2]

1 At the same time, however, other countries, such as Bulgaria, Hungary and Poland enumerate a "closed" list of public benefit activities; only objectives set out by law qualify as public benefit.

THIRD, many countries require that the organization be organized and operated principally to engage in public benefit activities, however defined. An organization is *organized* principally for public benefit when the purposes and activities contained in its governing documents limit it to engaging principally in public benefit activities. An organization is *operated* principally for public benefit when its actual activities are principally public benefit. "Principally" may mean more than 50% or virtually all, depending on the country. There are different ways of measuring whether the "principally" test has been satisfied – for example, by measuring the portion of expenditures, the portion of staff time, or the circle of beneficiaries.

In the Netherlands, the decisive factor is the circle of potential beneficiaries. If the activities are aimed at serving too restricted a group of persons – persons belonging to a family, for example – then the organization is not eligible for public benefit status. If the organization serves both its members and engages in public benefit activities, it may qualify for public benefit status if its public benefit activities make up at least 50% of its overall activities. Similarly, in France, in order to qualify as a PBO, an organization must engage primarily in at least one public benefit activity and provide services to a large, undefined group of individuals in France.[3]

The Charity Commission of England and Wales requires more exacting adherence to public benefit to qualify as a charity. For an organization to be treated as a charity, its aims must be exclusively charitable and it must be set up for the benefit of the public. The Charity Commission applies three criteria:

2 Recognizing the need for modernization, the British government has introduced legislation to reform charity law. The draft Bill contains no statutory definition of "public benefit", as the Government believes the current non-statutory (common law) approach provides flexibility and the capacity to adapt to changing circumstances. Instead, the draft Bill sets a framework listing the main charitable purposes, as follows:
- prevention or relief of poverty;
- advancement of education;
- advancement of religion;
- advancement of health or the saving of lives;
- advancement of citizenship or community development;
- advancement of arts, culture, heritage or science;
- advancement of amateur sport;
- advancement of human rights, conflict resolution or reconciliation or the promotion of religious or racial harmony or equality or diversity;
- advancement of environmental protection or improvement;
- the relief of those in need by reason of youth, age, ill health, disability, financial hardship or other disadvantage;
- advancement of animal welfare; and
- other currently charitable purposes together with new purposes analogous to or within the spirit of purposes now or in the future as charitable.

1) the organization must be capable of conferring a clear benefit to the public;
2) those eligible to receive benefits must comprise a large enough group to be considered as the public or a sufficient section of the community and no personal or private relationships must be used to limit those who may benefit; and
3) any private benefits to individuals must be incidental and not outweigh the benefit to the public.[4]

In connection with the second criterion, it should be emphasized that English practice allows the beneficiaries of an organization's activities to belong *predominantly* to a particular racial, ethnic, religious or other group, so long as the benefits are not restricted *solely* to members of that group.

Similarly, Germany requires that an organization receiving tax benefits carry out its public benefit activities exclusively, directly and unselfishly (with disinterest). Poland also requires that a public benefit organization engage exclusively in public benefit activities. A Polish organization must meet the following requirements, among others:

— it conducts its statutory activities for the sake of the whole community or for a defined group of individuals whose living or financial situation is particularly difficult in relation to the rest of the society;
— the public benefit activities are the only statutory activities of the organization (except that membership-based organizations can also undertake activities serving the members);
— it does not conduct economic activities, or the economic activities of the organization are limited to the fulfilment of statutory activities; and
— its entire income is allocated to its public benefit activities.[5]

3 There are two forms of public benefit status in France: (1) general interest status and (2) public utility status. Qualifying for general interest status, as stated in the text, is satisfied when an organization engages primarily in a public benefit activity and provides services to an appropriate group of beneficiaries. Qualifying for public utility status additionally requires adopting statutes in compliance with model statutes provided by the Conseil d'Etat (containing requirements regarding internal structure, use of funds, and distribution of assets upon dissolution) and satisfying other requirements relating to financial viability and size of the organization.

4 Debra Morris, "How Does the Common Law Assess Public Benefit in Order to Define a Charity?", April 1999, International Journal for Not-for-Profit Law, Volume 2, Issue 1.

5 Polish Law on Public Benefit Activities and Volunteerism, Article 20.

IV. DECISION-MAKING BODY

This section focuses on the decision-making authority for public benefit status – who is responsible for granting public benefit status.

Who decides which organizations qualify for public benefit status? The question has critical implications for the regulation of public benefit organizations and the entire nonprofit 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 organizations. 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.

There is no single right answer to the question of who should make the public benefit determination. Instead, countries have adopted a variety of different approaches. In some countries, this authority is vested in the tax authorities. In other countries, the courts or a governmental entity, such as the Ministry of Justice, confers public benefit status. Still others have empowered independent commissions to decide the question. Each approach has distinct advantages and disadvantages.

In many countries, the public benefit determination is made by the **tax authorities**. In this case, there may not be a recognized "public benefit" legal form or status; often, the fiscal authorities decide which organizations are entitled to fiscal privileges based on their purposes and activities. Countries adopting this approach for at least some categories of public benefit activity include Denmark, Finland, Germany, Greece, Ireland, the Netherlands, Portugal and Sweden. In Denmark, for example, the tax authorities grant public benefit status through an annually published list of qualified organizations. 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. In the Netherlands, official recognition as a public benefit organization is not required, but an NGO may request it. Such recognition helps organizations avoid potential disputes, which is particularly important when large donations are involved. Fiscal authorities in the Netherlands have adopted certain criteria for such requests, which seek to ensure that the NGO has appropriate standards of transparency and accountability.

Vesting the tax authorities with authority over the public benefit determination has the advantage of administrative convenience, in that one entity makes all such decisions. The degree of expertise which they can be expected to bring to the question of public benefit status may depend on whether or not there is a specialized department within the tax department to focus on this question. In addition, the tax authorities in some countries demand this authority, because the determination affects the tax base. A potential disadvantage, however, arises out of the potential conflict of interest between the duty to maximize the tax base and the responsibility for granting a status that reduces the tax base.

In Bulgaria, the Ministry of Justice – specifically, a Central Registry within the Ministry of Justice – is responsible for public benefit regulation (certification and supervision). Court-registered NGOs pursuing public benefit activities must submit applications and documentation to the Ministry. Should registration be denied, the applicant may file an appeal within 14 days in the Supreme Administrative Court. The primary advantage of placing authority within a **single ministry** is the greater likelihood of consistent decision-making. The creation of a specialized department within the Ministry (as we see in Bulgaria) may also foster the development of specialized expertise relating to public benefit issues. At the same time, a single ministry with many duties may fail to allocate sufficient resources to public benefit issues, in which case expertise is less likely to develop. Perhaps the greatest danger in assigning authority to a single ministry is the danger of arbitrary, politically motivated decision-making. In certain countries, where ministries have decision-making authority on registration questions, there has often been a distinct chilling effect on NGOs pursuing registration.[6]

6 Very few countries have placed decision-making authority within line ministries. Romania is one exception. While this approach might seem useful in ensuring ministries with appropriate expertise are evaluating public benefit activities (e.g., the Ministry of Health would review the public benefit application of an NGO pursuing health-related activities), there are far more disadvantages. The danger of political decision-making remains; consider an environmental NGO seeking to engage in environmental advocacy and litigation having to apply to the Ministry of the Environment for certification / registration. The problem of inconsistent decision-making between ministries is acute. Moreover, there will inevitably be jurisdictional gaps, where the NGO-applicant will not know which ministry is competent to handle its application. Furthermore, in Romania, the law has left the formulation of qualifying criteria to each line ministry, creating uncertainty for those ministries that have issued no such criteria, and inviting inconsistency, as criteria may vary from ministry to ministry.

Indeed, it is in order to avoid politicized decision-making that some countries have opted to vest **courts** with the power to certify or recognize public benefit organizations. Such is the case in Greece, Hungary and Poland. In France, the Conseil d'Etat – its highest administrative court – has authority to decide whether associations and foundations qualify for "public utility" status. 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 NGOs can apply simultaneously for both registration as a legal entity and recognition as a public benefit entity. Such is the case in both Greece and Hungary. On the other hand, because courts are usually overburdened, the registration process can be slow-moving. Also, courts must deal with a wide range of issues, making it difficult for them to develop specialized expertise in public benefit issues. Decentralized decision-making, finally, is unlikely to produce wholly consistent decisions.

Perhaps the most innovative approach is **Charity Commission** for England and Wales. While the Charity Commission is part of the government, it is independent of the political process. Its powers are conferred by an Act of Parliament and exercised under the oversight of five Commissioners, each of whom is independent of the political process and voluntary sector. 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 in the Commission. The key disadvantages are the cost of creating and maintaining such a commission and the fact that it is a centralized organ.

Interestingly, the Moldovan Law on Associations created a similar body, known as the Moldovan Commission. The Moldovan Commission consists of nine persons, three of whom are appointed by the President, three by Parliament, and three by the Government. At least one of each of the three sets of appointees must represent a public benefit organization and not be a civil servant, a government official, or a Member of Parliament. The hope is that including public benefit representatives on the Commission will protect against repressive or discriminatory decisions and increase public confidence. Developing the proper mechanism for selecting the civil society representatives, however, remains a critical challenge.[7]

It should be emphasized that a "public benefit commission" will only be effective if its independence from government interference is preserved.

As is the case in England, and to a lesser extent in Moldova, commission members should be representative of civil society and not simply government. Indeed, the Charity Commission of England & Wales ranks independence as one of its core principles:

> "We act in the public interest in carrying out our independent role. We work in partnership with charities, umbrella bodies, local and central Government bodies, and to others to whom we are accountable. Although we will be receptive and responsive to the views of these interests, we will arrive at our own decisions without fear or favour." [8]

In stark contrast to the commission approach, a few countries grant public benefit status by governmental decree. In Belgium, for example, organizations 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. These practices reflect particular historical, cultural and legal contexts, and need not represent models for emulation.

V. CERTIFICATION / REGISTRATION PROCEDURES

This section examines the registration procedures related to public benefit status, with a particular focus on the procedures in Hungary and Poland.

Whichever organ the state designates to rule on applications for public benefit status, the certification or registration process should be clear, quick and straightforward. The specific procedures of course vary, depending on the country's regulatory scheme.

7 The new Latvian Law on Public Benefit Organizations contemplates the creation of a Public Benefit Commission. In the Latvian context however, the Commission simply acts as an advisory body for the Ministry of Finance, the decision-making body. The Latvian Public Benefit Commission consists of authorized governmental officials and representatives from associations and foundations, in equal numbers. The procedures for selecting representatives of associations and foundations to the Commission are not defined in the law, but instead shall be determined by the Cabinet.

8 "The Charity Commission and Regulation", as contained on the Commission's website (http://www.charity-commission.gov.uk/spr/regstance.asp).

Generally, however, NGOs applying for public benefit status must submit documentation indicating (1) the qualifying public benefit activities; (2) compliance with internal governance requirements, including safeguards against conflict of interest and self-dealing; and (3) compliance with activity requirements (extent of public benefit activity) and limitations on activity (for-profit, political, etc.). For example, to be eligible for tax benefits under the German tax framework, an organization must have a governing document specifying a public benefit purpose and stating that the public benefit activities will be carried out exclusively, directly and unselfishly; furthermore, the governance of the organization must follow the rules laid down in the governing document.

Detailed procedures for public benefit registration are contained in separate public benefit legislation, such as we find in Hungary or Poland. The goal of these requirements is to ensure that the organization is focusing predominantly on public benefit activities, that it is not engaged in other activities to the detriment of its public benefit mission, and that it maintains appropriate standards of transparency.

Hungary's 1997 Public Benefit Act lists the specific provisions that must be included in the organization's founding instrument, including the following:

— the list of public benefit activities;
— a clause stating that the organization conducts entrepreneurial activities solely in the interest of and without jeopardizing its public benefit activities;
— a clause stating that the organization does not distribute business profits, but devotes them to its statutory activities;
— a clause stating that the organization is not involved in direct political activities and does not provide financial aid to political parties; and
— clauses relating to internal governance, conflict of interest and reporting requirements.[9]

Similarly, Poland's 2003 Law on Public Benefit Activities and Volunteerism lays down specific registration requirements for organizations pursuing public benefit status, including the following:

— the organization conducts its statutory activities for the sake of the whole community or a defined group of individuals in a particularly difficult living or financial situation;

9 Hungarian Law on Public Benefit Organizations, Article 4.

— the public benefit activities are the only statutory activities of the organization;
— it does not conduct economic activities, or its economic activities are limited only to the fulfillment of statutory activities;
— its entire income is allocated to public benefit activities;
— it has a statutory collegiate institution for monitoring or supervision that is separate from the management board; and
— its statutes prohibit certain types of self-dealing and conflicts of interest described in the law.[10]

Procedural safeguards to protect applicants are the norm. These include time limits for the registration decision and the right to appeal an adverse decision to an independent arbiter. Hungarian courts must decide on public benefit applications within 30 days – or 45 days, if additional information is required; an adverse decision can be appealed to the superior courts within 15 days. Polish courts must rule on applications within three months, but in practice take about six weeks. Bulgaria imposes even stricter limits for government action; the Ministry of Justice must decide on public benefit applications "immediately". The failure to grant registration within 14 days is considered a tacit denial of registration; in the case of denial, the applicant may appeal to the Supreme Administrative Court within 14 days.

As a procedural shortcut, countries granting public benefit status often allow an organization to register simultaneously as an NGO (association or foundation or other organizational form) and as a public benefit organization. Such is the case in Greece and Hungary, as well as Kosovo. Bulgaria is an exception; there, courts are responsible for NGO registration and, subsequently, the Ministry of Justice processes applicants for public benefit status.

Facilitating the recognition of public benefit organizations is in the state's interest. Registration requirements that delay such recognition will only interfere with the work of public benefit organizations. Whether contained in the law or in accompanying regulations, the legal framework must set forth clear procedural requirements that facilitate registration while imposing appropriate standards of accountability and transparency.

10 Polish Law on Public Benefit Activities and Volunteerism, Article 20. See also Latvian Law on Public Benefit Organizations, Articles 11-12.

VI. BENEFITS FOR PUBLIC BENEFIT ORGANIZATIONS

This section underscores the importance of linking public benefit status to state benefits by providing a brief overview of the usual kinds of state support.

Public benefit recognition would have no real meaning if there were no state benefits provided to facilitate the work and sustainability of PBOs. State benefits typically come in the forms of tax exemptions on organizational income, tax incentives for the organization's donors, and VAT relief. PBOs may also receive state subsidies or grants, and preferential treatment in procuring certain government contracts.

Most commonly, the state extends tax benefits to PBOs.[11] **Tax exemptions** may take a variety of forms and are usually available only if the income is used to support the public benefit purpose. The following categories of income may be exempt from taxation:

— Income from grants, donations, and membership dues;
— Income from economic activities;
— Investment income;
— Real property;
— Gifts and inheritance.

In addition, many countries extend exemptions or preferential rates on value added tax (VAT) to PBOs or to organizations engaged in transactions of certain goods and services related to the public benefit.

Crucial to encouraging private philanthropy to support public benefit activity are tax incentives to individuals and corporations donating to PBOs. Such tax incentives may take the form of tax credits, or more typically, tax deductions. Almost invariably, **donor incentives** are linked to either the public benefit status of the recipient or to enumerated public benefit activities in which the recipient is engaged. For example, France and Germany allow only public benefit organizations to receive tax-deductible donations.[12]

The state may also provide **other forms of support** to public benefit organizations, including the following:

11 For a comprehensive overview of tax benefits associated with NGOs and PBOs, please see ICNL's Survey of Tax Laws Affecting NGOs in Central and Eastern Europe and Survey of Tax Laws Affecting NGOs in the Newly Independent States.

— Many sources of grants, including the National Lottery, are available more easily, or exclusively, to charities (UK);
— A PBO may purchase "the right of perpetual usufruct of estates that are owned by the State Treasury or local self-government units" (Poland);
— A taxpayer may allocate 1% of his/her tax payment for the sake of public benefit organizations chosen by him or her (Poland);
— Users of PBO services are entitled to a personal tax exemption for the value of the service received (Hungary); and
— A PBO is entitled to employ a person fulfilling his civil service duty obligation (Hungary).

VII. ACCOUNTABILITY OF PUBLIC BENEFIT ORGANIZATIONS

This section outlines the common European approaches to ensuring the accountability and transparency of public benefit organizations.

Public benefit organizations – as recipients of direct and/or indirect subsidies from the government – will naturally be subject to greater government scrutiny. The purposes of this scrutiny are to protect the public from possible fraud and abuse by NGOs and to ensure that public support is linked to public benefit. In positive terms, the goals of supervision are to promote the effective operations of PBOs, by supporting good management, appropriate to the size of the organization, and to ensure that public benefit organizations are accountable to their members, beneficiaries, users and the public. The degree of supervision should be proportionate to the benefits provided, and not so intrusive as to compromise the organization's independence.

REGULATORY AUTHORITIES. The governmental body authorized to regulate PBO activity varies widely from country to country. In nearly every country, the tax authorities play a prominent regulatory role, through their

12 In France, only general interest associations, public utility associations, and public utility foundations (all categories of PBOs) are entitled to receive tax-deductible donations. In Germany, only certain public benefit organizations (those pursuing general public benefit purposes, benevolent or church-related purposes, or especially support-worthy general purposes) may receive tax-deductible contributions.

control over the tax treatment of PBOs. Indeed, in countries like Germany and the Netherlands, where public benefit regulation is primarily an issue of tax regulation, it is the tax authorities that play the central regulatory role. In other countries, a ministry may be vested with primary authority over PBO regulation, such as the Ministry of Justice in Bulgaria or the Ministry of Social Security in Poland. In Romania, a special governmental department monitors the activity of associations and foundations with public utility status. In France, the Ministry of Interior and the *Prefet du Departement* exercise supervision over public utility foundations.

Other specialized government organs may be involved with specific aspects of PBO regulation, including the spending of state budgetary funds and general legal compliance. In Hungary, for example, when a PBO has received funding from the state budget, the State Audit agency may monitor the use of these funds; the public prosecutor has authority to investigate potential legal violations. In Bulgaria, the Ministry of Justice can notify the public prosecutor and bodies of State Financial Control, in the event of a violation of law. Similarly, in Germany, the Ministry of Interior Affairs has supervisory authority over non-fiscal infringements, and civic organizations are subject to state control according to the respective laws of the *Bundeslander,* meaning that each state has its own supervisory system.

As highlighted above, the Charity Commission of England and Wales represents a unique approach to the regulation of public benefit organizations (or charities). The Commission has five broad functions, which include registration, accountability, monitoring, support and enforcement. Underscoring all of these functions is the Commission's general duty to enhance charitable endeavor.

REPORTING. To ensure that PBOs are transparent and accountable, the state has legitimate interests in receiving information. Relevant information includes (1) financial information (e.g., annual financial statements, an accounting of the use of assets obtained from public sources and claimed to be used for public benefit) and (2) programmatic information (e.g., a report on activities made in the public interest).

Most commonly, a PBO files reports with the tax authorities, including annual tax returns (even if the organization is exempt) and/or tax benefit application forms (submitted voluntarily), as well as annual activity reports to the supervisory ministry or agency. In France, public utility foundations submit an annual report and financial statement to the compe-

tent *Prefet* and the Ministry of Interior. In Germany, civic organizations must present annual reports to the relevant state authorities (according to the laws of the *Bundeslander*) and, to receive tax privileges, to the financial authorities (the tax exempt status is reviewed every three years). In Poland, PBOs must prepare and submit an annual activity report and annual financial statement to the Ministry of Social Security. In Hungary, a PBO must prepare and make available a public benefit report (containing an accounting report, a summary of public benefit activity, and information regarding the use of public support, the use of own assets, amounts of budgetary subsidies received, and amount of remuneration extended to senior officers). Interestingly, however, Hungary does not require the submission and filing of a public benefit report with a ministry or regulatory authority, but only that the report be made available for review.

In England and Wales, the accountability framework is graduated according to the size of the charity, with simple reporting of activities and receipts and payment accounts for small charities, and sophisticated reporting and accounting for large charities. The threshold is set at the annual income level of 10,000 British pounds. Those below the threshold need only make reports available for inspection, but do not have to file reports; those above the threshold must complete a more detailed return and send the report to the Commission.

Appropriate disclosure of information enables the public to exercise oversight responsibilities.[13] Recognizing this valuable role, many countries expressly require public disclosure. In Bulgaria, "The report of the [PBO] shall be public. The notification for availability of the elaborated report, as well as for the place, time and procedure for access thereto, shall be published in the bulletin of the central register."[14] In Poland, a PBO makes its annual report "public in a manner that is accessible to anyone interested."[15] In Hungary, "Reports on public welfare activities ... shall be available for review by the public, and anyone may make copies of such at his own expense."[16]

13 Preferred methods of disclosure include publication in the newspapers (Czech Republic), publication on the website (Hungary) or making the information available to the public at the organizational premises (Hungary).

14 Bulgarian Law on Nonprofit Legal Entities, Article 40(3).

15 Polish Law on Public Benefit Activities, Article 23(1).

16 Hungarian Law on Public Benefit Organizations, Article 19 (5).

AUDITS AND INSPECTIONS. In addition to reporting obligations, authorities often employ other monitoring tools, such as government audits and inspections. In Germany, for example, tax authorities may conduct regular tax inspections, following notice and an adequate time for the NGO to prepare; VAT inspections may, however, be conducted without prior notice. Hungarian PBOs are subject to supervision by the State Audit Office for the use of budgetary subsidies. In Bulgaria, PBOs are subject to financial audits for the use of state or municipal subsidies or grants under European programs. The responsible auditing body must have cause to justify the audit, but there is no requirement of prior notification.

The Polish Law on Public Benefit Activities spells out the procedures for carrying out inspections of PBOs in great detail.[17] The Ministry of Social Security is authorized to conduct inspections or to commission a provincial governor to perform the inspection. The Ministry has the right to access an organization's property, documents and other carriers of information, as well as to demand written and oral explanations. Such an inspection must be performed in the presence of a representative of the PBO or other witness. The inspecting officials must prepare a written report; the head of the PBO then has the opportunity to submit a written explanation or objections to the content of the report, within 14 days. Once filed, the inspection report describes the facts found during the inspection, including any deficiencies, and provides not fewer than 30 days to correct them.

In England, the government has no powers to investigate charities as such. The authorities do, of course, have a range of powers – related to terrorism and criminality (police), financial malpractice by companies or banking agencies, childcare (Social Services Inspectorate) – but these are generic and not specific to the charitable sector. Independent of government, the Charity Commission is vested with supervisory and investigative power, through which it seeks both to encourage good practices (as a support and advisory body) and to tackle abuse (as an investigative body).

The Commission's Support Division is responsible for giving advice and guidance to organizations on a range of legal, governance, management and financial issues. To make these services more widely available, the Support Division engages in outreach, including visits to individual charities, road shows open to charities, and conferences. The Commis-

17 Polish Law on Public Benefit Activities and Volunteerism, Articles 28-33.

sion's Investigation Division is responsible for combating abuse; it can suspend trustees, freeze bank accounts and appoint a receiver and manager to act in place of the trustees. Although the Commission does not have the power to de-register a charity, it can act to dissolve a charity by transferring all of its resources to a comparable charity. These two Divisions, along with the Registration Division, are supported by a team of lawyers and accountants who provide professional expertise.

The key to Commission action is proportionality. Smaller charities (with an annual income of less than 10,000 British pounds) are handled deferentially. "Audit" is not a term the Commission uses; instead it has developed the practice of pre-announced visits to examine a charity's administration. The Commission focuses on larger charities (based on cause) with the aim of promoting good practice. Initiating an investigation without cause runs against the ethos of the Commission.

STATE ENFORCEMENT AND SANCTIONS. State sanctions against NGOs often include the imposition of fines, for violations such as the failure to file reports.[18] The continued failure to file reports can lead to termination and dissolution in most countries. Termination, however, should occur only after the organization is given notice and an opportunity to remedy the deficiency. With both fines and termination orders, the NGO usually has the opportunity to file an appeal.

Additional sanctions may be available against public benefit organizations; these typically include the loss of tax benefits or the termination of PBO status. In Bulgaria, for example, no fines can be levied against PBOs; instead, systematic non-compliance with reporting requirements can lead to the PBO's termination. In Germany, Kosovo and Romania, PBOs that fail to file reports may also lose their public benefit status. Somewhat similarly, public benefit companies in the Czech Republic may lose comprehensive tax benefits in the year of breach and other more limited tax benefits in the following year.

18 Such is the case in Bulgaria, where the state may penalize NGOs from 50-500 EUR. In Poland, an association that does not comply with requests for documentation is subject to a one-time fine not to exceed 50,000 zlotys (approximately 11,300 EUR), which may be waived if the association complies immediately after the fine is imposed. In Slovakia, a foundation failing to file a report may be fined from SKK 10,000 to 100,000 (approximately 250-2500 EUR). In many countries (Bosnia, Croatia, Serbia and Montenegro), fines may be levied against both the organization and against the responsible representative of the organization.

Revocation of public benefit status should only be available as a sanction under exceptional circumstances. If an organization in Hungary violates the law or its founding charter, for example, the court can revoke its public benefit status at the request of the public prosecutor, but only after notifying the organization and giving it the opportunity to remedy the situation. In Poland, if the PBO fails to eradicate problems identified during the inspection process within a given time period, the Minister of Social Security can file to have the organization removed from the State Court Register. Note that in both cases the government must first notify the organization of the violation and give it an opportunity to eliminate the problem, and the decision on revocation is made by the court.

Notes