

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.

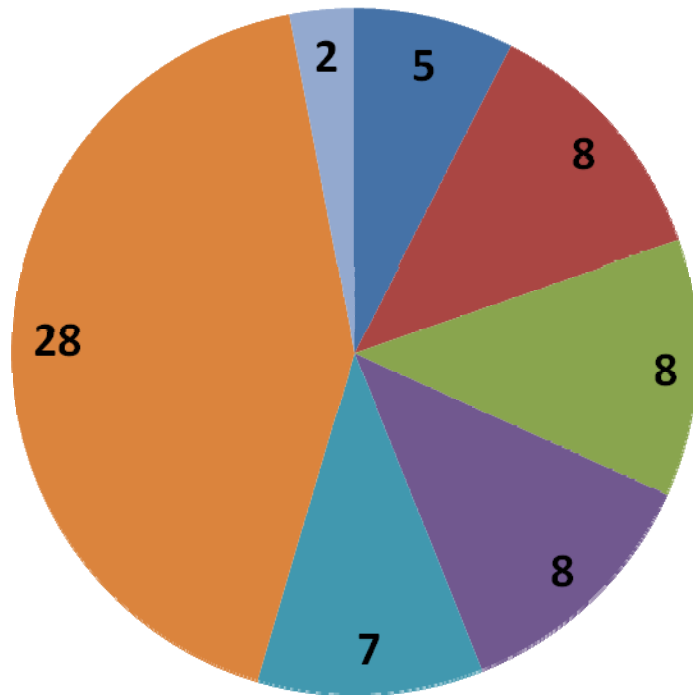
Trends in Public Regulation

- ❑ 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

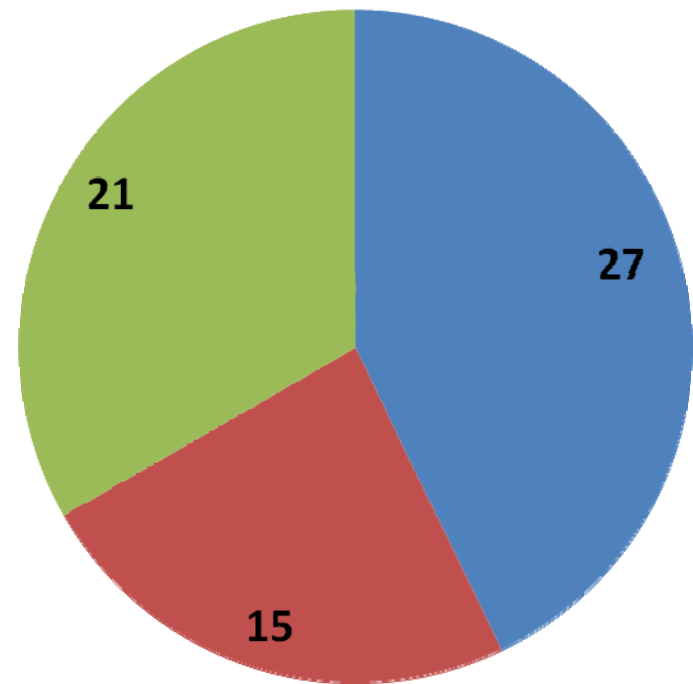
Types of NPO Regulated

- Association
- PBO
- Publicly funded
- Foundation
- Charity
- Multiple

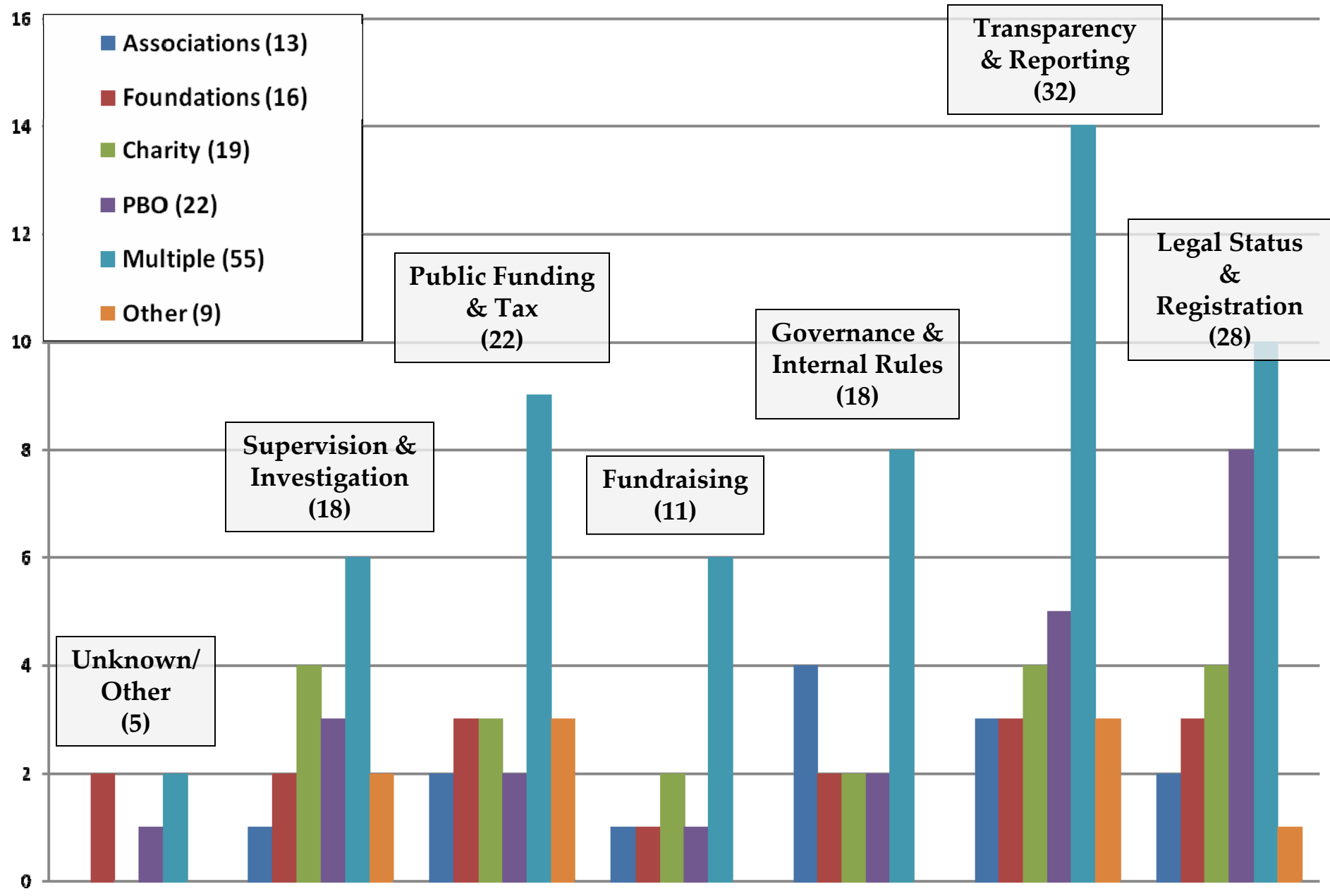


Number of Issues covered by Initiative

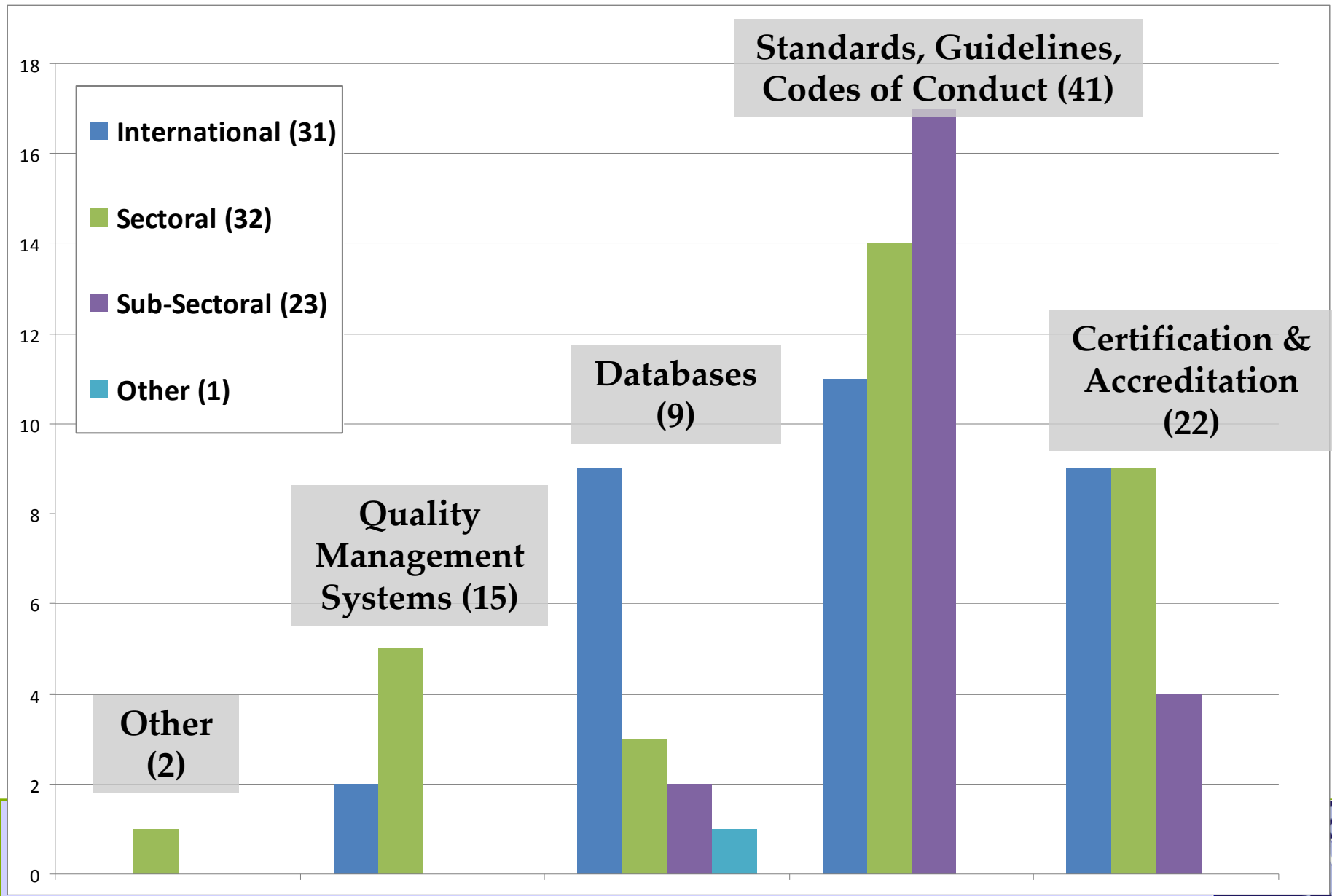
- 1
- 2 or 3
- 4+



Map of Public Regulation Initiatives



Map of Self-Regulation Initiatives



“Third Sector”

- Common law
(sector = charities)

vs.

- Civil law
(sector = all NPOs)

Legal, Welfare and Development

Models

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

New Member States

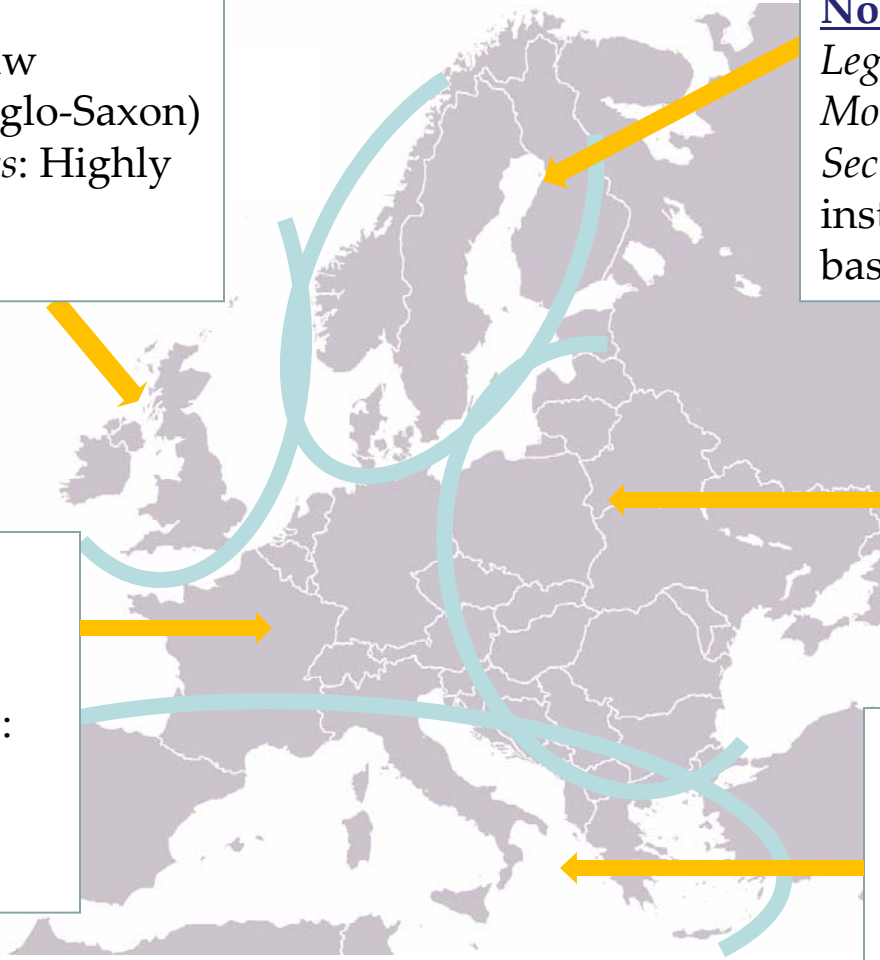
Legal: Civil Law
Model: Emerging
Sector characteristics: weaker, dependent

Continental

Legal: Civil Law
Model: Corporatist
Sector characteristics: Highly institutionalized, inter-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?
- ❑ ...

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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