

European Models for NGO Regulation and Supervision

Basic Principles of Civil Society Law

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Context

- European Convention on Human Rights
(Convention for the Protection of Human Rights and Fundamental Freedoms, 1950)
 - Article 11 on Freedom of Assembly and Association
- European Court of Human Rights (Strasbourg, France)





Council of Europe

- **Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organisations in Europe**
- **Basic principles on NGO supervision
Sections 67-74**

CoE Principles for Supervision

- 67. The activities of NGOs should be presumed to be lawful in the absence of contrary evidence.
- 68. NGOs can be required to submit their books, records and activities to inspection by a supervising agency where there has been a failure to comply with reporting requirements or where there are reasonable grounds to suspect that serious breaches of the law have occurred or are imminent.
- 69. NGOs should not be subject to search and seizure without objective grounds for taking such measures and appropriate judicial authorisation.
- 70. No external intervention in the running of NGOs should take place unless a serious breach of the legal requirements applicable to NGOs has been established or is reasonably believed to be imminent.

CoE Principles for Supervision cont'd

71. NGOs should generally be able to request suspension of any administrative measure taken in respect of them. Refusal of a request for suspension should be subject to prompt judicial challenge.
72. In most instances, the appropriate sanction against NGOs for breach of the legal requirements applicable to them (including those concerning the acquisition of legal personality) should merely be the requirement to rectify their affairs and/or the imposition of an administrative, civil or criminal penalty on them and/or any individuals directly responsible. Penalties should be based on the law in force and observe the principle of proportionality.
73. Foreign NGOs should be subject to the provisions in paragraphs 68 to 72 above only in respect of their activities in the host country.



CoE Principles for Supervision cont'd

74. The termination of an NGO or, in the case of a foreign NGO, the withdrawal of its approval to operate should only be ordered by a court where there is compelling evidence that the grounds specified in paragraph 44 (...) above have been met. Such an order should be subject to prompt appeal.

[44. The legal personality of NGOs can only be terminated pursuant to the voluntary act of their members– or in the case of non-membership-based NGOs, its governing body – or in the event of bankruptcy, prolonged inactivity or serious misconduct.]



Background

- ***Study on recent public and self-regulatory initiatives improving transparency and accountability of non-profit organisations in the European Union***



Background

- Study commissioned by the Directorate-General of Justice, Freedom and Security of the European Commission.
- Conducted by ECNL
- Research started in February 2008
- Published August 2009

Goals of the Report

- **Map and assess** the recent and most important public and self-regulatory initiatives enhancing non-profit organisations' (NPO) transparency and accountability in the 27 EU member states
- Support increased knowledge and improved dialogue by identifying and helping to **develop best practices** through comprehensive case studies

Scope of Research

- Geographic: on the EU level and in the 27 Member States
- Substantive: programmatic and financial accountability and transparency
 1. public accountability to Government
 2. accountability to donors or the general public
(*“upward accountability”*)

Definitions: Accountability

- Compliance with legal obligations;
- Demonstrating how resources are spent;
- Good governance;
- Prudent financial management;
- Demonstrating goodwill or an intent to meet certain professional and management standards;
- Demonstrating regularly that it uses its resources wisely and does not take advantage of its special privileges (e.g., tax exemptions) to pursue activities contrary to its nonprofit status.

Definitions: Transparency

Obligation or willingness of NPOs to publish and make available basic data about their operations.

- *Organizational transparency*: regarding the establishment and registration of the NPO, to identify NPO and seek out its responsible officers;
- *Programmatic transparency*: regarding activities and services to assess the effectiveness and/or efficiency of the NPO;
- *Financial transparency*: publishing financial reports about incomes, expenses and general financial health.

General Findings

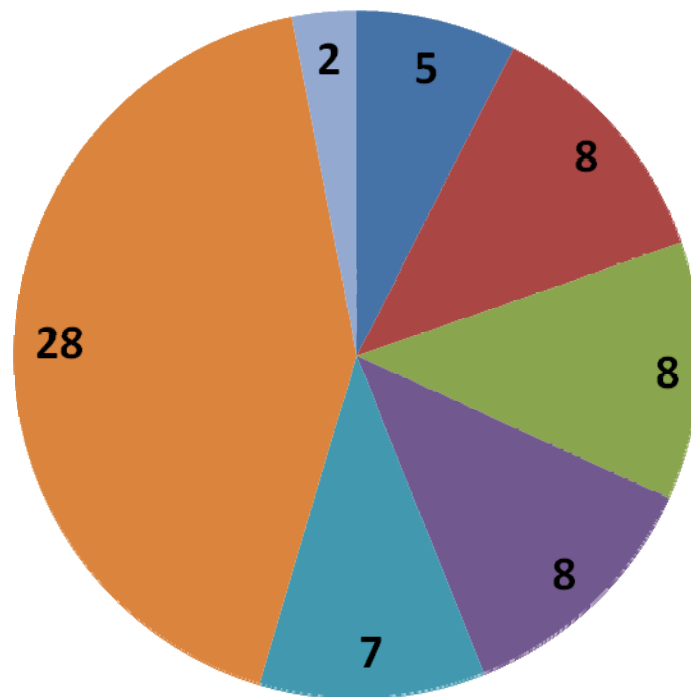
1. Large number of initiatives to improve NPO accountability and transparency.

*Close to 140 initiatives from 27 EU member states and EEA:
including over 65 public and over 70 self-regulatory*

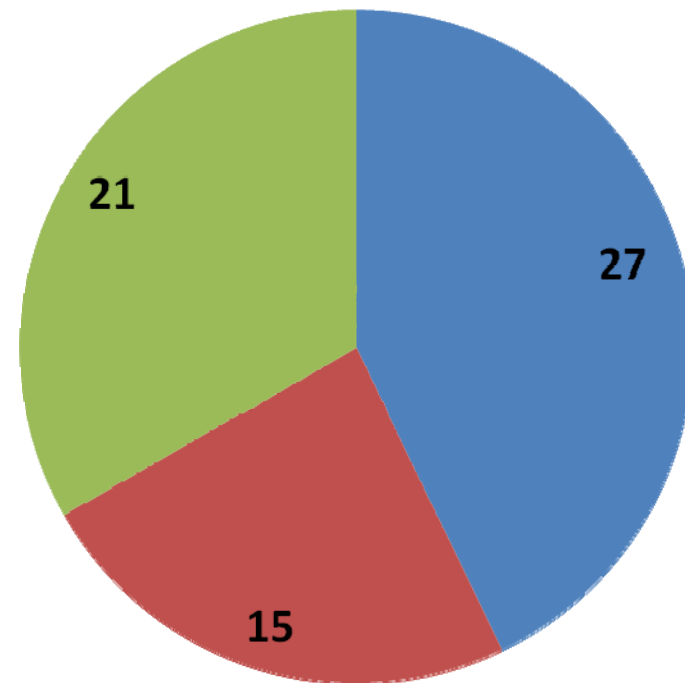
2. Driving force: growing social and economic importance of the sector.
3. Specific motivations include:
 - Transparency;
 - Value for (public) money;
 - Clarification of role – legal and societal;
 - Improved governance and effectiveness;
 - Prevention of fraud / crime;
 - Countering terrorist financing/money laundering threat.

Public Regulation Initiatives

Types of NPO Regulated



Number of Issues covered by Initiative



Trends in Public Regulation

- Developing comprehensive NPO legal frameworks;
- Creating national registries or making existing registration data more easily accessible;
- Introducing PBO status and/or strengthening accountability requirements for PBOs;
- Promoting good governance and ethical fundraising through self-regulation;
- Increasing transparency in public funding for NPOs;
- Strengthening supervision and investigation powers for limited purposes.



Convergence trends

- Co-regulation
 - Ireland (Charities Act – Fundraising Code)
 - Estonia – National Foundation – Code of Conduct (for funding applications)
 - Netherlands – Central Bureau for Fundraising – municipalities (for collection permits)
 - Guidestar model (NPO database linked to government registry)



What is specific about the functioning NGOs?

The “accountability gap”:

- Unlike political parties (election) and business firms (market), NGOs do not have an objective indicator of their performance that can be controlled by their stakeholders.
- The gap can be bridged by increased transparency and effective regulation: both public and self-regulation.

What kind of regulation is needed?

The “capacity gap”:

- Most NGOs do not have sufficient capacity to meet bureaucratic accountability requirements;
- But they have the potential to live up to the principles of accountability and transparency.
- Effective regulation of NGOs addresses the lack of capacity by
 - focusing on the principles rather than the methods, and
 - providing support as well as control.



Approaches to NPO supervision

- European states usually supervise PBOs to a greater extent than all NGOs; in fact, supervision of non-PBO NGOs is usually minimal.
- Proportionality is a leading principle in NGO regulation, including supervision.
 - E.g, small NGOs are less burdened by reporting requirements



Approaches to NPO supervision

- In some countries (most prominently in the U.K.) supervision goes hand in hand with support for NGOs (charities) as part of the overall regulatory mechanism;
- Supervision can be conducted by the same agency that provides registration or PBO status (UK, Italy);
- Other countries emphasize the independent control function of supervision (e.g. Hungary – public prosecutor's office).



Approaches to NPO supervision

- Supervision requirements usually include preparing and submitting or publishing reports on an annual basis.
- Usually there is a simplified or specifically tailored accounting form for NGOs.
- Reports contain enough information for the authority to determine that the NGO operates lawfully (but not more).
- Other forms of supervision (e.g. random inspections, on-site visits) need to be justified and are subject to due process regulations.



Approaches to NPO supervision

- Supervision needs capacity – the model determines the amount of staff and resources needed from the government.
 - E.g., Charity Commission of England and Wales: 180,000 charities, 460 staff
 - E.g., Netherlands: cca. 30,000 PBOs, 6 staff at Tax Department
- Transparency regulations also serve the purpose of supervision as the public gets increasingly knowledgeable about NGOs.
- Governments increasingly realize that fighting financial crime and terrorism requires targeted intelligence rather than increased overall supervision of the NGO sector.



Conclusions

- There is an increasing trend to promote NGO accountability through regulation and oversight across Europe.
- Increased focus on accountability co-exists with respect for the Right to Associate.
- Cooperation with EC and domestic authorities needed in order to maintain best practice arrangements.