Oversight Mechanisms of Charities

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Presentation structure

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

- Findings on the initiatives

- Trends and issues in government oversight
Background

- Study commissioned by the Directorate-General of Justice, Freedom and Security of the European Commission

- Research started in February 2008

- Study presented February 12, 2009
  - not yet released to the general public
Background

- Study originated in intention to enhance implementation of counter-terrorism policies within EU.

- Scope and relevance go beyond that; nonprofit sector gained economic and social significance over the past decades.
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.
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;
- Tightening regulation of fundraising and management of funds;
- Strengthening supervision and investigation powers;
- Increasing transparency in public funding for NPOs.
Public Regulation Initiatives

Types of NPO Regulated
- Association: 28
- PBO: 7
- Publicly funded: 5
- Foundation: 8
- Charity: 8
- Multiple: 2

Number of Issues covered by Initiative
- 1: 21
- 2 or 3: 15
- 4+: 27
Map of Public Regulation Initiatives

- Legal Status & Registration (28)
- Transparency & Reporting (32)
- Public Funding & Tax (22)
- Governance & Internal Rules (18)
- Supervision & Investigation (18)
- Fundraising (11)
- Unknown/Other (5)

- Associations (13)
- Foundations (16)
- Charity (19)
- PBO (22)
- Multiple (55)
- Other (9)
Map of Self-Regulation Initiatives

- Standards, Guidelines, Codes of Conduct (41)
- Databases (9)
- Certification & Accreditation (22)
- Quality Management Systems (15)
- Other (2)
“Third Sector”

- Common law
  (sector = charities)

  vs.

- Civil law
  (sector = all NPOs)
British Isles
Legal: Common Law
Model: Liberal (Anglo-Saxon)
Sector characteristics: Highly institutionalised, independent

Nordic
Legal: Civil Law
Model: Socio-democratic
Sector characteristics: Less institutionalised, membership based

Continental
Legal: Civil Law
Model: Corporatist
Sector characteristics: Highly institutionalized, inter-dependent

New Member States
Legal: Civil Law
Model: Emerging
Sector characteristics: weaker, dependent

Mediterranean
Legal: Civil Law
Model: Emerging
Sector characteristics: recently institutionalized
Issues in government oversight

- Which NPOs are under supervision?
  - All; PBOs/charities; by legal form; none (!?)
- Which is the supervisory agency?
  - Same as, or different from registry; overall regulator; government or independent body; co-regulation
- What does supervision/oversight entail?
  - General operation/certain activities – fundraising/finances (tax)/lawfulness vs. crime prevention!
Issues in government oversight

- What are oversight requirements?
  - Disclosure of information; reporting / filing or publishing reports;

- What are the competences of the supervisory authority?
  - Review of reports vs. withdrawal of license; initiate procedure vs. conduct investigation; level of sanctions differ - fines/penalties; termination of PBO status or legal person status etc.
Fundraising regulations

- Varies tremendously across and within countries
  - Permits – needed or not and for what kind of fundraising activity
  - Conduct of FR activities – type of activities, ethical principles, identity verification, limitations on cost etc.
  - Reporting / disclosure – required or not, for what kind of information/activity
  - “Know your donor, know your beneficiaries” rule is least addressed among regulatory initiatives (while found in self-regulation)
PBO supervisory authorities

- Charity Commission (UK)
- Tax Authority (e.g., Netherlands)
- Ministry (e.g., Portugal)
- Central PBO Registry (e.g., Italy, Bulgaria)
- Public Prosecutor (e.g., Hungary)
- Bi – Agency model: Ministry & PBO Council (Poland)
Fundraising oversight

- Charity Commission (UK)
- Police (Finland, Cyprus)
- Ministry of Interior (e.g., Czech Republic)
- None (e.g., Hungary – except 1% model)
- Tax Authority (e.g., Netherlands)
- Municipalities (Cyprus)
- Mixed model (Ireland)
Mixed regulatory model – Ireland

- Charities Regulation Act 2009 – just passed
- Fundraising administration & operation regulated by Codes of Good Practice.
- Fundraising permits & accountability requirements subject to statutory oversight.
- Reserve powers for Minister to regulate in case Codes of Good Practice “fails”.
- Includes “non-cash collections” – all fundraising activity will require permit.
Initiatives at a European level

- Council of Europe Recommendations on the Legal Status of NGOs
- European Foundation Statute
- European Database of NGOs (GuideStar)
- Cross-border giving (ECJ)
- DG JLS - Code-of-conduct for NGOs?
- ...

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Role of EU in European level regulation of NGOs

- Regulator
- “Qualifier”
- Facilitator
Conclusions

- NPOs are coming under increased regulation, scrutiny and oversight across Europe.
- Fundraising is a field most diversely regulated; and where self-regulation plays an increased role.
- Cooperation with EC and domestic authorities needed in order to maintain best practice arrangements.
Thank you!

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